



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS  
LEGISLATION COMMITTEE

**Estimates**

THURSDAY, 26 MAY 2011

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**

**Thursday, 26 May 2011**

**Senators in attendance:** Senators Abetz, Adams, Barnett, Boyce, Brandis, Cash, Crossin, Furner, Humphries, Ludlam, Parry, Pratt, Ronaldson, Trood and Xenophon.



## **ATTORNEY-GENERAL**

### **In Attendance**

Senator Ludwig, Minister for Agriculture, Fisheries and Forestry, and Minister Assisting the Attorney-General on Queensland Floods Recovery

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

#### **Management and Accountability**

Mr Roger Wilkins AO, Secretary

Ms Renee Leon, Deputy Secretary, Strategic Policy and Coordination Group

Mr Tony Sheehan, Deputy Secretary, National Security and Criminal Justice Group

Ms Elizabeth Kelly, Deputy Secretary, Civil Justice and Legal Services Group

### **Outcome 1—A just and secure society through the maintenance and improvement of Australia's law and justice framework and its national security and emergency management system**

#### **1.1 Attorney-General's Department Operating Expenses – Civil Justice and Legal Services**

##### **Access to Justice Division**

Ms Louise Glanville First Assistant Secretary

Ms Karen Moore, Assistant Secretary, Justice Policy Branch

Ms Janet Power, Assistant Secretary, Administrative Law Branch

Mr Steven Marshall, Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Dr Albin Smrdel, Assistant Secretary, Federal Courts Branch

##### **Civil Law Division**

Mr Matt Minogue, First Assistant Secretary

Ms Helen Daniels, Assistant Secretary, Business Law Branch

Mr David Bergman, Assistant Secretary, Personal Property Securities Branch

Mr Chris Collett, Acting Assistant Secretary, Classification Branch

Ms Janean Richards, Assistant Secretary, Office of Legal Services Coordination

Ms Janette Dines, Assistant Secretary, Queensland Floods and Commonwealth Law Ministers Meeting Branch

##### **Constitutional Policy and Law Reform**

Mr David Fredericks, First Assistant Secretary, Priorities and Coordination Division

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Mr Andrew Walter, Assistant Secretary, Strategy and Policy Advice Unit

##### **International Law and Human Rights Division**

Mr Greg Manning, First Assistant Secretary, Office of International Law

Ms Catherine Fitch, Assistant Secretary, International Human Rights and Anti-Discrimination Branch

Dr John Boersig PSM, Assistant Secretary, Human Rights Branch

**Social Inclusion Division**

Ms Katherine Jones, First Assistant Secretary

Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Ms Christine Freudenstein, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

**Office of Legislative Drafting and Publishing Division**

Mr John Leahy PSM, First Assistant Secretary

Mr Noel Bugeia, Assistant Secretary, Legislative Services and Publication

**1.2 Attorney-General's Department Operating Expenses—National Security and Criminal Justice**

**Criminal Justice Division**

Mr Iain Anderson, First Assistant Secretary

Mr Anthony Coles, Assistant Secretary, Border Management and Crime Prevention Branch

Ms Tamsyn Harvey, Acting Assistant Secretary, Criminal Law and Law Enforcement Branch

**National Security Capability Development Division**

Mr Kym Duggan, First Assistant Secretary

Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch

Mr Michael Pahlow, Assistant Secretary, Counter-Terrorism Capability Development Branch

Ms Doris Gibb, Assistant Secretary, Geospatial Capability Development Branch

**Emergency Management Australia**

Mr Campbell Darby DSC AM, Director-General

Ms Diana Williams, Assistant Secretary, Security Coordination Branch

Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch

Ms Kerryn Vine-Camp, Assistant Secretary, Crisis Coordination Branch

Mr Kevin Rheese, Director, Relief and Recovery Section

**International Crime Cooperation Division**

Ms Maggie Jackson, First Assistant Secretary

Ms Alex Taylor, Assistant Secretary, International Crime—Policy and Engagement Branch

Ms Anna Harmer, Assistant Secretary, International Crime Cooperation Central Authority

Ms Catherine Hawkins, Assistant Secretary, International Legal Assistance Unit

**National Security Resilience Policy Division**

Ms Ayesha Perry, Acting First Assistant Secretary

Mr Michael Jerks, Acting First Assistant Secretary, (Assistant Secretary, Critical Infrastructure Protection Branch)

Mr Duncan Anderson, Acting Assistant Secretary, Emergency Management Policy Branch

Mr Andrew Rice, Assistant Secretary, Identity Security Branch

Ms Deborah Anton, Assistant Secretary, E-Security Policy and Coordination Branch

Ms Marcella Hawkes, Acting Assistant Secretary, E-Security Policy and Coordination Branch

**National Security Law and Policy Division**

Mr Geoff McDonald PSM, First Assistant Secretary

Ms Jamie Lowe, Assistant Secretary, Countering Violent Extremism Taskforce

Ms Leisa Richardson, Acting Assistant Secretary, AusCheck Branch

Ms Kelly Williams, Assistant Secretary, National Security Policy Branch

Ms Annette Willing, Assistant Secretary, Security Law Branch

Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

**1.3 Justice Services****Access to Justice Division**

Ms Louise Glanville First Assistant Secretary

Ms Karen Moore, Assistant Secretary, Justice Policy Branch

Ms Janet Power, Assistant Secretary, Administrative Law Branch

Mr Steven Marshall, Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Dr Albin Smerdel, Assistant Secretary, Federal Courts Branch

**Social Inclusion Division**

Ms Katherine Jones, First Assistant Secretary

Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Ms Christine Freudenstein, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

**Civil Law Division**

Mr Matt Minogue, First Assistant Secretary

Ms Helen Daniels, Assistant Secretary, Business Law Branch

Mr David Bergman, Assistant Secretary, Personal Property Securities Branch

Mr Chris Collett, Acting Assistant Secretary, Classification Branch

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Dr John Boersig PSM, Assistant Secretary, Human Rights Branch

**Office of Legislative Drafting and Publishing Division**

Mr John Leahy PSM, First Assistant Secretary

Mr Noel Bugeia, Assistant Secretary, Legislative Services and Publication

**1.4 Family Relationship Services**

**Access to Justice Division**

Ms Louise Glanville, First Assistant Secretary

Ms Karen Moore, Assistant Secretary, Justice Policy Branch

Ms Janet Power, Assistant Secretary, Administrative Law Branch

Mr Steven Marshall, Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Dr Albin Smrdel, Assistant Secretary, Federal Courts Branch

**1.5 Indigenous Law and Justice**

**Social Inclusion Division**

Ms Katherine Jones, First Assistant Secretary

Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Ms Catherine Fitch, Assistant Secretary, Indigenous Policy and Service Delivery Branch

**1.6 National Security and Criminal Justice**

**Criminal Justice Division**

Mr Iain Anderson, First Assistant Secretary

Mr Anthony Coles, Assistant Secretary, Border Management and Crime Prevention Branch

Ms Tamsyn Harvey, Acting Assistant Secretary, Criminal Law and Law Enforcement Branch

**National Security Capability Development Division**

Mr Kym Duggan, First Assistant Secretary

Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch

Mr Michael Pahlow, Assistant Secretary, Counter-Terrorism Capability Development Branch

Ms Doris Gibb, Assistant Secretary, Geospatial Capability Development Branch



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Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch  
Ms Kerryn Vine-Camp, Assistant Secretary, Crisis Coordination Branch  
Mr Kevin Rheese, Director, Relief and Recovery Section

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Ms Alex Taylor, Assistant Secretary, International Crime—Policy and Engagement Branch  
Ms Anna Harmer, Assistant Secretary, International Crime Cooperation Central Authority  
Ms Catherine Hawkins, Assistant Secretary, International Legal Assistance Unit

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Mr Andrew Rice, Assistant Secretary, Identity Security Branch  
Ms Deborah Anton, Assistant Secretary, E-Security Policy and Coordination Branch  
Ms Marcella Hawkes, Acting Assistant Secretary, E-Security Policy and Coordination Branch

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Ms Jamie Lowe, Assistant Secretary, Countering Violent Extremism Taskforce  
Ms Leisa Richardson, Acting Assistant Secretary, AusCheck Branch  
Ms Kelly Williams, Assistant Secretary, National Security Policy Branch  
Ms Annette Willing, Assistant Secretary, Security Law Branch  
Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

**People, Information and Technology Division**

Ms Hilary Russell, General Manager

**Strategic Policy and Coordination Group****Finance and Property Division**

Mr Stephen Lutze, General Manager, Finance and Property Division  
Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

**Priorities and Coordination Division**

Mr David Fredericks, First Assistant Secretary  
Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit  
Mr Craig Harris, Assistant Secretary, Public Affairs Branch  
Mr Matt Hall, Assistant Secretary, Cabinet and Ministerial Coordination Branch

Mr Andrew Walter, Assistant Secretary, Strategy and Policy Advice Unit

**People, Information and Technology Division**

Ms Hilary Russell, General Manager

**Australian Crime Commission**

Mr John Lawler APM, Chief Executive Officer

Ms Jane Bailey, Executive Director, People and Business Support

Ms Karen Harfield, Executive Director, Performance and Stakeholder Relations

**Australian Customs and Border Protection Service**

Mr Michael Pezzullo, Acting Chief Executive Officer

Ms Marion Grant, Deputy Chief Executive Officer

Mr Neil Mann, Deputy Chief Executive Officer

Ms Roxanne Kelley, Acting Deputy Chief Executive Officer, Border Enforcement

Mr Steven Groves, Chief Finance Officer

Ms Raelene Vivian, National Director, Cargo

Ms Jan Dorrington, National Director, Passengers

Ms Sarah Major, National Manager, Trade Policy and Regulation

Mr Justin Wickes, Acting National Manager, Trade Measures

Rear Admiral Tim Barrett, Commander, Border Protection Command

Mr Demetrio Veteri, Deputy Commander, Border Protection Command

Ms Sharon Nyakuengama, Acting National Director, Enforcement and Investigations

Mr Nigel Perry, National Director Maritime Operations Support Division

Mr John Gibbon, Acting National Director, Intelligence and Targeting

Mr Geoff Johannes, National Manager, Trade Measures Review

Dr Ben Evans, National Manager, Border Strategies and Priorities Branch

Ms Maree Bridger, National Director People and Place

Mr Joe Attanasio, Chief Information and Knowledge Officer, IT Division

Mr Kingsley Woodford-Smith, National Manager, SIEV 221 Taskforce

**Australian Federal Police**

Mr Tony Negus APM, Commissioner

Mr Peter Drennan APM, Deputy Commissioner, National Security

Mr Michael Phelan APM, Deputy Commissioner, Close Operations Support

Mr Andrew Colvin, Deputy Commissioner, Operations

Mr Andrew Wood, Chief Operating Officer

Mr Neil Gaughan, National Manager, High Tech Crime Operations

Mr Frank Prendergast, National Manager, International Deployment Group

**Australian Government Solicitor**

Mr Ian Govey, Chief Executive Officer

Mr David Riggs, Chief Financial Officer

**Australian Human Rights Commission**

The Hon Ms Catherine Branson QC, President and Human Rights Commissioner

Mr Graeme Innes AM, Disability Discrimination Commissioner and Race Discrimination Commissioner

Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner

Ms Elizabeth Broderick, Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination

Ms Padma Raman, Executive Director

Mr Darren Dick, Director, Policy and Programs

Mr David Richards, Manager, Finance and Services, Chief Financial Officer

**Australian Law Reform Commission**

Professor Rosalind Croucher, President

Ms Sabina Wynn, Executive Director

**Australian Security Intelligence Organisation**

Mr David Irvine AO, Director-General of Security

Mr David Fricker, Deputy Director-General

**Australian Transaction Reports and Analysis Centre**

Mr John Schmidt, Chief Executive Officer

Mr Peter Clark, Executive General Manager, Supervision

Ms Liz Atkins, Executive General Manager, Intelligence

Mr Alf Mazzitelli, General Manager, Corporate and Chief Finance Officer

Ms Amanda Wood, General Manager, Supervision, Central and North West

Mr John Visser, General Manager, Intelligence

**Classification Board**

Mr Donald McDonald AC, Director

Ms Lesley O'Brien, Deputy Director

**Classification Review Board**

Ms Victoria Rubensohn AM, Convenor

**Family Court of Australia**

Mr Richard Foster PSM, Chief Executive Officer

Mr Grahame Harriott, Executive Director, Corporate Services

**Federal Court of Australia**

Mr Warwick Soden, Registrar and Chief Executive

Mr Peter Bowen, Chief Finance Officer

**Federal Magistrates Court of Australia**

Mr Richard Foster PSM, Acting Chief Executive Officer

Mr Steve Agnew, Acting Deputy Chief Executive Officer

Mr Grahame Harriott, Acting Executive Director Corporate

**High Court of Australia**

Mr Andrew Phelan, Chief Executive and Principal Registrar

Mr Jeff Smart, Manager, Corporate Services

Ms Carolyn Rogers, Senior Registrar

**Insolvency and Trustee Services Australia**

Ms Veronique Ingram, Chief Executive and Inspector-General in Bankruptcy

Mr Gavin McCosker, National Manager

Mr Jeff Hanley, National Manager, Regulation and Enforcement

Mr Bob Morison, Chief Finance Officer

Mr Matthew Osborne, Principal Legal Officer

Mr Adam Toma, National Manager, Regulation and Enforcement

Mr Andrew Robinson, National Manager, Debt Agreement Service and Information and Registry

**Office of the Director of Public Prosecutions**

Mr Christopher Craigie SC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Mr James Carter, Deputy Director

**Committee met at 09:02**

**CHAIR (Senator Crossin):** I declare open this public hearing of the Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure in respect of the year ending 30 June 2012 and the particulars of certain proposed expenditure in respect of the year ending 30 June 2012 for the Attorney-General's and Immigration and Citizenship portfolios. The committee must report to the Senate on the 21 June 2011, and we have set the date of 8 July 2011 as the date by which answers to questions on notice are to be returned. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings, but we have assistance or copies of those rules over there if you need them. I want to particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, and we will incorporate that into the *Hansard*.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
  - (1) If:
    - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
    - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.
  - (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
  - (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
  - (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
  - (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
  - (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
  - (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
  - (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

We are going to continue our examination of the Attorney-General's portfolio today and begin with the Australian Federal Police. We are then proposing to go to the Customs and Border Protection Service after lunch at 1:30 pm, and when that is finished we will return to the

Attorney-General's Department. I think that last night we still left it at cross-portfolio and the group I outcome.

Having said all of that as the introduction, can I welcome you back Minister Ludwig; good morning. Thank you to you and Mr Wilkins.

**Australian Federal Police**

[09:04]

**CHAIR:** Our first witnesses this morning are, of course, Commissioner Negus from the Australian Federal Police. Thank you to you and your team, and welcome. Do you have an opening statement that you wanted to start with this morning?

**Mr Negus:** No, I do not.

**CHAIR:** All right, thank you very much. We will go straight to questions.

**Senator ABETZ:** If I may, I will quickly indicate a private conversation that I had with Mr Wilkins, who, following on from last night, indicated that in relation to the pursuit of the potential Gaddafi assets in Australia the lead agency is DFAT. So I just put that on the record; and can I thank Mr Wilkins for that. Have the Australian Federal Police entered into a memorandum of understanding or a protocol, or whatever terminology one might like to employ, with the Tasmanian police in relation to the potential detention centre at Pontville?

**Mr Negus:** At this stage we have not. We are in negotiations with all the state and territory police forces and DIAC to facilitate such an arrangement but, at this stage, no arrangement has yet been settled.

**Senator ABETZ:** When did those discussions with Tasmania first start?

**Mr Negus:** I hosted a commissioners conference about one month ago where we discussed the issues and the potential issues around immigration detention centres. Shortly thereafter, within the last couple of weeks, the Department of Immigration and Citizenship convened a meeting and representatives from all state and territory police forces attended. So it is only within the last two or three weeks.

**Senator ABETZ:** Thank you very much.

**Senator TROOD:** Mr Negus, I want to ask you some questions about the AFP deployment in Afghanistan. Can you tell us how many AFP officers are currently deployed there, please?

**Mr Negus:** We currently have 28 officers in Afghanistan.

**Senator TROOD:** I think we discussed on the last occasion we met the possibility that you might actually be increasing your deployment. Have there been any further developments on that front?

**Mr Negus:** There have been some developments but no formal conclusion has been reached on whether we will or will not. We have actually been successful in being selected for a senior officer to be an adviser in the Ministry of the Interior over there, and that will commence in June this year. What we will do is replace one of our strategic positions currently there with that senior officer, so the total numbers will not change. Part of the role of that person is to look at and work with NATO on what the future requirements might be for training. As I said, we will take those issues as they come. NATO have indicated to us that

they would like us to play a larger role in training but, of course, that would be subject to discussions with the government.

**Senator TROOD:** Is there any active consideration on increasing the deployment of AFP officers at the moment?

**Mr Negus:** No. We have had some preliminary requests about what we could do if we were able and we are looking at that. Again, when that person, who is an SES1 officer, a commander, reaches Afghanistan, he will work with NATO on what the requirement would be. They are talking in the range of perhaps 10 to 12 additional officers to assist with training but nothing has been settled as yet.

**Senator TROOD:** And when will your senior officer arrive in Afghanistan?

**Mr Negus:** Around 30 June.

**Senator TROOD:** As I understand it, your officers are primarily employed in training the Afghan police force; is that still the case?

**Mr Negus:** It is. We have 21 officers at the training centre in Tarin Kowt. We have four officers in Kabul who are involved in the more strategic direction setting, if you like, and curriculum development and those sorts of things. We have three officers in Kandahar who, again, are more involved in the intelligence type areas there.

**Senator TROOD:** Do you have any recent figures for the numbers of Afghan National Police that you have trained?

**Mr Negus:** As at 14 April, we have trained 1,255 Afghan National Police in Tarin Kowt, and we have also trained 172 personnel out of the Afghan major crime task force in Kabul.

**Senator TROOD:** What was that second figure?

**Mr Negus:** We have trained 172 out of the Afghan police major crime task force, which is based in Kabul. Just to give you some proportions, there are slightly over 3,000 police in Uruzgan, so we have trained 1,255 out of around 3,000.

**Senator TROOD:** Are the police that you are training the responsibility of the Australian Federal Police, or are you doing that in conjunction with other countries?

**Mr Negus:** In conjunction with the NATO Training Mission—Afghanistan. The AFP is taking a lead role in that, of course, but there are other people from other countries there as well.

**Senator TROOD:** So you and others are cooperatively undertaking this training?

**Mr Negus:** Yes, we are. I should say that it is actually coordinated by NATO and, again, they set most of the direction within the training. We just facilitate that by providing the training.

**Senator TROOD:** And what specifically are your people doing?

**Mr Negus:** It is a basic patrolmans course. It is very base level police training. There are some survival aspects to this as well, but it is base level police training to bring them up to a level that they can go and facilitate and work their jobs with a basic level of training. There is also some English language training and we are also anticipating in the second half of this year some leadership training for the people who are showing some promise within the Afghan National Police within Uruzgan.

**Senator TROOD:** Are these courses of a particular duration? So the officers enter the course, they complete the training and then they move onto other things? Is that how it works?

**Mr Negus:** Yes, it is. It is six weeks duration. They come in for six weeks and live in the facility within Tarin Kowt. In fact, Minister Brendan O'Connor and I visited there last June and witnessed some of the training taking place.

**Senator TROOD:** Once these officers leave your care, do you have any continuing contract with them? Do you maintain an extended role in relation to their training?

**Mr Negus:** Uruzgan is a relatively small precinct and there are opportunities for them to come back into the environment and actually provide some advice from the trainers. We do not actively go outside the wire, as it is known, and mentor them in their workspaces.

**Senator TROOD:** So all this takes place within the confines of a highly protected and secure environment?

**Mr Negus:** Yes, it is.

**Senator TROOD:** Why do you not go beyond that and provide additional training or mentoring?

**Mr Negus:** It is something that we have looked at but the current security assessment is that anywhere outside of the confines of the Tarin Kowt camp is really a battle zone and the dangers to civilian police operating in that environment, from our perspective, are just too great. It is something that we have asked our officer to look at when he is there. He has actually been to some forward operating bases which are secured to some degree, though certainly not as much as Tarin Kowt. We have actually asked him to examine that, and he was there recently on a fact-finding mission—he is one of our senior people from the international deployment group—and spent two weeks looking at forward operating bases and the security environments around that. It is something that we are considering, but at this stage we consider that the environment is just too dangerous for civilian police to be operating.

**Senator TROOD:** What would it take for you to undertake that role in terms of providing security and protection?

**Mr Negus:** There are two options. Either we would have a significant force protection deployment from the ADF or one of the allied forces, so you would have a significant group of people around you—which, again, is not particularly effective in the context of the community policing model—or we would have to see an advancement in the security situation on the ground there, which would stabilise and allow our people to do their jobs in relative safety.

**Senator TROOD:** Is the latter a likelihood in the near future? I can see one might be able to do it if you have adequate support from the ADF, but the alternative is the preferable one and presumably reflects our long-term objectives in Afghanistan. What is your assessment of how near or far we might be from being able to do that kind of thing?

**Mr Negus:** As I said, we are looking at the forward operating bases, which are secured to a greater degree than the broader community. But I would suggest that we are a long way short of an overall community policing effort within townships that are not secured and those sorts of things.



**Senator TROOD:** I see. You probably could not do that forward basing by yourselves, could you? Would you think that that is a role that the international deployment force could undertake?

**Mr Negus:** Again, there would have to be force protection measures around those forward operating bases that secure them in a way that we could go out and work in those places, but they are still secured environments. They are not open townships or villages.

**Senator TROOD:** I see. I know we have discussed on previous occasions the problems of retention rates within the Afghan force. Do you keep statistics on retention rates of people you train?

**Mr Negus:** No, I am afraid we do not have them with us. I am sure that in country we would be able to source them, but we do not have them with us today.

**Senator TROOD:** Perhaps you could take that on notice. I think that I have asked you about retention rates on previous occasions and you have been forthcoming about them. If you do not have the particular statistics, can you give us an impression of the retention rates?

**Mr Negus:** It is a problem. I think as I have said before, casualty rates amongst the Afghan national police are even substantially higher than the military over there, because they are operating in environments without the sort of military support that might be provided to the army. Again, I think there are signs of improvement across the board in a range of areas with the Afghan national police but, as I have said before to this committee, we are starting from a fairly low base here and we must be realistic about what we can achieve in the policing sense. We have trained almost half of all police in Oruzgan up to a sufficient level for them to have a basic patrolman skill—

**Senator TROOD:** Sorry, Commissioner; does that mean they have been through your course or the NATO collective course?

**Mr Negus:** It is one and the same. NATO work with us to deliver that program, so again it is under the auspices of the NATO Training Mission-Afghanistan, but the Federal Police provide the predominant number of staff to provide that training.

**Senator TROOD:** So your impression is that the retention rates, which have been a problem consistently, remain a problem. Is that—

**Mr Negus:** Again, I would like to look at the statistics. It is not something I have been briefed on, probably, since last time I appeared before the committee, so I would like to have a look at that, but certainly the impression that I get from briefings I do get is that things are improving in the Afghan National Police—slowly, but they are improving.

**Senator TROOD:** And are the reasons why retention is a problem similar ones? I think that there were issues of people just leaving and deciding there were better things to do than put their life at risk, notwithstanding the no doubt excellent training they are getting. Can you tell us whether there are similar kinds of categories of reasons for the retention rates being relatively unimpressive?

**Mr Negus:** Certainly over the last few years there have been issues with pay, with people actually being paid. This is work that certainly NATO has been doing to eliminate corruption at various levels, to make sure that the officers who are doing the work are actually getting paid and that it is not being siphoned off somewhere else, and a range of other issues. We take

the opportunity, obviously, with them being with us for six weeks to reinforce those sorts of issues and to reinforce the commitment and importance of what is happening in Afghanistan and the role that a civilian police force will play in the longer term.

**Senator TROOD:** Once these officers have been—

**Mr Negus:** Sorry, Senator, I am just seeing if one of our officers—

**Senator TROOD:** I was going to say that I am happy to take any further information that your officers may be able to provide.

**Mr Negus:** One of the officers here is involved in the International Deployment Group and I was just checking whether he had any details, but unfortunately, like me, he does not have any update on the attrition rates.

**Senator TROOD:** Okay. If you can find them somewhere and let me have them later in the day, I would be grateful to you. Once these officers have been through your course, is there a follow-up at any point in time? Is there a second, refresher course or anything of that kind that you are undertaking?

**Mr Negus:** Not a refresher course per se, because, as I said, we are really working our way through the whole of the force to try and give training to everyone involved. We have identified about 100, if memory serves me correctly, of the brightest people who come through this course, to provide some leadership training to them. There are also English language courses that are being provided to help them through that process, so it is about really getting a baseline. As I said, we are starting from a low base so I do not want to give the impression this is a course that civilian police in Australia or anywhere else around the developed world would be doing. This is a base-level survival and basic patrolman's skills course, but the brightest of those people are being identified for leadership training to build the structure of leadership which is so important then for developing the force in years to come.

**Senator TROOD:** I wonder: are you familiar with this UN police perception survey of 2010 which refers to these activities?

**Mr Negus:** Not personally, but I will defer to one of my—

**Senator TROOD:** Do you have an officer there who can help us out with that?

**Mr Negus:** Yes, Assisting Commissioner Frank Prendergast, who is the head of our International Deployment Group, is here and he may well be able to answer some of those questions. He is familiar with that report.

**Mr Prendergast:** Thank you, Senator.

**Senator TROOD:** Welcome, Assistant Commissioner. So you are familiar with the UN perception survey?

**Mr Prendergast:** I have read it.

**Senator TROOD:** The survey actually is complimentary and, to some extent, encouraging of the progress that is taking place there but there are some disturbing dimensions—or at least I find them disturbing—to the survey. For example, six in 10 Afghans reported a significant level of corruption among ANP members; more than a quarter of the Afghans report seeing ANP members using drugs or narcotics; more than 10 per cent report seeing police participating in drug trade in various places. Afghans indicated a reluctance to engage with

the ANP and approximately half report that they would take criminal matters elsewhere. Fewer than one-third see the police as very well trained, equipped and prepared to take over duties from the international forces. So in the context of what is perhaps a good news story at one level, there are these rather disturbing dimensions. Do they accord with your recollection or your understanding of the environment there?

**Mr Prendergast:** Yes, Senator, they do. What that points to is how big the job actually is. It is a fact that the development of the ANP is lagging a long way behind the development of the ANA, the Afghan National Army. That is in part because the attention being paid to the ANP has come later than the attention paid to the Afghan National Army, but also because of the inherent difficulties in building a police force in any environment—particularly an environment such as Afghanistan where you have not only the normal issues you confront in police development, but also full-scale insurgency and the debilitating impacts of the narcotics trade.

**Senator TROOD:** Is it possible that these accounts to which I have just referred understate the extent of the problem?

**Mr Prendergast:** They are an accurate reflection of the state of the problem. Any police force really relies on the confidence of the public to properly perform its duty. It is a key element of policing and in the development of the ANP we have a long way to go. There are significant issues with things like illiteracy, narcotics abuse, human rights issues with the ANP, but if you look at the training that is being developed and being delivered, it is designed to try to combat some of those issues.

**Senator TROOD:** I see. Do you think they can be overcome if we were able to put a greater effort into the training component of our presence there?

**Mr Prendergast:** There is a large scale effort ongoing in relation to training of the ANP, but development of police forces generally, and it is not just a training issue, takes time. So with the ANP and its development to a state that we would consider acceptable you are probably looking at a generational issue. That is not to say that there are not a lot of good people in the ANP and progress is not being made, but the fact is you are dealing with a very undeveloped police force of 138,000-plus and there are significant issues to overcome. With regard to the scale of the effort, if you look at the NATO training mission, which is one element of the police reform picture in Afghanistan, their budget is something over \$1 billion a month. So there is a big effort going on, it is just a matter of properly coordinating that effort and having time for that effort to take effect.

**Senator TROOD:** So you are essentially saying this is a long-term activity. That we cannot expect results quickly, that it is going to take a generation, perhaps.

**Mr Prendergast:** It would require a sustained effort. If you look at other reform activity around the world in relation to police forces, it does take a long time. Developing a police officer takes time, building an institution takes time. As I said, the environment in Afghanistan is particularly difficult because unlike most places where you work which are post-conflict or pre-conflict, you are actually in the middle of a conflict. So you have the Afghan National Police accepting quite significant casualties, casualties that are much higher than the Afghan National Army, and as the commissioner quite rightly pointed out this all impacts on the ability to get mentors out into the field, which would be a normal aspect of

police development. The security situation just does not allow it, so it is quite a difficult problem.

**Senator TROOD:** So you are doing less than you would want to do, is that right? If you had your preferences, you would follow up this basic training activity with the mentoring activity that would provide the training and the support within the field—is that what I should take from your evidence?

**Mr Prendergast:** There are a couple of aspects to that. First off, the Australian contribution needs to be understood as part of a bigger effort. So we are making a valuable contribution. but it is a contribution to a much bigger effort. So some of the mentoring activities that we might do are being performed by other units that have the ability to survive in the field. For example, American army units are doing mentoring of police. But it is fair to say that our ability to operate is constrained by the security environment. So we are perhaps relying on other people to do some of the work that, for example, in the Solomons we would do ourselves. Having said that, one of the basic requirements for the Afghan National Police is to train them and there is an economy of scale in having our instructors at the provincial training centre where the Afghan National Police funnel in to us rather than dissipating that effort through Oruzgan in penny packets where we do not reach anywhere near the numbers.

**Senator TROOD:** Finally on this matter, did the perception survey prompt any particular response? Was there any assessment made of how the particular concerns which were raised in the survey could be met?

**Mr Prendergast:** I think the concerns raised in the survey are actually well known and the programs and the activity through NATO and other players like EUPOL, is actually tailored to try and deal with some of those issues. So there has been a concerted effort, for example in terms of the people we train, to weed out people who are involved in narcotics. The training involves human rights training and the like. So, in my view, there was nothing new thrown up in the survey that would cause a radical rethink of how we are doing things.

**Senator TROOD:** Thank you, Commissioner. Chair, I have finished my question on this particular topic.

**Mr Drennan:** Senator, if I can just add that in relation to the attrition rates, I have been advised that we will not be able to get those for you during the current hearing. We will need to get those from the coalition in Afghanistan but we will certainly take that on notice and provide them to you as soon as possible.

**Senator FURNER:** Thank you. Firstly, I was in Afghanistan last week and can I comment, certainly from my observations, on the excellent work that your officers are performing, particularly in Tarin Kowt and Kandahar. We actually met the ANP police chief there in Tarin Kowt and were very impressed with his approach and his competence and, I guess, his judgment on how things are going in that area.

**Mr Negus:** Thank you, Senator.

**Senator FURNER:** Firstly, the government made a commitment to increase the numbers of AFP. I know that has altered slightly in terms of the timing but I understand there is a commitment to fulfil a number of recruited officers by June this year. Could you inform the committee what that number will be as of that period, please?

**Mr Negus:** Yes. During the 2007 election there was a commitment for a further 500 AFP officers over the next five years. They were to be delivered in packets of 30, 30, 40 and then 200 and 200. In the last budget round, that has now been extended by a further two years. So the 500 will be achieved, but over a seven-year period rather than the initial five-year period. I might just go to Mr Wood, who has the figures in front of him here, to provide you with what the numbers are now with regard to what the recruitment will be.

**Mr Wood:** The figures under the new arrangement take us to an additional 30 in 2008-09, no change there; rising to 60 by 2009-10, no change; to a total of 100 in 2010-11, no change there. Then in 2011-12, there will be 359; in 2012-13 there will be 400, in 2013-14, 450 and then 2014-15 we will have the 500.

**Senator FURNER:** The 359 as of 2011-12, how does that compare with previous government recruitment figures?

**Mr Wood:** Previously by 2011-12 it would have been 200. I am sorry, a cumulative total of 300.

**Mr Negus:** Sorry, it might be worth clarifying the fact that because of the way this was designed, 200 in each of the final two years was a very steep increment in recruitment. We were able to take some of our supplier expenses and lessen that slope, if you like, with the knowledge that the money was coming on in those out-years. So we have actually reinvested back into our operational performance. We were well ahead of the target. In fact we were some 250-plus ahead of that target, because we knew the money was coming forward. At the moment the revised figure sets it at the figure that we have achieved—so we are well ahead of the target—and then lessens it in those out-years so we can just lessen that slope, if you like, of recruitment.

**Senator FURNER:** I was just wondering whether you could provide some information regarding the all-in model for aviation, policing and security in our major airports. How is that going?

**Mr Negus:** Senator, as you would be aware, Beale review, which was conducted a couple of years ago now, made a range of recommendations—I think, 40 recommendations—one of which was that we change the concept of how we do policing at Australia's 11 major airports. Currently there is a contract arrangement with state and territory police where the AFP would provide a counterterrorism first response with our Protective Service officers, but we would then second state police to each of those locations and they would provide the community policing. Roger Beale's review, which commonly referred to that component as the 'all in' model, changes that and the AFP will now take responsibility for all of those areas. It is a three-to five-year implementation plan. We will progressively return the state police to their jurisdictions and we will recruit and take over those responsibilities.

That is going very well. We have a project called Project MESA, which is well advanced, and we are also changing the construction of our workforce at airports with respect to Protective Service officers who, just for information, are sworn but they do not have a full sweep of police powers. They will be changed to being full sworn police. So it is quite a large endeavour and there are many hundreds of people involved in this. We are doing transition programs for own employees who are Protective Service officers. Since July 2010 five transition training courses have been run and we are progressively changing over from the

state police, who we have seconded us, to members of the AFP performing those roles. It is going very smoothly. We have had good cooperation from all of the states and territories, and progressively that will occur.

We have tried to be sensitive to the states and territories as well. If they need people back in their environments from a recruitment perspective, we will provide them much quicker. If they would like to take the whole five years to make the transition happen, we have tried to facilitate that as well.

**Senator FURNER:** How is the PSO transition tracking?

**Mr Negus:** Very well. Mr Wood has some figures or Deputy Commissioner Drennan, whose responsibility is for them, might be able to give you a bit more detail.

**Mr Drennan:** We have got 104 newly sworn police officers deployed across the various stations at the airports. They are people who have transitioned from PSOs, Protective Service officers, to sworn police officers. We have got another 52 courses of 25 who are currently under their training, who will graduate in the next two months. Currently we have got 202 AFP sworn officers at the airports out of a total of 731 members. It was from a base of zero AFP sworn officers to now having 202 there. So the transition program is going exceedingly well. The number of Protective Service officers who were interested in transiting to become sworn police officers and then have undertaken the courses successfully have actually far exceeded our expectations, which is a really good news story.

**Senator FURNER:** The commitment the government provided in the 2010-11 budget was \$760 million over four years for aviation, policing and security programs. I am just wondering whether you could go into some detail about what the recent changes to the legislation are and whether we are seeing any prosecutions as a result of those changes to the increased offences.

**Mr Drennan:** Some of the legislative changes there go to providing AFP member with access to some of the powers that go along in the application state laws within the airport environment. So they are more of an administrative nature with regards to the particular powers. There are some other increased offences in relation to on aircraft et cetera. There have been limited offences or opportunities where behaviour has lead to those offences and they are relatively new.

**Senator FURNER:** I want to ask some questions around the particular events on Christmas Island and in the Villawood detention centre. I know much has been reported about the AFP being called in to manage various serious situations in those locations and it has been widely reported that the AFP have used force against detainees. So, starting with the question of asylum, why was use of force necessary, firstly, in that particular circumstance?

**Mr Negus:** I will get Deputy Commissioner Drennan to do this. After the events of Christmas Island I actually tasked him with reviewing the situation, so he does have quite a comprehensive background in looking at the issues that you have mentioned. So I will pass to Deputy Commissioner Drennan.

**Mr Drennan:** I guess the first response is in relation to why the force was necessary. The AFP on island were faced with a series of public order incidents at the North West Point immigration detention centre and its surrounds. They were of such a nature and magnitude that the AFP were required to use a range of use of force options to restore order to the

detention centre to ensure the safety of the other detainees in the centre, of the staff, of Christmas Island residents and of the AFP officers themselves.

**Senator FURNER:** And who actually authorises those decisions to take control of the situation?

**Mr Drennan:** The authority really comes from the overall commander of the deployment, who is a police commander, SES Band 1. There is then a police tactical commander who has on-the-ground control, and then there is a tactical commander and team leaders. There are orders provided in relation to the options of the types of force that can be used, and then the actual deployment of those in response to the threat is made by the police officer on the ground within a certain constraint of what he has been authorised to use.

**Senator FURNER:** Okay. Were there any injuries as a result of the incident at all?

**Mr Drennan:** There was only one recorded injury and that was to a detainee who suffered a fractured leg. At this point in time it is indicative to us that the fracture was, not as a result of impact but certainly followed the impact of a less-than-lethal round which is commonly referred to as a 'beanbag round'.

**Senator FURNER:** All right. In relation to Villawood, how does the AFP work with the New South Wales state police?

**Mr Colvin:** As with all state and territory police, we have a very close relationship with them. You would be aware, obviously, that, outside the Canberra jurisdiction and Christmas Island, the AFP is not necessarily a police force for first response. So, in something like a Villawood incident, obviously we are constantly talking with the New South Wales police about what the appropriate response may be and discussing how we might share resources or split resources, depending on what response is required and what the incident may be.

**Senator FURNER:** Say a situation like Villawood occurs again—and let us hope it does not. I know some measures have been made to secure the buildings there. When that problem occurs, who makes that decision that it is either AFP or New South Wales state police to assist?

**Mr Colvin:** The first step in that is that the contracted service provider for the immigration detention centre, Serco, who are contracted to DIAC, would make the initial assessment as to whether it was within their capabilities to deal with the incident, and often it is. They have capabilities themselves to deal with certain incidents. If it gets to the point where public order issues become apparent and Serco can no longer deal with it, they will first of all contact the New South Wales police officials in Villawood. If it were an immediate response required then obviously, as I said, the AFP is not always in a position for immediate response outside jurisdictions like the ACT, and then that would be a negotiation. We would be contacted at a very similar time; we would be talking to the New South Wales police about what our ability was to respond and what their ability was to respond.

**Senator FURNER:** So, if the New South Wales police are involved in managing the disturbances, do the same standards apply to the AFP that apply to the New South Wales police?

**Mr Colvin:** What do you mean by standards, Senator? We work under very similar—

**Senator FURNER:** Standards of operation and, I guess, securing the centre.

**Mr Colvin:** I have to say yes. It is a fairly general issue. They obviously have some different rules and regulations internally to what we may have, but, in terms of interoperability of how we would approach certain instances, yes. We have very similar practices around our tactical deployments, what we will and will not do and what our concerns are for safety of officers or members of the public. So no; there are very similar concerns.

**Senator FURNER:** Okay. Thank you.

**CHAIR:** Senator Humphries, are there questions from you?

**Senator HUMPHRIES:** Yes, if I could have a few questions. Thanks, Madam Chair. I received an answer recently to a question asked on 27 February about investigations, conducted by a team within Special References-Home Office investigations, into unauthorised disclosure of Commonwealth information. I asked what the outcome of those investigations was and, of about 51 investigations, I was told that 34 had been finalised, 14 rejected, two terminated and one was awaiting finalisation. Can I have an understanding of what it means to have an investigation rejected or terminated?

**Mr Colvin:** Senator, I might take that question. For an investigation to be rejected, you would be aware that the AFP operates under a prioritisation model, so we need to look at the full circumstances of the matter, make an assessment about its serious nature, make an assessment about what offences may or may not have been committed and an assessment too about what our ability is to bring evidence forward of those offences. So we may reject matters on a range of those grounds, everything from priority through to our assessment of our ability to actually investigate or prosecute the matter. On matters that are terminated, I would have to check what those two were specifically but, again, there could be a range of reasons. It could be—and this is not specifically about these matters—that a complaint has been withdrawn; it could be that we commenced an investigation only to find that the evidence was not available or possibly witnesses that we thought would be able to provide certain evidence cannot provide that evidence, and so we would terminate the investigation.

**Senator HUMPHRIES:** Of the 34 matters that were finalised, can you tell me how many investigations resulted in a person or persons being identified as being capable of being prosecuted for breaching an offence in relation to unauthorised disclosure of Commonwealth information?

**Mr Colvin:** I do not think I have that with me specifically about the 34, so I would have to take that on notice.

**Senator HUMPHRIES:** If you could, please. That was what I was asking for originally in February. Could I find out how many of those resulted in either recommended prosecution or actual prosecution and also what the approximate cost of those 51 investigations would be to the AFP's budget?

The second issue I want to raise briefly was the report that came down earlier this week by the Commonwealth Ombudsman into possible shortcomings in compliance arrangements with covert surveillance. The Ombudsman makes the point that there is a number of improperly extended surveillance operations and installed surveillance without adequate justification. He comments that there is a perception by operational police that keeping up with the paper trail was burdensome. Can you outline to the committee what approximately is the process used to



begin, say, the use of a surveillance device and how you would describe that in terms of the burden that is placed on an officer or officers beginning such an investigation?

**Mr Negus:** I have the head of that particular area here, who is Assistant Commissioner Neil Gaughan. I will ask him to come up to the table and step you through the process. But can I just say that while the Commonwealth Ombudsman did make some of those recommendations, and we take those obviously very seriously, overall the report found the AFP was assessed as being compliant with the act. And he also, I noted in this morning's press, made some comments about the serious way in which both the AFP and the Australian Crime Commission senior executive take the compliance issues and the responsibility for compliance going forward. I think that is a very positive sign from the Ombudsman that we are attempting to do this.

The issues around compliance are necessarily complex because they are quite intrusive powers and there are a range of different checks and balances in place our officers must go through. Sometimes at the lower level of the organisation—and we do our best to explain these things—they might not understand necessarily the rationale for all of those complexities. But I will get Assistant Commissioner Gaughan just to step you through what they are. Again, it is an ongoing education process with us, but I am pleased that at least we were assessed as being compliant with the act and the recommendations are more of an administrative nature to improve our performance rather than anything else.

**Mr Gaughan:** Senator, in relation to any activity where we use covert powers, we are required to complete an affidavit. In the first instance that affidavit is actually reviewed by senior officers within the AFP to ensure that it not only complies with the law but also that there is sufficient evidence to allow us to obtain the relevant warrant to undertake the activity. In most instances we will then appear before a member of the Administrative Appeals Tribunal, and a warrant will be provided and sent up to members of my team to be involved in the installation of the necessary device to undertake the surveillance in accordance with the conditions that are put in place by the AAT member.

The issues that were raised in the Ombudsman's report were primarily around the renewal of those particular surveillance device warrants, and the issue primarily raised was: where members, inadvertently, instead of seeking a renewal of a surveillance device had actually made an additional application for what appeared to be a new device. Obviously the member of the AAT that then issues the new warrant is not necessarily of the view or the knowledge that this is an extension of an application. Obviously, and rightly so, the Ombudsman has some concerns that full and frank information is not being disclosed to the AAT member. As the commissioner rightly pointed out, it is an issue of education, and various members of the AFP are involved in the education process of members. We have had a significant influx of new members into the organisation in the last few years, as you would be well aware. But, as the Ombudsman also pointed out, it is not an issue of intentional noncompliance; it is an issue of people failing, to some extent, to understand what they are actually supposed to do. And we work very hard to ensure we comply with the act.

**Senator HUMPHRIES:** Do you think then that the requirements are, as the Ombudsman puts it, "burdensome"?

**Mr Gaughan:** No. I personally do not think they are, and everyone at this table would have worked under those same arrangements ourselves in our careers. It is just a matter of

ensuring that we actually comply with the legislation. There needs to be balancing acts in relation to the privacy of people involved in surveillance device activity, and we just need to comply with the legislation as it is.

**Senator HUMPHRIES:** In the last, say, five years, have any prosecutions failed because of a failure to comply with the disclosure requirements or the transparency requirements with respect to covert surveillance?

**Mr Gaughan:** Not directly, but there has been some criticism levelled at the AFP by various judicial officers in relation to the fact that we have failed to comply with the letter of the law. However, the nature of the evidence has outweighed to some extent our administrative mistake, and the evidence has been allowed to be submitted. We will take on notice to find out if there is any specific investigation, and we will get back to you on that.

**Mr Negus :** Can I just add that certainly the Commonwealth Ombudsman only yesterday, in a media release, made the following comment:

We note significant improvements made by the AFP in relation to this issue—making more frequent and correct use of extension provisions ...

So I think we are seeing a concerted effort by the AFP to improve in this area, and that is starting to bear fruit.

**Senator HUMPHRIES:** Okay; that is good. I notice that the AFP is reducing its involvement in the United Nations mission in Cypress quite substantially. What is the reason for that?

**Mr Negus :** As part of a broad range of savings across government that we were asked to put forward, we worked with the Attorney-General's portfolio and identified a number of different options that we could do to save some money. We have been part of the United Nations mission in Cypress since 1964. I understand it is the longest continuously serving United Nations mission in the world, as far as one country's involvement, so it is something that we have been involved in for a very long time. Again, the reduction will be from 16 officers down to five but we still make a significant contribution on the ground there, and it makes us the fourth largest contributor of any nation still, even with only five officers. We thought it was a reasonable area in which to provide some savings to the government, as we were requested to do.

**Senator HUMPHRIES:** So is another nation picking up that slack?

**Mr Negus :** It will be up to the United Nations to fill those gaps, but again I think Australia's contribution there in the last 47 years has been significant. Again, the United Nations would have to make that assessment.

**Senator PARRY:** Can I just pick up on two points where Senator Furner asked some questions. First, in relation to the protective service officers that are undergoing the training to become fully sworn AFP officers, do those numbers, when they become fully sworn, come out of the 500 increase, or are they additional or separate?

**Mr Negus :** No they do not. Those people are already employed by the AFP as protective service officers, and really, their status changes, so it will increase our sworn numbers and our proportion of sworn numbers, but it does not come out of the 500 because they are not new employees per se.

**Senator PARRY:** So regarding the 500 additional increase over seven years now instead of five, are they solely to be sworn officers or can they be a mixture of sworn and unsworn?

**Mr Negus :** They are solely to be sworn officers.

**Senator PARRY:** Just to be absolutely clear: the new sworn officers through the training program just change their status and do not reduce the number of the 500 additional?

**Mr Negus :** That is right.

**Senator PARRY:** Now that it has been delayed for another two years, does that affect your forward planning or deployment issues?

**Mr Negus :** As these were additional officers, we were quite glad to receive them and are looking forward to them. Obviously it extends it by two years, but, again, we can cope with that in our forward planning. It is an increased capacity. It is something we have not actually achieved yet, so it just extends the ability to deploy those officers into various organised crime fields.

**Senator PARRY:** In relation to the capacity to train, is the federal police training college here in Canberra the only college used for training purposes for sworn officers?

**Mr Negus :** It is for recruit training. We do have the capability to train people in each of our regional offices and there is some extension training and in-service training done in those locations, but the only place we conduct our long-term recruit training is here in Canberra.

**Senator PARRY:** Does the college meet that capacity? Is it modern enough?

**Mr Negus :** Yes it does. In fact, we have only just entered into a new lease. There has been substantial refurbishment over the last 10 years to meet the requirements of the organisation going forward, and I am satisfied—and I think Mr Wood will tell me it is about 10 years—

**Mr Wood:** Yes.

**Mr Negus :** We have just committed to a further 10 years, and, again, I am satisfied it will meet those needs. As I said, we do have to plan accordingly. You cannot have 300 or 400 people in there at once, but over the period of the year we can meet our attrition needs and also meet the extension needs that we do for training.

**Mr Wood:** I will add that the 500 initiative included some capital money, specifically for some work in the college to ensure not so much an increase in the size of the facility but the quality of the teaching aids in the facility. We were able to purchase those. That part of the delivery of the 500 has also been running on time, if not ahead.

**Senator PARRY:** Has that capital been fully expended or is there still some to go?

**Mr Wood:** The capital is mainly in the early years. I will confirm that it has all been spent, but my expectation is that it has all been spent.

**Senator PARRY:** Could you report back if that is not the case?

**Mr Wood:** Yes.

**Senator PARRY:** Just in relation to operational matters at the airports, do you have a rotation policy for the sworn officers at airports or is it just a standard deployment policy that applies elsewhere?

**Mr Negus :** People are rotated through airports. Deputy Commissioner Drennan will correct me if I am wrong here, but there is no regular rotation.

**Mr Drennan:** That is correct. That was largely on the basis that the people who did staff the airports, being the state and territory sworn police, used to rotate from their home force into the airports and back out. The protective service officers performed a specific role—that is, counter-terrorism first response. As we transition further into the major program, there will be greater rotation for developing the newer people at the airports, and more people who are currently sworn police officers will rotate into the airports. It will become a more vibrant workforce there with greater interchange between the operational activities in the office and the operational activities at airports.

**Mr Negus :** I will add to that. One of the good things about the Beale review and the all-in model is that it gives us far more critical mass in each of the locations for sworn police. Whilst in the past we had PSOs who could perform a limited role, those roles will now be performed by sworn police and there is greater flexibility within deployment and also a surge, if you like, where if things happen those people can be redeployed very quickly, called in on overtime or can do those sorts of things in a policing role rather than a protective security role.

**Senator PARRY:** So there is no maximum tenure as such in the airport. Is it perceived to be a high-risk environment because it is a more closed community and there is—if I can use this term—exposure to organised crime or potential exposure to organised crime?

**Mr Negus :** The work we do across the board has significant exposures. It is no more dangerous or exposed than anywhere else in the workforce.

**Senator PARRY:** Has there been a risk analysis done in relation to that particular aspect?

**Mr Negus:** There is a broad risk analysis of the workplace, but I have had nothing raised with me of any concern from the unions or anyone else about the working environment. In fact, part of this is also about improving the conditions and working environments of people at airports. Significant money is being spent over the next few years to give accommodation upgrades and those sorts of things for people at airports.

**Senator PARRY:** Thank you. My colleague has a question in relation to this before I move into another matter.

**Senator BARNETT:** To follow up on the airports, do you have set criteria for which airports receive AFP protection?

**Mr Negus:** Yes, we do. There are 11 designated counterterrorism first response airports and we could probably go through the list for you, off the top of our head. There are set criteria and the department of transport and regional services set that list. That is my understanding. Pete?

**Mr Drennan:** Yes, they set that list and they do an ongoing risk assessment of those, which we form part of and feed into.

**Senator BARNETT:** Do you have an opportunity or a discretion to allocate officers to other airports of concern?

**Mr Negus:** We do have slight discretion, but we do have a group called the Regional Rapid Deployment Team, and they actually go around to airports that are outside that core 11

and provide security advice and work with local authorities on the security structures. This is in regional Australia. I am not sure we have the figures of how many places they have visited but it would be in the hundreds each year of different airports they would actually look at and provide security advice. But we do not have actually have discretion to go and set up shop in Townsville or anywhere else.

**Senator BARNETT:** In terms of Tasmania I assume Hobart is on that list?

**Mr Negus:** Hobart is one of the designated airports, yes.

**Senator BARNETT:** How many officers do you have there?

**Mr Drennan:** There are 31 at Hobart.

**Senator BARNETT:** Thirty-one?

**Mr Negus:** Yes. That would cover a range of shifts, of course, but it is quite a large contingent.

**Senator BARNETT:** All right. And Launceston Airport I assume is not on that list?

**Mr Negus:** That is right.

**Senator BARNETT:** Have you considered Launceston in terms of using your discretion to allocate an AFP officer or officers to that airport?

**Mr Drennan:** It would be picked up, as the Commissioner said, through the Regional Rapid Deployment Team visits, and there have been, between July last year and March this year, 131 deployments to regional airports.

**Senator BARNETT:** And how many to Launceston?

**Mr Drennan:** I could not tell you that, Senator.

**Senator BARNETT:** Is that something you could take on notice?

**Mr Drennan:** I certainly could, yes.

**Senator BARNETT:** All right, and you can provide that list on notice of the 13—are you happy to do that, that list of 13?

**Mr Drennan:** I can run you through the 13 now, if you like.

**Senator BARNETT:** Fire away.

**Mr Drennan:** Adelaide, Alice Springs, Brisbane, Cairns, Canberra, Darwin, Gold Coast, Hobart, Melbourne, Perth and Sydney.

**Mr Negus:** It is actually 11, not 13.

**Senator BARNETT:** There has been an incident of some seriousness at the Launceston Airport in recent weeks, and I wonder if that has come to your attention and any calls for AFP officers to be stationed at Launceston Airport?

**Mr Drennan:** No, it is not something that I am across, and certainly I am not across any requests for us to have people permanently stationed at Launceston Airport.

**Mr Negus:** In all of the other airports—and there are many, many airports outside those 11—the response provision is provided by the local state police, so the Tasmanian police would have responded to any incident there accordingly. If they need support they can come to us and we can certainly do that, but as far as we know we have not had a request for support.

**Senator BARNETT:** Is it something you could just take on notice and provide any feedback? I am not fully aware of the level of intensity of the incident, but I have been advised of that and have been asked to see if we can obtain AFP protection at the airport. What should I do to follow up on behalf of my local community in that regard? What would your advice be?

**Mr Negus:** The responsibility for the allocation of those airports comes to the department of transport and regional services so they would be the ones who would conduct the assessment. They would look at a range of intelligence from ASIO and other services about the perceived threat and then look to talk to us about what appropriate action we would need—

**Senator BARNETT:** And the fact that there are over a million passengers going through the airport, and increasing numbers, is that relevant to the criteria?

**Mr Negus:** It would be one of the criteria. As we said, there are 31 officers at Hobart. To have a 24/7 or even a 14-to-15 hour commitment to providing security is a substantial investment. From memory I think the Hobart Airport costs the AFP around \$25million over four years to run. That is off the top of my head but it is in the order of magnitude of about \$25million over four years. So it is a substantial cost but one obviously that is important for the community.

**Senator BARNETT:** For sure. \$25million over four years for those 30—

**Mr Negus:** For the ones at the airport, yes. Thirty-one.

**Senator BARNETT:** Yes. Thank you very much. If there is any change to that figure of \$25million over four years, just let us know on notice. Thanks again.

**Senator PARRY:** If I could just move to a question placed on notice on 22 February estimates hearing earlier this year? You might recall, Commissioner, it was a very late hour in the day and I just managed to get a question in before we suspended. You have provided timely answers to my question, and I thank you very much. It was in relation to unexplained wealth legislation. The first response was that the AFP is assessing a number of matters in relation to unexplained wealth. There were two active investigations and I particularly asked about the adequacy of the legislation. The response there was that if case experience identifies any issues with the unexplained wealth legislation, the AFP will raise it with government for consideration. My question is: have you experience of that at this point in time and if so, has any matter been raised with the government concerning the adequacy of the legislation?

**Mr Negus:** I think I have been a little bit more forthcoming in other conversations I have had with you on other committees about this, rather than that question on notice. There have been some concerns. The original legislation as it was proposed was not delivered in the way that it was first put forward, and we understand the process around that. It has proved difficult for investigators, and I saw Mr Lawler's evidence from the Australian Crime Commission yesterday when he raised that. I think the words he used were 'less than optimal' as far as our ability to do this.

What tends to happen is—and the condition had been written into the legislation—that we must demonstrate reasonable grounds to suspect the person has committed the Commonwealth or foreign offence, or state offence with a federal aspect or that that person has derived wealth from an offence of that kind. It is not far removed from the predicate

offence provisions which already existed under the proceeds of crime legislation. We are looking at matters, and we have certainly had one matter on foot which we are looking at that may well fulfil that criteria. But when you have to tie the unexplained wealth provisions in their broader sense—and I think if you just take the title, for instance, it sets an expectation that people would be required to account for unexplained wealth—with reasonable grounds to suspect that the person has committed an offence, that makes it far more difficult for investigators.

**Senator PARRY:** And have you raised this matter with the government?

**Mr Negus:** We have had broad discussions about it. Again, I saw Mr Lawler's evidence where he said that he had not briefed the Attorney-General—and neither have I. But we have certainly spoken about this at agency level, and we are looking again. Until this is tested in the courts, this becomes the difficult component of this. The interpretation of what reasonable grounds are to suspect that the person has committed an offence has not yet been established by the courts, so there are varying legal interpretations of what that may be. Until we actually run one of these matters through the courts, I think it will be difficult to provide that. But can I just take Mr Lawler's comments to say that it is less than optimal, and was not what we were hoping for in the context of looking at seizing assets from major organised criminals who place themselves one step removed from the action. It is very difficult to tie them to a criminal offence, even when they cannot explain where the wealth they have accumulated comes from.

**Senator PARRY:** Can you anticipate when the first prosecutions may occur?

**Mr Negus:** It is very difficult to give you an estimate on that. Again, it is an ongoing matter and really the assessment will need to talk to the DPP and a range of others before we even push forward and look at that. But it is under investigation at the moment.

**Senator TROOD:** I just have a couple of matter of matters that I want to follow up. One relates to the Solomon Islands commissioner. How many officers do we have there at RAMSI now?

**Mr Negus:** We will go to Deputy Commissioner Drennen for the details on that.

**Mr Drennan:** There are 156 members of the Regional Assisted Mission in the Solomon Islands.

**Senator TROOD:** One hundred and fifty-six. And what do you understand to be the length of the commitment that you have in relation to the Solomons?

**Mr Drennan:** The commitment will be ongoing based on the assessment of the development of the Solomon Islands police. It has certainly moved from a stabilisation focus to a capacity-building focus, and by that I mean that the inline role that we perform with the Solomon Islands police will decrease and we will focus more on building their capacity to enable them to take over the full policing responsibility themselves. That will certainly take some time, but the progress to date has been quite significant.

**Senator TROOD:** I see. Are you familiar with the ASPI report on the Solomon Islands? It is titled *Long-term engagement: the future of the Regional Assistance Mission to Solomon Islands* by Matthew Allen?

**Mr Drennan:** Yes, we are.

**Senator TROOD:** In that report he makes the observation, 'Solomon Islands is entering into a higher risk period for conflict and an external security guarantee will need to be maintained for at least the next 10 to 15 years and possibly longer.' Do you agree with that assessment?

**Mr Drennan:** I would not agree with the fact that it is moving into, in the words you said, more high risk or more volatile. Certainly the observations we make and the intelligence we have on the ground and the interaction we have with the Royal Solomon Islands Police and the broader community there is that, sure, there is still some volatility but there has really been a period now of about four years where there have been no significant public disturbances. There have been some minor ones around various events, but we are not seeing an increase; in fact, we are seeing a decrease and longer periods of stabilisation.

**Senator TROOD:** Do you not accept part of the thesis of this report that, while there has been some considerable and welcome progress in relation to the Solomon Islands, there is a point being approached which could be a point of considerable conflict and tension and that could well lead to a breakout of violence once again?

**Mr Drennan:** Not being fully aware of the basis on which the author draws those conclusions, as I said, the observations that we have made and the environment that we observe there on a daily basis would not lead us to come to that same conclusion.

**Senator TROOD:** Have you done any long-term investigation or analysis of the situation in the Solomons?

**Mr Drennan:** Certainly it forms a part of what we do, again on a daily basis, and that is to continually reassess the security situation there and the volatility or perceived volatility of the community. We have officers with the Solomon Islands Police spread throughout the Solomon Islands and, again, for part of our own strategic planning that is something we take very, very seriously, as does the Office of the Special Coordinator there and the other agencies. Again, there is nothing there that would indicate to us to come to that same conclusion.

**Senator TROOD:** You do not accept the analysis that is in this report about the downside of progress in the Solomons?

**Mr Drennan:** I accept that it is still a volatile place, but, as I said, the periods of stabilisation are far longer and there have been no significant public order issues for about the last four years.

**Senator TROOD:** Just on another matter in relation to the Solomons, my attention has been drawn to some complaints about the behaviour of AFP officers in the Solomons—drunkenness, carousing, generally bad behaviour. Have any complaints been made or brought to your attention in relation to those matters?

**Mr Drennan:** There have certainly been a very limited number of complaints in relation to the behaviour of AFP officers there. Those matters are dealt with by our professional standards area. We have a professional standards person posted to the Solomon Islands to deal with that. Where there are complaints about behaviours which are against our code of conduct or of a particular nature in relation to behaviour with local people, then those people are returned to Australia, post haste.

**Senator TROOD:** Do you maintain a register or list of these complaints?



**Mr Drennan:** Certainly, and that would be held by our professional standards area.

**Senator TROOD:** The service maintains a list of complaints so you know about the regularity with which they are being made, I assume.

**Mr Drennan:** Yes, we do.

**Senator TROOD:** Could I ask you to provide me with a list—you can take this on notice, obviously—of the frequency with which complaints are made about the behaviour of officers in relation to these kinds of things?

**Mr Drennan:** Certainly.

**Senator TROOD:** What are the general consequences of this behaviour if the allegations are proved to be the case?

**Mr Drennan:** It would depend on the nature of the allegation. If it is one of drinking and driving, certainly the person would need to face any criminal prosecution there on Solomon Islands, but they would also be returned and be investigated through the professional standards area. Depending on the outcome of that, then there would be the consequence for that as well. Where people have gone against the expectation and the codes of behaviour that we expect on the island, they are not left in country.

**Senator TROOD:** Are you sufficiently concerned about this to require that you undertake some kind of training activity or remedial action that can enforce the standards that I know you expect to be applied here?

**Mr Drennan:** The complaints and issues are very, very infrequent. It is certainly not a regular occurrence. People who are being deployed to Solomon Islands, or other islands where we have missions, undergo a very rigorous training program. The expectations of their behaviour, the AFP values and the code of conduct are reinforced very strongly. We have particular focus in regard to informing them and instructing them on the issues about being deployed to a developing country, particularly in relation to where there are certainly power imbalances in regard to police officers, people from Western countries and stuff. So we do place a significant emphasis on that to ensure that people are well prepared, fully understand the environment that they are going into and fully understand what the organisation's expectations of them are.

**Mr Wood:** Can I just add to that. Not specific to the Solomon Islands but more broadly, the professional standards area of the organisation keeps an eye on the sorts of issues that come out of all the investigations we run across the organisation and develops case studies and scenarios that feed into both our education programs and stories on our internal hub, so that if we see an issue coming out of a PRS investigation that we consider needs to be addressed from the executive from a values perspective or an ethics perspective then we do connect that directly into the educational programs, the organisation and stories on our internal communications hub to make sure the whole workforce is picking up the lessons that we learned from it. But, as Deputy-Commissioner Drennan has said, certainly the Solomon Islands have not been generating a particular trend that has led to necessary intervention in the education.

**Senator TROOD:** I am grateful for that reassurance, but I would still like you to give me on notice the frequency with which these matters are being reported to you. I have just one other matter, which relates to the Commonwealth Ombudsman's report in relation to

monitoring of controlled operations, with which I assume that you are familiar. There were six recommendations in that report relating to police in relation to reporting illicit goods, identifying civilian participants in relation to certificates, activities covered by certificates, quarterly reports and the termination notice sent to law enforcement officers. The conclusion that the Commonwealth Ombudsman made about these matters was that there is considerable risk to the reputation of the AFP and the successful conduct of operations if these matters are not addressed. So obviously the Commonwealth Ombudsman regarded the deficiencies in your systems as serious. The Ombudsman then reports that the AFP generally agreed with these recommendations. Commissioner, when I read your response to the 'generally agreed', it sounded as though it was a response made with not a great deal of conviction about the concern that the Ombudsman had expressed in relation to the matter and it certainly suggested to me that you are not persuaded by the Ombudsman's observation that there was considerable risk to the reputation of the AFP if these matters were not attended to. Can you provide me with a response, please.

**Mr Negus:** Can I just say more generally that certainly we work with the Ombudsman's office and we take very seriously any observations of the Ombudsman because, again, he comes from a level of objectivity and we must respect that. I have to say, though, that with this report there were a couple of those recommendations that were ultimately withdrawn after consultation with the AFP. We did not agree completely with his findings and the context in which those observations were made, and at the end of the day a couple of those were withdrawn, so I do not have the details in that. We could certainly provide that. The rest of the comments were apparently of an administrative nature and not as serious as might perhaps have been articulated in your comments. I take this very seriously and the integrity of the organisation is paramount to everything we do. We have indicated through a couple of answers this morning, from the Solomon Islands right through to Afghanistan, that the public and the public's confidence in its police force is paramount in everything that we do. So I have had several meetings with the relatively new Ombudsman, Allan Asher, about these matters and we have discussed them and certainly take on board his comments. But, again, I am pleased to say that a number of those recommendations were withdrawn after consultation.

**Senator TROOD:** I am pleased to hear that. If they have been withdrawn, have you rectified the ones that remain?

**Mr Negus:** Certainly we are working and there are a range of people involved in this process who have responsibility now for rectifying those issues, the ones that were identified as needing attention, yes.

**Senator TROOD:** Thank you.

**CHAIR:** Thank you. Next questions? Senator Brandis?

**Senator BRANDIS:** Madam Chair, I have a lot of questions and it might be more efficient either to take the morning break now or alternatively, if other senators have brief questions, for them to ask them now.

**CHAIR:** Okay.

**Senator BRANDIS:** Can I just indicate that I have questions that will go for quite a long time.

**CHAIR:** I am going to go to Senator Pratt.

**Senator PRATT:** Thank you, Chair. What is the AFP's relationship with the Asia Pacific Civil Military Centre of Excellence?

**Mr Negus:** We have two officers posted full time with the Asia Pacific Civil Centre of Excellence and they have been there for approximately two years. They provide a liaison point for our international deployment groups specifically, and for the AFP more broadly, into research and what is happening in that environment.

**Senator PRATT:** That would be, example, for the operations in Solomon Islands et cetera?

**Mr Negus:** That is right.

**Senator PRATT:** So they are a strategic centre for the AFP's relationship with the Pacific. But what other kinds of organisations are part of that centre of excellence?

**Mr Negus:** I will go to Deputy Commissioner Drennan for the details of that. I should say that the people that we have put there are of substantially senior rank; in fact, one of them has a PhD and research in other areas. He is a very useful person to provide guidance to both the civil military centre and the AFP on the strategic implications of the Pacific and other offshore deployments.

**Mr Drennan:** The focus is very much about how the civil and military components of peacekeeping interact and how we can better integrate the deployments for interventions and stabilisation. It is very much research focused but it also brings together a range of stakeholders in that area. They work, as you said, very closely on to the Pacific and also on Africa as well. It is quite a successful initiative. There have certainly been some very good outcomes in relation to the work that has been done, the papers that have been written and the conferences that have been supported by the centre but conducted in other parts of the world.

**Senator PRATT:** So it is about capacity building in the police and military to emphasise the rule of law in relation to the military takeovers that we see popping up in the Pacific?

**Mr Drennan:** It is very much focused on when there is a civil and military deployment, or just a military deployment, but focusing on the civilian populations and how you can protect those. For those countries who are either the recipients of the deployments or participate in those deployments, it is about getting the focus on how important it is to take the civilians into consideration and ensure their protection.

**Senator PRATT:** I assume that there is a gender analysis in terms of managing the impacts on women and children et cetera.

**Mr Drennan:** Yes. I could not give you the detail on that but it is certainly an area of emphasis and we do appreciate that. The centre certainly looks at the increased areas of vulnerability for females and children.

**Senator PRATT:** Thank you. Moving on to a different area, clearly cybercrime and high-tech crime are getting more complex and increasing in significance. I am interested to know how the AFP is positioning itself as a whole around that area of threat.

**Mr Negus:** You are absolutely right; it really is pervading everything we do. Most of the people sitting at this table joined the police force many years ago. Most of the cases we would have investigated in those days—even drug investigations—would now have an online environment. and other things which you may not automatically put together with the online

environment. People's phones are used for contacting each other and they store information and the communications all become important as methods of obtaining evidence.

About three years ago we consolidated all of our high-tech crime environment under Assistant Commissioner Gaughan, who was here earlier, and we put together our child protection operations—who look to seek out those who would prey on children online—our high-tech cybercrime investigation area as well as our technical capability of interceptions and those sort of things all under one roof. That has been an extremely useful and a very dynamic way of looking at the future. We work very collaboratively with people like the FBI and the UK authorities as well about cutting-edge technology and how to intercept material. We work very closely with defence agencies as well around this and we have people seconded in those environments to make sure that we are looking at the cutting edge.

I have to say, though, that the way that cybercrime has advanced and the way that the use of technology is increasing, it is a very challenging environment, and I would not suggest to you that we are ahead of the curve in any way. We are hanging on and trying to keep up. But we certainly have good capabilities and we are further developing our capabilities in this area. One of the big things that we are doing is talking to a range of countries, and certainly the Attorney-General's department, about improved legislative frameworks for the collection of evidence offshore.

As you would be aware, many of the servers which would host material that will end up being evidence are housed offshore in a variety of countries around the world. So we are looking at a range of legislative reform issues to ensure that we can prosecute people in those environments. But, as I said, that is an important part of what the AFP does. One of our key performance indicators this year was to train 20 per cent of our investigators, and we will continue that going forward, in being aware of cybercrime issues. We have achieved that already this year. That is something that we see as very important.

**Senator PRATT:** I had heard a concerning media story about the fact that facial recognition software was going to make it more difficult for people to be able to work undercover. Is this a real concern?

**Mr Negus:** Any increased or improved biometrics, while they help the country and minimise fraud and those sorts of things, do actually have implications for undercover operations, witness protection and a range of other things that you could probably think of. But we work closely with people in those environments and we are usually able to find ways of actually dealing with those issues. But they are of concern and thankfully when these things are being looked at and implemented we actually are involved in those discussions with the relative government agencies who are looking to implement it.

**Senator PRATT:** But you would imagine that that is something that will become increasingly complex as the technology, both on the side of good and the side of bad, becomes more—

**Mr Negus:** That is right. For every positive, it does have an impact on us. I am supportive of the increased use of biometrics. With anything that we can do for the broader community to help stop identity theft and to protect kids online the AFP will fall in and our undercover operations will take account of those issues and work out different ways of dealing with it.

**Senator PRATT:** I suppose as we get better at using these things, organised crime possibly does as well.

**Mr Negus:** What we usually find is that they are not bounded by budgets or legislation, so they are usually ahead of the curve in the take-up of encryption. We have found over many years that particularly networks of paedophiles are at the cutting edge of the use of encryption and social networking sites and in many ways are ahead of even some of the other organised criminal groups that would do this. It just seems to be the way that they have come about protecting their information and protecting their identities in a very secure way. We are still getting behind those walls and still arresting those people, but it is a challenging environment in which to work.

**Senator PRATT:** I wanted an update on, I suppose, plans being put together to create a business case for a new forensic facility.

**Mr Negus:** We have identified that for the AFP one of the biggest strategic issues we have identified is our forensic facility and its ability to support us going forward over the next decade. We are currently housed predominately at Weston, here in the ACT, but we do have labs in various centres around Australia. We have run out of room and run out of the ability to expand to meet the technology such as DNA and other things. So the AFP is looking to internally fund, through our own capital budget, a new centre. We have had first-pass approval on that and the government has given us permission to come back in the next budget to again seek further approval of that and through a gateway process step forward. We are at the very early stages and we are still scoping out what the size, structure and context of that will be, and we are engaged with the Department of Finance on looking at how that will work into the future. I think it is an exciting project and one, as commissioner, I am very committed to. I think Australian law enforcement needs to make sure that we do keep pace. Computer forensics, to go back to your last question, is an important element of what we are talking about here as well—the seizure of computers and analysis of data. All of that would be wrapped up into the requirement for us to really step up now into the future and expand from a facility which is probably 25 years old into something that is more appropriate for the future.

**Senator PRATT:** Thank you very much. Thank you, Chair.

**CHAIR:** Yes. Mr Colvin.

**Mr Colvin:** May I ask the committee if we can answer a couple of questions we took on notice or would you like us to do that after the break?

**CHAIR:** You can do it now if you like.

**Mr Colvin:** Madame Chair, Senator Humphries asked earlier about the 34 matters that were finalised that you questioned on notice. I can advise you that six of those matters proceeded to prosecution, of which we had six convictions. However, two of those matters were later overturned. So four convictions stood and two matters were overturned.

**Senator HUMPHRIES:** Would it be possible to get some details of the four successful prosecutions?

**Mr Colvin:** Certainly, Senator, we can do that. I will definitely take that on notice.

**Senator HUMPHRIES:** Thank you.

**Mr Drennan:** Madame Chair, just in relation to a direction from Senator Barnett, in relation to the number of regional rapid deployments to Launceston: in the 2010 calendar year there were six and it is anticipated there will be a similar number in 2011. There are a couple of other things I could correct. When I responded to Senator Furner in relation to injuries on Christmas Island I talked about a fractured leg. There was also a detainee who received a split chin. Also, I think the commissioner mentioned, in relation to Cyprus, a number of 16 down to five. It is actually 15 down to five.

**CHAIR:** Thank you.

**Proceedings suspended from 10:27 to 11:01**

**CHAIR:** We will reconvene our consideration of budget estimates. Commissioner Negus, did you have something you wanted to add?

**Mr Negus:** Yes, Madame Chair. Just a couple of points of clarification from the evidence that was provided before the break. To Senator Trood, in regards to the Ombudsman's report, I have to admit that I was slightly misinformed. There were two draft recommendations changed by the Ombudsman, the final report stands as it is. So apologies to you and to the Ombudsman for that. But I can tell you quite sincerely that certainly all of those recommendations are being worked through very carefully. Most of them are of an administrative nature and we have people working tirelessly to make sure that they are implemented. So, again, the Ombudsman's office did discuss with us, two draft recommendations were removed, but the report that was tabled actually stands as it is.

**CHAIR:** Okay, thanks. Mr Wood?

**Mr Wood:** I had a point of additional information for Senator Humphries who has just left the room. I will go ahead anyway. Senator Humphries asked some questions about the capital expenditure relating to the 500 staff. I can confirm that the money, as part of the 500 that related to improvements in the training facilities of the college has all been spent, as he requested information on. But I do need to clarify that there was other money, to make sure that we had proper office fit-out in the regional offices where the 500 staff will eventually be sworn officers or be deployed. That money has not been spent because we will still work out what lease arrangements we already have in place interstate and what the priorities are in terms of the order in which we do that extra fit-out for the 500 as they arrive in the AFP. So the money is still being spent in relation to the interstate capital works at the training college, which was the specific question from Senator Humphries. That money has been spent on its intended purpose.

**CHAIR:** All right, thank you very much.

**Mr Colvin:** If you would like, I can just give some information to answer Senator Humphries's question in relation to the six matters, we said four convictions. Senator Humphries is just returning now. Four convictions were upheld of the six matters that we prosecuted. Senator Humphries, just in respect of those four I can tell you that one was a referral from Centrelink relating to the unauthorised disclosure of Centrelink information to Channel Seven's *Today Tonight* program. The defendant was convicted and placed on a surety of \$1,000 and entered into her own recognisance to be of good behaviour for three years. Another matter related to a referral from the department of employment and workplace relations, where the offender was convicted and fined \$750. The third matter was a referral

from the Australian Customs and Border Protection Service relating to an allegation of unauthorised disclosure by an officer. The offender received a nine-month suspended sentence. The final matter was a referral from the Office of Indigenous Policy Coordination relating to an unauthorised disclosure by an employee. That person was convicted of five offences, fined \$2,000 and sentenced to a good behaviour bond for three years.

**Senator HUMPHRIES:** Okay, so it is fair to say that that these convicted people were all public servants?

**Mr Colvin:** They would have been, yes.

**Senator PARRY:** To fulfil the obligations under the act they would have been public servants.

**Senator HUMPHRIES:** Thank you very much.

**Senator PARRY:** Chair, just to correct Mr Wood, I asked those questions about the academy and the training, so Senator Humphries did not miss anything.

**Mr Wood:** My apologies.

**Senator PARRY:** That is all right. I have got the answers so thank you very much.

**Senator BRANDIS:** I think Senator Xenophon has between five and seven minutes.

**Senator XENOPHON:** Yes. I am counting the clock.

**Senator BRANDIS:** So I will yield to my colleague.

**Senator XENOPHON:** Thank you, Senator Brandis. Thank you, Chair. Commissioner, I just want to discuss the issue of Allan Kessing and his conviction several years ago, under section 70 of the Commonwealth Crimes Act. He has denied his culpability, but he was convicted of the leaking of long ignored reports to the *Australian* newspaper that revealed criminality and security flaws at Sydney airport. I emphasise that Mr Kessing, in my private discussions with him, maintains his innocence. Recently, it has been revealed that the AFP failed to interview another potential witness in the case, a veteran reporter, Norm Lipson, whose evidence could have undermined the case against Mr Kessing. What do you say about that? You are well aware of the obligation to have all the evidence provided, to investigate all the evidence. This could have exculpated Mr Kessing or at least strengthened his case significantly in the prosecution that was brought against him.

**Mr Negus:** Thank you for that question, Senator. I have read the media reports suggesting that this material should have been disclosed. I will just put it into some context about what was disclosed and what did happen. On 1 June 2005 the AFP received a referral letter from the Australian Customs and Border Security Service relating to an alleged media leak. That is where this started, and the referral letter becomes important in the context of—

**Senator XENOPHON:** Sorry, what date was that?

**Mr Negus:** It was 1 June 2005. The AFP did not provide the referral letter to the Commonwealth Director of Public Prosecutions as part of the brief of evidence. That did not happen and that is what, I think, some of the conjecture has been about. The referral letter from Customs referred to statements made by the journalist, Mr Martin Chulov, in a conversation he had with a talkback radio announcer on 2GB on 31 May 2005. A transcript and audio recording of this interview with Mr Chulov, in which he stated that the information came from two Customs sources—and the two Customs sources is the critical point here—

was disclosed to the defence. So, whilst that was contained in the letter, the transcript of the audio recording of that was disclosed. Also disclosed to the defence prior to the committal hearing was material relating to the contact with Customs by Norm Lipson, a contract reporter for Australian Consolidated Press, and the article that appeared in the *Woman's Day* magazine.

Now, as you have said, both of those issues were contained in the letter, which was not disclosed; but, separately, those two issues were disclosed in various forms to the defence and to the Commonwealth Director of Public Prosecutions. Mr Kessing was convicted in March 2007 of the unauthorised disclosure, and in December 2008 the New South Wales Court of Appeal dismissed Mr Kessing's appeal against the conviction. There was obviously some action proposed in the High Court, which was later removed or discontinued.

**Senator XENOPHON:** He has already spent 100 grand on this. I mean, the guy lives in a shack in the Blue Mountains. There is a question of his resources to be able to pursue his rights. There is that attitude.

**Mr Negus:** I make no judgments about continuance; it is just a matter of fact.

**Senator XENOPHON:** No, no. Yes, but sometimes people just run out of steam. They run out of funds to pursue their rights, because, unfortunately, that is the way the system is. He does not have the financial resources. Can you say whether those responsible for the Kessing investigation now believe it was a mistake not to tell the Commonwealth DPP that Mr Lipson had a couple of sources inside Customs?

**Mr Negus:** They were told. I just explained that, in various forms, both of those areas were—Mr Chulov's interview was provided to the defence, in which Mr Chulov made certain statements, and the fact that Mr Lipson was involved was also disclosed at that time. The letter communicating that, from Customs to the Australian Federal Police, was not disclosed; but it was done by other means.

**Senator XENOPHON:** But it should have been disclosed.

**Mr Negus:** I think, in hindsight, it would have been practical to disclose the letter, but I do not think it is material to the outcome of the investigation or the prosecution.

**Senator XENOPHON:** It could have been tendered in evidence though. It could have been the subject of submissions by the defence case.

**Mr Negus:** Look, all of those things are possible, but it is not practical for me to sit here and review a case which was investigated five years ago. Judgments were made by the prosecutors and by the police at the time. Mr Kessing was convicted, he also appealed and his appeal was overturned.

**Senator XENOPHON:** Can I just go to this issue: the New South Wales director of Customs wrote to Mr Kessing's superior, Caterina Magni, on about 14 May 2005, so it is before that letter on 1 June from Customs to federal agent Fiona Drennan, This document is in the brief of evidence. It is talking about the suppressed reports: 'What do you know about the two reports and about security lapses?' The response from Ms Magni was that they were about as relevant today as when they were written about three years ago. So that indicates, I would have thought, some frustration within that unit that no action was taken about serious issues raised in terms of security breaches and criminality. Is that something that was investigated?



It seems that there was frustration at a number of levels about the lack of action in relation to those reports, which may have indicated other sources for the leak of these reports.

**Mr Negus:** I have received no information to suggest levels of frustration or levels of looking at the ways things might have been done differently. I am not sure whether any of the deputy commissioners here—again, this was some time ago and obviously precedes my—

**Senator XENOPHON:** If the head of the unit says words to the effect that they are as relevant today as when they were written three years ago, that tends to indicate a level of frustration.

**Mr Negus:** If I am correct, that was someone from the Customs service who said that.

**Senator XENOPHON:** Yes. A number of people had access to this report—that is correct?

**Mr Negus:** I believe so, yes. As I said, not being the investigator involved in the process and it now being some six years ago, well before many of the people at this table had assumed the positions they now stand in, I find it difficult to comment.

**Senator XENOPHON:** And you are aware—again this is not a criticism of now Minister Albanese, although it is about when Mr Albanese was the shadow minister—of the allegations that Mr Kessing went to Mr Albanese's office and provided information to it in terms of the lack of action in relation to these reports and provided details of these reports. Wouldn't that indicate that there were other people that could have had access to this material?

**Mr Negus:** The AFP's position on this is that those reports in the *Australian* newspaper on, I think, 7 September 2009 were evaluated. The AFP had decided that an investigation into the disclosure of that report in that circumstance was not warranted because an investigation had already been completed. Mr Kessing was convicted of that and we considered it not in the public interest to reinvestigate any of those allegations.

**Senator XENOPHON:** Commissioner, my time is short, but why wouldn't you evaluate that? Mr Kessing said, 'I gave this information to Mr Albanese's office because of his role as the shadow minister at the time.' There is a chain of evidence there suggesting that others had access to this report, although there is an argument that he would have been protected under section 70 anyway by going to a member of parliament. Are you saying that the AFP did not bother to investigate that at all?

**Mr Negus:** I am talking about Mr Kessing's alleged disclosure of that material. It may well have been protected—I have not formed that judgment—but not the further part. I think that was disputed—I could be wrong in that.

**Senator Ludwig:** I just wanted to add there that in relation to the statements you are making about Mr Albanese—and I do not have it before me, so I am not going to say that what you are saying is incorrect—my recollection is that that was disputed by Mr Albanese. I cannot remember, I think he made a statement in parliament about it. I am not sure, so if that is incorrect I will stand.

**Senator XENOPHON:** I do not have the *Hansard* of what Minister Albanese said.

**Senator Ludwig:** I am not even sure whether he made a statement about it. I cannot recollect. There were a range of statements that were made at that time and in the various

reports at the time, so the position that you are simply putting may be contested. I just wanted to make sure that by being silent I am not condoning the statements that you are making.

**Senator XENOPHON:** Minister, I always assume that you never condone anything I say, and I am not here to criticise Minister Albanese. The issue is that allegations were made by Mr Kessing very specifically when he went to see the minister's office, gave information to his office and had a brief discussion with Mr Albanese as shadow minister. Can you advise whether the AFP investigated that allegation?

**Mr Negus:** As far as we were concerned, we investigated the original allegation. The matters were heard by a properly formed court. There was an appeal and that appeal was—

**Senator XENOPHON:** That is not my question. As a result of Mr Kessing's allegations that were published in the *Australian* newspaper in September 2009, did the AFP follow that up?

**Mr Negus:** No, we did not.

**Senator XENOPHON:** Why not?

**Mr Negus:** An investigation had already been conducted and, as I said, this was a matter of whether or not to reinvestigate similar matters about Mr Kessing's disclosure of information to, allegedly, Mr Albanese's office.

**Senator XENOPHON:** But wouldn't that be relevant, the fact that—

**Mr Negus:** Senator, it is very difficult for the AFP to launch investigations at every media report. Regularly—

**Senator XENOPHON:** Should you be so dismissive of it, Commissioner? This guy's life has been wrecked as a result of what occurred on conviction. It has caused him enormous financial hardship and enormous distress within his family. His phones were being tapped. His mother's phone—and she was dying of cancer—was being tapped, which caused enormous distress for a period of something like six months. You have got to understand how he feels about this and the way that it has turned his life into a train wreck. He makes some serious allegations and you have not followed them through. I do not think you understand the position that Mr Kessing is in and what has happened to him as a result of this conviction.

**Mr Wilkins:** These issues are being considered. As you know, he has applied to the minister—

**Senator XENOPHON:** But, Mr Wilkins, if the AFP has not even bothered to look at these issues where he has said that he actually discussed the report and the contents of the report with the shadow minister and his staff previously—

**Mr Wilkins:** I am not judging that, Senator, I am just saying—

**Senator XENOPHON:** If you are looking at it, wouldn't it be reasonable, in terms of any pardon application, for that to be considered and for that to be investigated?

**Mr Wilkins:** We are considering these questions as part of the pardon application.

**Senator XENOPHON:** But you are not investigating whether or not that occurred?

**Mr Wilkins:** No.

**Senator XENOPHON:** Why not? That means that you are not looking at the pardon application seriously, are you?

**Mr Wilkins:** The department does not investigate matters anyway.

**Mr Negus:** I take on board the point you have made and I realise that this is a very difficult process for Mr Kessing and that he has maintained his innocence throughout the process. But again, from the AFP's perspective, the matter was properly investigated. Mr Kessing was convicted in court. His appeal was dismissed and he discontinued any further legal action in that regard. From the AFP's perspective, in the public interest we are not going to go out and reinvestigate matters on the strength of media reports or allegations by members of the Defence, if they want to re prosecute a case, in the press.

**Senator XENOPHON:** But that is your definition of the public interest. That is a value judgment as to what the public interest is.

**Mr Negus:** That is right, and that is what we are paid for.

**Senator XENOPHON:** I respect that and I respect very much the work that the AFP does. But if significant allegations were made that would be relevant to any pardon application, that would be relevant as to the veracity of the conviction in the first place, then surely I would have thought that is something that the AFP may want to follow up. Are you ruling out investigating the allegations that surfaced in September 2009 at any stage in the future?

**Mr Negus:** In the absence of any further information or any further representations, the AFP will not be reopening this case.

**Senator XENOPHON:** It is not relevant that the allegation that he went to a shadow minister with this information—

**Senator Ludwig:** As I said before, you were making a range of statements and I do not have the information before me as to the veracity or not of those statements that you are making it in terms of Mr Albanese. I am not interrupting you, but I am simply putting it on the record that it may be a matter that I might want to take on notice to come back should Mr Albanese want to correct the record. As you said, you have made a range of statements. Clearly, I am not Mr Albanese and I am just simply trying to protect the position—

**Senator XENOPHON:** It is not a criticism. The fact is, this could have gone to the safety of the conviction.

**Senator Ludwig:** I do not know whether it was a fact or not and I do not know whether what you are alleging is in fact a matter—

**Senator XENOPHON:** If the AFP is not going to investigate it, we are not going to find out, are we?

**Senator Ludwig:** All I am going to say is that in the terms of the statements you will make, I am not going to leave them unchallenged.

**Mr Negus:** Senator, I take on board all the points that you made but as far as we are concerned the conviction stands. Mr Kessing chose not to pursue the legal avenue of appeal.

**Senator XENOPHON:** Because he does not have the money, Commissioner. He does not have the resources to follow it up. You should go and visit where he lives, in a shack. It has wiped him out. I will leave it there, for now.

**CHAIR:** Senator Brandis.

**Senator BRANDIS:** Thank you, Madam Chairman. Commissioner Negus, can I start with the television program *AFP* on Channel 9. I understand that this is a television program based around the work of real officers. There are no actors, I am told. So far six episodes have been aired, the most recent of which was entitled 'Close personal protection'. You are familiar with this enterprise?

**Mr Negus:** Yes, I am. I do not think six episodes have been aired at this stage, but there are six in the series and we are up to about number four, from memory.

**Senator BRANDIS:** Including one on close personal protection.

**Mr Negus:** Yes, certainly, this week.

**Senator BRANDIS:** Commissioner Negus, I want to concentrate on that particular episode which involves a number of officers and discloses the names and faces of officers, including those who protect the Prime Minister. Is it usual to release the names and pictures of officers who are assigned to close personal protection of the Prime Minister?

**Mr Negus:** There is no prohibition on that, Senator, and in fact you will probably see them standing behind the Prime Minister in most newspapers on most days of the week.

**Senator BRANDIS:** That may be so but that is because they are there. They are not being showcased, as it were, or advertised as part of a television program. Do any of the officers who are named or whose faces are displayed as part of this television program ever partake in undercover operations?

**Mr Negus:** No, they do not. And if you watch some of the other episodes you will see some officers' faces have been obscured or pixelated for exactly those reasons.

**Senator BRANDIS:** So is that the rule? Some undercover officers do participate in this television program but, in the case of those officers, their faces are pixelated?

**Mr Negus:** There are officers who may want to pursue a career in undercover operations. Again, those people appear in court every day where they are using their names and publically displaying their faces. But if they choose—and we gave this option to staff, if they felt that they did not want their faces shown on the program—then they would be pixelated through that process in all of the episodes.

**Senator BRANDIS:** What is the point of showing their faces at all? There is plainly an element of security involved. The officers who at the time elect not to have their identities obscured on this program are presumably at a later stage in their career possibly constrained by the publicity they have received or the public notoriety they have received from participating in undercover operations. Why do this at all?

**Mr Negus:** The officers involved, again, it was their choice to do this. This is about providing the community with a look at what the AFP does. It was done in a very cooperative way with Andrew Denton's production company where methodology was assessed to make sure that things were not being disclosed. It has been done in a very sensible, I think, and a very proper way.

**Senator BRANDIS:** Except that I gather from what you have already told us that the notoriety given to the identity and appearance of certain officers makes those officers less able, at a subsequent stage in their careers, to participate in undercover operations. Doesn't

that therefore limit, as it were, the talent pool within the AFP from whom you can draw future undercover officers?

**Mr Negus:** We are an organisation of—as of earlier this week—6,935 people. Our undercover operations section of the organisation is a very small pool. There are a very small amount of people who would ever go into that area of expertise and they usually stay there for quite some time because of the nature of the work that they do. We left it up to our own staff to make those judgments about whether they would be comfortable in having their faces shown on the television screen in whatever episode it might be, whether it be the protection one you are mentioning or others, and those judgments were made by the individuals.

**Senator BRANDIS:** Do any of the officers named or whose faces appear partake in plain clothes operations while protecting the Prime Minister or another principal?

**Mr Negus:** They would be part of our close personal protection team. The vast majority of our organisation, in an investigative sense, undertakes plain clothes investigations work.

**Senator BRANDIS:** And you don't have any problem with the notoriety given to their identity, both their names and their appearance, by going onto this television show in terms of both their safety and their efficacy in other policing roles?

**Mr Negus:** No, I do not. Again, these were issues that were discussed with the individuals. They were all comfortable in participating in the show. It was voluntary.

**Senator BRANDIS:** I am not saying that they were press-ganged into going on this television program. But, Commissioner Negus, surely it should not just be up to the individual officers. Surely there are important operational reasons for keeping the identity of your officers—particularly, if I may say so, people involved in sensitive work like close personal protection of the Prime Minister—confidential. It gives me no comfort to hear you say, 'Well, it was up to them,' and they voluntarily chose to do it. There must be a broader policy issue here for the AFP.

**Mr Negus:** I have no concerns. Policing is a very public profession. Most of these people are prepared—

**Senator BRANDIS:** A lot of it is, but some of it is not. It is not for me to tell you your own work, but we all know that there are aspects of policing which are not public and in which the identity of the officer needs to be concealed. That is right, isn't it?

**Mr Negus:** Where those issues became apparent, the pixelation occurred and people's faces were not disclosed, their names were not used. More broadly, police appear in courts every day, in public forums every day where their names and their identities are disclosed. This happens every other day in every court around the country.

**Senator BRANDIS:** There are hardly any occasions I can think of in Australia, ever, where an appearance by a police officer in a court has been televised or the subject of newspaper photographs, for example. So I really do not think that gets you very far, with respect, Commissioner Negus. Why do it? The very fact that you feel the need or the officer concerned feels the need to have his face pixelated, of itself demonstrates that there is a sensitivity here, so why do it in the first place?

**Mr Negus:** This agreement was struck four years ago. It has been four years in the filming because most of these issues had to go through a court process before they could be aired. So

this goes back some time. From our perspective, the program provides the Australian public with an unique window on what we do. One of the concerns we have is that the public do not know enough about the AFP. There is a balance to be struck, and I certainly take on board the need for that, but I can tell you this has not been something that has been arrived at in 15 minutes of discussion. There is a lot of concern, a lot of consideration, about methodology, what goes in and what goes out.

**Senator BRANDIS:** I know that there is a lot of concern.

**Mr Negus:** The individuals who are concerned with the production company were security cleared to Top Secret because they had access to a range of different environments which would not normally be accessible to the media.

**Senator BRANDIS:** I do not mean this disrespectfully, but each successive answer you give causes me more perplexity. Why on earth would you expose on the television, and expose in most cases the faces and identities of officers, when in order to get this show up and running and the cooperation between the AFP and the television production company, you had to have officers cleared to Top Secret? Don't you see that there is an inherent contradiction there if the people who are helping the TV program make the program had to be cleared to Top Secret—

**Mr Negus:** No, I do not. What appears on the television screen is obviously a shortened version of what took place in reality.

**Senator BRANDIS:** I am sure that it is sanitised.

**Mr Negus:** Absolutely, and there is a range of issues that go to methodology, where again, we struck agreements with the production company that we would have the right of refusal. That protects the integrity of what we do. Any officers who had concerns, or if there were management concerns—it was not just left to the officers, but predominantly they were the ones who would raise issues—those concerns would be assessed and dealt with. I do not have a concern about it. I think that it has been responsibly done. I think that the Australian public, the 1.2 million people who tuned into the first show to look at what we do and how we do it in a very proper and professional way, would have appreciated that. This is not a sensationalised television show that you might see coming out of some production house. This is an observational documentary about the work of the AFP and the people in the AFP and the important work they do every day for the Australian community.

**Senator BRANDIS:** Commissioner Negus, I am the first to acknowledge that the public should be aware in a general sense of what the AFP does and the importance of its work and the dangers and risks associated with its work. But the AFP is not without public scrutiny. Isn't coming to Senate estimates enough for you?

**Mr Negus:** It is more than enough, I can tell you, Senator.

**Senator BRANDIS:** It is a semi-serious point. The public are entitled to know what you do up to a point and there are good operational reasons, which are often invoked here in Senate estimates, why things should be concealed. Why expand the range of activities on which the public, to use your phrase, has a window when there is no need to do that as long as you are satisfied, as I am sure that you are, that the public in general has a high level of confidence in and respect for your agency?

**Mr Negus:** All I can say to you is that all of the issues that you have raised in these questions have been considered by the organisation in initially going into this.

**Senator BRANDIS:** But that is no answer.

**Mr Negus:** All of those issues were considered, and were considered to be addressed and successfully addressed to the satisfaction of the former commissioner who signed into the agreement with the production company, and the production that went on after I became commissioner overseeing the program.

**Senator BRANDIS:** Commissioner Negus, it will not come as any surprise to you if I tell you that I am aware that this has been controversial including among the senior ranks of the AFP. There are some of your senior colleagues, are there not, who do not like it and did not want to do it?

**Mr Negus:** That is a generalisation.

**Senator BRANDIS:** It is a generalisation.

**Mr Negus:** No-one has raised any great concerns. There were certainly a lot of discussions about how much access people should get, absolutely.

**Senator BRANDIS:** It is true though, isn't it, that there are some of your senior colleagues who do not like it and did not want to do it?

**Mr Negus:** I do not know what you call 'senior'. I know that everyone sitting at this table has been supportive of the program. I recall an article by, I think, Anita Jacoby, the executive producer, who wrote some weeks ago that it was very difficult for the production company to come inside the AFP and get access to the sorts of things they needed, because people were very much used to being secretive in the way that they conduct their business. But I think we struck a reasonable relationship with the production company about what could be disclosed. They took on board our recommendations as far as identities and concerns, and particularly our methodology, which we were very sensitive to, and I am satisfied that those concerns have been addressed.

**Senator BRANDIS:** But Commissioner Negus, you said a moment ago—and I am paraphrasing; correct me if you do not think I am putting this fairly—that you have a process or an arrangement with the production company so that you get the final say as to what gets shown and, if you have concerns about the public disclosure of your methodology, then it is up to you to say, 'We are not showing that,' or, 'we are not putting that in the television program. Is that the way it works?

**Mr Negus:** That is right.

**Senator BRANDIS:** If that is the way it works then, ex hypothesi, there is a point at which the production company is made aware of your methodology and perhaps films your methodology, and at the editing stage you have a discussion with the relevant technical people in the production company, saying, 'No, we do not want you to show that and we do not want you to show that.' Are the technicians, the film recordists, the sound people, the other support staff of the production company cleared to top secret?

**Mr Negus:** Everybody involved in the process was cleared to a sufficient level to view the material.

**Senator BRANDIS:** No, no. That is an evasive answer, Commissioner Negus. I asked: were they all cleared to top secret?

**Mr Negus:** Yes.

**Senator BRANDIS:** Every person?

**Mr Negus:** Every person that was to view material which could potentially be seen as disclosing a methodology. Every person involved in that process was cleared, yes.

**Senator BRANDIS:** Let me just nail this down. Every cameraman? Every sound man? Every assistant of any kind who was on the set or involved in the post-production, including the editing and the sound editing? Every single person at any stage of the production from go to whoa was cleared to top secret. Is that what you are telling us?

**Mr Negus:** Yes. To the best of my knowledge, yes, and I only say that because certainly the major components of that were top secret. Whether the others were cleared to a lower level, I do not know, but certainly part of the contractual arrangements with Zapruder's Other Films, with Andrew Denton, were that the people involved in the process were appropriately cleared.

**Senator BRANDIS:** Was Andrew Denton cleared to top secret?

**Mr Negus:** Yes, he was.

**Senator BRANDIS:** And there were subsidiary people in Andrew Denton's production company—

**Mr Negus:** It was a very small production company.

**Senator BRANDIS:** who were cleared to top secret?

**Mr Negus:** Yes, they were—Anita Jacoby and others involved in the process, the editors, yes.

**Senator BRANDIS:** Is there a list of the names of the people cleared to top secret for the purposes of making this show?

**Mr Negus:** We would certainly have one, but whether or not that can be disclosed, Senator, I am just not sure.

**Senator BRANDIS:** You might like to think about it, but I am asking you to table it, please. I assume you will take that on notice to consider your position.

**Mr Negus:** I will take that on notice and—

**Senator BRANDIS:** But, if you are able to reveal the identities of some of the people who were cleared to top secret, like Andrew Denton and Anita Jacoby, as you have done freely—not under any pressure from me—then why can't you reveal the identities of the other people cleared to top secret?

**Mr Negus:** I will take some legal advice on that, Senator, and come back to you.

**Mr Wood:** Senator, it is in part because Anita Jacoby has already revealed the fact that she and Andrew Denton were cleared to top secret and, from memory, the rest of her team—but she did not name them. But we will take that on notice.

**Senator BRANDIS:** That is fine, but these are private citizens. It is all very well for a private citizen to put up their hand, particularly among the luvvies of the television industry,



to say, 'I have been cleared to top secret; how cool am I?' It is another thing for the Commissioner of the Australian Federal Police to announce that to a Senate estimates committee.

**Mr Negus:** Senator, the reason I announced it to a committee is that it was in the newspaper. And, as Mr Wood has already said, Anita Jacoby disclosed that in some of the issues she raised about some of the difficulties they had in dealing with this type of environment—that both she and Andrew Denton had to be cleared.

**Senator BRANDIS:** You have confirmed that; all right. We will not be finished with the AFP before the luncheon adjournment. I think this is an issue of significant public importance and I would like you to consider, and be in a position to respond when we resume after lunch, whether, particularly given that you have felt free to confirm that certain individuals had been cleared to top secret, you are able to provide to the committee a list of all of the people, and I am talking about the private citizens—

**Mr Negus:** Senator, I would like to consider my position on this. This could well require me to look at the contractual arrangements on the privacy of the citizens involved and I do not think that within an hour or two I am going to be able to do that. I am happy to take it on notice and come back to you on that, because I would like to receive some legal advice and also some broader advice from my own staff in regards to what I can and cannot divulge.

**Senator BRANDIS:** Would any of the AFP officers who appeared on this program or were involved in making the program involved in the process of clearing the production company personnel for top secret or any other level of security clearance?

**Mr Negus:** It is very hard for me to say absolutely, but the answer, I would say, would be no, because it is two separate parts of our organisation. These are operational staff who appear in the program; the other components would be very much a part of our security and intelligence areas.

**Senator BRANDIS:** All right, you will take that on notice for me too, please, Commissioner Negus. I want to come back to where I was going a little earlier. I put it to you that this is controversial among senior officers of your organisation and that there are a number of your senior colleagues who do not like it and did not want to do it. You said, 'That is a very general statement,' and then you said, 'None of the officers at the table are of that view.' There are two officers at the table. But I just want to put to you again, and I want you to reflect carefully on the answer—

**Mr Negus:** I would be happy if you could name them for me—

**Senator BRANDIS:** No, I am not going to name them.

**Mr Negus:** and I will actually go and talk to them, because no-one—I repeat, no-one—has raised concerns, out of my senior officers. We had a launch of this thing with the production company, almost 12 months ago, where almost the entire senior executive came along and watched—with pride, I might add—some of the episodes that had been filmed about the work that is being done at the AFP. Nobody has come to me with any concerns and particularly not senior officers. What happens amongst the almost 7,000 people in the organisation I could not tell you, but from a senior officer perspective we have spoken about this, we have debated this and, as a group, no-one has raised anything with me other than support for the program, with appropriate caveats put in place around the methodology I just talked about.

**Senator BRANDIS:** I am sorry, but the qualification in a sense is the very point I want to go. I do not have any doubt that, at some level, everybody in the AFP would think there is a value to be served in displaying to the Australian public, through the medium of a television program, the important work the AFP does. I would be very surprised if there would be anyone quite so curmudgeonly as to dispute that. On the other hand, and I think you almost concede the point—here we are; there is a note being brought to you. You almost concede that in the caveat you added at the end of the sentence: subject to issues of methodology. But it is the methodology that worries me, and I put it to you, Commissioner Negus, that—when it comes to the extent to which the methodology of the AFP is being disclosed to private individuals in the television production industry, with the only security being that they are cleared to top secret and the AFP gets to have the final say as to what actually goes to air—there is concern among some of your senior colleagues that too much methodological information that should be kept secure within the AFP is being disclosed to these people in the television industry.

**Mr Negus:** I would be happy if you could provide me with names.

**Senator BRANDIS:** I am putting that proposition to you.

**Mr Negus:** I am happy to discuss that with them, if they want to raise those issues with me. So if you are prepared to name them, I am prepared to talk with them about their concerns.

**Senator BRANDIS:** Are you prepared, Commissioner Negus, to assure the Senate that there are no senior officers in your organisation who have expressed concerns about the way in which the AFP's conduct, operational activity and methodology is being kept secure in the production of this television series.

**Mr Negus:** I can only assure you about what has been said to me, and nothing has been said to me in that regard.

**Senator BRANDIS:** All right.

**Mr Negus:** I would expect that my relationship with my senior officers, as you characterise them—unnamed, I might add—is such that would they feel quite within their rights to come up and express those concerns with me or one of my deputies. That has not been done.

**Senator BRANDIS:** Commissioner Negus, who decides which operations get to be filmed and which do not?

**Mr Negus:** There is a committee that was set up; the most recent chair is Deputy Commissioner Mike Phelan, who is unfortunately on his way to Asia at the moment and not here with us.

**Senator BRANDIS:** Are you making a TV show in Asia, are you?

**Mr Negus:** No, we are not. He is attending a regional forum meeting of commissioners on my behalf because I am before estimates.

**Senator BRANDIS:** Go on; continue your answer.

**Mr Negus:** The committee is there, they would seek—

**Senator BRANDIS:** Who sits on the committee? It is chaired by Assistant Commissioner Phelan—

**Mr Negus:** No, Deputy Commissioner Phelan.

**Senator BRANDIS:** I am sorry, Deputy Commissioner Phelan. And who else is on this committee?

**Mr Negus:** There are representatives from our media and marketing area—

**Senator BRANDIS:** Just pausing there, I want to take you through this in a stepped, methodical way. Are the representatives from your media and marketing area officers with operational experience?

**Mr Negus:** Some are and some are not.

**Senator BRANDIS:** So we have some representatives of the AFP without operational experience on this committee; yes. Who else sits on this committee?

**Mr Negus:** Mr Wood, as the chief operating officer, sits on the committee and, again, he may well be able to answer some questions about the process that that committee undertakes.

**Senator BRANDIS:** That is logical. Who else sits on this committee?

**Mr Wood:** As well as the people who have been mentioned by the commissioner, our legal branch, our internal legal practice—

**Senator BRANDIS:** Yes, that makes sense.

**Mr Wood:** The project team itself has an operational officer as part of that project team, and they sit on the committee.

**Senator BRANDIS:** By the project team, whom do you mean?

**Mr Wood:** At various times we have had two people who have worked with the production company in relation to the running of the project.

**Senator BRANDIS:** But are these people who form what you call the project team AFP personnel?

**Mr Wood:** Yes, an operational AFP person who works with the project team also sits with the committee. So that is it basically. It is chaired by the Deputy Commissioner Mike Phelan, me as the chief operating officer, legal, media and operational representation. Each proposed storyline is also fed through the local operational arrangements in the region in which that particular story applies.

**Senator BRANDIS:** So the people on the ground from the AFP?

**Mr Wood:** Correct, senior officers as well as staff on the ground, yes.

**Senator BRANDIS:** What about representatives of the production company, do they sit on this committee?

**Mr Wood:** No, Senator. In fact I do not recall them even attending meetings of the group. We would have separate meetings with them when there were particular issues we wanted to pursue.

**Senator BRANDIS:** That is what I want to pursue, and I do not mind which of you, whether Mr Wood or Commissioner Negus, answers this—I would prefer the person giving me the most forthcoming answer.

**Mr Wood:** That would be you, Commissioner.

**Senator BRANDIS:** At what stage do the Andrew Dentons and the television production people get involved in the choice of the operation to be made the subject of a program?

**Mr Wood:** After the AFP has identified an operation that we would like to suggest to them as being worthy for the program.

**Senator BRANDIS:** And this is a real-time operation?

**Mr Wood:** Correct, Senator.

**Senator BRANDIS:** And in this real-time operation, presumably the AFP does not just do exercises for the hell of it. This is a real-time operation which has, as its objective, the disclosure and the enforcement of the criminal law and the arrest of transgressors if transmissions are discovered?

**Mr Wood:** For the vast majority of stories that is the case. Of course the one you initially referred to, which was the story that went to air this year, was in fact an exercise, not for the fun of it but for the purposes of training and development. But most of the stories are about actual offence matters.

**Senator BRANDIS:** Is there ever a time when the people from the production company, the television industry people, are made aware of the nature of the exercise and the suspects who are the subject of the exercise?

**Mr Wood:** Yes.

**Senator BRANDIS:** And they are made privy to this confidential policing information and you are happy to share that with them because they have been given the appropriate security clearance?

**Mr Wood:** There are a number of layers to the management of the information for which the security clearance is important to establish a base level of trustworthiness. But there are of course protocols that continue to reiterate briefing them in terms of levels of classification of the information they have access to, and there are also clauses within the contract that enable us to ensure that they continue to meet their obligations in relation to the commitments they have made—

**Senator BRANDIS:** Good luck if there are clauses in the contract if it ruins an operation.

**Mr Wood:** Understood, Senator.

**Senator BRANDIS:** These operations are covert operations?

**Mr Wood:** Not always, no.

**Senator BRANDIS:** But sometimes?

**Mr Wood:** Correct.

**Mr Negus:** These are broad-based investigations which we would do every day.

**Senator BRANDIS:** They involve a covert element, don't they—or some do?

**Mr Negus:** They are investigations and certainly the intent is not disclosed to the suspect. But if that is your definition of 'covert', Senator, yes, they are covert. Covert in the policing sense tends to go to a much different regime of covert operations and undercovers and those sorts of things. We have just got to be very clear about what you are suggesting and talking about for the record. I just want to be very clear.

**Senator BRANDIS:** So you are saying that this word 'covert' has a particular meaning within the police force?

**Mr Negus:** That is right.

**Senator BRANDIS:** That is a fair point. Commissioner Negus or Mr Woods, we have a situation in which there is investigation into a suspect which involves an element of secrecy—rather than use the word 'covert' that you have properly reminded me has a technical meaning to you, I will use the word 'secrecy'—the object of which is to enforce the criminal law and to arrest the person who is breaking it, and you share this information with Andrew Denton and his personnel in advance, and the only protections you have are the fact that you have security-cleared these people and the fact that you have a private contract with them. Is that it?

**Mr Negus:** That is it, Senator. Again, the amount of information disclosed would only be commensurate with the requirement of the production company. They are not involved in all aspects of the investigation.

**Senator BRANDIS:** I do not think, Commissioner Negus, with all due respect, that it is the requirements of the production company that should drive the investigation; I think it is the requirements of the Australian Federal Police!

**Mr Negus:** I did not say that that is what the requirement was; I said that they get briefings commensurate with their role in the production. I want to be very clear—you are painting a picture here which I do not agree with and I am clarifying the position that you are putting forward.

**Senator BRANDIS:** I am asking you questions.

**Mr Negus:** These people were briefed on the requirements that allowed them to come along with the police and film certain aspects of investigations.

**Senator BRANDIS:** Is there a risk that the information provided to these people—which is in some cases information sufficiently secret to require them to be cleared to top secret and other than the obligations which the security clearance carries are only otherwise protected by a private contract—could be exposed and an investigation ruined as a result?

**Mr Negus:** There is always a risk—

**Senator BRANDIS:** Then why take it?

**Mr Negus:** with everything in life, but the benefits were seen to outweigh the risk when this contract was entered into.

**Senator BRANDIS:** Well then, Commissioner Negus, I come back to my original point: if there is a risk, why do it—apart from attracting a bit of publicity to the AFP and making the public somewhat more aware than they might otherwise have been of what the AFP does? Why take the risk of blowing an investigation?

**Mr Negus:** Can I just for the record say that no hint of any blowing of any investigation has taken place in any of the filming over four years—

**Senator BRANDIS:** You are not going to know about it until it has happened, Commissioner Negus.

**Mr Negus:** The secrecy of those investigations has been maintained appropriately and we have been satisfied with the conduct of the production company. In fact they have worked very well in treating these matters with the secrecy that they actually require. For the record I would like to say that the AFP considers that this is a unique window on what we do.

**Senator BRANDIS:** I am sure it is.

**Mr Negus:** The AFP's role and form is shown both domestically and overseas—it has just been sold to New Zealand as well, so the New Zealanders will get a nice look on what the AFP is all about. It will increase public awareness of the AFP's role and most importantly confidence in our policing capabilities for the future; it will encourage—

**Senator BRANDIS:** But the public have confidence in you, Commissioner Negus—you have a great reputation!

**Mr Negus:** I have not finished answering the question, Senator, if you will just let me finish. It will encourage greater community participation in the fight against crime. Understanding what the AFP does and being involved in the fight against organised crime is what we are all about and we want to publicise some of that, particularly in relation to the amount and quality of intelligence provided to law enforcement and how people can assist in that regard. It will inform and educate the public about how they may be affected by crime and put preventative measures in place so that people can see how crimes are committed, because not all of them have the opportunity to go and sit in a court room.

There has been a research survey done in 2009 to establish a benchmark of public attitudes and awareness of the AFP, and after the show has been aired we will do that again and make sure we take account of what that tells us. The AFP did not receive any financial benefit from this program from the production company and the television series. However, we were able to negotiate free community messaging with Channel 9 to the value of \$500,000 in advertising value. So there will be advertising, there will be community messaging around important issues like missing persons and online child protection put forward by Channel 9 at no expense to the Commonwealth but because of the participation of the AFP in this program. And when the contract was negotiated and spoken about four years ago, almost, those issues were seen to outweigh the risks, and for any risks that were identified there were appropriate mitigation strategies put in place with the production company, of which they have lived up to those strategies. Your unnamed senior officers may have some concerns but have not raised it with me or any of my officers. Certainly there were discussions very early on in this about whether it was a good idea, but those risks have been treated.

**Senator BRANDIS:** Thanks, Commissioner Negus. At least for most of that answer you were reading from a document. Who wrote the document?

**Mr Negus:** That is a good question, Senator.

**Senator BRANDIS:** Was it somebody from police public relations?

**Mr Negus:** No, it was actually written by Deputy Commissioner Michael Phelan, who is the chair of that committee that we just outlined.

**Senator BRANDIS:** Commissioner Negus, you said towards the end of your answer—and this was not part of the document you were reading from as far as I could tell—that the level of risk was assessed to be acceptable but in any event there were mitigation strategies put in

place to deal with that risk and that those mitigation strategies had worked. Are you agreeing with me?

**Mr Negus:** Yes, I did say that, Senator.

**Senator BRANDIS:** If the mitigation strategies have been demonstrated to work, doesn't that mean that there have been occasions when they have been needed—in other words, where some conduct has occurred to invoke the operation of those mitigation strategies?

**Mr Negus:** I am talking about general mitigation strategies about inviting a production company into what is, essentially, a business that is not usually seen by people outside that business. Policing is not something that people come along on ride-alongs for, usually, so we need to make sure that whatever we do is done properly.

**Senator BRANDIS:** I am sure that is right. Is that all you meant by mitigation strategies?

**Mr Negus:** As a general principle here we have security clearances, consultation with the investigators on the ground who are going to be there at the time, consultation with the senior executives who run major parts of the business, and consultation with the Deputy Commissioner, our legal branch and a whole range of other people.

**Senator BRANDIS:** I am sure you have taken some care, Commissioner Negus.

**Mr Negus:** These are all strategies designed to mitigate the sorts of risks that you are proposing exist. Now whether—

**Senator BRANDIS:** No, you have said they exist. I put it to you they exist and you said there is some risk in everything.

**Mr Negus:** There is risk in everything.

**Senator BRANDIS:** Smart people avoid avoidable risk, and what I am putting to you is that this is an avoidable risk, because it is not necessary to disclose, under these various conditions and protections you have described, this confidential information to private citizens in the television industry in the first place. You have said to me, 'We get all these benefits', but the benefits, if I may say so, sound to me to amount to this: publicity for the AFP and for its work. If I may interpolate, I do not think you need to reassure the public that you do a good job, because I think your agency, if I may say so, already enjoys a very good reputation.

**Mr Negus:** Thank you, Senator.

**Senator BRANDIS:** And \$500,000 worth of free advertising.

**Mr Negus:** Community messaging, not advertising. There is a difference.

**Senator BRANDIS:** Okay, but the community messages take the form of content either on the television or in online services provided by the television company, right?

**Mr Negus:** This decision was made almost four years ago, as I said—

**Senator BRANDIS:** That is not what I am asking.

**Mr Negus:** The concern was that the AFP's profile and range of responsibilities was not properly understood by the community. I think we are in a better position now where people do understand the work we do in places like Afghanistan and the Solomon Islands, in people smuggling, in airports and in fighting organised crime on a daily basis. Four years ago this decision was made. Many of these stories were filmed two, three or four years ago, but

because of court processes they have had to wait this long. Again, we will see what the public's attitude is when we do another survey about their knowledge of the AFP and our work.

**Senator BRANDIS:** Commissioner Negus, you have a minister who, in a pretty bad government, is not such a bad minister, I am bound to say. He gives speeches in parliament and in public forums about what the AFP does. Isn't that enough for you? Why is there this felt need to attract public attention to the AFP? What the public wants to know—speaking, if I may, as a member of the public—is that the AFP does its job well and catches the criminals it is trying to catch. The best publicity you can get is a successful enforcement operation resulting in a conviction. Isn't that enough for you?

**Mr Negus:** Senator, the decision was made some time ago and we have lived up to our contractual obligations with the company. I am satisfied with the programs as they are displayed.

**Senator BRANDIS:** Other than the \$500,000 worth of advertising—is that an annual fee, by the way?

**Mr Negus:** My understanding is that is a total figure, but if I am incorrect I will correct the record on that.

**Senator BRANDIS:** Can you check that, please.

**Mr Wood:** It is a one-off that we use when we want to.

**Mr Negus:** Obviously there are only six episodes in this series, but at various times for missing persons or for the protection of children and those sorts of things we may want to use it outside the times these things are screening. So we can use it as we see fit.

**Senator BRANDIS:** Let us take a missing child advertisement, for example. There was a terrible case in South-East Queensland recently about a missing child who was ultimately killed in a murder-suicide. There were broadcasts on the radio and on the television on a frequent basis because it was a very urgent situation. My understanding is that the commercial broadcasters and the ABC made that time available to broadcast these messages freely. Is that not the case?

**Mr Negus:** That is true. For instance, yesterday was National Missing Children's Day, 25 May. But these are more annualised programs to raise awareness rather than a specific missing child where there may have to be publicity around that particular case.

**Senator BRANDIS:** Channel 9 is the broadcaster with whom Mr Denton's production company has its contract for this show. Does that mean that Channel 9 has been given in effect a monopoly as a result of these arrangements to broadcast these programs—what you call, 'community information'?

**Mr Negus:** We would have to pay for them on other networks—

**Senator BRANDIS:** Do you?

**Mr Negus:** We do, but we have a very limited budget in the context of those public messaging and community service announcements that we provide.

**Senator BRANDIS:** All television stations have a market share, obviously, a percentage of the ratings. Because you are getting it free in consideration of your participation in this



program from Channel 9, does that mean that you reduce the buy on other television stations because you are getting it free on Channel 9?

**Mr Negus:** It would mean that we were able to get more messages out more frequently. If Channel 9 is doing it for free, it means that we can put more into the other networks.

**Senator BRANDIS:** Is that right? So you have not reduced—

**Mr Negus:** We are talking hypothetically here, Senator, because again I do not have our schedule of communications in front of me for the next year.

**Senator BRANDIS:** I would like you to take that on notice.

**Mr Negus:** All I am saying to you is that it would be common sense to understand that if you are getting one network providing a service to you for free, then you are able to do more in other areas.

**Senator BRANDIS:** Or you might abate what you are doing in other areas because you are getting it free from one. Which is it?

**Mr Negus:** That is an operational decision that I will make.

**Senator BRANDIS:** What is it?

**Mr Negus:** I have not made it yet. I am talking about it being in the future here. We have got a capacity to put far more messaging out there into the community, important things like saving children and about missing persons.

**Senator BRANDIS:** Sure, but the draw upon the \$500,000 has not begun yet.

**Mr Negus:** No.

**Senator BRANDIS:** I just want to take you to one other aspect of this. You said it started four years ago. It is true, is it not, that the program about close personal protection—

**Mr Negus:** Sorry, Senator, I am just going to try to get the date right. I have been using four years as a general term. We entered into the agreement with Andrew Denton's company in July 2008. There were some discussions before that, so I did not want to have you looking at this as being—

**Senator BRANDIS:** That is fine, thank you. That is what witnesses should do. They should revisit in order to clarify and give more particulars about their earlier answers—that is good. So it was July 2008. When did these discussions begin? Are you able to tell us that?

**Mr Negus:** They were between Commissioner Keelty and Mr Denton, so I do not have any clarity on that.

**Senator BRANDIS:** Was it before Christmas 2007?

**Mr Negus:** I do not know.

**Senator BRANDIS:** You do not know. Could you take that on notice—when the initial discussions began—please?

**Mr Wood:** It was certainly more than six months before we signed the contract in July 2008.

**Senator BRANDIS:** Anyway, the contract was signed in July 2008. I want to concentrate for a moment on the episode about close personal protection. It is the case, is it not, that that episode was developed and filmed before June 2010?

**Mr Negus:** I do not know; I have not seen the actual program you are referring to.

**Senator BRANDIS:** What I am putting to you is that that episode was about the close personal protection of the Prime Minister. It was developed and filmed at some time between the middle of 2008, when the contract was signed, and June 2010. Could you take that on notice?

**Mr Negus:** I will take that on notice.

**Senator BRANDIS:** And some of the vision in that episode—some of what was filmed—included vision of Mr Rudd, when he was the Prime Minister. Is that right?

**Mr Negus:** I do not know; I did not see the program.

**Senator BRANDIS:** Do you know, Mr Wood?

**Mr Wood:** Yes, that is correct.

**Senator BRANDIS:** Okay. Before the episode went to air, but after the Labor Party got rid of Mr Rudd, there were scenes of that episode that were reshot with Prime Minister Gillard as Prime Minister—that is right, isn't it, Mr Wood?

**Mr Wood:** That is correct.

**Senator BRANDIS:** If the purpose of these programs is to make the public aware of what the AFP does, and all the other criteria or objectives which Commissioner Negus listed a little while ago, why in heaven's name would you have to reshoot parts of the episode just because the identity of the Prime Minister has changed? The AFP's practices in relation to close personal protection did not change between when Mr Rudd was Prime Minister and Ms Gillard became Prime Minister, did they?

**Mr Negus:** As I said, the filming started in 2008. To run a series—

**Senator BRANDIS:** You did not say that before, as a matter of fact, you said the contract was entered into in July 2008, but okay, that is fine: the filming started in 2008.

**Mr Negus:** I would add to the record that the filming started in 2008 as well. Because of the nature of some of the shows, where there were criminal offences involved, the court process had to take its course. This has obviously been held up for some number of years before it can actually be put in front of the TV screens.

**Senator BRANDIS:** I understand; makes sense to me.

**Mr Negus:** Editorial control of the show rests with the production company and whilst, as I said, we had significant input into the disclosure of methodology and those sorts of things, the final product is not a puff piece for the AFP; this was an observational documentary that Andrew Denton's production company had the right to show how they saw fit about the work that we do.

**Senator BRANDIS:** I understand all of that, but Mr Wood has affirmed what I was trying to get at: if the show was filmed with Mr Rudd as Prime Minister, and it was a show about the close personal protection of the Prime Minister, why were scenes reshot when the Prime Minister changed? Mr Wood?

**Mr Wood:** The request came in from the production company to the steering committee. From the point of view of the benefits that the AFP were seeking from the program; it made no difference to us one way or the other which Prime Minister was in the shots—

**Senator BRANDIS:** Exactly.

**Mr Wood:** So we did not mind. There was no cost to us, so we approached—

**Senator BRANDIS:** What do you mean there was no cost to you? Surely there was a cost involved, even if it is only the cost of the time of the officers involved in making these arrangements. And you described to us much earlier on the complexity of this process, so there was a cost to you.

**Mr Wood:** There was limited complexity in arranging for 30—I am not sure how long it is—or a couple of minutes' worth of shot that ended up in the final program. The bottom line is—

**Senator BRANDIS:** Yes, but we all know, Mr Wood, that the two minutes of broadcast time—

**Mr Wood:** Senator, I was answering the question.

**CHAIR:** Senator Brandis, thanks—I do not think it is unreasonable to let Mr Wood finish his train of thought, so let us do that.

**Mr Wood:** Coming back to the benefits that the Commissioner has articulated, certainly, the AFP's position was that whichever Prime Minister was in there did not make any difference to us at all. The production house requested whether we might approach the Prime Minister to see if she minded if there was more current footage included in the final episode. We passed that request on in good faith, the answer was, 'That's fine,' and so it was arranged. I agree: there would have been some costs, though not material costs, in us ensuring that that occurred. But it was not something the AFP initiated and it was not something we had a strong view on.

**Senator BRANDIS:** That is fine. When I was chastised a moment ago by the chair for jumping in, the point I was going to make was that it is absolutely unpersuasive to say, 'This was only two minutes of television time,' because every two minutes of television time represents many hours of preparation and other tape that ends up on the cutting room floor, as people used to say.

**Mr Wood:** Which may have cost Zapruder, yes.

**Senator BRANDIS:** But it also would have cost you. You have said there is a cost to the AFP in remaking the arrangements but you do not know what it is.

**Mr Wood:** I did not say I do not know what the cost is; I said I do not believe it is material. I think it is in line with what you suggested, which was maybe a couple of hours of the agent's time or others.

**Senator BRANDIS:** If you know what it was, tell us the cost to the AFP of reshooting so as to put Ms Gillard in the frame, as it were.

**Mr Wood:** I do not know the cost and I did not say—

**Senator BRANDIS:** Has it been costed?

**Mr Wood:** I very much doubt it has been costed.

**Senator BRANDIS:** Can I ask you to take on notice the exercise of working out how much time was involved in reshooting so as to replace Mr Rudd with Ms Gillard, please.

**Senator Ludwig:** Chair, I think they are able to take on notice what information they have available, but if they are being asked to go away and individually cost it, it may in fact be less than the value of the time that would take. I am not disputing that the senator might want that information, but I question what they are taking on notice. Are they taking on notice to check the records to see whether or not they have that information? Or are they taking on notice to go away and cost it?

**Senator BRANDIS:** If I may respond, since it is my question, what I want is to know how much it cost. If the information is already extant, then it can be provided. If it is not extant, I would nevertheless still want to know how much it cost. Therefore, necessarily that exercise should be undertaken. If I may say, Senator Ludwig, that was, when the situations were different, the most commonly asked question by your former leader, Senator Faulkner, in these estimates committees. It is completely commonplace. I am sure you know that.

**Senator Ludwig:** I am not disputing that; I am just making sure it is plain what the officers are being asked to go and do.

**Senator BRANDIS:** I hope I have clarified it.

**Senator Ludwig:** Thank you, Senator Brandis.

**Mr Wood:** Can I be clear: it is the cost to the AFP.

**Senator BRANDIS:** Just the cost to the AFP of substituting Ms Gillard for Mr Rudd. We know the emotional cost to the Labor Party, but I want to know the economic cost to the AFP.

**Senator Ludwig:** Was that—

**Senator BRANDIS:** That was a joke.

**Senator Ludwig:** I assume that was less than when you changed leaders from Malcolm Turnbull to Tony Abbott.

**Senator BRANDIS:** Don't go all puritanical and humourless on me, please! Mr Wood, I accept what you say—that it was the production company's request—but by participating in this there was no benefit whatever to the AFP, because you have told us you were indifferent to it, effectively. Weren't you just arranging for free publicity for Julia Gillard? That is what it amounted to.

**Mr Wood:** I did watch the program the other night and I do not believe that would be the impression anybody got from watching the full half-hour program. So the answer is no.

**Senator BRANDIS:** I put it to you that, if you have a perfectly good television program which meets all of the benchmarks that Commissioner Negus recited a little earlier and there has been no change in the AFP's methodology between protecting Mr Rudd and protecting Ms Gillard—so you got nothing out of it—the only effect of your participation was to ensure that when this program when to air the public were not reminded of Mr Rudd but they were reminded of Ms Gillard. That is a promotional exercise, Mr Wood.

**Mr Negus:** It was a request from the production company, as Mr Wood has already said.

**Senator BRANDIS:** I cannot ask them questions in estimates.

**Mr Negus:** And that is the problem. But it is about also representing a contemporary view of what is happening. There is no use, in my view, having something which could quite easily

be fixed with a couple of hours of effort at the cost of maybe—I will not speculate on the cost—

**Senator BRANDIS:** Don't, because you have told us you do not know.

**Mr Negus:** Because we are going to get that. But for a very moderate cost it made the show contemporary, and that was the production company's request, which we agreed to.

**Senator BRANDIS:** As Mr Wood said, it made no difference to you who the Prime Minister was in terms of the methods that were on display.

What happens to the footage that is not used? Who retains that footage? Let us say, for example, the program is shot, it is reviewed by your committee and the appropriate AFP person on that committee says, 'We don't want you to use that, because that's too revealing of operational issues.' What protections do you have in place to gather in and ensure that that prohibited footage is not retained by anyone outside the AFP—or do you have such protections?

**Mr Wood:** The contract does specifically deal with that issue. It requires that the footage be kept in top-secret rated containers—

**Senator BRANDIS:** By whom?

**Mr Wood:** Either by Zapruder or by another facility approved by the AFP, which would generally be back to the AFP. I cannot remember the exact words of the contract, but it does require the material, whilst ever it remains classified, to be maintained and stored in a facility that is top secret.

**Senator BRANDIS:** And who protects that facility? Who enforces that top-secret classification in relation to this material?

**Mr Negus:** I do not think it would be useful for me to outline the capability of the protection of the material you are talking about.

**Senator BRANDIS:** You seemed to be prepared to tell Andrew Denton about it. Why will you not tell the Senate?

**Mr Negus:** Andrew Denton is also instrumental as part of the chain of protecting the material, so he needs to know. The rest of the Australian public I do not think would be well served by us disclosing in what container, in what safe, at what location or at what address this stuff might be sold.

**Senator BRANDIS:** I am not asking you where it is. I am asking you what protections there are. You have told me that it is not you—that you do not gather it up yourself. You leave with the production company this top-secret material that you have decided is too sensitive to be broadcast on the television because it discloses operational matters. You do not gather it up yourself. You leave it with Andrew Denton's production company in top-secret storage arrangements, and the person or persons who are responsible for protecting that top-secret information are Andrew Denton or his staff. Is that right?

**Mr Wood:** Whilst ever Zapruder has possession of the material, Zapruder is responsible for ensuring it is maintained in a top-secret facility. As the other partner to the contract, we of course will continue to ensure through our rights through the contract that they meet their obligation. The obligation is on Zapruder to maintain top-secret storage capability.

**Senator BRANDIS:** For how long? For as long as it remains top secret?

**Mr Wood:** Whilst ever the material continues to be classified and is in their possession. It does not have an end date on it.

**Senator BRANDIS:** Thank you. I take it that this material both takes material form and exists in cyberspace, as it were, on a computer somewhere. You have told me that you can impose a contractual right on Zapruder to protect it, but how do you enforce their handling of that material?

**Mr Wood:** We have inspected the facilities to assure ourselves that the facilities meet the required standards, and we have the right to continue to do that for as long as the material continues to exist and be in their hands.

**Senator BRANDIS:** And have there been instances where material has been redacted from a program as your request and has been retained in top-secret storage conditions by Zapruder?

**Mr Wood:** Most of the material is not included in the rough cut of the episode. In other words, because of the briefings they are well aware of what they need to leave out of the rough cut of an episode. The rough cut then comes to the steering committee and, if there is further material that we want them to take out, it would be redacted from the rough cut of the episode and returned to the facility.

**Senator BRANDIS:** So there is such material. This is not a hypothetical discussion; there have been instances of such material.

**Mr Wood:** I do recall—I could not put a number on it—a small number of cases where the steering committee has said they would prefer that material not to remain included.

**Senator BRANDIS:** That is fine. Have there been any occasions when the AFP have inspected the safe keeping or storage of this top secret material by Zapruder?

**Mr Wood:** My understanding is that we have, but I would need to confirm that.

**Senator BRANDIS:** Take it on notice, please. And I would like to know how often material of the kind we have been discussing has been inspected by the AFP.

**Mr Wood:** I will take that on notice.

**Senator BRANDIS:** Thank you.

**Senator FURNER:** Commissioner Negus, you have identified during this questioning from Senator Brandis that certainly this idea of the new film was an idea of your predecessor, Commissioner Keelty. Is that the case?

**Mr Wood:** That is right.

**Senator FURNER:** You have also identified that filming commenced in July 2008.

**Mr Negus:** Just to be clear, Senator, the contract was signed in July 2008; the filming commenced in September 2008.

**Senator FURNER:** No doubt some discussion would have been held prior to that filming commencing. If you go to the website of the Channel 9 site for this series, it indicates that discussions took place a year before July 2008, putting that in July 2007, when the previous government was in place. Is that the case?

**Mr Negus:** I have no reason to question that. I think that would be right.

**Senator FURNER:** So it was a decision made by the previous government to go ahead with this program. It was not a decision made by the current government to commence filming on this particular program that under questioning Senator Brandis has been scrutinising.

**Mr Negus:** I could not confirm without checking whether the former commissioner sought approval from the previous government or whether this was a decision taken internally by the AFP.

**Senator FURNER:** Surely a decision like this would have been made by the government and the Commissioner of the AFP. It would not be the case that the AFP would go out off their own back and make a contractual arrangement with Channel 9 to film such a program.

**Mr Negus:** I have just been told that certainly the decision was an AFP decision but the former government was briefed. The responsible minister at the time was briefed.

**Senator FURNER:** Who was the minister at that particular time when this briefing occurred?

**Mr Negus:** I think it was Senator Johnston. We think so.

**Senator FURNER:** Also the Q and A of the website not only identifies the Commissioner Keelty was the person that the idea came from, but also indicates that approaches were made five years ago, identifying that this was an idea that was considered at that particular time. It certainly clarifies the situation that this was a program that was orchestrated and agreed upon, no doubt by the previous government.

**Senator BRANDIS:** That is not right, Senator Furner.

**Senator FURNER:** The facts clearly demonstrate that. You had your time; now I will have my time, thank you, without being interrupted. Commissioner Negus, the other thing that I want to question you on is about the website—

**Senator BRANDIS:** Madam Chair, you have frequently pulled up opposition senators putting propositions to witnesses on the basis that the propositions were false and inconsistent with the evidence. Senator Furner has just said something totally at variance with the evidence. Commissioner Negus has already given us the evidence that this contract was signed in July 2008.

**CHAIR:** That is right; he said that.

**Senator BRANDIS:** In July 2008. That is when, according to this witness's evidence, the decision to proceed on this basis—with the arrangements of the kind described by the witnesses—was made, and Senator Furner should withdraw the misleading and false assertion on which his last question was premised.

**CHAIR:** Senator Brandis, just to clarify, I think what Senator Furner is trying to do is ascertain whether the facts on the Channel 9 website are in fact correct. That is what he is trying to ascertain. Senator Furner.

**Senator BRANDIS:** He is perfectly at liberty to do that—

**Senator FURNER:** Thank you, Chair.

**Senator BRANDIS:** my point is that, in doing that, he does not have to misrepresent the evidence of the witnesses.

**Senator FURNER:** The next part of my questioning is in relation to the challenges involved in *AFP*. The website indicates—and quite rightly so, I imagine—that the legalities in making this filming happen were far reaching. No doubt, if you are making films about operations within our shores and beyond, you would be confronting laws from other countries in respect of how that filming might occur, as well as the laws of the particular police jurisdictions. Can you expand on the complexities involved in that particular area?

**Mr Negus:** Certainly. I think the production company themselves have spoken about their challenges, and it is a very difficult thing. The other thing to remember is that about 70 per cent of the operations that the AFP gets involved in are done in multi-agency, multijurisdictional task forces, so we also required the permission of people like DFAT, Customs and others for material to be shown in episodes which could actually feature or implicate their officers in the screening. So it was very difficult process—unapologetically so. We made it as difficult as we saw fit, for the very reason that Senator Brandis has articulated: to make sure that any risk was mitigated to the extreme. That is why it was such a difficult process, why it took so long and why, at the end of the day, we are satisfied that the product that is actually airing on television is sound. It does not comprise our officers. All the appropriate measures have been taken to deal with any issues as they arose. The steering committee, chaired by the second most senior person in the Australian Federal Police, oversaw personally what was going to be screened. This was a significant undertaking but one that was also done with a very great awareness of the potential risks that could be faced and in a way that mitigated them satisfactorily for our organisation.

**Senator FURNER:** The website also indicates that one of the most intriguing stories is that of notorious drug king Tony Mokbel, and no doubt you would be familiar with the circumstances behind his criminality. What was involved in bringing that part of the show about and in terms of applying the legalities of filming such a well-known criminal?

**Senator BRANDIS:** Senator Furner, is Mr Mokbel the gentleman for whom Mr Kelvin Thomson wrote the glowing character reference a number of years ago?

**CHAIR:** Senator Brandis, Senator Furner is asking questions here.

**Senator BRANDIS:** I just wanted to clarify which Mr Mokbel we are speaking of.

**Mr Negus:** Sorry, Senator, I could not quite hear the question as it was being asked.

**Senator BRANDIS:** It was about Mr Mokbel, the well-known—

**CHAIR:** That is for Senator Furner. He actually has the call.

**Mr Negus:** I heard the words 'Mr Mokbel' and that is about it.

**Senator FURNER:** Once again, this is coming from the website, so it is not a case of anything other than that. It indicates that one of the most intriguing stories—I am not certain whether it has been shown yet or is about to be shown—is about the notorious drug king, Tony Mokbel, in relation to his involvement in crime and with the Victorian courts. What I am asking you is: what legalities had to be crossed in order to film that particular story in regards to what is required by the AFP and the contractual arrangements?

**Mr Negus:** Obviously, the production company had to take into account the suppression orders that were in place. There were a range of different complications. When Mr Mokbel was located overseas and extradited back to Australia, he faced a variety of charges at that



stage, some of which were AFP charges but some of which were Victoria Police charges. It was a very complex legal environment—and we all recall how long ago it was that Mr Mokbel was extradited to Australia. It is because of those legal complexities about extradition and suppression orders that it took so long to put the show to air. We had to make sure that we would not in any way negatively impact on or compromise any potential court hearings, and the production company were very much made aware of that at the start: our first and only direction here was to ensure that the role of the AFP was not compromised and these people would ride along but not interfere with any process that we were undertaking.

**Senator FURNER:** It certainly appears from the information on the website that that has been the case. So the AFP and the government have been arranging those situations where there is no compromise of particular officers. Going back to when these arrangements were put in place—and it is probably a matter you need to take on notice—I would like to clarify the dates of the first meetings with Commissioner Keelty and the then minister of the previous government to discuss the formation of this particular show.

**Mr Negus:** We will take that on notice.

#### **Proceedings suspended from 12:31 to 13:30**

**CHAIR:** We will reconvene and recommence our consideration of the budget estimates for the Legal and Constitutional Affairs Legislation Committee.

**Senator LUDLAM:** If it has not been traversed in detail already, I would like to ask you about the AFP's involvement in investigations or monitoring of the work of the WikiLeaks organisation. I understand a Defence task force was established last July principally to investigate the implications of the 400,000 US military documents on Iraq. There was a whole-of-government task force that the Attorney announced on 29 November, which I think was the day that they were published. The Attorney indicated at that time that the AFP was part of that investigation. Can you just tell us, to the limits of what you are able to disclose, what your role was, or is?

**Mr Negus:** Certainly. On 30 November 2010 the AFP received a referral from Mr Roger Wilkins, the Secretary of the Attorney-General's Department, who is almost but not quite here, relating to the publishing of the cables. On 17 December the AFP advised Mr Wilkins that the evaluation had been completed and the AFP did not identify any criminal offences. We had taken part in the joint agency, or joint government, task force prior to that. I think we might have some details of those things as well, which I will get Deputy Commissioner Drennan to go through.

**Mr Drennan:** There were certainly two parts of this. One was our investigation, which was on the basis of the referral from the Attorney-General's Department in relation to the potential criminality that might exist where Australia would have jurisdiction in regard to the cables. As the commissioner just outlined, we evaluated that and established that there was no criminal offence where there would be jurisdiction for Australia.

The whole-of-government task force commenced on 29 November. That was really to look at the cables as they became known and to assess what the implications of the release of those cables were. The AFP provided two people to that task force and they remained with that task force for a short period of time and then on an as-needs basis as cables were released on the WikiLeaks site.

**Senator LUDLAM:** I understand that task force has now virtualised itself. I think the chair used the phrase that they are a 'virtual task force' now. Are you still conducting any virtual or ongoing investigations as part of that?

**Mr Drennan:** No, the regime we put in place—and I will deal with the two aspects again—following investigation was that we provided what I would call a template for departments to use as an assessment tool so they could themselves assess what potential criminality might exist in regard to a cable once it was released to the public and then they could refer it to us so that we could then evaluate it and see whether it warranted investigation. As far as the task force went, yes, that is on a virtual basis and then on an as-needs basis.

**Senator LUDLAM:** When was the last time that you considered you had staff or officers working on the WikiLeaks issue directly? I should not say that. To be more specific, on issues that were raised as a consequence of the document drop?

**Mr Drennan:** We notified Mr Wilkins on 17 December that the investigation was complete. I do not have the exact detail of how long after that it was to just tidy up those aspects, but it would not have been a very long time after that.

**Senator LUDLAM:** So there is really nothing ongoing.

**Mr Drennan:** There is nothing ongoing at the present time in regard to investigations, no.

**Senator LUDLAM:** If you were able to scrub that document of anything that was operationally sensitive, would you be able to provide the committee with a copy of the template that you refer to?

**Mr Drennan:** Yes, I do not think there is any issue with that. It is very much about what are the types of offences that may exist and what the essential elements of those offences are.

**Senator LUDLAM:** That would be much appreciated. I am not seeking specifics of any of the particular things you are investigating, but the form that you were using to do that evaluation would be appreciated. How many AFP officers in how many states were working on this investigation when it was afoot?

**Mr Drennan:** There were a total of six AFP staff who worked on the investigation. That was conducted from the head office investigations here in Canberra.

**Senator LUDLAM:** I think that answers my next question as well. What areas of expertise were you specifically bringing to bear?

**Mr Drennan:** If I could just be clear, this was not an investigation. We were evaluating the material before us to see whether there was sufficient material to commence an investigation. It is a subtle distinction, but it is actually about looking at the material which is on hand. One of the primary areas of focus there is to establish whether or not there would be criminal offences and whether we would have jurisdiction. If those two issues were established then we would progress to a formal investigations. The threshold was not met for either of those two things. It was evaluated but not progressed to an investigation.

**Senator LUDLAM:** Did you question anybody—for example, known associates of Mr Julian Assange—in Australia, or was it all done on the basis of documentation?

**Mr Drennan:** It was done on the basis of the documentation.

**Senator LUDLAM:** You did not feel the need to question anybody.

**Mr Drennan:** I do not have all the precise details of the investigation, but to my knowledge there was nobody interviewed and questioned in relation to it.

**Senator LUDLAM:** Can you just confirm that for us on notice if you later discover that that was not the case.

**Mr Drennan:** Certainly, but as far as we know there were no interviews and no questioning done in regard to it.

**Mr Negus:** I think you will find that, as Deputy Commissioner Drennan has said, the thresholds were not met for a criminal offence being identified for which we had jurisdiction, so therefore there was no requirement to go forward to interview any persons outside of examining those documents.

**Senator LUDLAM:** So the assessment is primarily legal; it is not investigative as such? You are seeking legal opinion on a range of benchmarks?

**Mr Negus:** The officers themselves, and also seeking legal opinion, yes.

**Senator LUDLAM:** Was anybody put under surveillance or were any warrants sought during the course of that scoping period?

**Mr Drennan:** No. Again, to use warrants as you articulate, in a general sense we would need a criminal offence to investigate to form the basis of seeking those intrusive powers, and we did not reach that threshold of offence so we would not have used those.

**Senator LUDLAM:** Do you need to be persuaded that a criminal offence over which we have jurisdiction in Australia might have occurred for you to seek to—

**Mr Negus:** That is right.

**Senator LUDLAM:** Did the AFP do anything in relation to the death threat that was posted online against Daniel Assange, Julian's brother? First of all, are you aware of that event? I beg your pardon—his son.

**Mr Drennan:** No, I am not aware of one in his relation to his son.

**Senator LUDLAM:** Are you not aware that a death threat was made?

**Mr Drennan:** No.

**Mr Negus:** We might have to take that on notice. From the table here, no-one is aware of that. I suspect that, if it had been reported to the AFP, we certainly would have been briefed on it, but it may well have gone to state police or territory police. Do you know where Mr Assange's son lives?

**Senator LUDLAM:** No, I do not. My understanding is that there was an inquiry that was made. I believe he lives in Melbourne and that an inquiry was made of the AFP, and my information is that that inquiry was referred to the Attorney's office. I would be very interested to know what the thought processes were behind that.

**Mr Negus:** It sounds a very unusual pathway, so—

**Senator LUDLAM:** It does.

**Mr Negus:** we will try to find something out while we are at the table.

**Senator LUDLAM:** You might have answered this already, so let us keep it brief. The interdepartmental committee for managing the issue included a number of departments. Can

you formally tell us what role the AFP played in that group? Were you a formal member or did you just come on for advice as needed?

**Mr Negus:** No, for the initial phase I was actually on leave but the person performing my role attended in the capacity of deputy commissioner and then when I returned from leave I participated in that IDC.

**Senator LUDLAM:** What would the normal process be if somebody with some kind of profile in the community receives a death threat and the Federal Police are notified that a death threat has been made? What is your normal workflow from there?

**Mr Drennan:** Normally, if it were a death threat, the primary responsibility there would be for the state and territory police, so it would be referred to them.

**Senator LUDLAM:** What if it were a parliamentarian or a High Court judge? At what threshold does the Federal Police take an interest in a death threat?

**Mr Drennan:** The only legislative basis there would be when it is a person who is either an internationally protected person or a high office holder here in Australia, which would be the Governor-General or the Prime Minister. Other than that it would be a state or territory responsibility, although if there were some significance to that then we would certainly work with them. The only other thing that would give us a jurisdictional role is if the threat were made over a telecommunications device—

**Senator LUDLAM:** Well, it was. Let us just be clear about definitions then. It was made online on some social media platform, I guess, so, yes, it was made over a telecommunications device.

**Mr Drennan:** That could form the basis for us having jurisdiction. But again, without knowing the circumstances, I would virtually be guessing as to what our response should be.

**Senator LUDLAM:** I do not want to take us down the path of hypothesis, so what I would seek to confirm from you is, first of all, if and when you received notification, if and when you referred it to the Attorney-General's office and if and when it was referred to a relevant state police, presumably the Victorian police. If there is any other information that you could provide to that, that would be great.

**Mr Drennan:** Certainly.

**Senator LUDLAM:** A couple of days before Christmas—I think it was 23 December 2010—the government announced the terms of reference for an independent review of the intelligence community. Has the AFP been invited to participate in that review?

**Mr Negus:** Yes, we have.

**Senator LUDLAM:** Can you provide for us any info that you are able about what role you will play and what the nature of your participation has been?

**Mr Negus:** As a member of the national security community we would be interviewed. From memory I did speak to the people conducting the review. I think we also had a general survey on behalf of the organisation that we actually completed as to our views. But I am just not sure about the second one. We get a lot of surveys and a lot of review committees coming through to look at those things.

**Mr Drennan:** The review met with the deputy commissioners and the chief operating officer—

**Senator LUDLAM:** Could you say that again; I missed the first part.

**Mr Drennan:** The committee also met with the deputy commissioners and the chief operating officer, and again we provided some input to them.

**Senator LUDLAM:** Have you been asked to make material available, apart from this survey?

**Mr Colvin:** Yes, we have. I believe we have been asked for a submission which we have provided. I think that in follow-up from that they have spoken to officers at various levels within the organisation. I will stand to be corrected and I will correct the record if this is the case. We are an interested party as a member of the National Security Committee, so I am not sure that the review itself is necessarily directly into us as an organisation, but we are an interested party and as part of that we provide information to assist them.

**Senator LUDLAM:** In the last budget there was \$9.1 million appropriated over four years for the establishment of a multi-agency counterterrorism control centre as discussed in the counterterrorism white paper. The AFP has someone designated to this group. Can you just provide for us a breakdown of what they do.

**Mr Drennan:** We had a senior officer outposted to ASIO to form part of that group. They are part of the general activities of the group there which really—without going into the detail, because of its intelligence nature—is about assessing material, providing information in relation to what priorities there are and ensuring that there is a coordinated approach of agencies in regard to intelligence concerning counter-terrorism.

**Senator LUDLAM:** Is that person based in ASIO headquarters and will they continue to be based there when the new fortress they have down by the lake opens up?

**Mr Drennan:** I am not too sure that they call it a fortress—

**Senator LUDLAM:** A palace?

**Mr Drennan:** but certainly they will continue to be outposted to ASIO.

**Senator LUDLAM:** Those are the polite words. My next question is administrative and I apologise that I do not have this in front of me. I do not know if it is addressed in the portfolio budget statement or not. Have you abolished or reassigned or redesignated your CEO position since the last budget was handed down?

**Mr Negus:** The CEO, was that?

**Senator LUDLAM:** If you ever had such a position.

**Mr Negus:** I think I am the CEO, so nobody has told me.

**Mr Drennan:** The CFO?

**Mr Negus:** We have the chief financial officer, who left to take up another position with defence housing, and only a matter of a few weeks ago a new chief financial officer commenced with the organisation.

**Senator LUDLAM:** Maybe I have just got the designation mixed up, and I do not have your corporate tree in front of me. Do you have a PA or an executive officer or somebody that assists you in the normal course of your work?

**Mr Negus:** Do I?

**Senator LUDLAM:** Yes.

**Mr Negus:** Yes, I do.

**Senator LUDLAM:** Can you just describe for us the role or the nature of that position?

**Mr Negus:** I think we are getting back to where the chief of staff role—

**Senator LUDLAM:** Let us start there.

**Mr Negus:** I just want to go back two steps to put this into some context. We had a chief of staff who worked for me for about 12 months. That position had been at various levels over the past probably five years, really: from a commander to an assistant commissioner. What happened is that the Roger Beale review we had said we needed a third deputy commissioner role. We implemented that and of course we have three deputy commissioners. The role of the chief of staff's functions were taken away and essentially that was redefined down to a much lower level. That person was retasked into people smuggling operations at the moment.

**Senator LUDLAM:** Your office does not have a chief of staff at the moment; you have three deputy—

**Mr Negus:** I have an executive assistant who does my normal secretarial work and I have an executive officer who picks up my general support and broad office functions, but the responsibilities that necessitated the chief of staff being at an SES or senior level have been redistributed amongst the deputies.

**Senator LUDLAM:** They were delegated away?

**Mr Negus:** Yes.

**Senator LUDLAM:** The exec assistant and the exec officer are two different people?

**Mr Negus:** That is right.

**Senator LUDLAM:** Has the AFP in the past cooperated with Egyptian intelligence services?

**Mr Drennan:** Not to my knowledge, but when you say 'in the past' it is a very long time.

**Senator LUDLAM:** Forever.

**Mr Drennan:** I could not be definitive there but, to my knowledge, no, we have not.

**Senator LUDLAM:** I note that there is an inquiry underway by the IGIS at the moment into the actions of relevant Australian agencies in relation to the arrest and detention overseas of Mr Mamdouh Habib from 2001 to 2005. Has the AFP been requested to cooperate with that inquiry?

**Mr Negus:** Yes, we have.

**Senator LUDLAM:** Can you spell out in a bit of detail about what manner you have been asked to cooperate in and what you have done?

**Mr Negus:** The IGIS came and met with me. Obviously there has been significant evidence over the years, even before this committee, on the AFP's involvement. She requested our full cooperation, which we did pledge to her. We will have members who will appear before IGIS and assist her in the investigation that she is conducting, but it is very difficult for us to really specify anything more than that given that the inquiry is currently underway. But she has our full support and cooperation throughout that inquiry.

**Senator LUDLAM:** I should say in response to my first rather vague question about whether you had cooperated with Egyptian intelligence services in the past that I think the period in question, if you are able to go back to your records, is since 2001. Are you aware of the content of the 840-word statement by an Egyptian intelligence officer that names an Australian official who witnessed the torture of Sydney man Mamdouh Habib in Guantanamo Bay?

**Mr Negus:** Not specifically, no, I am not.

**Senator LUDLAM:** I asked if you were aware of the content. Are you aware of the existence of such a document?

**Mr Negus:** Not specifically. This case actually predates my position here as commissioner. I know Deputy Commissioner Drennan has been involved in reviewing some of the material. We have previously presented to the committee on Mr Habib's allegations.

**Senator LUDLAM:** At some length. It predates my arrival here as a senator as well.

**Mr Negus:** Can I just say that certainly Mr Drennan has looked at that material and the advice I have is that there is nothing further that we would add or change from previous evidence that has been provided to this committee really since 2001.

**Senator LUDLAM:** Nothing that you would change? That is important. I can confirm, if you were not sitting up late watching estimates last night—I would want to know why you were not—that ASIO and some of the officers at the table today confirmed that such a document had been sighted by Australian government solicitors just prior to a settlement agreement which was reached with Mr Habib. So it does in fact exist and it is probably still in the possession of the Australian government. Has the AFP to your knowledge had any contact with the Egyptian intelligence officer who is relevant to that document?

**Mr Drennan:** I am sorry—has the AFP had any contact?

**Senator LUDLAM:** That is right.

**Mr Drennan:** No, we have not.

**Senator LUDLAM:** Is the AFP aware of who the Australian official is who is named in that document?

**Mr Drennan:** No, we are not.

**Senator LUDLAM:** I am a little perplexed by this, because the AFP was quite central in the long and tortured history of this issue. Are you aware of the open-source reporting about the statement that was made by this Egyptian intelligence officer?

**Mr Drennan:** We are aware of media reporting on 1 May in relation to the alleged Australian government knowledge of Mr Habib's rendition to Egypt, but really that is the extent of that knowledge. When you say that we are central to Mr Habib's issues, we spoke with Mr Habib—and this is all on the record before the committee—whilst he was in Pakistan. That was in October 2001. We again spoke to him when he was in Guantanamo Bay in May 2002. The extent of our interest was as to whether or not he had been involved in committing criminal offences, again, where we would have jurisdiction. We were satisfied at that time that, no, he was not and that was the extent of our interest in regard to Mr Habib. I would not put that we were central in regard to the issues concerning Mr Habib.

**Senator LUDLAM:** Does your interest extend to whether or not Mr Habib was tortured while he was under the custody of either the Egyptian government or the United States?

**Mr Drennan:** That would be the interest in regard to his consular rights—

**Senator LUDLAM:** Or to his human rights, really.

**Mr Drennan:** which is a matter for the Department of Foreign Affairs and Trade, who are responsible for consular issues.

**Senator LUDLAM:** But that matter is not directly relevant to the interests of the AFP?

**Mr Drennan:** It is not a matter which falls within the jurisdiction that we would have in regard to our interest in Mr Habib. That was whether or not he had been committing criminal offences where we would have jurisdiction.

**Senator LUDLAM:** Can I take it then that the AFP did not do anything to investigate the allegations that were published that you have just cited there by an Egyptian intelligence officer? You have not opened that book up again for any reason?

**Mr Drennan:** That is correct.

**Senator BRANDIS:** This has been touched on by others but I want to ask you a series of questions about the Christmas Island riots in March, when Commonwealth property was destroyed, Commonwealth officers were assaulted and the government lost control over the detention facility, which had to be retaken by force. Can you confirm that the AFP had warned the government about the potential for violence on Christmas Island before these riots took place?

**Mr Negus:** We have been having discussions about the potential for violence in detention centres for some time. We have not formally briefed the government on anything around that. We have certainly had discussions with DIAC and with Serco. At Christmas Island we have had something like 107 movements of resources on and off the island to cater for a raised expectation or raised intelligence that something might occur over the last year and a half or so, but we have not formally briefed the government about this. This is really something that we provide advice to DIAC and work with DIAC on and they have the lead in those areas.

**Senator BRANDIS:** You had certainly identified, had you not, that Christmas Island, because of the nature of the facility and the overcrowding there, was a risk location?

**Mr Negus:** Yes, we had. As I said, we have moved resources to and from the island as that risk has risen and fallen over that period of time.

**Senator BRANDIS:** Obviously, it is implicit in what you have just said, you monitor that risk and keep it under review on a daily basis, I suppose.

**Mr Negus:** That is right.

**Senator BRANDIS:** When you say you had not formally briefed government but you had had discussions with DIAC and with Serco, do you mean by that there was no written brief to your minister or any other minister of an agency which was concerned with the detention facility on Christmas Island?

**Mr Negus:** No, there has been no written brief to that effect, not from the AFP.

**Senator BRANDIS:** Have there been oral briefings?



**Mr Negus:** We have had discussions with a variety of people, including the minister, about our responses to Christmas Island over that period.

**Senator BRANDIS:** When you say your minister do you mean Mr O'Connor, not the Attorney-General?

**Mr Negus:** I do, sorry—the Minister for Home Affairs.

**Senator BRANDIS:** Have those discussions ever included the Attorney-General, by the way?

**Mr Negus:** Not to my knowledge, and I am usually the one doing the briefings.

**Senator BRANDIS:** Have they ever included the Prime Minister?

**Mr Negus:** No.

**Senator BRANDIS:** When you speak of those matters I want you to focus specifically on the riots in March of this year. You might want to take this on notice, but to the extent to which you are able to give me an estimate I would like a response here and now please. What was the most recent occasion before the riots when you had an informal discussion with the minister in which the issue of the risks of violence on Christmas Island was raised?

**Mr Negus:** I would have to take that on notice. I should put it in some context. The discussions I have with the Minister for Home Affairs are more about the AFP resourcing required to support DIAC and Serco in their endeavours to manage the centre rather than the specific risk, because again that is outside his portfolio. It is about what the AFP is doing to support other agencies.

**Senator BRANDIS:** I understand that, but there is obviously a direct relationship, isn't there, between your resourcing needs and your assessment of the level of the risk?

**Mr Negus:** That is a long bow, because essentially I would not discuss matters of an intelligence nature with the minister per se but I would talk to him about the issues and what we were responding to as far as the requirement for the AFP to support DIAC in that regard.

**Senator BRANDIS:** Is that right—that you would not ordinarily discuss intelligence matters with the minister? Is that what you said?

**Mr Negus:** That is what I said,

**Senator BRANDIS:** This is a hypothetical—

**CHAIR:** We will give it a go.

**Senator BRANDIS:** I am sorry; is there a rule of the Senate that hypothetical questions are not allowed.

**CHAIR:** We have just had a debate over the last three days about, I think, members of your party not wanting hypotheticals raised, but go ahead.

**Senator BRANDIS:** Let us say that you became aware of an imminent risk of a violent event on Christmas Island in the detention centre. Will you not ordinarily alert the minister or his office to that fact?

**Mr Negus:** What I would alert the minister's office to is the fact of what the AFP response would have to be. I would not necessarily go into the depths of the intelligence that supported that.

**Senator BRANDIS:** I suppose that is an answer to the question of how long is a piece of string.

**Mr Negus:** It is a hypothetical question.

**Senator BRANDIS:** As the opposition spokesman I have been briefed by various national security agencies, so I understand perfectly well that there is a point beyond which an agency does not go into the detail of the intelligence with the political levels of government. I suspect it is much more extensive with the government than with the opposition. Nevertheless, I fully accept that you do not go into the weeds, as it were, of the intelligence with the minister, but that is really not my point. My point is that, if you thought that there was a serious, imminent risk of a violent event on Christmas Island which required an AFP response, merely by discussing with the minister the nature of the AFP response you are kind of alerting him, are you not, to that which is to be responded to?

**Mr Negus:** Without going into the specifics of the intelligence, that is right.

**Senator BRANDIS:** That is fine. You do not go into the specifics of the intelligence but, if there is an imminent risk, even if only for the purpose of dealing with the nature of your response, you do alert the minister to that.

**Mr Negus:** It is a hypothetical question and, characterised in that way, I could support that.

**Senator BRANDIS:** I am sorry?

**Mr Negus:** I said, characterised in that way, I could support your assertion.

**Senator BRANDIS:** I am just trying to be helpful to focus the discussion. You have taken the issue of the date on notice so I will not ask you for that again. But was there a conversation of that kind with the minister in advance of the March riots?

**Mr Negus:** No, there was not.

**Senator BRANDIS:** When the March riots occurred were you expecting them to occur or did they take you by surprise?

**Mr Negus:** We were not expecting any violent behaviour of that nature, to that extent.

**Senator BRANDIS:** So you had not assessed an elevated level of risk?

**Mr Negus:** No, we had not. I should qualify that by saying that there are always ebbs and flows in these things—but certainly not of the magnitude that occurred.

**Senator BRANDIS:** I understand that there were public order specialists stationed on Christmas Island who returned to Australia in December 2010 and were absent therefore from the island when the riots occurred three months later, is that right?

**Mr Negus:** That is right.

**Senator BRANDIS:** Why were the public order specialists taken off the island in December 2010?

**Mr Negus:** As I said, there were ebbs and flows in the intelligence and the response required. The best judgments of the officers were made on having a suitable number of people on the island to respond. Some 202 officers ended up being deployed to the island when the riots occurred in March. It is very difficult to have a standing force sitting around for three to four months waiting for something to happen. During that intervening period there was very

close monitoring of the intelligence with DIAC and Serco. People were moved onto and off the island over that period of time in response to elevated threats and then when those calmed down again. But I think, as I have said to you in my previous answer, the magnitude of the events that happened in March were not foreseen.

**Senator BRANDIS:** You have made that perfectly clear. Presumably the removal of the public order specialists from Christmas Island in December 2010 was a decision made as a result of an assessment at the time that those officers were not needed either then or imminently?

**Mr Negus:** That is right.

**Senator BRANDIS:** Who made that assessment, by the way? Was it the people on Christmas Island?

**Mr Negus:** I will pass to Deputy Commissioner Drennan whose area of responsibility is that component.

**Mr Drennan:** It was a decision which was made on the information of the officers on the island who provided it back to the international deployment group who had responsibility for the resourcing. It was the national manager of that area, the assistant commissioner, in consultation with me.

**Senator BRANDIS:** Did your interlocutors from Serco and your interlocutors from DIAC participate in making that decision?

**Mr Drennan:** They participated in providing the information and in the discussions with the officers on the island to come to the conclusion that the level of resourcing that would remain there was commensurate with the intelligence and the current environment of the centre at the time.

**Senator BRANDIS:** Presumably on a day-to-day basis there is a meeting between Serco, DIAC and relevant AFP officers to keep an eye on the security situation and the threat level? Is it on a day-to-day basis that they talk to each other?

**Mr Drennan:** There is a joint intelligence group which is constantly—not only on a day to day basis—exchanging information and assessing the situation. There is also a daily meeting, the interagency working group, which is AFP, DIAC and Serco. Then there is—

**Senator BRANDIS:** Let's pause there, because I want to keep track of this. Do the first two groups that you referred to meet on Christmas Island? Are those people physically on the island?

**Mr Negus:** That is correct. There is a third group, also on the island, the Christmas Island interagency coordination committee. That is chaired by the Christmas Island administrator. That group consists of all agencies there, AFP, DIAC, Serco, Customs, regional Australia, national parks and AQIS.

**Senator BRANDIS:** How often does that meet?

**Mr Drennan:** That meets Wednesdays, weekly.

**Senator BRANDIS:** So there are graduated levels of consideration of this matter from the more than daily, to the daily, to the weekly, effectively, by these three different groups?

**Mr Drennan:** That is correct.

**Senator BRANDIS:** Which of those groups was the locus or the decision maker, as it were, of the decision to withdraw the personnel in December 2010?

**Mr Drennan:** As I said, the final decision was made here in Canberra based on the advice from both the joint intelligence groups and the interagency working group.

**Senator BRANDIS:** That is the first and the second of those two groups?

**Mr Drennan:** That is correct.

**Senator BRANDIS:** Did they both make that recommendation?

**Mr Drennan:** Yes, they did.

**Senator BRANDIS:** Immediately prior to the March riots, how many AFP officers were on the island?

**Mr Negus:** We have some tables here which we will just have to find.

**Mr Colvin:** I may be able to help you with that.

**Senator BRANDIS:** Before you do, let me give you an indication of where I am going with this; it might help you focus your answers. I obviously want to know in this bracket of questions about the numbers: how many there were before, how many were deployed, and how long those deployed stayed on the island. I am interested in the up-tick of the numbers as a result of the riots.

**Mr Negus:** Whilst Deputy Commissioner Colvin is looking for the answers there, just to put this in context, we actually perform the community policing on Christmas Island as well as the public order management specialists you have talked about. We also regularly have people-smuggling investigation teams on the island as well as, as we said, the specialists in public order, so there could conceivably be three different groups of AFP officers on the island doing three different functions at the same time.

**Senator BRANDIS:** Do they move between functions? For example, in an emergency situation would the people-smuggling specialists lend a hand to the riot control people?

**Mr Negus:** That is a very good question. In fact, we trained the Christmas Island community police in public order management because of the potential for things to escalate quickly—and the remote locations involved. We have trained the people involved in the people-smuggling strike team, and this can be up to 15 to 18 people on the island doing those investigations into people smuggling. We trained all of those in public order management as well so that if they got caught in that position they would be able to support DIAC, Serco and the Christmas Island police. We trained a number of officers in the Perth office who are just general federal agents doing the broad range of organised crime work. But for ease and speed of deployment we train those in public order management as well, to ensure that we have a range of contingencies in place before the public order specialists are deployed within 24 hours, usually from Canberra or Brisbane, where they are based.

**Senator BRANDIS:** Is there a chain of command among those, can I call them, co-opted officers? In the event that there is a crisis situation, as there was in March, who makes the call to co-opt these officers from the other tasks, and who gives the orders?

**Mr Colvin:** In answer to that direct question it is generally the most senior person with the relevant skills on the island who will assume command and control. That is a decision that would also be communicated back to us in Canberra because those people sit across a range

of areas within the AFP. But it is generally accepted, as you would expect, that at times of high order or at times of crisis all hands are moved to whatever the priority is and they fall under the most senior skilled person on the island. If you like, I can give you some of those numbers.

**Senator BRANDIS:** Yes, please.

**Mr Colvin:** At the time of the disturbance when it first began on 11 March we had 32 AFP members on the island. That included, as the commissioner has said, Christmas Island police, our people-smuggling strike team investigators as well as a small contingent of IDG support, which would have been public order management people, I would presume, but we can check that—

**Senator BRANDIS:** Can you disaggregate between those three for me, please?

**Mr Colvin:** I do not have an exact figure for you but I can say that the Christmas Island police is 10 and the people-smuggling strike team generally sits around the 15 to 18, but that fluctuates up and down on a daily basis. So that probably leaves about seven additional surge to support any operations on the island.

**Senator BRANDIS:** Four to seven?

**Mr Colvin:** Correct. The incident commenced on 11 March. As I said, we had 32 members there on that day—

**Senator BRANDIS:** Just for the sake of completeness, obviously a deployment at that level, 32, reflects a view held at the time that there was no imminent threat?

**Mr Colvin:** That is correct. So the 32 was commensurate with what we believed was the level of threat on the island. Between 12 April and 20 March we deployed an additional 158 members in support of this operation.

**Senator BRANDIS:** Is that all at the same time?

**Mr Colvin:** No, it was graduated and obviously some people come on the island, others come off. We need to rotate people through. There are capacities used on island as well.

**Senator BRANDIS:** Have you got that tabulated for us?

**Mr Colvin:** I think we actually do have the ons and offs. I might just have to take a moment to get it. At its peak, we had 202 people on the island in response to these issues.

**Senator BRANDIS:** How many hours or days do you define as the peak?

**Mr Colvin:** I would have to check that.

**Senator BRANDIS:** I am guessing now but I assume we are talking about a period of a few days.

**Mr Colvin:** It would be a few days to a week, because of course we needed to resolve the incident and we would leave resources on island in case the incident was to flare up again, so we would need to make an assessment before we drew down. I mentioned we deployed resources up until 20 March. We commenced a withdrawal on 25 March which we completed on 4 May, so it was quite a long period of time for a build up and then a draw down.

**Senator BRANDIS:** If you have got it ready it is probably a convenient time for you to table that document. Are you in a position to do that now?

**Mr Colvin:** I do not think we would be. We would need to have a look and actually go through it, because, as the commissioner said, there have been 107 movements in the last few years so we are talking about a lot of ups and downs.

**Senator BRANDIS:** Rather than put you at risk of giving us a document that you are not completely satisfied with, why don't you just take that on notice and if you can satisfy yourself between now and the end of your evidence perhaps you could table it then. If you cannot, just take it on notice and provide it to us. But I think you have told me largely what I was looking for.

**Mr Colvin:** Can I just correct one point?

**Senator BRANDIS:** Yes.

**Mr Colvin:** I did say to you that we deployed 158 members between 12 April and 20 March. That would be the wrong way around of course, but it was actually 158 members deployed between 12 March and 20 March. It was a quite intense period of eight days where we moved resources onto the island.

**Mr Negus:** Could I just correct one thing I said as well? I mentioned the people-smuggling strike team had been trained. Many of the officers were, but I am advised not all of them were because there are people who rotate through that process.

**Senator BRANDIS:** I did not understand you to be saying that everybody had been.

**Mr Negus:** I just want to be very clear about that.

**Senator BRANDIS:** As part of that exercise can you also please provide the committee with a month-by-month breakdown of the number of officers deployed to Christmas Island over the past year and during the period of the riots. Obviously I would like the March period to be disaggregated on a daily basis during what you called the critical period—but, otherwise, a month-by-month breakdown for the past year of the deployments on Christmas Island.

**Mr Colvin:** We can do that. I am just looking at the document I have in front of me. It will take some time but I do not see any great objection to me reading it onto the record.

**Senator BRANDIS:** I have no objection to you doing that. What I have asked might be time consuming so why don't you do that?

**Mr Colvin:** How far back would you like us to go?

**Senator BRANDIS:** A year ago. Back to May 2010.

**Mr Colvin:** On 1 May 2010 the AFP deployed one person to bring our total number to 44 on island. That was a proactive measure by the AFP and part and parcel probably of normal rotation, which a lot of this will be. On 4 May we moved one person off. On 6 May we moved—

**Senator BRANDIS:** I do not want you to do it for a whole year on a day-by-day basis, though.

**CHAIR:** You asked for that so—

**Mr Colvin:** I did say it might take some time.

**Senator BRANDIS:** That is not what I understood you to be saying. I asked for a month-by-month and then during the critical incident period a day-by-day, not a day-by-day for a whole year.

**Mr Colvin:** I can aggregate this together. It will take me some time to do that.

**Senator BRANDIS:** Why don't I concentrate on Commissioner Negus and Deputy Commissioner Drennan while you do that—concentrating please on the additional 158 AFP officers who were deployed at the time of the riot to bring it to a peak of 202. From where were those officers brought?

**Mr Drennan:** Those numbers were brought from across the AFP, from a broad range of different areas. They were sworn federal agents, they were protective service officers who have public order management training and they were specialist public order management officers from our international deployment group.

**Senator BRANDIS:** They were obviously retasked from the work that they were doing at the time in order to deal with this crisis situation?

**Mr Drennan:** That is correct.

**Senator BRANDIS:** I am interested to know what the interactivity is between the AFP and Serco both in normal times and during the riot itself. In other words, do AFP officers have a physical presence within the facility in normal times or is that left entirely to Serco. Does Serco report to the AFP? Is there an intelligence-gathering function within the detention centre to which Serco contributes and of which you are the recipient of product? I am sorry to roll up all these questions but I hope you can see what I am interested in. Then how does that change when a critical incident like the riot occurs and the officers are required to enter the centre? Do they await Serco's permission? Do they just go in or is there a relationship on the ground during the critical incident between the AFP and Serco?

**Mr Negus:** I will get either one of my deputy commissioners to step in and answer that because they are involved in that tactical decision making. But, broadly, the AFP do not have a role in running immigration detention centres; that is the responsibility of DIAC and the contracted staff they have in Serco. Obviously, Deputy Commissioner Drennan has already articulated the intelligence relationship that occurs between us and the people on the ground on the island and back here in Canberra.

**Senator BRANDIS:** Does that include within the detention centre?

**Mr Negus:** I am not sure where the meetings are held there, but the AFP's responsibility is not inside the detention centre, it is about the overall temperature, if you like, of issues on the island.

**Senator BRANDIS:** Except in times of emergency like this riot, you have no policing function within the detention centre?

**Mr Negus:** We have exactly the same role as the New South Wales Police would have outside Villawood. For instance, we are the community police. If there is something that happens that the Serco staff cannot handle, they would call us and we would go and make an assessment and assist them where we could.

**Senator BRANDIS:** Would you act of your own motion, if you thought the situation was serious enough, rather than await a call from Serco?

**Mr Negus:** The responsibility is for them to manage what they can and they would contact us if they thought that was escalating to a point outside their control. We would not necessarily walk in and take over against their wishes if they thought the matter was under control.

**Senator BRANDIS:** But you might, depending on the circumstances?

**Mr Negus:** It is not a circumstance that would happen. We would obviously be working with them to assess the situation, and the situation did not occur that we had to make that decision.

**Senator BRANDIS:** This is not a hypothetical, because it has happened both on Christmas Island and in Villawood. You see Commonwealth property being destroyed. It is as obvious to you as can be that a crime is being committed. You know this is Commonwealth property, albeit under management by a private contractor, and it is being destroyed, and that is a crime against Commonwealth law. You would not stand by, would you, and allow that to happen? You would take a proactive step. If there were any resistance to you doing so, you would nevertheless take steps to prevent that crime from taking place?

**Mr Negus:** As you are probably aware it is the responsibility of a police officer to keep the peace and to prevent other injuries to property and life so, yes, we would; but we do not have people sitting outside watching the detention centre, waiting for something to happen. This would have to be a communication by Serco and by DIAC that it was escalating, and we would then discuss with them what the appropriate action was.

**Senator BRANDIS:** As you rightly say, ultimately it is your responsibility to keep public order and that includes keeping public order on both Commonwealth premises, on leased premises and on private premises. If you see a crime being committed in a private home, your policing function extends to entering the private home and preventing the crime. That is elementary.

**Mr Negus:** I am not sure what you are suggesting.

**Senator BRANDIS:** I am not suggesting anything. I am just trying to get you to paint a picture of the way the relationships and responsibilities work here. My point is that, at the end of the day, nobody can stop you, the police, from intervening to prevent the commission of a crime; if you believe, on appropriate and reasonable grounds, that a crime is being committed, you intervene, and that is your decision. You do not ask permission. That is right, isn't it?

**Mr Negus:** That is right.

**Senator BRANDIS:** Presumably the issue did not arise, at least at Christmas Island, because your assistance was called in by the contractor, Serco, and by DIAC the moment this crisis situation began to develop; is that right?

**Mr Negus:** That is right.

**Senator BRANDIS:** Can we go back to the general question about the AFP and Serco in relation to the Christmas Island detention centre, both in what I will call normal times and during a period of emergency and the extent to which it has been answered by the questions I have just put to Commissioner Negus, you need not repeat anything he had to say.

**Mr Drennan:** I am sorry, what is your actual question?



**Senator BRANDIS:** I asked a series of questions about how the relationship between the AFP and Serco and, where relevant, DIAC is conducted both in normal times and when a crisis situation like this develops.

**Mr Drennan:** As I articulated before, in normal times there is a joint intelligence ongoing interaction between Serco, DIAC and ourselves. There is the daily interagency meeting, which is DIAC, Serco and us. As the volatility increased in relation to the centre, or public disorder increased, then the level of that interaction increased commensurate with what was occurring. At the height of these incidents there was constant interaction and at many times our senior officer on island was in the control centre of the detention centre with the Serco staff.

**Senator BRANDIS:** That is a room within the walls of the detention centre, isn't it?

**Mr Drennan:** It is part of the detention centre, yes.

**Senator BRANDIS:** When a crisis situation like the March riots takes place it is ultimately your call, isn't it? You, the AFP, decide how the matter is to be dealt with—no doubt in collaboration and cooperation with the other agencies, but at the end of the day it is your call, isn't it?

**Mr Drennan:** In regards to dealing with the incident where it is affecting, as I think you described before, good order and criminality, then, yes, it is. But what we need to understand here is that the detention centre is quite a large place. There were approximately two and a half thousand detainees on Christmas Island at that time. Those people who were involved in the riots and public order incidents probably ranged from, I think, 50 up to 200-plus people. So the majority of the detainees in the detention centre were not part of the incidents which were occurring.

**Senator BRANDIS:** They do not attract your notice because they are behaving themselves and not doing anything wrong.

**Mr Drennan:** As I was going to say, the ongoing running of the centre remains the responsibility of Serco. The incidents which are occurring which are of a criminal nature and a public order nature are the ones that we are dealing with.

**Senator BRANDIS:** Presumably Serco has rules for the governance of the centre, for example, for things as commonplace as: don't walk on the grass here, or what is a prohibited area, to matters of daily routine like during what hours certain buildings can be used, or recreational facilities, to more serious matters. I assume that Serco enforces their own rules. The AFP is not concerned to enforce the day-to-day rules for the conduct of the centre?

**Mr Drennan:** The centre is run by Serco on behalf of DIAC. The running of the centre and the rules and regulations which cover that are certainly a matter for DIAC and Serco.

**Senator BRANDIS:** I suppose there must come a point, must there not, when defiance of the contractor's rules for the governance of the centre and for conduct within the centre becomes so serious that it constitutes a breach of public order even though the rules might not themselves be laws.

**Mr Drennan:** The rules not being laws I think is a different issue from a public order issue. I think we just need to look at our responsibilities dealing with the public order issues, not dealing with the rules and regulations within the centre.

**Senator BRANDIS:** Let me take a slightly extreme case. Let us say there was a part of the centre in which detainees were told: this is off limits. It was a grassed area and it was nothing more than a protocol that detainees were not to walk or sit on the grass in a particular corner of the centre and they defied that order. They were ordered off by a guard or a person concerned in the management of the centre and they refused. That would not be a public order issue, would it?

**Mr Drennan:** No, certainly not.

**Senator BRANDIS:** But, on the other hand, if they began destroying property, then that would plainly be a public order issue, would it not?

**Mr Drennan:** Again, it would depend on the circumstances. Serco do have the capacity within the centre to deal with a range of issues, including those which affect the good order of the centre. By destroying property there is a minor scale and a larger scale—

**Senator BRANDIS:** Yes, and you have to be sensible. I understand that. It becomes a matter of degree as to the point at which disorderly or defiant conduct becomes so disorderly as to constitute a breach of the peace or a breach of good order which would attract your attention, is that right?

**Mr Drennan:** I think the commissioner outlined this before. The point is where it starts to threaten the safety of the people involved and, particularly from our point of view as the police for Christmas Island, the Christmas Island community, our officers and the other detainees in the centre. So, we are not talking about things at the lower end of the scale here, we are talking about those things which are at the upper end of the scale and which I think the normal person would classify as significant public order issues.

**Senator BRANDIS:** This is not exactly my field, but I know that there are actually common law definitions of riot and affray and so on. You have not mentioned damage to property, though, Deputy Commissioner. Again, there is probably as a matter of common sense a graduated scale, so breaking a pencil is not going to attract the operation of the AFP, but burning down a detention centre is. Are you able to speak of the gravity of the situation in relation to damage to property that would be the point at which the AFP would intervene? Are there guidelines that guide you in making that decision?

**Mr Drennan:** No, there are not.

**Senator BRANDIS:** So, this is a common-sense policing decision by the man on the spot?

**Mr Drennan:** It is. There are a range of variables, as you articulated, from breaking the pencil to burning the building down. Clearly, it was demonstrated in this set of circumstances where it reached that higher end of the scale and we did intervene to disrupt and prevent that from spreading and try and contain and control the situation.

**Mr Negus:** We rely very much on the judgment of the Serco officers and DIAC. When they call for our assistance we would then come and assess the matter with them and talk about what reasonable steps should be taken to rectify the matter. I am not sure if you are aware, but Serco do actually employ negotiators. They do have people who are skilled in that sort of field, so it is not just standing and guarding a gate; there are people there who are conflict de-escalation experts and they deal with many of these issues in their own right rather than ringing the police every time somebody might do something which they do not agree with.

**Senator BRANDIS:** I have one last issue arising from what you just said, Deputy Commissioner. May I take it that a serious threat to property, even in the absence of an evident threat to life or safety, would be a circumstance in which the AFP would intervene? So, if somebody is trying to burn a building down, for example, although there is no reason to believe there is anyone in the building and no life is imminently at risk, you would expect that the AFP would intervene to stop that, would you not?

**Mr Drennan:** We would certainly assess it, but if it is a serious threat to property, then yes, we would.

**Senator BRANDIS:** Yes, okay. Because it is not just the protection of life and limb that the police are concerned about; it is also the protection of property?

**Mr Drennan:** Exactly.

**Senator BRANDIS:** Yes, all right.

**Mr Negus:** Just to qualify that, though. I do not want to qualify everything you are saying here, but there are limits and things have to be considered like the safety of the persons, the safety of the police and if someone was potentially damaging property where it is more dangerous to go and stop them than to cordon, contain and negotiate, then we may well sit back and watch this and look to de-escalate it in a different way. It is not a matter of blue lights being turned on and in we go. There are a variety of ways in actually dealing with these issues.

**Senator BRANDIS:** I understand that. That is a decision that will be made by the person on the ground based on their professional judgment, having assessed the situation?

**Mr Negus:** Exactly.

**Senator BRANDIS:** Other than the March riots, have there been any other violent disturbances or incidents on Christmas Island that have caused the AFP to intervene?

**Mr Colvin:** There have, yes.

**Senator BRANDIS:** Can you give us the details of those, please?

**Mr Colvin:** I can. On 21 November 2009 there was a disturbance involving detainee males. It occurred in a recreation room within the North West Point detention centre on Christmas Island. At approximately 8.45 we were contacted by Serco, as we have just described the arrangement. They reported that the riot had erupted involving a group of about 50 detainees and up to 200 in the associated breach of the peace. We were advised that there had been multiple altercations occurring and property at the IDC was being damaged. In that instance order was returned by Serco without the need for the AFP to actually intervene. So, we deployed but did not need to actually intervene.

**Senator BRANDIS:** Just on a small technical point; when you deploy, do you go inside the centre?

**Mr Colvin:** It would depend on the circumstances.

**Senator BRANDIS:** So, there is no black and white answer to that question?

**Mr Colvin:** No, it would completely depend on the environment and what we are faced with.

**Senator BRANDIS:** When you deploy, you would, I imagine, at least assess the situation.

**Mr Colvin:** Absolutely.

**Senator BRANDIS:** Right, go on.

**Mr Colvin:** And we would talk to all agencies relevant that could give us information. So, on that occasion Serco were able to get the situation back under control and, I guess, further to your questions around the investigation, the incidents of affray, assault and damage to property were investigated and in that instance there were four people who were convicted for those offences. That is just one example.

**Senator BRANDIS:** Were four people charged or were there some people that—

**Mr Colvin:** No, there were 11 people charged.

**Senator BRANDIS:** And the seven who were not convicted, was that because they were acquitted or because the prosecutions were discontinued?

**Mr Colvin:** I could not be sure.

**Senator BRANDIS:** Can you take that on notice and find out for me, please?

**Mr Colvin:** We can. Is this the information that you were looking for?

**Senator BRANDIS:** Yes, exactly. It is very, very helpful and responsive, if I may say so.

**Mr Colvin:** One was discontinued and the rest were not guilty.

**Senator BRANDIS:** So, there were four convictions, one acquittal and—

**Mr Colvin:** No, one we did not continue so we dropped the prosecution.

**Senator BRANDIS:** Sorry. Four convictions, one was dropped and the rest were acquitted.

**Mr Colvin:** Correct.

**Senator BRANDIS:** Thank you.

**Mr Colvin:** On 4 July 2010 a disturbance occurred at the Phosphate Hill alternative place of detention, a facility on the island. It is commonly referred to as Construction Camp, if that helps you. Fifty detainees from two different groups within the centre had been involved in an altercation resulting in violence, and a number of minor injuries were sustained by a number of the detainees. The Christmas Island police were contacted and responded as a result of a call from DIAC and Serco. That was all of our AFP resources on the island at the time which included some additional ORG tactical officers that we had. Several hours later I am advised that Serco and DIAC members regained control of the camp, so again we did not need to actually intervene. We deployed but did not have to intervene and we were not required to assist in returning the centre to good order. I can tell you that there was a subsequent investigation relating to possession of weapons and damage to property as well as common assault. Two people were identified; they were juveniles and they were formally cautioned, so that matter did not proceed beyond that point. Just bear with me for a moment.

On 25 February this year a disturbance also occurred at Phosphate Hill detention centre on the island. The disturbance involved up to 100 detainees. Two Christmas Island police members were deployed to the IDC and arrested and charged three people with offences in relation to breaching the peace. I take it that that situation was obviously brought under order fairly quickly. That is all I have in relation to that incident.

**Senator BRANDIS:** So, there were no prosecutions arising from that incident?

**Mr Colvin:** Yes. Three people were charged with offences in relation to breach of the peace. Let me just check. Yes, it is ongoing.

**Senator BRANDIS:** So, three prosecutions?

**Mr Colvin:** Correct. Then the next incident is the March riots that you have already asked us about. Then I also understand that just recently, on 20 May, there is a current ongoing investigation into allegations of two assaults that occurred within detention centres on the island, and that matter is still ongoing.

**Senator BRANDIS:** You were brought in to investigate those assaults, were you?

**Mr Colvin:** As a normal police response; the Christmas Island police.

**Senator BRANDIS:** You have mentioned five episodes since November 2009. The only one in which the AFP actually had to come in, in strength as it were, and take over the situation and bring it under control was the March riots; is that right?

**Mr Colvin:** That is correct, yes.

**Senator BRANDIS:** How many AFP officers are currently stationed on Christmas Island? Can you disaggregate them between those three categories of function, please?

**Mr Colvin:** Right at the moment I believe the figure I saw this morning before I came up here was 85 on-island. If you will bear with me a moment, I may be able to break that down for you. In fact, I am sure I can. Of those 85 we have two officers that we categorise as in a command role; we have four officers in support role; we have 23 protective service officers; we have 15 general duty police; we have 14 in our operational response group, which are our tactical operators; we have two members who are attached to the JIG that Deputy Commissioner Drennan mentioned earlier; we have 15 members of our people-smuggling investigation team on the island at the moment; we have nine members of the Christmas Island police; and I have one listed as 'other' and I am not too sure what 'other' is but that should bring this to the total of 85.

**Senator BRANDIS:** Let us forget about the 'other' and say of the 84 that you have been able to classify, nine are the Christmas Island police, the community policing people; 15 are the people-smuggling specialists. Would I be correct to conclude that the rest of the 84 are deployed there with a view to keeping order or being in a position to respond to any further disorderly conduct in the detention centre?

**Mr Colvin:** That is correct. The rest I would describe as a surge that we have put onto the island and that would be as a result of a range of factors that Deputy Commissioner Drennan has already spoken about.

**Senator BRANDIS:** At the peak of the riots it went from 202—was it?—and it is now 85. But of those 85, some 60 are the surge; is that right?

**Mr Colvin:** No. We would have to take out the 25. You are right; you are correct, yes.

**Senator BRANDIS:** That is fine. Were any AFP officers injured during the riots in March?

**Mr Drennan:** No, there was not.

**Senator BRANDIS:** When were the AFP first aware of trouble in the centre prior to the walk-out on 12 March?

**Mr Drennan:** Sorry, when or were?

**Senator BRANDIS:** When was the AFP first aware of trouble prior to the walk-out on 12 March, or was the walk-out the precipitating incident that alerted you to trouble?

**Mr Drennan:** Yes, the walk-out was the precipitating incident.

**Senator BRANDIS:** You had no prior warnings?

**Mr Drennan:** That is correct.

**Senator BRANDIS:** Can you tell us what action has been taken against individuals involved in the March riot, including the walk-out? How many prosecutions have been instituted and how many cases are still under investigation but are waiting a decision whether or not to prosecute?

**Mr Colvin:** I am probably best to help you with that. There have so far been two persons of interest charged with escape, and those matters are currently before the court on Christmas Island.

**Senator BRANDIS:** Escape?

**Mr Colvin:** Escape from lawful detention, effectively. There is a current, much broader investigation into the ongoing damage to Commonwealth property, assaults, affray and use of weapon type charges, so that investigation is still ongoing.

**Senator BRANDIS:** How many cases are you investigating? I am obviously not going to ask you any further questions about this because it is an investigation that is still current, but are you able to tell me, though, how many cases are under investigation?

**Mr Colvin:** I think what I would be happy to put on the record is that between 14 April and 18 April we executed 12 search warrants within the detention centre. With these types of offences we are looking at damage to property, aggravated burglary, issues in relation to use and carriage of a weapon, causing harm to Commonwealth public officials and threatening to cause harm to a Commonwealth public official. I do not think I should put on the record just how many people we are looking at at the moment and how many people of interest we have.

**Senator BRANDIS:** But you have a number?

**Mr Colvin:** We have a number; that is correct.

**Senator BRANDIS:** That is fine. How many weapons were found in the centre at the time of, or immediately after, the March riots?

**Mr Colvin:** I do not know that we have that. I guess it would actually depend on how you define 'a weapon'; a weapon could be anything from a toothbrush to a wheelie bin.

**Senator BRANDIS:** By 'weapon', I mean an object—

**Mr Colvin:** An improvised weapon or something?

**Senator BRANDIS:** An improvised weapon, not a commonplace object that might be used for a violent purpose like, for example, if I were to throw this glass at someone, but something that is purposely designed to be a weapon, either because it is crafted or manufactured as a weapon such as a firearm, or something that is in a makeshift way fashioned into a weapon.

**Mr Drennan:** What is commonly understood as a weapon, there was a baton found. In regards to other implements which could be defined or used as weapons, that will be part of

the ongoing investigation and court process and there are some intricate legal definitions around that, so it is best that we do not go down that road at this time.

**Senator BRANDIS:** I am going to press a little further, and I understand your proper circumspection here. Were there, for example, knives that were secreted in such a way as to cause you to believe that they were being used, or potentially being used, as weapons?

**Mr Drennan:** No, as I said, the item which was located which is readily identifiable as a weapon was a baton. I am sure if knives had been located in such a circumstance, that would indicate that they were being secreted or potentially used as a weapon, they would have been highlighted as 'weapons found', and that is not the case.

**Senator BRANDIS:** You have a return, do you, or some kind of form when you do these investigations and one of the items that the investigating officer has to complete is whether any weapons were found and what they were.

**Mr Drennan:** Certainly there are post-operational assessments and a whole range of reviews and documents which need to be completed. It would certainly have been picked up as part of the investigation if weapons had been located because they would form the basis of a prosecution.

**Senator BRANDIS:** Without going into the investigation any further—and I understand your caution here—weapons were found?

**Mr Drennan:** Yes.

**Senator BRANDIS:** No bombs on the Christmas Island detention centre?

**Mr Drennan:** No.

**Senator BRANDIS:** There was a media report at the time that DIAC departmental officers were following a group of asylum seekers—those who walked out—offering food and a ride back to the centre. Are you aware of that report?

**Mr Drennan:** No, I am not.

**Senator BRANDIS:** I think you have answered this but, just for completeness, may I take it that the AFP took control of the situation and thereby took control of the centre after a consultation with Serco and based on the AFP's assessment of the situation?

**Mr Drennan:** The AFP was formally requested to take over the centre on 17 March, which we did.

**Senator BRANDIS:** Was that by Serco or by DIAC?

**Mr Drennan:** It was both Serco and DIAC.

**Senator BRANDIS:** Prior to that request being made, had the AFP not, of its own motion, assessed that the situation was such that it ought to take over the centre?

**Mr Drennan:** As I described before, the centre is quite a large place.

**Senator BRANDIS:** Those parts of the centre where the situation was acute; let us confine ourselves to that.

**Mr Drennan:** No, our role was not to take over the centre; our role was really to intervene and quell the riots or public order issues until such time safety was returned and the centre could operate. There was only that specific period between 17 March and 29 March where we took over the centre.

**Senator BRANDIS:** This is not meant to be a criticism, but it does sound that until 17 March the AFP's role was somewhat passive. In other words it was a situation in which Serco and DIAC said to you, 'We want you to take control of the situation and settle it down', rather than you saying to Serco and DIAC, 'We are going to settle the situation down.'

**Mr Drennan:** There were a range of incidents during that time. Some of those were outside the centre, as in when the detainees walked from the centre; there were some which were on the periphery of the centre where they breached the external perimeter; and there were some which were within the centre where we went in and intervened. So, it was not a matter of taking the control of the centre to bring order back to the centre; it was about dealing with those specific incidents and occurrences at the time.

**Senator BRANDIS:** How many people—and if you do not have the precise number, an approximate number will be sufficient for my purposes—were involved in the walk-out?

**Mr Drennan:** We estimate that there were approximately 400 people who walked out of the centre.

**Senator BRANDIS:** Why then have only two people been charged with escaping from a lawful place of detention, or are there other cases under consideration?

**Mr Colvin:** As we said, there are a number of matters still under investigation. It is a matter for the police to make a decision about what evidence we can bring to the court that we believe will lead us to a successful prosecution.

**Senator BRANDIS:** There is photo surveillance at this centre, isn't there?

**Mr Colvin:** There is some CCTV. There is, of course, television footage. As you would have seen from the footage, though, people were covering their faces. This was a fairly large event.

**Senator BRANDIS:** Sorry to interrupt you, but what was the detainee population at the centre on 12 March?

**Mr Colvin:** There were 2,538 detainees on Christmas Island at the time.

**Senator BRANDIS:** Surely you would be able to identify a substantial number of the 400 out of a population of 2,538 who walked out and presumably committed the offence of escaping from a place of lawful detention, even allowing for the fact that some of them might have been concealing their faces.

**Mr Colvin:** I do not want to make that assumption that surely we could do that. As I said, they are matters that are still being investigated and we will assess all of the evidence that we have and work out which offences and which charges we think are the most relevant that we can be successful with.

**Senator BRANDIS:** Presumably, when the 400 or so people who walked out were returned, there must have been a process of readmitting them to the centre at which their identities were established so that they were returned to the centre. So, regardless of the concealment of faces from CCTV and so on, would that not be a reasonably solid basis on which to prosecute those people—the people who were readmitted and their identity established as they were readmitted?

**Mr Colvin:** I am sure that that is an avenue of inquiry that we are following, yes.



**Mr Negus:** I am not sure whether you have visited the centre, but it is not a prison. There are levels of detention; some are higher security than others. Some, in a legal sense, were fences which were trampled down and people just walked out. Some of these areas are designed for a largely compliant population, and they are some of the legal, I guess, characteristics that need to be established throughout this process. Over the period of a few days there were people walking into and out of those less secure areas. Some returned voluntarily and stayed there and some did not. The ones who were charged—there was a specific set of circumstances and they are before the courts, so I will not actually go into those matters—were quite different to the normal population, the 400, who decided to walk out in protest rather than what happened with these other two that were located in another location.

**Senator BRANDIS:** I understand your point—it is a point properly made—but it does seem to me, nevertheless, that if people were trying, there would have been a process of establishing the identity of those who were coming back to the centre who had been part of the walk-out. Anyway, we will leave that issue.

**Mr Colvin:** I might just add, I think in reality over the course of this time people came and went in and out of centres, so it is not as simple as saying people were corralled, put through a process, and we ticked them off.

**Senator BRANDIS:** That is a fair point. There is an electric fence, is there not, around at least part of this centre?

**Mr Drennan:** Yes, there is.

**Senator BRANDIS:** Was the electric fence energised at the time of the riot or at any time during the course of the critical incident?

**Mr Drennan:** It was energised during the period in which the public order incidents were occurring. It was not energised at the commencement of those.

**Senator BRANDIS:** Whose decision is it to energise the electric fence?

**Mr Drennan:** It is a decision for Serco as the operators.

**Senator BRANDIS:** Are you able to tell me the date and time at which the electric fence was energised and the date and time on which the electric fence ceased to be energised?

**Mr Drennan:** Yes. I just need to correct myself. It was actually the AFP that caused the electric fence to be energised.

**Senator BRANDIS:** I am going to ask you about that in a minute, but just give us the date and times at the moment.

**Mr Drennan:** 17 March.

**Senator BRANDIS:** What time?

**Mr Drennan:** We took the centre over at 22:21 hours.

**Senator BRANDIS:** Okay, 22:21; 21 minutes past 10 pm on 17 March. When did you, as it were, hand it back?

**Mr Drennan:** We handed the centre back on 29 March.

**Senator BRANDIS:** Throughout the time that you had control of the centre, the electric fence was energised; is that right?

**Mr Drennan:** That is correct.

**Senator BRANDIS:** Do you know when, after you handed control of the centre back on 29 March, the electric fence was de-energised?

**Mr Drennan:** I would need to confirm with DIAC and Serco, but my understanding is that it is still energised.

**Senator BRANDIS:** You corrected yourself a moment ago and said that it was not Serco, but the AFP, who made the decision to energise the electric fence. Is it not right to say that prior to the AFP taking control of the centre at 21 minutes past 10 on 17 March, the AFP advised DIAC and Serco that the electric fence should be energised and that that advice was not followed?

**Mr Drennan:** There were ongoing discussions between ourselves, DIAC and Serco in regard to security aspects of the centre. Certainly, the perspective that we took in regard to that was things that we would do to ensure maximum control of the centre, but certainly the operations of the centre were a matter for DIAC and Serco and they made the decisions in regard to the security of the centre based on their assessment of running the centre.

**Senator BRANDIS:** Do you dispute that prior to your taking control of the centre at 22:21 on 17 March, you advised DIAC and Serco to energise the electric fence? Do you dispute that?

**Mr Drennan:** I need to take that on notice because I do not have that information with me here.

**Senator BRANDIS:** Do you know?

**Mr Drennan:** No, I do not.

**Senator BRANDIS:** Deputy Commissioner Colvin, do you know?

**Mr Colvin:** No, I am not aware of the answer to that.

**Senator BRANDIS:** You will have to take it on notice. If you are taking that on notice, I would like you to take this next question on notice. Is it not the case that DIAC and Serco declined to follow your advice prior to 22:21 on 17 March to energise the electric fence as a measure in order to help bring the situation that was developing within the centre under control?

**Mr Drennan:** As I said, I would need to take that on notice because I do not have that information.

**Senator BRANDIS:** Yes, I am asking you to take that on notice; if you do not know the premise you obviously cannot answer the next part of the question that follows from it. I put it to you that that did happen and you will take that on notice for me, thank you. By the way, what is the recording practice engaged in by AFP officers in this situation? Presumably, officers have notebooks and presumably they also, in the normal routine, prepare a daily log that records relevant events; is that right?

**Mr Drennan:** That is correct. There is ongoing reporting in regard to the events and occurrences, which are captured in a daily situation report.

**Senator BRANDIS:** What I have perhaps artlessly called a log is what you call a daily situation report?

**Mr Colvin:** There would be a combination of things.

**Senator BRANDIS:** You tell me what they are, please.

**Mr Colvin:** There would be reporting and note taking by officers to the best of their ability given what they are involved in.

**Senator BRANDIS:** In real time?

**Mr Colvin:** In real time to the best of their ability.

**Senator BRANDIS:** That is what I have called ‘the police notebook’?

**Mr Colvin:** Correct. For most incidents we would stand up what we could call a ‘major incident room’ and that would be a room forward like a forward command post. Then we would also have room, possibly back here in Canberra, that had overall control and was managing that. They would keep logs of incidents.

**Senator BRANDIS:** So the controller of each of these respective incident rooms would keep a log?

**Mr Colvin:** That is correct. It is a normal command and control arrangement, and from that we compile a range of reports, including, as Deputy Commissioner Drennan said, for people like ourselves a daily report to tell us what the critical incidents are.

**Senator BRANDIS:** But the reports that you compile are secondary documents, are they not? They are not real-time documents in the way that, for example, the notes taken by officers on the spot are contemporaneous records of what is happening, and the logs kept in the control centres are contemporaneous, or near contemporaneous, records of events as they unfold.

**Mr Colvin:** That is correct. Every police officer has an obligation to take notes to produce a statement and that is what is required in this instance.

**Senator BRANDIS:** Yes. Do the police officers—and I am not talking about the people in the control room now; I am talking about the officers on the ground, as it were—also have an obligation at the end of each day to prepare their own log which presumably is based on their notes and their fresh recollection?

**Mr Colvin:** Not necessarily. The obligation on the individual officer would be to ensure that they are reporting back matters that are of a significant note that need to be picked up by the forward command post in the daily log, and they would be keeping their notes because at some point later they will need to compile a statement.

**Senator BRANDIS:** When an officer compiles a statement, there is an obligation, is there not, on the officer to compile that statement in a timely fashion at the next reasonable opportunity to do so when the incident is most fresh in his or her mind?

**Mr Colvin:** Their contemporaneous notes are still in their notebook. They would not all necessarily be required to produce a statement. It depends on what evidence they may have that is relevant, so, no, I would not say that they are required at the next available opportunity to produce that statement.

**Senator BRANDIS:** Perhaps I should have stopped at ‘in a timely fashion’, but when an officer prepares a statement about an incident and in the course of that incident the officer has taken notes in his notebook, then because of the pressure of events and the fog of war, as it were, obviously the notes are going to be incomplete and when the officer prepares the statement, the officer will be primarily relying on two things. He will be relying on the notes

in the notebook, but he will also be relying on his own unaided and fresh recollection of the event that he has just witnessed and participated in, not all of which he will have had time to record in the notes; agreed?

**Mr Colvin:** That is correct. So, to that end, a statement made as soon as practicable afterwards is always the best statement.

**Senator BRANDIS:** That is good police practice, is it not?

**Mr Colvin:** Correct.

**Senator BRANDIS:** In relation to the riot, therefore, we would expect that those practices were followed by the officers concerned?

**Mr Colvin:** In fact, I believe as part of the investigation a large number of the officers involved have provided one, if not several, statements about different aspects of what they saw and what they did.

**Senator BRANDIS:** I would expect they would. So, we have three categories of documents. We have the notebooks, which are the nearest to contemporaneous, but because of the vicissitudes of the event will also generally speaking be the most, as it were, sketchy; correct?

**Mr Colvin:** Abbreviated.

**Senator BRANDIS:** Abbreviated.

**Mr Colvin:** Generally speaking, yes, I would agree with that.

**Senator BRANDIS:** So, we have the police notebooks which will be the nearest to contemporaneous, but the most abbreviated; we have the statements written up by the officers, both from the notes in their notebook and from their own fresh recollection; and we will have what I call 'the logs' that are maintained in a contemporaneous or near-to-contemporaneous fashion by the officers in the control room to whom the officers in the critical incident are reporting

**Mr Colvin:** That is correct, yes.

**Senator BRANDIS:** Those are the three sorts of documents and then there might be secondary documents down the line.

**Mr Colvin:** There would be a suite of documents, but in a very general sense I think that encapsulates it.

**Mr Negus:** It is very difficult to be categorical about that because again, in your—

**Senator BRANDIS:** I think, literally, that is what I am being; I am trying to identify categories.

**Mr Negus:** My mistake. There are a range of things a police officer would rely on: radio logs, for instance, showing at what time they called things back in. They might not write the time down but they may go and look at a particular log entry in the command centre. They may well sit down four hours later and write down to the best of their recollection what happened during a particular incident. And again, when that matter gets to court, the date and time that those notes were made as opposed to the incident would be a matter for the court to consider with regard to how reliable they may be. So, there are all of those things that do take place. As you quite rightly said—and I do not think it is too much of an exaggeration—there

is a fog that can exist in some of these environments here. There would be myriad different techniques and time frames in which people would record notes and make statements, and it may not be for a matter of weeks until somebody actually sat down and made a statement when they were asked by their supervisor to provide a particular element of a particular action that took place. It is not 'as soon as practicable'; it would be when requested really as part of the brief of evidence that would go forward.

**Senator BRANDIS:** You are probably familiar, I daresay, with the distinction that is sometimes drawn between present events recorded and past recollection revived.

**Mr Negus:** That is right.

**Senator BRANDIS:** The general—in fact the almost invariable—rule is that a present, contemporaneous record of an event will always be more reliable than a reconstructed, albeit in good faith, account of the event a period later when the person making the record is not narrating what they see and hear at the time but is drawing upon their memory, which may have been corrupted by intervening events as well.

**Mr Negus:** I agree with you. I guess that is the point I am trying to make about the incidents, the way they took place and the demands on our staff during those periods of time. Whilst it may be best police practice to sit down and write notes up within the intermediate time, I am sure over these events that it may have been even done at a matter of days. The courts will decide on the relevance, as you have said quite rightly.

**Senator BRANDIS:** Lastly, are the police on the scene involved in the incident in direct radio communication with the control room?

**Mr Drennan:** Yes, they are.

**Senator BRANDIS:** Are the radio communications to the control room recorded?

**Mr Drennan:** No, they are not.

**Senator BRANDIS:** Are they ever recorded?

**Mr Drennan:** Not on Christmas Island, no.

**Senator BRANDIS:** So, we will not have an electronic record of that kind?

**Mr Drennan:** No, we will not.

**Senator BRANDIS:** I would like all of the categories of documents in relation to the period between 22:21 on 17 March and when the police released control of the centre on 29 March—that is all of the diaries, the logs, the statements—produced, please.

**Mr Negus:** As we have already said, these are matters under current investigation, so obviously we will take that on notice and look to what we could appropriately provide to you over that time period.

**Senator BRANDIS:** I am sure you will. If there are some of those documents which you do not wish to produce at large, as it were, to the committee because they might be required for the purposes of a prosecution, then I would like them to be provided to members of the committee in camera. Those records, logs and notebooks which you are advised by the prosecutor will not be required to be tendered in evidence in relation to the prosecutions that are ultimately brought, that consideration plainly will not apply and therefore I would like them all to be produced without that qualification.

**Senator Ludwig:** Sorry, Senator Brandis. I am just going to check with the chair; I am not sure we can produce them in camera in an estimates hearing.

**CHAIR:** You cannot.

**Senator Ludwig:** I am not being obstructive; I am just pointing out a simple fact.

**Senator BRANDIS:** If that is the case, let me qualify that. In relation to only those records that I asked for in camera, I would like you to produce them to the individual members of the committee as individual senators in camera, for their inspection, please.

**CHAIR:** I will need to take advice on that.

**Senator BRANDIS:** You do not need to take any advice at all. Any senator can ask for a briefing from an agency and that briefing can be in camera and it can involve documents.

**CHAIR:** You were seeking individual documents to be tabled to individual senators in camera and, under the orders of the Senate, we cannot do that.

**Senator BRANDIS:** That was the point the minister made and, having heard what the minister had to say, that is why I changed the request.

**CHAIR:** If you want to get a briefing from the minister's office, you just need to do that outside this process.

**Mr Negus:** I just want to be very clear, and I would like to state on the record that what you are asking for is a substantial amount of work for the police involved who are currently trying to investigate these matters and prosecute them accordingly. There will be methodology and other things within those documents that you refer to which would normally be redacted, so whilst I take on notice your request—and I will seek some advice on that—I just want to state on the record that what you are asking for is a considerable drain on police resources to provide that in the fashion that you are asking for.

**Senator BRANDIS:** I do not want to be unhelpful and I understand that the police resources are very stretched, so might I politely suggest to you that you arrive at a preliminary view as to the extent of time and effort that would be involved in fully complying with my request and write to me and I will, of course—

**CHAIR:** Because it is estimates, you need to write to this committee, you see.

**Senator BRANDIS:** You can write to the chair—that is fine—and the letter will be circulated.

**CHAIR:** Otherwise, can I suggest that a private briefing be arranged for Senator Brandis?

**Senator BRANDIS:** I will decide whether or not to press that request, having considered what you have to say, and of course I will be reasonable about it.

**Mr Negus:** Thank you, I appreciate that. There are 202 officers involved in this over a series of several days.

**Senator BRANDIS:** It may be that what I need is completely satisfied by some of the more central documents like, for example, the logs maintained at the control centre. I do not mean for you to be trawling through 202 individual police notebooks over eight days.

**Mr Negus:** It worries me that we might have to deliver this in a truck, that is all.

**Senator BRANDIS:** I am going to make the request at large and I am asking you to consider it, to write to the committee and consider how the substance of what I am looking

for—that is a contemporaneous or near to contemporaneous account of what took place—can reasonably be complied with.

**Mr Negus:** Thank you.

**Senator BRANDIS:** Thank you very much. Were there any accelerants found in the centre?

**Mr Colvin:** I am not sure that there were, but again that is still subject to investigation.

**Senator BRANDIS:** Will you take that on notice, please?

**Mr Colvin:** We will need to be careful with what we can respond to you on notice.

**Senator BRANDIS:** I understand that, of course, but I want you to consider the matter and if you want to raise an objection then you will say that in your response. These are all time limited issues because once a decision has been made in a particular case, for example not to prosecute, then the matter becomes moot. Once a decision has been made to prosecute, if there is an acquittal, the matter becomes moot; and if there is a conviction, after the appeal period has expired or run its course, the matter becomes moot. So, sooner or later you will be in a position to comply with these requests but I perfectly understand why, in relation to cases currently under investigation for prosecution, you might take the objection for the time being.

**Mr Colvin:** No, I understand that and we will do our best to answer the question.

**Senator BRANDIS:** Has the AFP received advice from Serco or DIAC that they are concerned that there might be more trouble at the Christmas Island detention centre in the future?

**Mr Negus:** That would go into exploring current intelligence which is not something we would want to discuss in front of the committee.

**Senator BRANDIS:** Does the AFP or, to your knowledge, DIAC or Serco monitor communications at Christmas Island, including telephone communications and internet communications?

**Mr Negus:** The AFP does not monitor communications. DIAC and Serco would have to speak for themselves.

**Senator BRANDIS:** Do you know, by the way, the answer to that question so far as concerns DIAC and Serco? Serco is not answerable to this committee.

**Mr Negus:** Yes, I have an idea, but again I would not want to speak on their behalf without being certain about it.

**Senator BRANDIS:** That is fair enough. What is the AFP's policy in using force in situations of this kind against violent protestors?

**Mr Negus:** I will pass to Deputy Commissioner Drennan because he has conducted a review of the use of force on the island, but broadly it has to be reasonable in the circumstances. That is our broad use-of-force policy. There is a continuum: we cordon, contain and negotiate as a starting point and we escalate from there depending on what circumstances we face, but I think, as I said, Deputy Commissioner Drennan could provide you with quite a bit of detail on the AFP's use-of-force policies and what actually occurred in this circumstance.

**Senator BRANDIS:** Rather than take up time, if this question of the use of force has been made the subject of a written report by you, Deputy Commissioner Drennan, and the question I have raised has been addressed in that report, perhaps you could table the report with appropriate redactions.

**Mr Negus:** The only thing I would say is that the Ombudsman has commenced a no motion review of the use of force on the island, so whilst ever that inquiry is underway, which we will fully cooperate with and we are currently, then it would be difficult I think, because that report may well become subject of the Ombudsman's review and findings.

**Senator BRANDIS:** So what? I want to know what the AFP's view is, not what the Ombudsman's view is.

**Mr Negus:** I would just like to make sure the Ombudsman is comfortable with that being released during his investigation of the process.

**Senator BRANDIS:** Was this report prepared specifically for the Ombudsman?

**Mr Negus:** No, it was not; it was prepared specifically for me, but it is classified in the context that it is an internal working document about an AFP operation of which there are a range of ongoing investigations taking place. I am happy to take it on notice and we will get some advice for you and if we can release it we certainly will, whether it be now or at a future time. We are happy to take that on notice.

**Senator BRANDIS:** I think the way to do this rather than take time now is for me to ask you two questions on notice in the alternative. First of all, I would like you to produce the report, but I understand that you wish to consider that in view of what the commissioner said. If, on reflection, you decide that you are able to comply with that request then that can be your response—which I hope it is. If, however, you are of the view, for reasons that you will state in your answer, that the report should not be produced then I would like your own narrative, as it were, and full response to the question: what is the AFP's policy on using force against protestors and violent rioters, and in particular what practices and protocols were observed in relation to the Christmas Island riots?

**Mr Negus:** Can I just add to that? There may well be issues of methodology and those sorts of things we would have to consider. I am not saying they could not be released but we will just have to consider those issues. Can I say for the record, though, having read the report, that I think that the AFP's response to those incidents was extremely reasonable and very fair to all in the circumstances? I think that, given the injuries that we talked about earlier in the day here, where one person unfortunately suffered a broken leg and another one a cut to their chin, under the circumstances of 100 or more violent protestors with rocks and sticks charging at police lines the response was proportionate and reasonable in all the circumstances. Certainly nothing I have seen from the commander on the ground and from Deputy Commissioner Drennan's report causes me to have any concerns about the actions of my police officers during that period of time.

**Senator BRANDIS:** Thank you for putting that on the record, but as I understand it nobody is suggesting otherwise.

**Mr Negus:** No. I would just like to state for the record that was the position, and again I thank you for your indulgence.



**Senator BRANDIS:** I was not extending you any indulgence. I am just continuing to ask the questions.

**Mr Negus:** You allowed me to continue, so for that I thank you.

**Senator BRANDIS:** That is fine. I am pretty easy to get on with. I have asked you about whether any AFP officers were assaulted during the March riot and the answer was no. Deputy Commissioner Colvin mentioned four other incidents in which the AFP were involved. Were there any assaults on AFP officers during any of those other incidents?

**Mr Colvin:** I am confident that the answer to that question is no. If I am wrong, we will get back to the committee.

**Senator BRANDIS:** Thank you. So, there have been no assaults on any AFP officers by any detainees on Christmas Island?

**Mr Colvin:** To the best of our knowledge, no.

**Senator BRANDIS:** That is good, thank you. I am going to go on to another bracket of questions about Villawood, so I could do that now or we could have the afternoon tea break a little earlier than planned.

**CHAIR:** We will keep going, I reckon.

**Senator BARNETT:** I will very quickly to put on notice some follow-up questions regarding AFP officers at the various airports; you mentioned there are 11. I was just wondering if you could, on notice or as soon as possible, provide me the number of AFP officers at each of those 11 airports if at all possible. If you have the criteria that are used by the Office of Transport Security for the appointment of those AFP officers to those airports, that would be also appreciated.

**Mr Drennan:** I can certainly give you the numbers of AFP at each of those 11 airports now if you wish.

**Senator BARNETT:** That would be good if you could.

**Mr Drennan:** At Adelaide there are 46; Alice Springs has 15; Brisbane, there are 118; Cairns, there are 41; Canberra, there are 41; at Darwin there are 39; at Gold Coast there are 53; at Hobart there are 31; at Melbourne there are 102; at Perth there are 82; and at Sydney there are 163. That is a total of 731.

**Senator BARNETT:** Thank you, that is fantastic. On notice, if you can forward the criteria upon which it is decided that those officers are appointed to those airports, that would be great.

**Mr Drennan:** The criteria there certainly belong to the Office of Transport Security and they are the ones who actually conduct those assessments. As I say, we feed into those.

**Senator BARNETT:** Do they forward you a copy of the criteria? Do you have access to the criteria?

**Mr Drennan:** We have access to the criteria but they actually belong to that department.

**Senator BARNETT:** If you could use your best endeavours. If it is a difficult thing, do not worry, but if you could use your best endeavours to forward that to the committee, that would be appreciated.

**Senator BRANDIS:** What I think I will do rather than go onto Villawood now is ask a few other brief and unrelated questions between now and 3.30 pm. Commissioner, are there any AFP offices that are closing in the near future?

**Mr Negus:** Yes, we are removing the resident agent from Broome, which is a one-person station, and we are returning that position to Perth in Western Australia, but again it is not an office per se; it is a one-person resident agent.

**Senator BRANDIS:** Is that the only one?

**Mr Negus:** No. I just wanted to double check so I could be certain about it.

**Senator BRANDIS:** Can I take you to Budget Paper No. 2—the budget measures? In the Attorney-General's portfolio, one of the budget measures deals with deferral expenditure in relation to the confiscated assets account. The note to the measures says:

The Government will defer payments from the Confiscated Assets Account made under section 298 of the Proceeds of Crime Act 2002. The Attorney-General's Department manages inquiries relating to crime prevention matters and funding under the Act, and provides recommendations to the Minister for Home Affairs on expenditure from the account.

This measure will achieve savings—

there is that word again, Senator Ludwig—

of \$32 million over four years.

Savings from this measure will be redirected to other government priorities.

Commissioner, why has this funding been deferred?

**Mr Negus:** I think this is really a question for the Attorney-General's Department.

**Senator BRANDIS:** You are not a stakeholder here?

**Mr Negus:** We obviously seize assets and contribute to that fund. We also receive occasional allocations from that fund on the discretion of the minister, but it is administered by the Attorney-General's Department.

**Senator BRANDIS:** That is what I was going to say, because it seems to me that because the confiscated assets account—and we have talked about this, I think, either with you or your predecessor before at these estimates committees—is used by the Australian Federal Police for the purposes of financing further criminal investigations, is it not?

**Mr Negus:** No. That is a very broad characterisation. There are a range of things.

**Senator BRANDIS:** It is used for some purposes serviceable to the Australian Federal Police?

**Mr Negus:** It is, but it is not for criminal investigation per se.

**Senator BRANDIS:** What is it used for?

**Mr Negus:** It is used for projects; it is used for trials of equipment and those sorts of things. I think, again, the Attorney-General's Department is in a much better place to answer that than I am.

**Senator BRANDIS:** I just want to focus on—

**Mr Negus:** It is not exclusively the Australian Federal Police. There are a range of other agencies that can apply to the CAT fund for money.

**Senator BRANDIS:** I just want to focus narrowly now on the answer you have just given, and I would like you to tell the committee what particularly are the projects which the Australian Federal Police uses the confiscated assets account to fund in whole or part.

**Mr Negus:** I am probably best to take it on notice. I can tell you that the Australian Illicit Drug Data Centre, which the Minister for Home Affairs and I opened in Sydney last year, is funded out of the confiscated assets trust fund.

**Senator BRANDIS:** Entirely?

**Mr Negus:** Yes. Over four years I think it is in the order of \$8 million, if my memory serves me correctly. There was a one-year trial for the infamous spy plane that was spoken about here over the recent couple of years. That was funded from the confiscated assets trust fund. Since then, that has been absorbed into the AFP's core funding and we fund that out of our internal funding. There are right down to particular conferences or particular events that might be held that can be funded from that fund down to literally \$100,000 or less, so I will have to have a look at the list.

**Senator BRANDIS:** Are you able to tell me how much money was paid to the AFP from the confiscated assets account in the last financial year?

**Mr Negus:** I cannot tell you that now, but I can certainly take it on notice.

**Senator BRANDIS:** Can anyone help? That is a simple accounting question.

**Mr Wood:** Just for visibility of the budget, an example of the conferences the commissioner has just referred to is the Virtual Global Taskforce conference that we hosted earlier this financial year, and that was in the order of about a quarter of a million dollars. There are certainly no significant projects that would exceed that sort of amount of money in the current financial year, so that is typical of the sorts of things.

**Senator BRANDIS:** I think you are answering the question before last. What I now want to know is: in the last financial year how much money has been paid to the AFP out of the confiscated assets account?

**Mr Wood:** So, the financial year 2009-10?

**Senator BRANDIS:** Yes.

**Mr Wood:** I will take that on notice.

**Senator BRANDIS:** Do you know?

**Mr Negus:** No, I do not.

**Senator BRANDIS:** Can you find out? This must be within your accounts. Can you find it out for me over the afternoon tea break and can I also burden you, Mr Wood, to find out how much money has been transferred to the AFP from the confiscated assets account so far this financial year?

**Mr Negus:** We will do our best and I will talk to our colleagues from Attorney-General's as well.

**Senator BRANDIS:** I have kept questions deliberately easy, so that they can be responded to promptly.

**Mr Negus:** We will do our best.

**Senator BRANDIS:** Can you tell me please how many AFP officers are currently deployed as part of the international deployment group and where they are located?

**Mr Drennan:** There are 802 people who form part of the international deployment group. In Afghanistan there are 28; there are currently 20 people deployed to the Northern Territory as part of the intervention; there are 22 people on Australian external territories, which are Jervis Bay, Christmas Island, Cocos Island and Norfolk Island; there are 20 people who form part of the Pacific Police Development Program; there are 149 who are Australian based staff; there are 117 who are part of the Operational Response Group; there is a mission component of 116; in Cambodia we will have one person—

**Senator BRANDIS:** What is a ‘mission component’? Which mission?

**Mr Drennan:** They are the people who rotate through the missions. As you can appreciate, we do not just put people in a mission and leave them there.

**Senator BRANDIS:** Missions; okay. I thought you meant something else.

**Mr Drennan:** Cambodia, we have one; in Cyprus we have 15; in Nauru we have three; in PNG we have 14; in Samoa we have three; in Solomon Islands we have 156; in Sudan we have 10; in Timor Leste, as part of the UN mission, we have 50; in Timor Leste, as part of our police development program, we have 32; we have four in Tonga; we have one in New York as part of the United Nations; and we have seven in Vanuatu.

**Senator BRANDIS:** Were any of the officers who were posted to Christmas Island in March as a result of the riots, drawn from the international deployment group?

**Mr Drennan:** Certainly there would have been people who come from the operational response group, which is based in Australia but deploys offshore as part of the international deployment group, and there would have been in a capacity from those people who were part of the mission component who were back here during their rotation and also those Australian based staff who form part of the command and the support and the logistics network for the international deployment group which is here in Canberra. So the answer is yes.

**Senator BRANDIS:** You might need to take this on notice, but I would like to know how many there were—the actual number.

**Mr Drennan:** Yes, certainly. I would need to take that on notice.

**Senator BRANDIS:** Thank you.

**CHAIR:** Let us go to afternoon tea. Thank you.

**Proceedings suspended 15:30 to 15:47**

**CHAIR:** Let us reconvene with our consideration of estimates. Senator Brandis, you have the call.

**Senator BRANDIS:** Commissioner Negus, I would like to turn to the Villawood riots. I would like to pursue similar lines of inquiry to those I pursued in relation to the Christmas Island riots. Because you were being so helpful in talking broadly about policy issues, which I assume to be generic, I hope we will be able to get through this a lot faster. I appreciate that there are obvious differences between a detention centre in suburban Sydney and a detention centre on Christmas Island, but did the AFP anticipate, in advance of the Villawood detention centre riots recently, that there was an at-risk situation at the facility?

**Mr Colvin:** No, we did not.

**Senator BRANDIS:** Minister, can you remind me—you should know—when illegal entrants were first detained by your government at Villawood?

**Senator Ludwig:** No; I could not help you with that. I can certainly take it on notice, but I cannot recall it.

**Senator BRANDIS:** No, do not worry about that. Have there been any other incidents at Villawood involving unlawful entrants, other than the riot, to which the Australian Federal Police were called?

**Mr Colvin:** The answer to that question is yes.

**Senator BRANDIS:** Can you provide details of those other incidents?

**Mr Colvin:** It depends on the time frame. We were aware of various protest activities at detention centres. I cannot be specific about which ones and when.

**Senator BRANDIS:** It is not core to my line of questioning, so perhaps the easiest thing might be for you to take that one on notice.

**Mr Colvin:** We will take it on notice.

**Senator BRANDIS:** Is Serco also the operator of Villawood?

**Mr Colvin:** Yes, they are.

**Senator BRANDIS:** I thought so. Do the same protocols that govern the relationship between the AFP, DIAC and Serco for the Christmas Island detention centre govern the relationship for Villawood or are there differences?

**Mr Colvin:** No. There are some distinct differences.

**Senator BRANDIS:** I will ask you, Deputy Commissioner, a rather open-ended question. Can you explain to us what those differences are?

**Mr Colvin:** The key difference is that Christmas Island is a territory that is governed by the Commonwealth and we are actually the police on Christmas Island. We are the police of first response.

**Senator BRANDIS:** There is no state police force, in other words?

**Mr Colvin:** We are the state police force on Christmas Island. In New South Wales we are not, so the AFP has a different posture in terms of our response. We obviously work very closely with the New South Wales police.

**Senator BRANDIS:** I understand that, and it is an important point to make, but I was really more concerned about the relationship between the AFP, Serco and DIAC in relation to Villawood. I understand, of course, that Christmas Island is a Commonwealth territory and New South Wales is not, but you have not specifically addressed how that affects the relationship between Serco, DIAC and the AFP.

**Mr Colvin:** Sorry, Senator, I misunderstood. In terms of what Deputy Commission Drennan has previously mentioned about the interagency working group, the JIG and the various levels, they are not replicated for Villawood.

**Senator BRANDIS:** They are not?

**Mr Colvin:** We do not have that arrangement at Villawood.

**Senator BRANDIS:** So you do not have any of these working groups at all?

**Mr Colvin:** We obviously have a relationship with DIAC, where DIAC passes on information, and a relationship with Serco. Information is still exchanged, but it is not in the manner that you see and has been described for Christmas Island.

**Senator BRANDIS:** The Villawood detention centre is nevertheless Commonwealth property, albeit operated by a private contractor.

**Mr Colvin:** That is correct, yes.

**Senator BRANDIS:** Can you please explain to us the relationship or the protocols that govern the relationship, if any, between the AFP and the New South Wales Police concerning Commonwealth property in New South Wales and offences committed on Commonwealth property in New South Wales?

**Mr Colvin:** In answer to the first part of that question, there is no formal MOU that exists between the AFP and the New South Wales Police in response to incidents at the Villawood Immigration Detention Centre. As the commissioner said earlier in the proceedings sometime this morning, there is a large body of work at the moment and the outcome of that work is to arrive at a point where we have an MOU that covers those arrangements between ourselves, the New South Wales Police and DIAC. At the moment that does not exist. Villawood falls into the more general arrangement that the obligation or the expectation on state and territory police as police of first response—

**Senator BRANDIS:** Can you say that again?

**Mr Colvin:** As the police of first response.

**Senator BRANDIS:** The New South Wales Police?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** They are the police of first response?

**Mr Colvin:** Yes. From memory, although I could not give you specifics, there are instances where New South Wales Police have responded and dealt with assaults in the centre and, more recently—and the incident that you are probably going to refer to—the recent riots was something that we did together. There is no formal protocol between us.

**Senator BRANDIS:** So there is an informal arrangement. By reason of being informal, presumably it is a little vaguer and more flexible?

**Mr Colvin:** You could categorise it that way.

**Senator BRANDIS:** It is the case, is it not, that there is no limitation on the policing responsibilities of the New South Wales Police just because an offence occurs on Commonwealth property? It is not as if the New South Wales Police who are aware of the commission of an offence on Commonwealth property have to stand back and let the AFP have exclusive responsibility for responding to the commission of that offence.

**Mr Colvin:** As you would be aware, there are a number of areas that are designated as Commonwealth property that sit in state and territory jurisdictions.

**Senator BRANDIS:** Yes.

**Mr Colvin:** Again, I am talking in very general terms because when we start to talk about immigration detention centres as opposed to other Commonwealth places, different rules and

different legislation guides what can be done and what the applicable powers and authorities are in those places. I do need to be a little careful because even within the immigration detention arrangement there are Commonwealth facilities that are clearly Commonwealth places and there are facilities that are clearly operated by the Commonwealth but may not be technically a Commonwealth place. It varies significantly.

**Senator BRANDIS:** What is the Villawood detention centre?

**Mr Colvin:** The Villawood detention centre is a Commonwealth place.

**Senator BRANDIS:** So, it is a designated Commonwealth place?

**Mr Colvin:** Yes. As per the start of your question, the New South Wales Police, like all state and territory police, have powers under Commonwealth law.

**Senator BRANDIS:** Indeed. Would you regard yourselves, the AFP, as the primary policing agency with responsibilities for Villawood?

**Mr Negus:** No, we would not. That is the matter that is being discussed at the moment. I can give you an example perhaps to help. If there was a murder committed within the Villawood detention centre—

**Senator BRANDIS:** You would expect the state police to look at it?

**Mr Negus:** The state police homicide squad, with their expertise and their forensic capability in Sydney, would be much better placed than the AFP in that geographic location to respond to that and to continue the investigation. It may well be something we would do jointly but, for serious cases that would be investigated, we would work that out as to who is best to respond and whether or not we do things jointly.

**Senator BRANDIS:** Murder is a good example, but a murder is, as it were, a generic crime. It can happen in any location. It is not characteristic of any particular situation, as it were, other than the very facts that give rise to it; whereas a riot in a detention centre has a closer bearing on the circumstances by which under Commonwealth law these individuals are detained. They are detained by the Commonwealth. The Commonwealth has certain fiduciary obligations to them and they are obliged by Commonwealth law to remain within those premises. There are lots of other specific peculiarities, but those are just a few. There is nothing in the criminal law generic about the conduct of detainees at a Commonwealth detention centre; it is squarely within the Migration Act. What they may or may not do in terms of coming and going, for instance, is squarely governed by the Migration Act, is it not?

**Mr Negus:** In reality, as the deputy commissioner has mentioned before, this is about an immediate response. If something happens, the AFP is not well placed to respond within minutes to a fire or some other type of disturbance within the environment. What happens is that the New South Wales police are called; they respond, cordon and contain the scene; and then we would have discussions at a variety of levels about who is best placed to take the investigation forward. This is one of the things that we are now trying to cement into an MOU about responsibility. We talked about Serco earlier.

**Senator BRANDIS:** Do you have MOUs with other state police forces in relation to offences on Commonwealth places?

**Mr Colvin:** No, I do not believe that we do.

**Mr Negus:** No, we do not.

**Senator BRANDIS:** Are you working on them?

**Mr Negus:** We are. I do not think that you were in the room this morning when we talked about this in another context. The issue is that DIAC is now coordinating all the states and territories. I spoke to all the police commissioners here in Canberra only a matter of about a month ago about this and they are now looking to come together to have agreements with all the states and territories on the appropriate response and the devolution of responsibilities about what Serco can do—and we have talked about Serco’s role and responsibility in settling matters—what the state police would do in the first response and in subsequent investigations, and then what the AFP should do. Again, these things are currently under active consideration. In many ways we have been talking to DIAC for a number of years about getting this done, but it has proved problematic because of the devolution of responsibility.

**Senator BRANDIS:** I suppose the problem was not acute until the last two or three years when these detention centres started growing up like mushrooms. Let us cut to the chase here. I think that a few weeks ago, when the public saw this detention centre in flames, numerous buildings alight and a number of rooftop protesters on buildings that were not in flames, it was immediately apparent that there was a crisis situation at this facility. When did the AFP first become engaged?

**Mr Colvin:** We were first made aware by the New South Wales police that there was an incident in the Villawood immigration detention centre shortly after 1 am on 21 April.

**Senator BRANDIS:** What was the incident defined as—because it was an escalating situation?

**Mr Colvin:** It was. I was not the officer who took the call so I am not too sure exactly how the New South Wales police categorised it, but effectively there were clients on the roof and it finally escalated into significant unrest and disorder within the compound, including fires.

**Senator BRANDIS:** So did the rooftop protest come first? I know that this is an evolving or escalating incident and I do not want to be over-rigid in categorising it, but is it broadly right to say that the rooftop protest came first, they incited disorder within the centres on the ground, as it were—that is, among people who were not protesting on the rooftop, which escalated—and at some point that disorder on the ground turned into people setting fire to the buildings?

**Mr Colvin:** I would agree with everything except that I could not say that the rooftop protesters incited the violence that ensued. It is correct to say that it started with the rooftop protest. I believe it started with a few members and that increased to a number of detainees. Detainees came off and down, and through that process there was also the significant unrest within the centre that ultimately led to the fires. Whether it was the rooftop protesters who instigated that, I am not sure.

**Senator BRANDIS:** You were alerted to this shortly after 1 am on 21 April by the New South Wales police. Were they already at the scene?

**Mr Colvin:** That is correct, yes.

**Senator BRANDIS:** So, at the time you were alerted, the only incident then was the presence of protesters on the roof?



**Mr Colvin:** No. I cannot say exactly what they told us, but at the time that we were alerted it had escalated beyond simply rooftop protesters.

**Senator BRANDIS:** So there was disorder on the ground?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** Are you able to tell me whether at the time you were first alerted there were any buildings on fire?

**Mr Colvin:** Yes, I believe there were buildings on fire at that time.

**Mr Negus:** For the record, I would like to inject that the New South Wales coroner is actually examining the cause of this fire and, again, we have arrested and charged seven people with the circumstances surrounding this. We just need to be a little careful in the context of presuming or asking the deputy commissioner to give evidence to the committee which may well be subject to challenge in other forums.

**Senator BRANDIS:** I understand what you are saying, so I will frame my questions as tightly as I can and you will take whatever appropriate objections you think you should take. How many Federal Police were deployed to the scene at the beginning of your engagement in this incident?

**Mr Colvin:** It was a graduated response, as is normally the case. We immediately deployed a senior officer out of our Sydney office to act as a liaison point and to help assess an appropriate response.

**Senator BRANDIS:** Did he attend at the site?

**Mr Colvin:** He did, yes.

**Senator BRANDIS:** Immediately?

**Mr Colvin:** My understanding is that he was there within about an hour.

**Senator BRANDIS:** So he went out to Villawood as soon as he knew. Can you tell us about the escalated or graduated response?

**Mr Colvin:** He acted as a liaison point, obviously, through the night. There was significant negotiation with the New South Wales police about what the New South Wales police response would be and what assistance we could provide to that response. That ultimately led to a request from DIAC and Serco for the AFP to assist.

**Senator BRANDIS:** Just pausing there, that is an important point. So your engagement began at the request of the New South Wales police?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** You had a graduated and presumably fairly rapidly escalating response, during the course of which you were in discussions with the New South Wales police about the management of the incident. Is that right?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** You just said that ultimately—I do not think you used the word ‘ultimately’, but that is what I understood you to mean—a decision was made by DIAC and Serco to call in the AFP—is that right?

**Mr Colvin:** The point to understand is that at this stage and throughout the incident, in fact, control of the centre was always still with Serco and DIAC. They were dealing with the New South Wales police. We were speaking with the New South Wales police, DIAC and Serco. There was a decision taken in consultation with them and at the request of DIAC and Serco for us to deploy. That would have been a decision made because at some point New South Wales police needed to lessen their resources.

**Senator BRANDIS:** Does 'deploy' mean to take control and manage the incident?

**Mr Colvin:** The incident, yes, but I just want to be very clear that the centre stayed in the control of Serco. So we were assisting Serco.

**Senator BRANDIS:** So the centre stayed under the control of Serco at all times?

**Mr Colvin:** Yes. The reason I make that point is that it is clearly a distinction from what happened in the riots.

**Senator BRANDIS:** I picked that up. So the New South Wales police made a decision to draw back or reduce their level of involvement in the management of the incident—is that right?

**Mr Colvin:** I want to be careful how we categorise it. I do not want to make it look as though New South Wales police just walked away. That is not the case.

**Senator BRANDIS:** I do not think you have said that and I have not understood you to mean that.

**Mr Colvin:** In consultation with them a decision was made.

**Senator BRANDIS:** Between the AFP and the New South Wales police?

**Mr Colvin:** Not entirely. We were there acting in support of DIAC and Serco. So, should New South Wales police have withdrawn their resources, DIAC and Serco needed support and that support came from the AFP.

**Senator BRANDIS:** I just want to be very precise about this. You are alerted to it in the first instance by the New South Wales police, but when you arrive and get involved you are there in support of DIAC and Serco—is that right?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** And there is a discussion between the AFP and the New South Wales police?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** May I take it that the subject of that discussion included the relative levels of involvement of, respectively, the New South Wales police and the AFP?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** The outcome of that discussion was that the New South Wales police essentially, from a policing point of view, passed principal responsibility for the management of the incident to the AFP?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** There was also a discussion between the AFP, DIAC and Serco, an outcome of which was a decision by the AFP to deploy, to use your word?

**Mr Colvin:** That is correct; in support of Serco and DIAC.

**Senator BRANDIS:** That discussion was after the discussion between the New South Wales police and the AFP where a decision was made as to the AFP taking policing control?

**Mr Colvin:** I could not be that specific, because there would have been numerous discussions happening. As you said before, in the fog of war lots of discussions are happening.

**Senator BRANDIS:** I understand.

**Mr Colvin:** The point that you are asking me to confirm is that the New South Wales police were not in a position to continue resourcing, so we then needed to make a decision with DIAC and Serco as to whether they continued to need support in managing the incident. When they say yes, we make the decision to deploy.

**Senator BRANDIS:** Allowing for what we both call the fog of war, the decision to deploy, at the request of DIAC and Serco, was not a decision that specifically involved the New South Wales police; it was a decision somewhat earlier in time for the AFP to take over in effect from the New South Wales police—is that right?

**Mr Colvin:** I think you are making it too categorical.

**Senator BRANDIS:** I am trying to establish a sequence of events.

**Mr Colvin:** I am not sure that we can establish that sequence of events with absolute clarity.

**Senator BRANDIS:** I understand that too. Nevertheless, one thing that does not admit of confusion in trying to work out what happens in a forensic way is to work out what happened before something else happened, because the sequence of events has its own logic. If something happened before something else, it is not possible that the opposite is true. That is why I am trying to be very methodical about this. It seems to me that you are telling us that a decision at some point was made for the AFP, as it were, to take over the primary policing responsibility from the New South Wales police. You have told us that a decision was made by the AFP at the request of DIAC and Serco to deploy, to use your word. What I would like to know is whether that second decision was subsequent to the earlier decision.

**Mr Colvin:** I believe it would have been subsequent to it, yes.

**Senator BRANDIS:** You would think it would have been in terms of the logic of events.

**Mr Colvin:** Exactly.

**Senator BRANDIS:** That is your best evidence. Were all of these decisions made by breakfast time on 21 April?

**Mr Colvin:** 'Breakfast time' is a very broad term.

**Senator BRANDIS:** I was waiting for someone to say that; it all depends on what time you have breakfast.

**Mr Colvin:** We were on site at 12.30 on 21 April with resources deployed from Canberra.

**Senator BRANDIS:** Is that 12.30 pm?

**Mr Colvin:** 12.30, lunchtime.

**Senator BRANDIS:** Was that giving effect to the decision to deploy that you have described?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** So the decision to deploy happened some hours before 12.30 pm on 21 April?

**Mr Colvin:** That is correct. From memory, having been part of the decision-making process, I think it was in the very small hours of the morning.

**Senator BRANDIS:** From that point on, the involvement of the New South Wales police reduced. Did it reduce to a point at which there was little or no involvement by the New South Wales police?

**Mr Colvin:** Certainly not no involvement; there was limited involvement and constant engagement with us.

**Senator BRANDIS:** From the early hours of 21 April when these two decisions were made, from a policing point of view you were the lead police force and running the show?

**Mr Colvin:** From a policing perspective, yes.

**Senator BRANDIS:** That is why I am careful to qualify myself, because I understand that you say that you never, in fact, took control of the facility from Serco.

**Mr Colvin:** Yes.

**Senator BRANDIS:** So, to the extent to which there was a policing function being performed, you were the lead agency and not the New South Wales police, and their involvement abated significantly from that point onwards?

**Mr Colvin:** That is correct, yes.

**Senator BRANDIS:** What do you mean, in a practical sense, when you say you 'deployed'?

**Mr Colvin:** We had to make a rapid assessment of the level of capacity and capability. We needed to assist Serco and DIAC with the situation. We made that assessment, as we normally do, very quickly, and sent approximately 70 officers in the first instance to the site. There was a range of capabilities in that 70 officers.

**Senator BRANDIS:** Are these the officers who came up from Canberra?

**Mr Colvin:** Mostly from Canberra, but we also used officers out of our Sydney office.

**Senator BRANDIS:** Were some of those officers equipped with riot control gear?

**Mr Colvin:** No. They had the capability, yes.

**Senator BRANDIS:** At what point, if at all, during this incident did AFP officers enter the Villawood site—go behind the gate, as it were?

**Mr Colvin:** I will just check my notes.

**Senator BRANDIS:** Yes, that would be helpful.

**Mr Colvin:** My understanding—and I will correct the record if this is not the case—is that when we first deployed our major focus was on perimeter security, because the incident was being contained inside. New South Wales had already assisted the New South Wales fire brigade to put out the fires. Later that night, on the 21st, just after midnight, or in the very

early morning on the 22nd, we along with DIAC, Serco and the New South Wales police went into the facility to assist Serco to do a full headcount as part of bringing the centre to good order again.

**Senator BRANDIS:** This is about 16 or so hours after you arrived, at 12.30 on the 21st, is it?

**Mr Colvin:** It would be about 12 hours after we arrived.

**Senator BRANDIS:** Is that the first time you entered the site?

**Mr Colvin:** I believe so. If I am not correct, it would only have been if we went on to help make an assessment or look at fences. It would not have been in any substantive way to take any interventions or action.

**Senator BRANDIS:** Other than securing the perimeter in the first 12 or so hours post your deployment, may we, for the purposes of this discussion, take 12.30 pm on the 21st as the time at which you deployed?

**Mr Colvin:** The time at which we deployed, correct.

**Senator BRANDIS:** The first task you undertook after you deployed was to secure the perimeter?

**Mr Colvin:** Which I believe we took over from the New South Wales police, yes.

**Senator BRANDIS:** But that was your first significant task?

**Mr Colvin:** Yes.

**Senator BRANDIS:** But, from the moment you deployed, as well as that you were engaged in assessing the situation?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** About 12 hours later, in the early hours of the morning of the 22nd, having secured the perimeter in the intervening hours and assessed the situation, in company with Serco and DIAC officers, you went into the detention centre itself?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** Approximately how many officers went into the detention centre at that time?

**Mr Colvin:** I would have to take it on notice to say exactly how many went in.

**Senator BRANDIS:** I said 'approximately'.

**Mr Colvin:** I could not even say approximately. We had 70-odd officers deployed. That would have been on a range of tasks. I could not be sure how many were actually used for that task.

**Senator BRANDIS:** Would I be right in surmising that it would have been more than one or two?

**Mr Colvin:** Absolutely, yes.

**Senator BRANDIS:** It would have been a substantial number of that 70 that would have gone into the premises?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** At that time—that is, in the early hours of the morning of the 22nd—how many of the buildings in the detention centre were still alight?

**Mr Colvin:** I believe none was alight at that time.

**Senator BRANDIS:** So the fires had all been extinguished during the course of the previous day?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** At the time you deployed at 12.30 on the 21st, how many buildings were alight?

**Mr Colvin:** The New South Wales fire brigade had already left by the time we arrived, so I take it by that that the fires had already been extinguished.

**Senator BRANDIS:** So there were no buildings alight by the time you got there?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** So the situation you found when you arrived, deployed and began to assess, and then 12 or so hours later when you actually went into the premises, was that the property damage had already happened? The buildings had been set fire to and the fires had been extinguished? There were protesters on the roof? Was there still some disorder among detainees on the ground?

**Mr Colvin:** No. I think the fairer way to categorise it would be that, yes, there were protesters on the roof, but in the large part, notwithstanding that large chunks of the centre had been burnt down, the centre had been returned to some level of good order.

**Senator BRANDIS:** That was not done by your officers; it was done by Serco and DIAC people?

**Mr Colvin:** That is correct, yes.

**Senator BRANDIS:** How many buildings were significantly damaged by fire? Can you tell me? The press reports that it was nine.

**Mr Colvin:** Yes, I think it was nine.

**Senator BRANDIS:** Out of how many?

**Mr Colvin:** I could not say.

**Senator BRANDIS:** Was it most of the buildings?

**Mr Colvin:** No, I would not say that it was most. It was some critical facilities—a medical centre, kitchen facilities, and the galley-type facilities. I understand most of the accommodation blocks were still there. I do not think ‘most’ would be the right word, but again I could not be accurate with that.

**Senator BRANDIS:** You might be able to take that on notice.

**Mr Colvin:** DIAC would be much better placed to answer these questions.

**Senator BRANDIS:** These questions have also been asked of DIAC. What we are interested in is getting evidence from all of the relevant witnesses to the event.

**Mr Colvin:** To answer the question, I will have to ask DIAC.

**Senator BRANDIS:** From a policing point of view, you may assess what they tell you differently from the way they might express it. Does it amount to this: at the time you entered

the centre and for some time before that the only significant disorder was the presence of people on the roofs?

**Mr Colvin:** You describe that as disorder but, yes.

**Senator BRANDIS:** People are not meant to be on the roofs.

**Mr Colvin:** Presumably not. There were four people on the roof at that time.

**Senator BRANDIS:** Other than that disorderly circumstance there were no riots going on and everything had settled down in the hours of the 21st?

**Mr Colvin:** That is correct, yes.

**Senator BRANDIS:** You said there were four people on the roof. Is that on the roof of one building only?

**Mr Colvin:** That is correct, yes.

**Senator BRANDIS:** Did anybody climb onto any other roofs?

**Mr Colvin:** Not to my knowledge. When we arrived there were four people on the one roof.

**Senator BRANDIS:** Did that rooftop population change at all during the course of the ensuing days?

**Mr Colvin:** It certainly did. In the time that we were there, before we withdrew, one person came down off the roof.

**Senator BRANDIS:** How many people climbed up on the roof?

**Mr Colvin:** There were four on the roof and when we left there were three on the roof.

**Senator BRANDIS:** Nobody joined the four, as it were?

**Mr Colvin:** No.

**Senator BRANDIS:** From the early hours of the morning of the 22nd, when your officers entered the facility did they ever feel physically at risk?

**Mr Colvin:** You are asking me to answer on behalf of my officers.

**Senator BRANDIS:** You have appraised the situation.

**Mr Colvin:** We make a risk assessment. With everything that we do we assess the risk. Did my officers feel at risk? I would suggest that in all instances of a tactical nature they certainly feel a level of apprehension.

**Senator BRANDIS:** Indeed, but was there any immediate threat to their safety? Were they under attack or assault at any time?

**Mr Colvin:** That was something that was being assessed after we arrived.

**Senator BRANDIS:** I am drawing a comparison with the Christmas Island riot, where I understand from your earlier evidence there was a direct engagement with angry and violent rioting detainees. There was no direct engagement with angry and violent rioting detainees at Villawood, was there?

**Mr Colvin:** No. That is correct. It was a very different situation.

**Senator BRANDIS:** Meanwhile, a few days later, there was also a rooftop protest at the offices, paradoxically, of the Minister for Immigration, Mr Bowen, at his electorate office in Newcastle—is that right?

**Mr Colvin:** I do not think it is Newcastle. It may be Sydney, but I am aware of it.

**Senator BRANDIS:** You are aware of it?

**Mr Colvin:** I am aware of it, yes.

**Senator BRANDIS:** Are you aware that the New South Wales police who deployed to that incident brought the rooftop protesters down within a matter of hours?

**Mr Colvin:** I am aware of that, yes.

**Senator BRANDIS:** I think the question that the public are a little perplexed by is why the AFP did not get the rooftop protesters down from the roof at Villawood.

**Mr Colvin:** What you are comparing are two vastly different scenarios and two vastly different situations. I might say at the outset that we were in constant communication with New South Wales police about the Villawood rooftop protesters and the rooftop protest at Minister Bowen's office. I do not wish to speak on behalf of the New South Wales police. However, it would be reasonable to relay my discussions with my counterpart. The protesters on the roof of the electoral office came down voluntarily, notwithstanding that they asked for help to come down, and their motivation for being there, their intention and what they were trying to achieve was extremely different from the situation in Villawood. Those detainees were not of a mind to come down and certainly did not have the same motivations to come down as did the protesters at Minister Bowen's office.

**Senator BRANDIS:** I understand that one cannot make rigid comparisons between two different incidents. We have already established that the rooftop protest was the inciting incident to this. It was the first thing that happened followed by affray and the burning down of nine buildings. You could not say that the rooftop protesters were not directly and immediately involved in the whole scenario of disorder at Villawood, could you?

**Mr Colvin:** Again, you said that the rooftop protesters led to the incitement. I am not saying that.

**Senator BRANDIS:** If not causally then certainly sequentially.

**Mr Colvin:** Sequentially, absolutely, I agree. However, as the commissioner said earlier in response to the Christmas Island questions, police operate under a cordon, control and negotiate arrangement. It is exactly the same for the New South Wales police, and that is what they did with the rooftop protesters at Minister Bowen's office. I am trying to be very careful here. You cannot compare the two situations. I am certainly happy to put on the record that, from my discussions with my counterpart in the New South Wales police, they were very much in support of our actions to not bring down the rooftop protesters at Villawood.

**Senator BRANDIS:** Why did you not bring them down?

**Mr Colvin:** It is very difficult to explain tactical decisions that are made at the time, but we are talking about a building that is nine metres off the ground. We are talking about a building that has a slope on the roof of anywhere in the order of 30 to 40 degrees. We are talking about protesters that do not wish to come down so therefore we have a reasonable expectation that they will resist coming down.



**Senator BRANDIS:** If people are committing a crime, all other things being equal, the fact that they might resist police intervention is not a reason not to intervene. There might be other reasons not to intervene.

**Mr Negus:** They were nine metres off the ground on a 40 degree sloping roof inside a controlled facility where they are not liable to do any more damage. We have talked cordon, control and negotiate. The fact that it took several days for these people to come down of their own free will was a very safe outcome for all involved, including the detainees and the police. I would not want my officers wrestling with a non-compliant person nine metres above the ground in the middle of the night.

**Senator BRANDIS:** You can stop the barracking, whichever senator that is.

**Mr Negus:** All of these are tactical decisions by the people on the ground. Certainly it would have been in everyone's best interest to have these people controlled much earlier.

**Senator BRANDIS:** That is what I am getting at.

**Mr Negus:** These are tactical operations and decisions made by the police—and only the police on the ground—to make sure the best outcome can be facilitated. These people were removed safely after a period of time.

**Senator BRANDIS:** Commissioner, you jumped in far too soon. I was asking Deputy Commissioner Colvin, who was in a very methodical and, if I may say so, helpful way listing the considerations that were upon the minds of the decision makers on the spot. I am not saying it is for us to second-guess those decisions, with the benefit of hindsight.

**Mr Negus:** I could have sworn you said, 'Why didn't you get them off the roof?'

**Senator BRANDIS:** Yes, that is right.

**Mr Negus:** So, I did respond to that question and I am telling you why we did not get them off the roof.

**Senator BRANDIS:** Deputy Commissioner Colvin was doing a very good job of answering the question.

**Mr Negus:** He was.

**Senator BRANDIS:** Your intervention has not really advanced things.

**Mr Negus:** That is your opinion.

**CHAIR:** Commissioner Negus is at liberty at any time to assist his deputy to clarify information for you. He is in a very senior role here.

**Mr Negus:** Thank you, Chair.

**Senator BRANDIS:** Deputy Commissioner Colvin addressed the inherent risks of a situation of a roof nine metres off the ground with a steep slope, and then he added that there was the possibility that these people might resist. I merely wanted to isolate that one factor. I was very careful—and I do ask my questions carefully—to say that, all other things being equal, and leaving aside all other considerations, that consideration alone would not be a sufficient consideration not to enforce the law—that is, the fact that there might be resistance. The fact that there may be surrounding hazards of the kind you described might be an additional consideration to recommend that you play a waiting game, but the risk of resistance of itself cannot be a reason not to enforce the law, can it?

**Mr Negus:** Are you talking purely about resistance being the issue or are you talking about the circumstances of where these people were located as part of that issue? You cannot separate the two. Every day police make arrests where people resist. There is no doubt about that. But every day we also have to make critical judgments about people's safety and our own officers' safety about the best way to resolve a situation. I simply make the point that doing something urgently is not necessarily doing something right. These are operational judgments made by people on the ground who have full training and respect for the circumstances in front of them. I am not going to sit here and second-guess. I was briefed, as was the Deputy Commissioner, and we fully supported the position that they took. These people were on a roof inside a contained facility. There were no fences down. They were not causing any harm. Our negotiation process continued, as did Serco's, and we had heard from DIAC.

**Senator BRANDIS:** You seem to be getting upset about this.

**Mr Negus:** I am not getting upset, but I would like to make a point. I really do object to the notion—and I will not characterise things for you—that people could have done things differently in this regard. It is not fair to second-guess these situations in this position.

**Senator BRANDIS:** We talked before, when we were talking about Christmas Island, about the importance and the primacy of the judgment of the person on the spot. I entirely agree with that and do not controvert it. But we are entitled to know why that judgment was arrived at, and that is the point of these questions. You have told us about the innate hazard of the situation—a steep roof nine metres of the ground—which I fully understand. Where this started to go off the rails a little, if I may say so, is when I queried whether the risk of resistance was, of itself—

**Mr Negus:** You asked me why we did not get them off the roof. That is the question that you asked.

**Senator BRANDIS:** I queried whether that was of itself a sufficient reason not to act. In the circumstances, of course, it may be, but the way in which it was being expressed, perhaps not deliberately so, was that the risk of resistance by the wrongdoers was itself a reason not to act. In any event, I think we have covered that enough. Deputy Commissioner, what other factors played upon or were on the minds of the AFP officers in making their decision not to bring the protestors off the roof?

**Mr Colvin:** I would not begin to pretend to be able to tell you everything that was in their minds. As the commissioner said, we trust their judgment. They are trained to make those judgments. The ones that I have outlined, from my perspective, were the main considerations, which ultimately came down to a balance of risk versus outcome, and the risk was certainly too high in this instance.

**Senator BRANDIS:** It seems to me that, of the three categories of consideration that you have mentioned, as I would analyse them—that is, the physical hazards of the situation of it being a steep roof nine metres up, which is very understandable; the fact that the facility was a contained facility, and so there was no risk of escape, which is perfectly understandable—I adhere to my assertion that the risk of resistance of itself was not a factor. But, in the circumstances, bringing into account the other environmental factors as it were that may have

been on your mind, what about the other risks? What about the risk of leaving them up there—in particular, the risk of self-harm? Was that a consideration that you had regard to?

**Mr Colvin:** All of those factors are considerations that the officers have regard to. They have regard to weather. They have regard to whether the members on the roof at any given time—and, mind you, behaviour changes and circumstances change constantly—were causing trouble for other people and whether other people's lives were at risk.

**Senator BRANDIS:** Were they?

**Mr Colvin:** No, they were not. I am not sure how helpful or otherwise I can be.

**Senator BRANDIS:** I think you have been very helpful.

**Mr Colvin:** These are the issues that we considered.

**Senator BRANDIS:** I would like to explore with you for a little while longer the issue of the risk of self-harm. You have explained reasonably fully the arguments for leaving them there, but there are arguments for taking them down, are there not, and one of those arguments has to be the risk of self-harm?

**Mr Colvin:** That is correct. If we had credible information in respect of behaviour—I am talking hypothetically now—indicating that had the situation had changed, our officers would have had to make another assessment. I daresay that the assessment may not change until other people's lives are at risk. It depends on the nature of the self-harm. It is a hypothetical and I cannot say much more than what I have said.

**Senator BRANDIS:** Would it be a fair paraphrase of your answer that your assessment of the situation was that it was too dangerous to physically intervene when there was no immediate urgency to do so?

**Mr Colvin:** That is correct.

**Senator BRANDIS:** I understand that. The rooftop protestors eventually came down after 11 days. Is that right?

**Mr Colvin:** Eleven days rings a bell, but we were not a part of that.

**Senator BRANDIS:** Is it right to say that they were not arrested or otherwise restrained or taken into some form of custody after they came down?

**Mr Colvin:** Not at that time, no.

**Senator BRANDIS:** What happened to them? Were they allowed to go about their normal business?

**Mr Colvin:** As we said before, there were seven people charged in relation to the incidents at Villawood.

**Senator BRANDIS:** I am coming to that.

**Mr Colvin:** One of those charged was a detainee who was on the roof.

**Senator BRANDIS:** With respect, you have not answered my question. Why were they not taken into some form of custody when they came down from the roof? What happened?

**Mr Colvin:** I am not sure. The investigation obviously did not come to the conclusion that there was sufficient evidence. They were sitting on the roof itself.

**Senator BRANDIS:** For heaven's sake, they were on the roof. Everybody in Australia was watching.

**Mr Colvin:** We need to establish what property they were damaging. This was not a trespass; it was within the premises that they live in. There is a range of factors. All I can say is that the investigation did not conclude there was sufficient evidence to charge other than one person.

**Senator BRANDIS:** What was the offence with which he was charged?

**Mr Colvin:** The seven were charged with a range of offences.

**Senator BRANDIS:** I confine myself now to the one rooftop protestor. What was the offence with which he was charged?

**Mr Colvin:** To be specific about what that particular individual was charged with, I would have to take that on notice.

**Senator BRANDIS:** Was it a charge in relation to his being on the roof?

**Mr Colvin:** I would have to take that on notice. There were charges around damage to Commonwealth property, affray—there was a range of charges.

**Senator BRANDIS:** Do you not know whether the charge with which that rooftop protestor was charged related to his being on the roof?

**Mr Colvin:** I cannot answer that with absolute clarity. As you know, when a crime is committed there is a number of circumstances that lead us to presenting evidence, and I am sure that was part of that.

**Senator BRANDIS:** I understand all of that, but what I am struggling to understand is, if one of the rooftop protestors was charged, why were all four not charged?

**Mr Colvin:** I would suspect that it was the totality of his activities and not just the activity of sitting on the roof.

**Senator BRANDIS:** If you are willing to answer that question on the basis of you 'suspect', then at an equivalent level of hesitancy or qualification can you answer my main question: was the rooftop protestor who was charged charged with an offence related to his being on the roof?

**Mr Colvin:** I cannot answer that question.

**Senator BRANDIS:** What do you suspect?

**Mr Colvin:** If you allow me to finish, I will try to be helpful. As I have said, a range of people got onto the roof.

**Senator BRANDIS:** Four.

**Mr Colvin:** Yes, more than four throughout the course of the period. Which particular offenders or alleged offenders removed the tiles? I do not know. Whether they were one of the last four that were on the roof, I do not know. The physical presence of sitting on the roof, whether that constitutes damage to Commonwealth property is something that we would need to make an assessment of. These are the questions that we need to answer.

**Senator BRANDIS:** Indeed, and that is why I am asking them.

**Mr Negus:** I will just return you to my earlier caution. This is still under investigation. People have been charged. The New South Wales coroner is conducting an investigation into the fires.

**Senator BRANDIS:** You told us that.

**Mr Negus:** Again, when we talk about other issues usually the committee is quite respectful of the fact that matters are before the court and we should not try to prosecute them here in this forum. Again, I add a note of caution to you about the questions and the nature of the questions, which are being repeatedly asked and answered.

**CHAIR:** Thank you, Commissioner Negus.

**Senator BRANDIS:** I am not trying to prosecute anyone. What I am trying to work out is what the police did and what decisions they made in response to an incident of national importance.

**Mr Negus:** What I have just said to you is that I think we have adequately answered those questions, taking into account that these matters are currently before the court.

**Senator BRANDIS:** There are two different things there. Firstly, you are saying they are before the court and, secondly, you are saying they are not before the court because they are under investigation, but they could potentially be before the court.

**Mr Negus:** People have been charged with these offences and the investigation continues, so the two are not mutually exclusive.

**Senator BRANDIS:** On no view of what is inappropriate to be asked could it be inappropriate to ask with what charge has a person been charged when the charge sheet, as you well know, is a public document.

**Mr Negus:** Absolutely, and the Deputy Commissioner has agreed to take that on notice and you will be advised accordingly.

**Senator BRANDIS:** I have asked him whether the charge related to the conduct of the person on the roof.

**Mr Negus:** And he does not know.

**Senator BRANDIS:** What he said was, 'I can't be absolutely clear about it.' Do you want to have another go, Deputy Commissioner?

**Mr Colvin:** No. What the commissioner has said is quite right. I am trying to be helpful to the committee within the bounds of what we can say. You well know that there is a totality of evidence that we present to the court and those matters are now presented to the court. I do not know that I can say anything more helpful without getting into specifics, and I cannot do that.

**Senator BRANDIS:** The three people who were on the roof, who are not currently subject to charge, are they among those currently subject to investigation?

**Mr Colvin:** The matter is ongoing, and that is as much as I will say on that. The matter is ongoing. We would not normally, and you would not expect us to, identify potential suspects in an investigation.

**Senator BRANDIS:** Approximately how many people are under investigation but not currently under charge arising from the Villawood episode?

**Mr Negus:** We are not going to answer that. The Deputy Commissioner has just said that we are not going to divulge the number of suspects we may be looking at in any particular investigation—this one or any other one. I think he has been quite clear about that.

**Senator BRANDIS:** You will no doubt take advice from the DPP, but it would be very surprising to the public if the four protestors who were on the roof were not at least subject to investigation, if not charged.

**CHAIR:** At this stage, without compromising the work your people are doing, we will stand by your previous answer.

**Senator BRANDIS:** I would like to move to another topic. I have a few questions about asylum seekers and people-smuggling. Is DIAC required to report access to pornography by detainees to the AFP for investigation, has it ever done so and in relation to what detention centres have such reports been made?

**Mr Negus:** I have just been reminded that viewing pornography is not an offence. It depends on the type of pornography.

**Senator BRANDIS:** Indeed it does and I am not saying it necessarily is.

**Mr Negus:** You would have to ask DIAC whether, under their internal guidelines, they are required to report any of that to us. But, in saying that, unless a crime was committed or an alleged crime was committed—

**Senator BRANDIS:** It would not involve the AFP.

**Mr Negus:** It would not involve the AFP.

**Senator BRANDIS:** Have there been any reports by DIAC to you of pornography at detention centres that might constitute a criminal offence?

**Mr Negus:** Not to my knowledge.

**Senator BRANDIS:** You have not been asked to investigate any, in other words?

**Mr Negus:** No. Again, I will correct the record if that is incorrect.

**Senator BRANDIS:** How many AFP staff are currently occupied primarily or exclusively with people-smuggling?

**Mr Negus:** Approximately 90.

**Senator BRANDIS:** Is that as of today?

**Mr Negus:** As of today. That number would go up and down one or two.

**Senator BRANDIS:** I understand it fluctuates. What was the equivalent figure 12 months ago?

**Mr Negus:** Approximately 100.

**Senator BRANDIS:** And 12 months before that?

**Mr Negus:** It is very difficult to categorise in 12-month blocks, but certainly with the increase in boats from about 2008 there has been an increased requirement for the AFP to investigate these matters and, therefore, more staff being allocated to that.

**Senator BRANDIS:** Has the AFP been given information from DIAC or other agencies about people smugglers operating from Australia?

**Mr Colvin:** The AFP takes information from a range of agencies. Again, I will be careful; we do have current investigations about alleged people-smuggling activities in Australia. Whether that has come from DIAC specifically I could not say.

**Senator BRANDIS:** You might take that on notice. Home based, as it were, or Australian based people-smuggling is a very significant component of the business model of many of the people smugglers, is it not?

**Mr Colvin:** It is a part of the business model, yes.

**Senator BRANDIS:** Do you investigate that domestically, just as you cooperate with international policing agencies, particularly, though not exclusively, in Indonesia, to assist them to deal with the problem in their jurisdictions?

**Mr Colvin:** That is correct, yes.

**Senator BRANDIS:** Is the AFP aware of information in relation to family members in Australia facilitating the illegal movement of people into Australia—in other words, family members who are facilitating people-smuggling?

**Mr Colvin:** To answer that question in either the positive or the negative would be to talk about operational details.

**Senator BRANDIS:** We should ask Andrew Denton.

**Mr Colvin:** Is that a question?

**Senator BRANDIS:** No. Have there been any prosecutions of family members of unlawful arrivals or asylum seekers for people-smuggling offences in the last 12 months?

**Mr Colvin:** No, of family members there have not.

**Senator BRANDIS:** Have there ever been?

**Mr Colvin:** Of family members here in Australia?

**Senator BRANDIS:** Yes. I am positing a situation in which family members in Australia, in collaboration with people smugglers offshore, are assisting the smuggling of people into Australia. Has there ever been a prosecution of a family member of an asylum seeker for a people-smuggling offence?

**Mr Colvin:** As for activity in Australia, I will correct the record if I am wrong, but I think the answer is no.

**CHAIR:** Senator Brandis, if you would like a break, Senator Furner has a few questions.

**Senator BRANDIS:** No, I would not like a break and I am nearly finished. Is the AFP aware that Heydarkhani has facilitated the entry to Australia of people as a result of people-smuggling activities?

**Mr Colvin:** Mr Heydarkhani is currently before the courts for the activity that we have alleged and we have charged him with. It is on the public record that we have charged him in relation to more than one vessel. It is before the courts and that is the limit of what I can say.

**Senator BRANDIS:** How many people-smuggling prosecutions have been commenced by you in the past 12 months?

**Mr Colvin:** To commence a people-smuggling prosecution for us that involves an arrest, the figure is 203 people arrested in the calendar year of 2010.

**Senator BRANDIS:** Did you say 203?

**Mr Colvin:** It is 203 in 2010. In the calendar year to date, 2011, we have arrested 158 people.

**Senator BRANDIS:** So, if we were to annualise that at a constant rate, you would be expecting to arrest about 400 people—twice as many. What was that equivalent figure in 2009?

**Mr Colvin:** The equivalent figure in 2009 was 82.

**Senator BRANDIS:** What was the figure in 2008?

**Mr Colvin:** I do not have that in front of me, but it is lower than 82.

**Senator BRANDIS:** So, fewer than 82 in 2008, 82 in 2009, 203 in 2010 and 158 in the less than five months of 2011. When are the 2011 figures made up to?

**Mr Colvin:** They are up until 23 May, so nearly five months.

**Senator BRANDIS:** How many of those cases resulted in a prosecution?

**Mr Colvin:** They are prosecutions.

**Senator BRANDIS:** All of them?

**Mr Colvin:** They are matters we have charged and the matter has gone to court.

**Senator BRANDIS:** I thought you said ‘arrested’.

**Mr Colvin:** Arrest is the first step for us in terms of charging someone.

**Senator BRANDIS:** So, there are no cases where you have arrested someone but on further consideration or after advice from the DPP you have decided not to institute a prosecution?

**Mr Colvin:** No. We have started prosecutions.

**Senator BRANDIS:** Are you aware of evidence given yesterday by Mr Craigie, the Commonwealth DPP, to the effect that because of budget cutbacks on his office that may have—he did not say it necessarily would have—an effect on the capacity of the Commonwealth DPP to prosecute cases that otherwise would be prosecuted under the Commonwealth Prosecution Policy Guidelines?

**Mr Negus:** Yes, I am aware of that.

**Senator BRANDIS:** Has that affected any people-smuggling prosecutions so far?

**Mr Negus:** Not at this stage. However, over the last 12 months the DPP has been less able to support the AFP in ancillary activities, such as training and additional advice, and we are now doing that in different ways across our business line.

**Senator BRANDIS:** Prior to the last 12 months—and we are talking about people-smuggling investigation and ultimately prosecution and progression of these cases through the criminal justice system—the Commonwealth DPP was able to provide assistance to you in matters not specifically prosecutions but related matters, and the Commonwealth DPP can no longer do that and you have to find other resources within your limited resources to fill that gap; is that right?

**Mr Negus:** They have withdrawn a range of services, yes.



**Ms Kelly:** The withdrawal of those services by the DPP is as a result of budget decisions in the previous year's budget, not related to the matters that the DPP gave evidence about yesterday. I just wanted to clarify that, because it flowed from your questions in the evidence yesterday.

**Senator BRANDIS:** I am well aware that there have been cutbacks to the DPP to prosecutorial function in years other than this. Commissioner Negus, can you run through those programs and activities that have been cut back as a result of this? Can you give us some examples?

**Mr Negus:** Some examples would be that the DPP would send lawyers to our training courses where we would have people undertaking in-service training. They would talk about particular elements of the law and the DPP's expectations. Much of that is now unable to be done. They would also provide advice on a range of different cases. Again, much of that now is limited only to very much the high-end cases around counter-terrorism, serious drug matters and those sorts of things, whereas we had further access to them in previous years.

**Senator BRANDIS:** Although I have never been a prosecutor myself, I am very well aware of the importance of the close relationship between the police and the prosecutor in getting a case to a stage at which a prosecution can be initiated. Does this mean that a lot of the training of your officers to know what the prosecutor needs in order to bring the prosecution and in particular the assembly of the appropriate evidence, which your officers were being trained to do by the officers of the DPP, is now not happening?

**Mr Negus:** It is still happening, but the expertise that the DPP can provide—above and beyond what our lawyers or our investigative trainers would provide—is something that we miss.

**Senator BRANDIS:** I want to tidy up an issue arising from the bracket of questions that I asked before lunch. Do you know of a man called Col Speedie?

**Mr Negus:** Yes, I do.

**Senator BRANDIS:** Mr Speedie was formerly the head of Prime Minister Gillard's protection detail.

**Mr Negus:** Are you asking me whether that is correct?

**Senator BRANDIS:** Yes.

**Mr Negus:** No, that is not correct. He is a superintendent of police in the Australian Federal Police. One of his responsibilities was in the protection detail to oversee close personal protection for the Prime Minister and the Governor-General.

**Senator BRANDIS:** Was Mr Speedie one of those involved in filming the *AFP* television program involving Prime Minister Gillard, which was originally about Prime Minister Rudd but got reshot in part?

**Mr Negus:** No, I do not think so. He has gone into that role relatively recently. We are talking about some time ago for the shooting of that.

**Senator BRANDIS:** Mr Wood, you might be able to answer this. Was there a request made to the production company Zapruder to edit the tape of that particular television program to remove Mr Speedie's appearance? You might want to take that on notice.

**Mr Wood:** During steering committee meetings, not that I recall, because I was there.

**Senator BRANDIS:** Do you know for sure?

**Mr Wood:** In terms of whether he was one of the members who exercised the discretion or the individual choice, as we explained earlier, on whether they wished to be shown or not, that I do not know.

**Senator BRANDIS:** I did not ask you that, though.

**Mr Wood:** That is the process it would have gone through. I can check to see if he, through that process, had requested not to be in the film.

**Senator BRANDIS:** Perhaps you misunderstood my question. Was a request made by anyone other than Mr Speedie to the production company Zapruder to edit the tape of that program to remove his appearance?

**Mr Wood:** Not that I am aware of, but I will check.

**Senator BRANDIS:** Take that on notice.

**Mr Wood:** I will take that on notice.

**Senator BRANDIS:** Are you aware whether it is the case that Mr Speedie was removed from his role in Ms Gillard's personal protection at Ms Gillard's request recently?

**Mr Negus:** Mr Speedie has been removed from that role, but again they were internal decisions made by his management team.

**Senator BRANDIS:** Was that at the Prime Minister's request?

**Mr Negus:** No, it was not.

**CHAIR:** Senator Furner has some questions just to finish up.

**Senator FURNER:** I have a series of questions in relation to the recovery efforts for the disasters both in Australia and also overseas and the involvement of the AFP in those efforts. Firstly concentrating on Queensland, would you indicate the number of deployments in both the floods and also Cyclone Yasi, please?

**Mr Negus:** Between 11 January and 24 February a total of 92 AFP members were committed to supporting the Queensland Police Service in response to the Queensland flood crisis and Tropical Cyclone Yasi.

**Senator FURNER:** So, there were 92 overall in relation to both the floods and the cyclone.

**Mr Negus:** From memory, I think there were a further 61 who attended New Zealand and assisted in the Christchurch earthquakes.

**Senator FURNER:** Were there any deployments to Japan as a result of the tsunami and earthquakes?

**Mr Negus:** No, there were not. We certainly made offers to the Japanese, but they did not require Australian assistance across any of the disciplines that we could offer.

**Senator FURNER:** As to the 92 that were deployed to Queensland, were an additional 61 deployed to Christchurch, New Zealand?

**Mr Negus:** That is right. Some of them may well have been the same officers who went to both locations, but they were a completely separate group.

**Senator FURNER:** Basically, the locations for Queensland would have been South-East Queensland, I take it, and North Queensland?

**Mr Negus:** They were generally paired with Queensland Police Service officers in the Grantham and Murphy's Creek area. Again, their role was really search and recovery, and also just to assist in general policing around that area.

**Senator FURNER:** So that was essentially the purpose of their deployment in Queensland. What about their purpose of deployment in Christchurch?

**Mr Negus:** In Christchurch there was a contingent of over 300 Australian police that was put together within literally 48 hours and arrived in Christchurch. Again, I think it was a remarkable effort from Australia to support, in the way they did, the Australian police. Over there, as you can imagine, in that first 48 hours the New Zealand Police had almost exhausted their ability to continue working around the clock. Our people did things such as manning barricades and doing patrols, and again paired up with New Zealand Police officers. Interestingly, they were all sworn in as members of the New Zealand Police force. Again, I think credit should go to those who were looking at the legal issues surrounding that, for two sovereign nations to be able to swear in their police immediately on arrival. There were standing ovations from people in the airports as the Australian police from all jurisdictions attended to support and help in the recovery efforts. As I said, I have been to New Zealand since then and, from the Commissioner of the New Zealand Police, they are eternally grateful for the work that was done by a range of Australian police. The Prime Minister actually hosted a function here in Parliament House on Tuesday night recognising the efforts of some of those people, and spoke warmly about the work they had done.

**Senator FURNER:** I take it there are none of those officers either in Queensland or in New Zealand that are still—

**Mr Negus:** No, they have all returned. In New Zealand they were there for about a month, or just a little longer than that. In Queensland as soon as they could be returned, they were, and the Queensland police resumed their normal duties. But in emergency situations like this it is about the ability to continue normal policing services, and very quickly we run out of resources. They provided that backup and they returned us to normal activity soon thereafter.

**Senator FURNER:** Turning to organised crime, it has certainly been a matter that has been prevalent in media of late, everything from fraud to money laundering to cybercrime and drugs. I understand the AFP has reorganised the agency to better address serious and organised crime. Has that been effective in getting a better handle on organised crime?

**Mr Negus:** We think it has. It is very difficult to sit here and say, 'We have the problem beat,' because we do not, but we continue to work very hard in that direction. We work very closely with our state and territory colleagues in joint task force arrangements. Seventy per cent of the work we do is with other agencies—I mentioned that this morning—and in the organised crime space that is even more so. We work closely with the Australian Crime Commission and we have worked very hard in the last couple of years to deconflict our roles so that the Crime Commission do the things that they do very well and we do the things that we do very well and not duplicate those services.

I am pleased to say, though, that this year we have seen a 42 per cent increase in the amount of drugs seized. I think that is a direct result of some of the things we have put in

place. But, again, we continue to battle away on that front, so you do not claim victory in those areas. That equates to about 1.77 tonnes of narcotics seized by the AFP this financial year to date.

We talked a little bit earlier about some of these things, but pleasingly we have been working with our intentional colleagues on these fronts. I saw Mr Lawler yesterday provide some information to the committee about Mexican organised crime. The AFP has just seconded another officer overseas to Los Angeles to work with the drug enforcement administration and the FBI and others—the immigration and customs excise in the US—on organised crime, particularly those Mexican cartels which seem to be targeting Australia for cocaine at the moment. Our seizure rates for cocaine are up significantly this year.

Lastly, as to results this year, we have more than doubled the amount of assets we have restrained coming from organised criminals. Last year we restrained around \$18 million. This year so far it is about \$43.4 million. Again, that is as a direct result of looking at the multiagency approach to asset forfeiture. People from the tax office, people from the Australian Crime Commission and another agency and we have been working with the DPP to look at a new way of being much more aggressive in going after the assets of organised criminals. As I said, this year alone we have more than doubled the seizure rates in that regard. There are some good signs there. The proof of the pudding will be over a number of years, as far as whether the way that we have constructed the organisation to deal with organised crime is working and is sustainable in the long term, but we are seeing some positive signs with our partners and, again, working in that international environment to take the fight against narcotics and a range of other different crime types offshore and helping target harden Australia against these things from outside.

**Senator FURNER:** We heard from the Australian Crime Commission yesterday on some of those points that you have raised, and I thank you for the additional points that you have added to that response. The ACC argues that the AFP is working with regional partners to address common issues. How does the AFP feed into the work it does with the state and territory police jurisdictions on this particular area?

**Mr Negus:** We have a range of different intelligence exchange networks through each of the states and territories. On a range of fronts on any given day we are in a number of joint task force arrangements with them. We have officers working side by side with Customs as well, particularly in the narcotics area. In counterterrorism, we have joint counterterrorism teams in each of the jurisdictions as well. So there is a multitude of different mechanisms where our people are working in the same office together. But we also have a range of other different forums. I am the chair of the Australian Crime Commission board, on which all the other commissioners are represented as well as some of the Commonwealth government agency heads. Strategically we look to set the direction for the ACC to take account of all of the organised crime issues facing the states and territories and the Commonwealth in this country. There has been a significant reformation of the strategic agenda around that. Mr Wilkins and the Attorney-General's Department have played a key role in that with the organised crime threat assessment and the organised crime strategies that are now being implemented to make sure that the Commonwealth is dealing with this problem as one entity rather than a multitude of different agencies looking at the problem themselves. So I think there have been some significant improvements there.

**Senator FURNER:** The ACC also prompted my memory yesterday of the huge drug seizure, in my home capital of Brisbane, of 460 kilograms of cocaine. Is that an example of attempts by organised crime to get drugs through in larger quantities?

**Mr Negus:** That matter is before the courts so I will have to be a little bit careful, but, with cocaine particularly, it is not unusual to see them shipped in those sorts of quantities. As Mr Lawler said yesterday, it is relatively cheap to purchase cocaine in South America or even in Mexico and even in the US compared with Australia. We have seen large shipping containers and off the coast of Western Australia about a decade ago there was a tonne of cocaine on a vessel that was sailed to Australia, which we seized. It is not unusual to see them in the multi-hundred kilo shipments of cocaine and up to a tonne, as we have seen. It is certainly a sign that Australia is being targeted. Unfortunately the thirst for cocaine in the community is not diminishing. We need to make sure that we send the right messages to our citizens about the dangers of cocaine and certainly its highly addictive qualities and the damage it can do to their health.

**Senator FURNER:** Is that indicative of the good work the AFP and Customs are doing in this particular area?

**Mr Negus:** As I said, I think a 42 per cent increase in seizure rates on last year is a good sign. Again, I would hesitate to claim victory in any of these areas, because it is a constant battle and I think in 10 years time we will still be here talking about a range of different drug threats facing the Australian community. But we have seen some positive signs. We are working well together. I think the new structure at a Commonwealth level is helping us to deconflict our roles and responsibilities with the Customs Service, the ACC and a range of other agencies. The states and territories as well are looking now through the ACC board at matters in the national interest, looking at organised criminals, whether they reside here or offshore and how they are impacting upon our children, and the drugs that are available in the streets of Sydney, Melbourne and Brisbane.

**Senator FURNER:** Do you have a view on these trends that we are noticing?

**Mr Negus:** Certainly cocaine is an alarming trend. The intelligence we have about Mexican cartels seeing Australia as a viable market is very alarming. I know Mr Lawler spoke yesterday about the violence that can sometimes be associated with Mexican cartels. It is not something we want on these shores. We have already seen elements of that, so we are working very hard in that regard.

Only a matter of a couple of weeks ago we had a record methamphetamine seizure in this country of almost 240 kilograms. When you start having record seizures or regular seizures in the half tonne area it is of grave concern. As I said, the thirst for drugs in our community seems to be not waning, and we take that responsibility very seriously.

**Senator BRANDIS:** Can I show you this document, please, Commissioner Negus? It is in a slightly unusual form. I will just pause to let you familiarise yourself with it.

**CHAIR:** Are you tabling that?

**Senator BRANDIS:** I will in due course.

**Senator Ludwig:** I would hate it to be tabled and—

**Senator BRANDIS:** I am not going to table the document until it has been identified by the witness, obviously.

**CHAIR:** If you are going to refer to it, you need to table it.

**Mr Negus:** I recognise the text, but not in the landscape format.

**Senator BRANDIS:** No, I understand that. I will table the document. I was hoping to get some photocopies. I will table that document.

**CHAIR:** Is that the only copy you have?

**Senator BRANDIS:** I have some copies on the way. This document just arrived in my hands physically a few minutes ago.

**CHAIR:** We can take it and copy it.

**Senator Ludwig:** I think it is uncontroversial. I think you can continue. My view is that the committee can continue questioning in respect of the document. Mr. Negus has identified the document.

**Senator BRANDIS:** I am sorry, I did not mean any discourtesy, Commissioner Negus. I literally just got this document and I have arranged for it to be photocopied. I did not want to not have multiple copies here. In any event, you have already identified the document—

**CHAIR:** I am sorry to interrupt you, but for the committee's sake and Hansard's sake, can you identify what it is: a newspaper article or a piece of research?

**Senator BRANDIS:** That is what I am doing, if you just listen.

**CHAIR:** I am listening, but I do have people that need to record these proceedings as they do a proceedings of the Senate chamber, and we need to know what exactly this document is. Is it a letter or a newspaper article?

**Senator BRANDIS:** That is what I am doing—

**CHAIR:** Could you tell us that as you table it, please?

**Senator BRANDIS:** Could you just settle a bit!

**CHAIR:** Could you just follow the standing orders and identify—

**Senator BRANDIS:** Allow me to do the very thing that you are demanding I do.

**CHAIR:** the document as you have tabled it, please.

**Senator BRANDIS:** Here are the multiple copies. Travis, give that to the Commissioner, would you?

**CHAIR:** Through the clerk, thank you, Senator Brandis.

**Senator BRANDIS:** Could the clerk give a copy to the commissioner.

**CHAIR:** The clerk will give and only the clerk will give a copy to the commissioner.

**Mr Negus:** You asked me whether I recognised the document and I just want to be very clear: I recognise the text of the document. It is not addressed to anyone.

**Senator BRANDIS:** No, I understand.

**Mr Negus:** The addressee has been taken off—the document that I recognise—

**CHAIR:** Could you identify the document, Senator Brandis? Until we identify exactly what this document is as it is tabled—

**Senator BRANDIS:** If everybody would just fall silent and let me do this, we will save a lot of time, Senator Crossin.

**CHAIR:** I am not after time saving, Senator Brandis. What I am after is some form of identification of this document for the people that are recording these proceedings.

**Senator BRANDIS:** If you would only fall silent, that will be done right away.

**CHAIR:** As you have tabled the document, which you have done, I am now asking you to identify what it is.

**Senator BRANDIS:** That is what I am going to do. Okay?

**CHAIR:** Thank you. I have asked you quite a number of times.

**Senator BRANDIS:** I have been trying while you have been asking me and you keep interrupting. Just fall silent, please.

**CHAIR:** Let us do it, then.

**Senator BRANDIS:** Commissioner Negus, you have told us that you recognise the document. The document is—

**Mr Negus:** No, I said I recognised the text.

**Senator BRANDIS:** That is fine. That will do. This is the text of a memorandum or electronic letter sent to you and others over the signature of Mr Craigie, the Commonwealth DPP, headed 'Federal Budget 2010-11'; is that correct?

**Mr Negus:** It appears to be, yes.

**Senator BRANDIS:** Did you receive that text from Mr Craigie?

**Mr Negus:** Again, without having one to compare it against, it appears to be the same letter I received about two weeks ago.

**Senator BRANDIS:** Did you receive that a day or two after the budget?

**Mr Negus:** Yes, shortly after the budget.

**CHAIR:** Senator Brandis, as chair I need to ask you: is this the same document that was tabled yesterday?

**Senator BRANDIS:** No.

**CHAIR:** No? It is a different document, is it?

**Senator BRANDIS:** That is why I said 'no' in answer to your first question.

**CHAIR:** There is no date on this document, then?

**Senator BRANDIS:** That is correct, but the date has just been given by the commissioner as a document received by him within a day or two of the budget. Commissioner Negus, I just want to take you through some bits that are relevant to you. Mr Craigie writes:

I am writing to you and the heads of other agencies that refer matters to the CDPP for prosecution. It is important that I provide initial information concerning the impact of the recently announced Federal Budget on the CDPP.

You are one of the addressees of the document in its original form; is that correct?

**Mr Negus:** Yes.

**Senator BRANDIS:** Mr Craigie goes on to state:

Until now, the CDPP has prosecuted all matters referred to it where the test in the *Prosecution Policy of the Commonwealth* is satisfied, that is, where there is a prima facie case with reasonable prospects of conviction and the prosecution is in the public interest. However, as a result of budget related Government decisions there will be a significantly reduced allocation of resources to the CDPP in the coming financial year.

This necessarily means that the CDPP will not be resourced next year to carry out the range of work and the number of prosecutions that it currently conducts. Accordingly, it will be necessary for the CDPP to review the totality of the matters that we will be able to prosecute to determine which prosecutions the CDPP is able to commence or continue.

I will just skip over the next two paragraphs; they are not terribly material. What I want to focus on in particular is the first paragraph on the second page, which states:

Regrettably, as the CDPP expects that it will not be in a position to prosecute all matters currently referred, there will be an adverse impact on agencies' law enforcement strategies and the deterrent effect provided by prosecution.

How will that advice by Mr Craigie, the Commonwealth Director of Public Prosecutions, affect the Australian Federal Police, who I assume are the principal referrer to the Commonwealth Director of Public Prosecutions of matters for prosecution?

**Mr Negus:** When I received this letter just after the budget it caused me great concern.

**Senator BRANDIS:** Yes. What effect will it have on both the law enforcement efficacy and, specifically, the capacity to bring criminals to trial of the AFP if the Commonwealth DPP is no longer able to prosecute all of the matters referred by the AFP to it?

**Mr Negus:** As I said, it would cause us concern. One of the things that you have not read out yet is the final sentence in this, which states:

In giving this initial notice in general terms, I want to assure you that the CDPP will work with your agency to discuss and explain the details of changes required of us to implement the Government's decision.

What I did immediately was ask our head of legal and people at a lower level to go into the DPP and try to get some advice. I was not here last week and I still have not spoken to Mr Craigie personally about this, but we are still waiting on advice as to what the implications of that will be.

In watching Mr Craigie's evidence yesterday to this committee, I understand that a funding model has been looked at which should sustain things in the current fashion. So, again, without any direct information from Mr Craigie, I am really unsure of what this does mean for us.

**Senator BRANDIS:** I am a bit embarrassed not to have been in a position to put this document to Mr Craigie yesterday, but it only, as it were, fell off the back of a truck into my hands earlier this afternoon. If I had had it, I would of course have put it to Mr Craigie as well, but given that you are an addressee of the document and are directly affected by it I thought it fair enough to put it to you. Thank you very much, Commissioner.

**Senator PRATT:** I would like to begin with CHOGM. I wanted to ask about any preparations that the AFP is making for security issues, including the risks posed by a significant number of heads of state being in the city of Perth at one time.



**Mr Negus:** We have been actively involved. I will hand over to Deputy Commissioner Drennan, who has that responsibility, and he can provide you with some details.

**Mr Drennan:** We are certainly working very closely with the Western Australian police and also the Prime Minister and Cabinet 2011 CHOGM task force, the Attorney-General's Department and the Australian intelligence community in developing operational planning in the manner in which security will be maintained. We will probably deploy approximately 200 staff to Western Australia and to other parts to assist with the security that will be required for the large number of visiting heads of state and dignitaries.

**Senator PRATT:** What kind of process are you using in order to prepare? Clearly you will be consulting the WA police force; what other agencies?

**Mr Drennan:** Certainly those agencies I mentioned before. The CHOGM task force is a large range of Commonwealth departments, and also the state police from Western Australia and the state Premier's Department. That meets on a regular basis. I am part of a security working group that meets as part of that. There are ongoing and quite regular meetings, discussions and planning in relation to CHOGM.

**Senator PRATT:** I have a question about Project Wickenby. We have had some discussion with other agencies before this committee and there has been some media attention, I guess, with identities such as Paul Hogan. It seems that it has been fairly successful overall in terms of prosecution of fraud and money laundering. I wanted to know the continuing extent of the AFP's involvement in this operation.

**Mr Colvin:** I should make clear at the outset, in relation to the Hogan investigation, that that is not a matter for the AFP. But I will say that the AFP has 39 full-time employees nationally, comprising investigators, financial analysts and investigative assistants. We currently have 12 operations that fall under the Project Wickenby banner. So far our investigations under that banner have resulted in 48 people being charged by the AFP. This has included promoters, participants in the schemes and a number of high-wealth individuals. These people have been charged with offences ranging from fraud to money laundering, with penalties of up to 25 years. Of those charged, 11 of the scheme participants have pleaded guilty and have been sentenced to terms of imprisonment ranging from three years six months to two years with various non-paroles. One high-wealth individual was found guilty of money laundering in relation to the activity that we investigated. Some \$56.25 million is currently the subject of restraining orders by the AFP and its partner agencies under Project Wickenby. The AFP action to date has resulted in the forfeiture of in excess of \$49 million in proceeds of crime and has also directly contributed to close to \$68 million in taxation assessments. In answer to your question, I think Project Wickenby has been very successful.

**Senator PRATT:** I have a last set of questions largely about child abuse. I know the AFP's website includes a range of statistics about those crimes. I am interested to know when the 2010 offences will be uploaded. I note that I think the last set of offences is about April 2009, so clearly a year has transpired since then. I would be interested in knowing what statistics would fall into that.

**Mr Negus:** It is unfortunate they have not been uploaded. I just looked at my head of high-tech crime, who shrugged his shoulders. Can we take that on notice? If there has been a

delay in uploading those statistics I am sure it is an inadvertent one . We will look to address that as soon as we can and provide you with a response.

**Senator PRATT:** I note that some states have much higher arrest rates than others and I would be interested in knowing what this represents. I assume it is a success rate of catching people. I would not have thought that one state has disproportionately higher levels than others of people engaging in this kind of criminal behaviour.

**Mr Negus:** It is very hard for me to comment on the capability or effectiveness of each of the state and territory police forces. We work with all of them in a variety of means. Our role in this area of child protection is very much around the online environment.

**Senator PRATT:** Yes, I understand that.

**Mr Negus:** Often that translates, unfortunately, into the real world and we do have information we pass to states and territories, who rescue children all too frequently. In that environment, I think the consolidation of our high-tech crime resources over the last couple of years has the government providing around 90 investigators, I think, and 90 investigators to focus explicitly on child protection operations has been a great boost for the organisation and has resulted in a range of people being brought before the courts. Again, I will look for some advice here, but in excess of 350 people have been arrested and charged with those types of offences. That is alarming to parents. It is alarming to me as a parent to have 350 people out there looking at inappropriate child pornography and other inappropriate pornography of that style. So, it is a concern about the magnitude.

**Senator PRATT:** Your website seems to illustrate also state convictions for child abuse imagery. I am interested in knowing what the overlap of charges is, in the sense that you have federal convictions and state convictions for similar crimes. I would be interested in knowing what the overlap in that is and whether or not most of those convictions do represent overlaps.

**Mr Negus:** I will just reintroduce Assistant Commissioner Neil Gaughan, who is the head of this unit, and also, importantly, is the current chair of the Virtual Global Taskforce, which is a network of law enforcement agencies around the world looking at child abuse online.

**Mr Gaughan:** I think the overlap relates to the fact that the AFP, as the commissioner rightly pointed out, has jurisdiction in relation to Commonwealth offences primarily in relation to the transmission of child abuse material on the internet. When we actually arrest someone we always charge them with the Commonwealth offence of transmission. In most instances we will also charge them with the relevant state offence of possession. So, what we are seeing is not only the Commonwealth offences captured but also the state offences as well.

**Senator PRATT:** Would most of those people have had both charges under both jurisdictions, then?

**Mr Gaughan:** That is correct.

**Senator PRATT:** I note that the AFP has made a statement to the media encouraging people to use the words 'child abuse images' instead of 'child pornography'.

**Mr Gaughan:** That is correct.

**Senator PRATT:** I wanted to know the significance of that. But, also, in a sense many of the charges do relate to child pornography possession and I do wonder whether states need to

update their offences to come in line with the idea that this is not pornography, it is in fact explicit sex abuse material.

**Mr Gaughan:** I agree 100 per cent with what you have just said. Having seen some of these images recently, I can say there is nothing pornographic about them. It is child abuse, child exploitation, and I think it would be handy if we could get to a situation where we remove the word ‘pornography’ from the legislation at some stage. We will work with AGD to make sure we move forward with that.

**Senator BARNETT:** As I did indicate earlier, I just have a few questions to conclude. This relates to your services. Are you aware of a decrease in funding or a removal altogether of AFP services and a corresponding increase in funding and creation altogether of those same AFP services from one funding source to another? I am specifically referring to the overseas aid budget.

**Mr Negus:** I am not sure if my deputies can help me; I am not sure that I understand the question.

**Senator BARNETT:** I will try to rephrase it. Have you been defunded from one source and it is now being funded under the overseas aid budget? Has it moved from one balance sheet in the federal budget to another, which is the overseas aid budget?

**Mr Negus:** Thank you for the clarification. We do have a number of different policy initiatives where we have either full or part funding from the overseas aid bucket. We have tried to work with AusAID particularly to better characterise the work being done by the AFP overseas. Many people would not realise this, but the AFP is the second largest deliverer of aid overseas behind AusAID. We are right up there with them and we have regular meetings with them. A lot of the work that we talked about before, about capacity building and training, does fall within what is ODA eligible.

**Senator BARNETT:** Is there a figure for that?

**Mr Negus:** No, but I can give you the two new bits of money we received this year. We received \$10.8 million for people-smuggling operations offshore. I think about \$8.9 million of that was ODA eligible.

**Senator BARNETT:** When you say ‘eligible’, what does that mean?

**Mr Negus:** It has to meet certain criteria for the funding to be provided through the aid bucket.

**Senator BARNETT:** Is the \$10.8 million allocated in your budget for—

**Mr Negus:** For people-smuggling operations offshore. A proportion of that, not all of that, was seen to be what we call ODA eligible. It came out of that bucket rather than the bottom line core funding from government.

**Senator BARNETT:** Of the \$10.8 million—is this for this financial year?

**Mr Negus:** Yes.

**Senator BARNETT:** Some \$8.9 million is ODA eligible. Let us go back 12 months. How much was expended for people smuggling offshore last year? Do we have those figures with us?

**Mr Negus:** We might have those figures.

**Senator BARNETT:** Secondly, how much of that was ODA eligible, if any?

**Mr Wood:** I will take that on notice to make sure I have the number exactly right.

**Senator BARNETT:** Let us deal with the broad. Last year was any ODA eligible?

**Mr Wood:** Specifically in the people-smuggling area?

**Senator BARNETT:** Yes.

**Mr Wood:** Yes.

**Senator BARNETT:** But not to that extent. Is it less than \$8.9 million? Was it much less or was it similar?

**Mr Wood:** I would have to take that on notice.

**Senator BARNETT:** You know where I am coming from. I am asking you to what extent your overseas aid budget has been AFP activities overseas?

**Mr Negus:** We have worked with AusAID to better characterise the work we do. I think for a number of years some of that funding would have come out of our core budget because we did not recognise, I think, that we met the eligibility criteria to assist AusAID in delivering programs offshore. This is about training. This about capacity building. They are very strict criteria. We appear before a range of different committees to make sure that we are meeting the strict criteria implemented for that, including the department of finance, which oversees this. I would not want to suggest that this is a shift in ways of funding things that is in any way inappropriate. I think it is just a better allocation of the resources against the intent of the actual funding.

**Senator BARNETT:** I am not saying it is inappropriate in any way, shape or form. I am just asking for the facts.

**Mr Negus:** We have worked constructively with AusAID over the last couple of years I think to better identify where issues could be funded from the aid budget, and quite appropriately so. We do a lot of training and a lot of capacity building offshore.

**Senator BARNETT:** That is excellent and that is what I am seeking. I am happy for you to take it on notice, but I would like further and better particulars regarding exactly what you are saying. Where the overseas aid budget has been made available or eligible—it is ODA eligible, using your words—I would like a comparison over the last three years, and then going forward so that I know, the public knows and this committee knows where the level of increase has been. Can you characterise that for us now? Has there been a significant increase over the last couple of years?

**Mr Negus:** I think for a number of years now we have been the second largest deliverer of aid offshore. As I have said, we have tried to work with AusAID to enhance that partnership so we are not duplicating resources but actually delivering a service on behalf of the Australian population.

**Senator BARNETT:** For that aid that you deliver offshore is that funded through AusAID or ODA?

**Mr Negus:** I am talking about the same thing. AusAID has control of the money, but again the department of finance and others would play a role in the allocation of that.

**Mr Wood:** I would certainly say that over the last three years if something has been ODA eligible in a bid that we are putting forward it is expected that we do declare that quite clearly and give cabinet the option of funding things through ODA where there is the possibility of that, or not, if it does not—

**Senator BARNETT:** As you should.

**Mr Wood:** I think the funding levels will be seen to be increasing over the three-year period, but I think—

**Senator BARNETT:** What about the next three-year period and in particular through to 2015 when we are aiming to meet our Millennium Development Goals?

**Mr Wood:** We will take on notice what is included in the forward estimates as well as the historical three-year data.

**Senator BARNETT:** I hope you can understand where I am coming from, at least in part. The aid budget has increased markedly through to 2015 to meet the Millennium Development Goals as committed by the government. I am seeking to know what proportion of that—how much of that—is being funded where, and specifically of the AFP services? Does that make sense?

**Mr Wood:** That is understood.

**Senator BARNETT:** I would like to get a comparison over the last three years and then going forward certainly through to 2015 or thereabouts, vis-a-vis forward estimates. Is that okay?

**Mr Wood:** Yes. Deputy Commissioner Drennan may have more to say.

**Mr Drennan:** Under the eligibility criteria in relation to ODA it is more about the capacity and capability development of countries. As we become more involved in that work, the funding that can be ODA eligible will most likely increase. If you look at the transition of missions, say, like the Solomon Islands, where they are moving from an intervention and stabilisation through to capacity building, the nature of the funding for the activities will change. It is actually a reflection of the change in work that we are doing. If you look at, for example, the United Nations mission in Sudan that we are part of, where it is directly related to building the capability of the Sudanese police, it becomes ODA eligible. It is more a reflection that as our work changes then things that we are doing will fall more into the ODA side as opposed to core funding.

**Senator BARNETT:** Understood. Thank you very much.

**CHAIR:** Thank you very much, Commissioner Negus and your colleagues. It has been a very long day for you and we appreciate your tenacity and ability to answer those questions very professionally, I might say, and patiently.

**Mr Negus:** Thank you. I hope we have been of some help to the committee.

#### **Australian Customs and Border Protection Service**

[17:38]

**CHAIR:** Mr Pezzullo, welcome to you and your team from Customs and Border Protection. Do you have an opening statement for us?

**Mr Pezzullo:** No.

**CHAIR:** We will go straight to questions.

**Senator BARNETT:** I understand Mr Carmody is held up elsewhere.

**Mr Pezzullo:** Mr Carmody is on annual leave at the moment. I am the Acting Chief Executive Officer.

**Senator BARNETT:** I understand you had other matters to deal with yesterday in Perth and that is the reason that we shifted the appearance time back from this morning to this afternoon to accommodate the customs service?

**Mr Pezzullo:** I am not quite sure that that is the case. We certainly did have a senior office of our agency in Perth yesterday attending to matters connected to the coronial inquest into SIEV221, yes.

**Senator BARNETT:** I was just clarifying that because that was advised to us. Can I start by saying that I had four-odd days in Darwin and the Timor Sea with the Royal Australian Navy and the Australian Customs and Border Protection Service and also on the P3C Orion, looking at our activities up there, focusing on the illegal fishing and also people-smuggling activities. I was very impressed with the level of professionalism and competence of all the various services I was with and I very much appreciated the opportunity.

**Mr Pezzullo:** Thank you. I will make sure that the relevant officers are shown a copy of your remarks. I am sure they would very much appreciate that.

**Senator BARNETT:** Thank you very much. I have advised them personally with a note, but if you did that that would be excellent. We will go to the headline numbers in terms of boat arrivals and so on shortly, but I just want to address Budget Paper No. 2, on page 95, which states:

The government has identified savings of \$9.3 million in the 2014-15 year, including \$4 million in capital funding, within the Australian Customs and Border Protection Service.

Can you explain to the committee where the funds have been cut from?

**Mr Pezzullo:** I will start with an overview of the summary of measures contained in the 2011-12 budget that was recently brought down. In particular I will go to the detail that is contained in the portfolio budget statement for our portfolio, which is summarised at a high level of course in Budget Paper No. 2. I think your question goes to, as you describe them, cuts. The savings measures are in the following areas. There is a general saving across passenger facilitation at international airports—and these are forward estimates numbers that I will now give you, so the 2011-12 year plus the three years of the forward estimates. In round terms that is \$34 million.

**Senator BARNETT:** When you say ‘forward estimates’, this is over what period?

**Mr Pezzullo:** The 2011-12 budget year followed then by the three years that then make up the forward estimates, so 2012-13 and the following two years. So: passenger facilitation at international airports efficiency measure, \$34 million; reduced costs in responding to illegal foreign fishing in northern waters, in round terms, \$10 million ; aerial surveillance efficiencies measure, in round terms, \$21 million; and the temporary increase in the rate of the efficiency dividend—so it is the additional element of the efficiency dividend—\$28 million, in round terms. That yields a net savings aggregate over the forward estimates—that is, the budget year plus the three forward estimates years—of \$99 million.

**Senator BARNETT:** Can we go into the specifics now?

**Mr Pezzullo:** Yes, if you like, we can go through each of the measures. In doing so, I might introduce my two colleagues and ask them to address particular measures. Ms Roxanne Kelley, the Acting Deputy Chief Executive for Border Enforcement, will address the issue of illegal foreign fishing and aerial surveillance. Mr Neil Mann, the Deputy Chief Executive Officer for Passenger and Trade Facilitation, will address the issue of passenger facilitation. I will go through the measures in the order that I gave. Mr Mann will take the issue of passenger facilitation.

**Mr Mann:** This measure will deliver savings of \$34 million over the four years, as outlined by Mr Pezzullo. That is broken down into \$7.7 million in year 1, \$8.6 million in year 2, \$8.7 million in year 3 and \$8.9 million in year 4. The way these savings will be achieved is through a reduction in average staffing levels across the primary clearance function at eight international airports. Translating those dollars into average staffing level adjustments would be the equivalent of a reduction in average staffing level of 77 in the first year, an additional nine in the second year, that stays the same in the third year, and one extra in the fourth year.

The way we will achieve those savings is through natural attrition. It will basically be delayed recruitment. As a consequence of this measure we do expect that, as recognised in the portfolio budget statement, the current national average performance benchmark of processing 95 per cent of arriving passengers within 30 minutes of joining the queue will change to 92 per cent. In plain terms, we could expect that, once fully implemented, this measure may see the average wait time for arriving passengers increase by around five minutes.

**Senator BARNETT:** What is it now?

**Mr Mann:** It is currently 10 minutes. So that would be an additional five minutes.

**Senator BARNETT:** It is a 50 per cent increase in delay?

**Mr Mann:** For departing passengers an average wait time increase of two minutes, and that is from two minutes to four minutes.

**Senator BARNETT:** It is by two minutes and it is currently two minutes, so it is a 100 per cent increase. So that will be four minutes?

**Mr Mann:** Yes.

**Senator BARNETT:** That is when they are going through the—

**Mr Mann:** The primary clearance function, yes. As you can see, the way these measures take effect there will be no reduction in the border management processes that we undertake. We will continue to conduct the full immigration clearance function that we do at the primary point. The impact will be an increase in wait times.

**Senator BARNETT:** You have noted in these budget papers that these are similar levels to other international airports around the world. Can you table that or take that on notice and let us know what the other levels are around the world?

**Mr Mann:** I will take that on notice.

**Senator BARNETT:** Is there anything further on that matter?

**Mr Pezzullo:** To amplify Mr Mann's point, the wait or the extended processing is up until the point where the passenger reaches the primary line. At that point our current procedures kick in and they will not in any way be undermined or degraded. So the face-to-passport check, the immigration check, the passenger moves through the hall, what we call the baggage or back-of-hall interventions with dogs and the rest of it—all of that remains in place.

**Senator BARNETT:** So this is just the front end?

**Mr Pezzullo:** Effectively it is queue management. As persons approach the primary line we are going to have to obviously marshal and manage those queues. The queues will get slightly longer, along the lines that Mr Mann has indicated, but the border integrity function, which starts when the officer starts the analysis, is in no way degraded.

**Senator BARNETT:** You are not improving your efficiencies through electronic measures and the facial assessment and the eye assessment?

**Mr Pezzullo:** I might ask Mr Mann to address that in two parts. Prior to a passenger even arriving in Australia we are making much better use of intelligence sources and other information sources by connections with other agencies. Then, yes, there is a rollout of what is called SmartGate technology. I will ask Mr Mann to address that.

**Mr Mann:** Of particular relevance to this savings measure, you are quite correct; we do have in operation an automated border processing system known as SmartGate. It does operate using the digitised algorithm of a facial image in ePassports. It currently accepts Australian and New Zealand ePassport holders over the age of 18. We will be expanding the current deployment of that technology, which we do hope will offset to some degree the effects of this particular savings measure in that we will be promoting and actively expanding the capacity.

**Senator BARNETT:** Can you, on notice, give us the percentages and numbers for how many people use SmartGate compared with the standard process?

**Mr Mann:** Yes.

**Senator BARNETT:** That is okay, unless you have it there now?

**Mr Mann:** The current percentage of total arrivals using SmartGate at the moment is around 12 per cent and, currently, arriving Australians and New Zealanders that are eligible account for around 33 per cent. So there is still quite an amount of growth in that percentage of arriving travellers that we hope to transfer into using SmartGate as the regular mode of primary processing.

**Senator BARNETT:** Can you give us those in numbers? Do that on notice, because we are a bit tight for time, if that is okay.

**Mr Mann:** I will take that on notice.

**Senator BARNETT:** Will we move to the next item?

**Mr Pezzullo:** Yes. Leaving aside the management of the temporary increase in the efficiency dividend, which we will manage at the agency level, the other two specific measures were in relation to illegal foreign fishing and aerial surveillance. I will hand over to Ms Kelley on those.



**Ms Kelley:** In terms of illegal foreign fishing, the measure delivers savings of \$2.465 million in 2011-12 and \$9.993 million over four years. Each year since we have had funding for illegal foreign fishing, so since 2006-07, we have reviewed the funding and the targets as a consequence of the interceptions that we have made. We have again reviewed that and we have some new apprehension targets of 45 vessels and 400 illegal foreign fishers. The savings are linked to that reduced apprehension target—

**Senator BARNETT:** Sorry, 45 vessels and what?

**Ms Kelley:** Four hundred illegal foreign fishers. The savings will be realised in the costs associated with the processing and transfer of apprehended fishers, because of the reduced target, and a reduced capacity to contract civilian vessels capable of towing illegal foreign fishing vessels into port for destruction, again linked to the reduction in the vessel target as well.

**Senator BARNETT:** The reduced target is from what to what?

**Ms Kelley:** Five hundred and forty illegal foreign fishers and 60 vessels.

**Senator BARNETT:** What is that figure? The target has been reduced from?

**Ms Kelley:** Five hundred and forty illegal foreign fishers is the target this year, and that is reducing to 400, and then 60 vessels to 45.

**Senator BARNETT:** But over what period? Over the four-year period or directly?

**Ms Kelley:** Yes. The 400 and 45 will become the new target from 1 July this year.

**Senator BARNETT:** What about the next year and the next year and so on?

**Ms Kelley:** Again, that target is what is built in over the four years but, as we have done every year since we have had this funding, we tend to review the target each year.

**Senator BARNETT:** Over that four-year period, it is going from 540 to 400?

**Ms Kelley:** Yes, and 60 vessels to 45 vessels. There are two actual targets that we work on.

**Senator BARNETT:** Could you say again the figures for the vessels?

**Ms Kelley:** Sixty to 45. We have assessed this proposal as being low risk because our current offshore surveillance and response activities are being maintained, and this has proven over the years to be a very effective deterrent to the ongoing risk posed by illegal foreign fishing in the northern waters. That is the information I have on that one.

**Senator BARNETT:** Is this all in the northern borders, in the Timor Sea and in that area?

**Ms Kelley:** Yes, it is.

**Senator BARNETT:** What about in the southern oceans?

**Ms Kelley:** No, there has been no reduction in that.

**Senator BARNETT:** It is only relating to—

**Ms Kelley:** It is related to the northern waters.

**Mr Pezzullo:** Senator, I should just add, in the same way that I amplified the remarks on passenger facilitation, that is a risk assessed view in terms of what we are expecting will happen in the northern waters. It is not just a series of numbers that have been plucked out of

thin air. We think there is a sustainable basis to reduce the funding but still maintain the integrity of our border vigilance.

The other measure that I made reference to that responded to your initial question about what constitutes the savings relates to aerial surveillance. I will ask Ms Kelley to address that issue now.

**Ms Kelley:** As Mr Pezzullo identified, savings of \$20.8 million over four years have been identified through our Customs and Border Protection discontinuing the use of the AMSA Dornier aircraft capability for aerial surveillance. I should clarify that AMSA will continue to have these aircraft for their purposes; it is about our use of those aircraft.

Aerial surveillance in Australia's north, where the threat from people smuggling and illegal foreign fishing is the highest, will be maintained at its present level. However, from 1 July there will be a reduction in aerial surveillance by 950 hours per annum.

**Senator BARNETT:** You are going to have to tell us what it currently is and then tell us what it is being reduced to. We have to go from A to B. We do not have all the figures in front of us. You are going to have to help us there.

**Ms Kelley:** I can give you the total hours that we have funded this financial year. That is for all aerial surveillance. It is 19,728 hours. It is reducing to 18,778 hours.

**Senator BARNETT:** Very good. Keep going.

**Ms Kelley:** The reduction in aerial surveillance of our use of the AMSA Dornier aircraft is by 950 hours per annum. This is in lower risk areas south of Cairns in the east and south of Port Headland in the west. The aerial surveillance hours previously provided by these aircraft will not be replaced by the use of alternative aircraft. We would note that this reduction is more than offset by a separate measure announced in the budget which provides funding over two years for an additional 2,215 aerial surveillance hours per annum. This measure is an extension of an earlier measure to combat the short-term rise in people smuggling and therefore terminates on 30 June 2013. As we always do, we will assess the need for ongoing funding post 30 June, based on our operational requirements, and if it is deemed to be required will be pursued through the usual budget processes.

**Senator BARNETT:** Who is undertaking that aerial surveillance if it is not the Dornier?

**Ms Kelley:** Surveillance requirements are met by aircraft already contracted to Customs and Border Protection and through the Royal Australian Air Force P3C aircraft.

**Senator BARNETT:** Is that separately funded through the P3 aircraft?

**Ms Kelley:** Yes, basically in terms of those total hours that is provided by aircraft that is contracted to Customs and Border Protection and through the RAAF.

**Senator BARNETT:** I want to know the square nautical miles that you cover at the moment under your existing program and then the areas that will be cut in terms of miles. You have given us the number of hours. We need to know the square miles, or square kilometres. They refer to it as nautical miles, don't they?

**Ms Kelley:** Yes, square nautical miles. This year it was 145 square nautical miles and next year it will be 140 square nautical miles.

**Senator BARNETT:** Is that because you have got this additional contract with the Royal Australian Navy for the P3s, is it, because they will be covering—

**Ms Kelley:** No, that reduction covers off the reduced hours, the 950 hours that we are reducing in terms of the Dornier aircraft.

**Senator BARNETT:** So 445 square nautical miles is going down to 140?

**Ms Kelley:** Yes.

**Senator BARNETT:** Is that based on the number of hours—the 19,728 down to 18,778?

**Ms Kelley:** Yes.

**Senator BARNETT:** I am happy for you to provide on notice further and better particulars regarding the contracting out of the P3s.

**Mr Pezzullo:** I can quickly address that. It is not contracted out as such because they are obviously assets. We have a joint agency arrangement with the Department of Defence. The Department of Defence runs an operation known as Operation Resolute which is the Defence contribution to civil maritime surveillance. As part of that operation Defence is required to provide a certain number of P3 hours and Armidale patrol boats, the ones that you referred to earlier that you have been on. With our assets the marine unit and other activities that we contribute that is jointly managed through the Border Protection Command, which is an agency managed on a day-to-day basis by my agency.

**Senator BARNETT:** Will they be undertaking that surveillance?

**Mr Pezzullo:** The Defence contribution to the Border Protection Command task, if you like, is managed through Op Resolute and there are no changes to those arrangements.

**Ms Kelley:** I should clarify that those surveillance hours are not only provided by those aircraft; there are also aircraft that are contracted separately to Customs and Border Protection.

**Senator BARNETT:** On notice, can you provide details regarding those other services?

**Mr Pezzullo:** Most certainly.

**Senator BARNETT:** I guess the question that we would have is: are there specific areas that will no longer be covered—and clearly there are some; there are five square nautical miles—or will there just be less surveillance of the same area, or both? Do you understand?

**Mr Pezzullo:** Yes, I do. I want to be a little bit cautious in how I respond because obviously we want a degree of unpredictability in our surveillance pattern so that the people involved either in people smuggling or—

**Senator BARNETT:** Sure, understood.

**Mr Pezzullo:** the importation of narcotics do not know exactly what our patrol patterns are. I think the best way to answer the question is that we will focus our surveillance on the higher risk areas, which at the moment with people smuggling and other issues tends to be in the northern waters. But unless Ms Kelley has got anything further to add I do not know that I would want to be much more specific than that.

**Senator BARNETT:** Okay, noted.

**Ms Kelley:** I think the only thing I would add is that we make decisions based on operational information, so if there is a higher risk area and it is not in the north then we will deploy assets to that area. An example of that has been what was Operation Begonia last year where there was the importation of a large amount of cocaine in a small craft.

**Senator BARNETT:** Has consideration been given to using unmanned aerial vehicles for aerial surveillance and, if so, can you provide information on them?

**Mr Pezzullo:** I might just need to take some advice on whether the Customs and Border Protection Service has looked at that as a technology class. I know in general whole-of-government terms, and I can refer you explicitly to the Defence white paper 2009 on which I have a little bit of knowledge—

**Senator BARNETT:** Do you have government knowledge?

**Mr Pezzullo:** There is a whole-of-government view that over time as certain Defence assets swap out for long-range maritime surveillance unmanned assets they will be available for civil maritime surveillance. That is a whole-of-government view expressed in the Defence white paper. As to whether our agency has looked at similar technology, I will ask Mr Perry to respond.

**Mr Perry:** We have done a series of trials independently and in concert with Defence of a number of unmanned technologies. More recently we conducted a trial of a UAV up in the Gulf of Carpentaria in the Torres Strait region. That aircraft provided very good, useful information about how those types of capabilities would contribute to the civil maritime security surveillance. There are plusses and minuses with it. We find with things like the Dash 8s that we can redeploy them very quickly. We can operate them very cheaply from remote areas. They are easy to support. The cost of UAVs is not substantially lower than the manned aircraft. You have just taken the man out of the airplane and put the operator into a remote area, so the cost effectiveness of that was very much on par with somewhat less flexibility than we were getting out of the Dash 8 aircraft.

**Senator BARNETT:** So you have not made a decision?

**Mr Perry:** We do not have any specific funding for it but certainly when it comes around to the next generation of our aerial surveillance contract they are the sorts of technologies we will be looking at, particularly the mix of what the manned and unmanned versions will be. We also work very closely with Defence looking at what technologies they have coming online, particularly an air project, Air 7000, which is looking at a high altitude UAV and how that might contribute.

**Senator BARNETT:** I am now looking at another area and that is the unauthorised arrivals in terms of those numbers. I assume you have got them there. If you have got the latest details on a piece of paper it would be good if you could just table it. How many unauthorised boats and people have arrived since, firstly, August 2008 and then, secondly, in the following calendar years: 2008, 2009, 2010 and 2011 to date?

**Mr Pezzullo:** I do not have before me the numbers since August 2008 per se, but I do have the breakdown of calendar years so I might have to come back to you on specifically the aggregate since August of 2008. But if I can just go through the calendar years first as you have requested, I will do year, number of boats and then passengers, excluding crew. I do not have the crew numbers.

**Senator BARNETT:** Thank you.

**Mr Pezzullo:** Calendar 2008, seven boats, 161 irregular maritime arrivals; 2009, 60 boats, 2,726 people; 2010, 134 boats, 6,535 people, 2011 year to date—and this is up until the latest arrival—

**Senator BARNETT:** Which was when?

**Mr Pezzullo:** Which was intercepted on 16 May, known as SIEV 249, the data for calendar year to date: 24 boats, 1385 people. What I need to fully and conclusively respond to your question, which I will need to take on notice, is in the 2008 number I will need to work out how many arrived after August 2008 in order to give you the number since August of that year.

**Senator BARNETT:** I thought you might have been able to give us a more updated figure. That was 16 May. Today is the 26th.

**Mr Pezzullo:** There have been no arrivals since the 16th. The last interception was 16 May.

**Senator BARNETT:** How many boats have arrived undetected to Christmas Island or to the Australian mainland?

**Mr Pezzullo:** I might either need to take that on notice or refer to Ms Kelley. If Ms Kelley has got that data she will answer it. Otherwise we will take it on notice.

**Ms Kelley:** I think we will have to take it on notice.

**Senator BARNETT:** Have any arrived on the Australian mainland over that period?

**Ms Kelley:** Since 2008? My recollection is that, yes, there have been but I—

**Senator BARNETT:** You will take that on notice and give us the details of the boat and the IMAs, excluding the crew. If you have got details regarding the crew, please provide them?

**Mr Pezzullo:** Is that since August 2008, just to be clear?

**Senator BARNETT:** Yes, it is. But let us do the same figures so we are doing from August 2008 and then I want calendar years 2008, 2009, 2010 and then 2011 to date.

**Mr Pezzullo:** On the same basis as the answers I gave.

**Senator BARNETT:** Yes, thank you. How many unauthorised boats have either been intercepted or arrived at Christmas Island, Ashmore Reef, Cocos Keeling Islands and how many near the Australian mainland?

**Mr Pezzullo:** I would have to take the breakdown on notice.

**Senator BARNETT:** Have there been any incidents where Customs officers have been injured or physically threatened during unauthorised boat interceptions and what were the nature of the incidents?

**Mr Pezzullo:** Not to my knowledge, but I will just check that with Ms Kelley as the head of the border enforcement program.

**Ms Kelley:** No.

**Senator BARNETT:** Is DIAC or its agencies or contractors required to inform Customs or any other agency if asylum seekers arrive in Australia with large amounts of cash or bullion? Do you get that advice from DIAC?

**Mr Pezzullo:** As Commissioner Negus and his team referred to in response to some of Senator Brandis's questions, there is a joint intelligence process on Christmas Island where

the analytical products of that joint intelligence process are shared amongst relevant agencies, including mine.

**Senator BARNETT:** Moving to staff, what is the total number of FTE staff employed by Customs?

**Mr Pezzullo:** The current staffing situation is as follows: our 2010-11 forecasted position, so the number of staff we think as at 30 June in average staffing level terms will be 5,320. That is our forecast position for 30 June, in about a month's time. That is denominated in what are known as ASL terms, average staffing levels.

**Senator BARNETT:** And 30 June last year?

**Mr Pezzullo:** At 30 June last year the actual ASL was 5,489.

**Senator BARNETT:** What is that difference?

**Mr Pezzullo:** Over the year, 169 is the projected reduction over the 12 months.

**Senator BARNETT:** Have you got the figure for 30 June 2009 with you?

**Mr Pezzullo:** Yes, I do. The actual ASL position for 2008-09 was 5,679.

**Senator BARNETT:** And 2008?

**Mr Pezzullo:** For the previous financial year—and then you are going to really test my memory because my table runs out here—was 5,842.

**Senator BARNETT:** Can you provide a breakdown of their salary bands on notice?

**Mr Pezzullo:** I would need to do that on notice. I am sorry, when you say 'salary bands', I will do that by classification and then we will advise what the salary ranges are for the classifications.

**Senator BARNETT:** I see from the PBS that the revised estimate for 2011-12 is 5,230; is that correct?

**Mr Pezzullo:** That is right. That is as per the PBS.

**Senator BARNETT:** Is that another 90?

**Mr Pezzullo:** That is the forecast reduction of 90, yes.

**Senator BARNETT:** Another 90 reduction?

**Mr Pezzullo:** Over 2011-12, yes.

**Senator BARNETT:** So you have got a reduction of 169 from the last financial year and then another reduction of another 90 through to the 2011-12 financial year?

**Mr Pezzullo:** That is right.

**Senator BARNETT:** Can you explain the decrease in those staff numbers and where they have been and where will they be removed from?

**Mr Pezzullo:** Over those two years in question, 2010-11 and 2011-12, there is a number of features there. In some cases functions have been referred off to other agencies. An excise function, for instance, is transferred to the Australian Taxation Office. But principally it has been about rationalising, if you like, the back office, the corporate operations area, trying to keep our profile and frontline services as high as possible. Rationalisation and improvements in our intelligence and targeting capability, where we are moving to higher end analytical

capability; there have been some staff savings achieved there. Generally speaking across the board it has been about attacking those corporate functions.

**Senator BARNETT:** I appreciate your feedback. It is a generic response and I understand where you are coming from. I am going to have to ask you to provide further and better particulars on notice and provide specifics as to exactly what areas these people come from—

**Mr Pezzullo:** I understand. I think we can update a previous answer to a question taken on notice which broke down last year's reductions.

**Senator BARNETT:** That would be good. How many staff do you have on Christmas Island?

**Mr Pezzullo:** I will refer that to Ms Kelley.

**Ms Kelley:** We have three Customs officers based on Christmas Island and we also have nine acting officers of Customs who are part-time people who work for us.

**Senator BARNETT:** Do you have three full time?

**Ms Kelley:** Three full-time Customs and Border Protection officers and then nine acting officers of Customs.

**Senator BARNETT:** What does that mean?

**Ms Kelley:** That means that they assist the full-time Customs officers with the various duties that are required at Christmas Island. They are people who actually live on the island and they are employed by us on a part-time capacity to assist.

**Senator BARNETT:** Those nine are all part time?

**Ms Kelley:** Yes.

**Senator BARNETT:** On notice can you provide details their role and their salary band?

**Ms Kelley:** I believe that we have previously provided that information in a question on notice, but we can check that—

**Senator BARNETT:** Alert the committee to that if you could on notice.

**Ms Kelley:** Yes.

**Senator BARNETT:** Regarding media management, what is the total number of staff employed in the media and communications unit within Customs?

**Mr Pezzullo:** I might just see if the relevant national manager has that information to hand. Otherwise I will take that on notice. I would prefer to take that on notice.

**Senator BARNETT:** When you do so can you provide a breakdown of their salary bands?

**Mr Pezzullo:** Yes, and I should say, as is the case with a number of agencies, we have got a combined media management unit and an internal communications unit, so we will provide a breakdown of the different levels of—

**Senator BARNETT:** When you say 'combined'—

**Mr Pezzullo:** It is a team that focuses on external communications, a media unit, to use the term that I think was used in your question. But they also are collocated and combined with an internal communications unit.

**Senator BARNETT:** If you can provide details, thank you. Can you advise also the protocols in place for a Customs spokesperson to comment on government policy or incidents within your portfolio. We would like a copy of the protocol.

**Mr Pezzullo:** I am happy to provide relevant documents on notice, but as a general matter of principle of course we do not comment on government policy. It is not our role to.

**Senator BARNETT:** If there is a protocol in terms of what you can comment on and what you cannot comment on, that would be appreciated. Are you happy to take that on notice?

**Mr Pezzullo:** I will indeed. There are obviously APS-wide guidance documents that we make available to our staff, but I will see if there are any particular documents that are specifically designed for our agency.

**Senator BARNETT:** Since November 2007 on how many occasions has the relevant minister's office instructed Customs spokespersons to make public comments? You might need to take that on notice.

**Mr Pezzullo:** I might seek some clarification as to what you mean by 'instructed'. There certainly is a discussion, as there is in every portfolio that I have ever been involved in, between media units, senior management and ministerial staff. I cannot recall an incident in the last two years that I have been in charge of the function where there has been an instruction as such. Consultation, engagement, discussions—lots. It would happen fairly frequently. But the term that you used was 'instruction', so I would seek some clarification on that?

**Senator BARNETT:** A directive, an instruction, an intention via paper, verbally or otherwise from the minister's office to a Customs officer to make a public comment. If you could take that on notice.

**Mr Pezzullo:** I will take it on notice.

**Senator BARNETT:** I am interested specifically in exactly what the occasion was; who was instructed and where the instruction came from; what were the topics of the instructions and/or advice from the minister's office and when that occurred?

**Mr Pezzullo:** I will take it on notice and I will look at it carefully. I am not sure that ministerial staff have got any authority to do those things. Just to be clear about your question, your question goes to the making of a comment or to not making a comment.

**Senator BARNETT:** To the making of a comment.

**Mr Pezzullo:** I will look at your question in detail.

**Senator BARNETT:** As to credit cards, are departmental credit cards provided to members of the media and communications unit?

**Mr Pezzullo:** I would have to check the detail of that.

**Senator BARNETT:** When you do could you check who has the cards, what is the expenditure limit, what expenses are placed on the credit cards and who authorises the expenditure?

**Mr Pezzullo:** If I am able to make that available, I will.

**Senator BARNETT:** Can you provide a summary of the expenditure items of those cards for 2009-10 and then 2010-11 to date?



**Mr Pezzullo:** If that is able to be provided, I will make it available.

**Senator BARNETT:** Then the estimated by way of departmental credit card expenditure for the next financial year, if you have got that information?

**Mr Pezzullo:** I am sorry, on credit cards or just generally?

**Senator BARNETT:** No, credit cards.

**Mr Pezzullo:** I am not sure that we forecast in that way, but if I have got any data that goes to that I will make it available if I am able to.

**Senator BARNETT:** Additional expenses that have been met directly by the department in the media and communications unit for entertainment and hospitality; I am sure you would have a figure for that.

**Mr Pezzullo:** Those things are very carefully controlled so I cannot imagine that there would not be data on that, so if there is data that I can make available I will.

**Senator BARNETT:** If you could provide the further and better particulars that would be good. Regarding the vessels, the Customs and Border Protection Command vessels are currently patrolling northern and southern waters of course. How many patrol days have been allocated for the vessels operating under Border Protection Command? We would like to know if those patrol days have increased or decreased over the last 12 months.

**Mr Pezzullo:** In the forthcoming budget year?

**Senator BARNETT:** Let us know for this year and then in the coming year.

**Mr Pezzullo:** I will ask Ms Kelley to take that.

**Ms Kelley:** The Customs and Border Protection marine unit has 11 vessels, which includes the eight Bay class vessels, the ACV *Ocean Protector*, the ACV *Ashmore Guardian* and the ACV *Triton*. As at 30 April this year, the Bay Class vessels had completed 1,951 patrol days. This is 49 days or two per cent less than the planned 2,000 days to 30 April. The reduction in the patrol days is due to a combination of unscheduled maintenance requirements and some crewing issues. The Bay class vessels—

**Senator BARNETT:** And they are getting older.

**Ms Kelley:** Yes, that is what I was just about to say—

**Senator BARNETT:** I was on one.

**Ms Kelley:** They are reaching the end of their useful life, so maintenance is becoming more of an issue for us. The *Ocean Protector* has undertaken 167 patrol days. This is seven days more than the 160 planned days and we expect to achieve 209 patrol days, which is nine days more than the 200 patrol days in the PBS. The *Triton* has undertaken 223 patrol days, which is 13 days more than the 210 that were planned, and we expect to achieve 253 days, which is 13 days more than the PBS target of 240. The *Ashmore Guardian* has undertaken 279 patrol days, which is three days less than the 282 planned days, but we expect to achieve the PBS target of 330 station and steaming days for this year. The combined total sea days for the 11 vessels is 3,170 days. Our current estimate is that we expect to achieve a total of 3,177 days this year.

**Senator BARNETT:** Has there been a shift from the southern waters to the northern waters?

**Ms Kelley:** I will just get Mr Perry to answer that question.

**Mr Perry:** We were funded for 200 sea days for *Ocean Protector* this year, 120 of which were to be conducted in southern waters and 80 in the north. Because of the rate of people smuggling activity, one of those southern ocean patrols had been shifted from a southern patrol to a northern border patrol.

**Senator BARNETT:** Is that it?

**Mr Perry:** That is it, yes.

**Senator BARNETT:** For the next 12 months is there a plan to shift more patrol days from the southern waters to the northern waters?

**Mr Perry:** That will depend on the operational requirement and where the highest risk is.

**Senator BARNETT:** Is that an assessment yet to be made?

**Mr Perry:** Correct.

**Senator BARNETT:** I want to ask now about the update on these Bay class vessels which are going to be replaced with Cape class patrol vessels. I think the tender closed 22 October last year. I am advised that the evaluation was expected to be completed by 31 December. Can you advise at what stage is the tender process and is there an estimated cost of Cape class vessels at this stage?

**Mr Pezzullo:** There is probably very little that we can put on the public record because we are really at the culminating point. But if there is anything that we can add, I would ask Ms Kelley to put that on the record.

**Ms Kelley:** We have commenced our parallel negotiation phase with two companies. We are in the stage of finalising those negotiations and we expect that we will be able to announce the preferred tenderer very shortly.

**Senator BARNETT:** Are we talking about a purchase or a lease?

**Mr Pezzullo:** That is a purchase.

**Senator BARNETT:** What is the manufacturing time to get them on the water?

**Mr Pezzullo:** The current program is to have the first vessel available to conduct trials in the early part of 2013. At this stage it looks like being somewhere around March, April 2013. The aim is to get the last of the eight that we are buying in service in August 2015.

**Senator BARNETT:** Will you bring them on over that period of time? You mentioned 2013; can you give us a time frame?

**Mr Pezzullo:** The program is to have the first vessel as a lead vessel for a six-month trial period so we can iron any wrinkles out of that. Then we go basically into a production cycle that will deliver a boat every four months up until August 2015.

**Senator BARNETT:** In terms of the costs, is that something you are negotiating with the two companies?

**Mr Pezzullo:** That is correct.

**Ms Kelley:** That is right.

**Senator BARNETT:** Are you then going to negotiate and there will be one preferred company and then you will defer the negotiations; is that right?

**Mr Pezzullo:** We are in that process of final negotiations now.

**Senator BARNETT:** As to the tenders, I just want to highlight that on the AusTender website there are a number of contract notices and standing offer notices for Customs. I actually have them here with me. Thirty contract notices were found that state, and I quote, 'temporary personnel services', some with short contract periods and others quite lengthy. The total cost of the temporary personnel services is approximately \$6 million. I have got a contract note here. It states the category of law enforcement from one contract period 1 July 2010 to 30 June 2011, the contract value of \$1.1 million. There is another one, contract notice temporary personnel services from 1 February 2011 to 30 June 2011, a contract value of \$499,000. Is there a reason why Customs needs to employ \$6 million worth of temporary personnel services?

**Mr Pezzullo:** Without knowing the detail of each individual contract—they sound like short-term engagement contracts, consultancies and the like. If they are on the AusTender website it means that we are going through a procurement process and those are the dollar values as you have read out. But without knowing what each individual line item goes to, it is hard to work out what the purpose is.

**Senator BARNETT:** But it raises the question that you are under enormous pressure as a result of these staffing cuts and that you are going to other places, outsourcing them via the AusTender website, and \$6 million worth of temporary personnel services is a lot of money—

**Mr Pezzullo:** It is possible—

**Senator BARNETT:** in the context of your budget. It seems that you are stretched due to your funding and staffing cuts.

**Mr Pezzullo:** The premise of your question or the assertion would be right if we were doing short-term tendering for all Public Service functions. If, however, we are purchasing on a short-term basis IT expertise, legal expertise, HR expertise, property expertise, it really does depend on the nature of the function. But it sounds to me like they are in-line contractors and/or short-term consultancies as opposed to, if you like, offsets—I can understand the premise you are trying to get to—for core staff which we have otherwise lost. We are not in that position. We are managing our budget within the parameters that the government has laid down. We are focusing our resources on higher risk areas using intelligence and risk leads. If we are purchasing in the short-term labour market the kinds of services I think you are describing, it would almost certainly go to specialised expertise that you actually do not want in your core labour force.

**Senator BARNETT:** Well, yes and no. Can I ask you to review the contracts?

**Mr Pezzullo:** I am happy to do that.

**Senator BARNETT:** There are 30 of them. When you do I would like to know if \$6 million for 30 contract notes is normal in terms of outsourcing for temporary personnel services. I would like you to do an analysis of the last couple of years and tell me whether \$6 million is normal in terms of contracting out for those types of services over those last few years?

**Mr Pezzullo:** I am very happy to look at that. Instinctively \$6 million in a \$1.1 billion cash business actually sounds pretty modest, but I will look at the detail.

**Senator BARNETT:** There are two other areas. The SIEV 221 tragedy occurred on 15 December 2010. You are aware of that?

**Mr Pezzullo:** Yes.

**Senator BARNETT:** The question is why was that vessel not picked up by the radar? Was there a radar system function on that or was it dysfunctional?

**Mr Pezzullo:** All of those matters are currently before the WA coroner who is undertaking an inquest in effect as the Commonwealth coroner in this instance because it is Commonwealth external territory. That inquest is underway. I do not propose to go to any matters of detail at all. That very question has been canvassed in the inquest and I certainly do not intend to undertake parallel giving of evidence.

**Senator BARNETT:** Understood. The government has said on a number of occasions that the minister's response to the Productivity Commission report of 2009 on Australia's anti-dumping system would finally be revealed as part of this year's budget process. Given there was, again, no response announced as part of the budget announcements, can you update us on when we can now expect to see it?

**Mr Pezzullo:** I might have to take that in two parts. If Mr Mann can add anything as a public official, he will. If it is a question of the government's response or a representation on behalf of the minister, I might have to defer to Minister Ludwig, but we might start with Mr Mann.

**Mr Mann:** I think the government has announced that in order to take into account any developments that are currently underway—there is a number of pieces of legislation that have been introduced into parliament. In finalising its position on the Productivity Commission report I think the government has indicated it wishes to consider the analysis from the inquiry that is currently before the Senate Economics Legislation Committee on the bill introduced by Senator Xenophon as well as the views of state and territory governments. I think the way this has been handled is to avoid making decisions and then find that there are other views being put—why not take them all into account?

**Senator BARNETT:** When can we expect to see the government's response?

**Mr Mann:** I believe that is a matter for—

**Mr Pezzullo:** That is really a matter for ministers, Senator.

**Senator BARNETT:** With respect, Mr Mann, I appreciate what you are saying but you have not really told us anything of great import. We have a Senate committee inquiry—

**Senator Ludwig:** There is no need to insult him. It is a matter for government. The government will determine the timing.

**Senator BARNETT:** I have got one final question. How many staff are currently employed in the Trade Measures Branch; what were the total staffing numbers in the branch for each of the years 2007, 2008, 2009 and 2010; and can you provide a breakdown of the numbers at each staffing level for each of those years?

**Mr Mann:** I think we do have a question on notice from the inquiry to that, but I can briefly say that at the beginning of this financial year, 2010-11, the funded level was 29 FTE. We currently have 33 staff. I would like to take on notice the remainder of your questions. I

would like to add, though, that we have budgeted to increase that staffing level to 45 in the coming year.

**Senator BARNETT:** Forty-five staff or 45 FTEs?

**Mr Mann:** We are recruiting up to 45 staff.

**Senator BARNETT:** Thank you very much. Thank you, Chair.

**CHAIR:** The coalition have no more questions to Customs and Mr Xenophon has about 10 minutes. Mr Pezzullo, do you want to come back at eight o'clock or little bit later—given your commitments?

**Mr Pezzullo:** Thank you for indulging me earlier in the discussion we had. I will take a temporary break for my dinner engagement and I will come back. I would rather not convey an apology to my host for this evening.

**CHAIR:** No, I understand that. I do not know what Senator Xenophon's commitments are. We cannot track him down. He must have left the building to go and get some dinner; otherwise I was going to get him up here now.

**Mr Pezzullo:** I am here at the committee's convenience.

**CHAIR:** If Senator Xenophon has other committee commitments, he might do those at eight o'clock and come to us a bit later.

**Mr Pezzullo:** Chair, I am entirely at your disposal. Whatever suits the convenience of the committee.

**CHAIR:** Could you just let Margaret know how we could contact you over your next engagement. Otherwise, expects to be back here at 8 pm.

**Mr Pezzullo:** Chair, if I may. I do not have know how long this will take. Senator Barnett asked about detected or undetected arrivals. We could probably dispose of that very, very quickly, if that is okay.

**CHAIR:** Yes.

**Mr Pezzullo:** Then I can return for Senator Xenophon's questions. I am not sure I will be able to assist him if he is going down a particular line of inquiry that he put to Commissioner Negus, but I am happy to come back and tell him that directly.

**Senator Ludwig:** We think we know what he is going to ask.

**Mr Pezzullo:** But it is not for me to presume that, so I will come back.

**CHAIR:** We might be able to talk to him and see if he wants to put his questions on notice. We will try to contact him and contact you, because I know you have a very important engagement.

**Mr Pezzullo:** Thank you. If we can just deal quickly with the detected and the undetected arrivals.

**CHAIR:** Yes.

**Ms Kelley:** Since January 2008 at Christmas Island there have been 65 detected arrivals and six undetected arrivals, which total 71 arrivals; at Ashmore Island there have been 89 detected arrivals and one undetected, which is a total of 90 arrivals; on the mainland there have been six detected arrivals and one undetected arrival, which is a total of seven; and at

other places where we have found people, such as Browse Island at Scott Reef, there have been 55 detected arrivals and two undetected arrivals, which is a total of 57 arrivals.

**Senator BARNETT:** On notice could you provide further and better particulars regarding those, including the dates? Could you indicate the boats and the number of people on the boats plus the crew. Could you provide the details?

**Ms Kelley:** Did you want the crew numbers?

**Senator BARNETT:** Yes, the number of people, including the crew numbers. I have two other questions which you can take on notice. I would like up-to-date figures for the amount of sea and air cargo that is physically inspected and examined. I would like those same figures for the last four years and the effect of budget cuts on the amount of cargo screened, if any. I would like you to provide up-to-date figures for the illicit drugs intercepted at the border. I would like to know whether detections have gone up or down over the past 12 months.

**Mr Pezzullo:** We will take all of that on notice.

**Senator XENOPHON:** I want to go to the case involving the prosecution and conviction of Allan Kessing, a former Customs officer, in relation to reports he prepared. He was charged with breaching section 70 of the Crimes Act. You are well familiar with the case and well familiar with my interest in this matter. Recently Chris Merritt reported in the legal section of the *Australian*:

THE Australian Federal Police and the Customs Service have closed ranks to prevent scrutiny of apparent flaws in the police investigation of ... Allan Kessing.

In particular, there was the issue of the communications that Customs officer Zoe Ayliffe had with the journalist Norm Lipson. Are you familiar with the matter?

**Mr Pezzullo:** Yes, I have seen the media reports.

**Senator XENOPHON:** If we can just cut to the chase, why won't Customs reveal whether Zoe Ayliffe has been interviewed by the AFP?

**Mr Pezzullo:** I will cut to the chase but I want to preface my response by saying that I watched Commissioner Negus's evidence earlier today very carefully and I have absolute nothing to add to that.

**Senator XENOPHON:** You may have something to add. I have asked you a direct question.

**Mr Pezzullo:** I am saying to you that I have nothing I wish to add. In relation to the relevant information that arose in Mr Merritt's recent reporting that there allegedly were—and I do not know the facts—several sources within Customs, one or both of which might have been able to disclose this document, I heard Commissioner Negus very clearly state that, after the matter was referred from my agency to his at the time, on 1 June 2005, whilst the referral letter was not passed on to the defence, the material matters that related to the alleged—

**Senator XENOPHON:** Passed on to what? Passed on to defence?

**Mr Pezzullo:** As I heard his evidence to you—and I listened to it very carefully and I read his statement—he said the referral letter that triggered the initial investigation of 1 June 2005 was not given to the defence but the material matters described in that letter were. It was a brief to the defence both in relation to what Mr Lipson had been told and what Mr Chulov had been told. I do not have anything further to add to the commissioner's evidence.

**Senator XENOPHON:** You cannot or will not say whether Ms Ayliffe has been interviewed by the AFP?

**Mr Pezzullo:** I have nothing further to add, Senator.

**Senator XENOPHON:** I have more questions to ask on this. I am just trying to understand. Do you know whether Ms Ayliffe has been interviewed by the AFP?

**Mr Pezzullo:** As a matter of fact, even if I did, I defer to the commissioner's evidence. He said that an investigation plan was put in place.

**Senator XENOPHON:** You are a separate agency.

**Mr Pezzullo:** I understand that. The officer is in my agency. But the conduct of the investigation was a matter for the AFP and I am not going to gainsay his evidence.

**Senator XENOPHON:** I respectfully disagree. Let us go back a step. If an officer has been interviewed by the AFP in relation to a breach of section 70, is that something you would be aware of?

**Mr Pezzullo:** If it occurred at the time of the investigation. I was not a member of the agency.

**Senator XENOPHON:** Is that something you would be made aware of?

**Mr Pezzullo:** I could be made aware of it.

**Senator XENOPHON:** But, as a matter of course, if the AFP interviewed a Customs officer in relation to an AFP investigation, is that something that you would be made aware of?

**Mr Pezzullo:** Ordinarily you would expect the senior leadership of the agency to be aware of that, yes.

**Senator XENOPHON:** So it is the standard protocol, the standard procedure, that you would know that, as you would in any other department?

**Mr Pezzullo:** I would find it hard to think of a circumstance where that would not occur, but it is possible.

**Senator XENOPHON:** Does that mean that, whether Ms Ayliffe was interviewed or not by the AFP, would be something that would be within the knowledge of the senior management or senior executives of Customs?

**Mr Pezzullo:** Not of me personally but I am sure that it would be more generally, noting that these matters occurred some time ago.

**Senator XENOPHON:** Whether a person was interviewed or not by the AFP in an investigation of this sort is something that would be within the purview or within the knowledge of senior executives of the AFP?

**Mr Pezzullo:** Potentially and probably.

**Senator XENOPHON:** Are you able to say whether you have any knowledge of whether there was an interview by the AFP of Ms Ayliffe?

**Mr Pezzullo:** As I said in my earlier evidence, I do not have any direct personal knowledge of it because I was not in a senior position at the time.

**Senator XENOPHON:** I know you do not. I am not asking about your direct personal knowledge. Are you aware whether Ms Ayliffe was interviewed by the AFP?

**Mr Pezzullo:** I personally do not know. I have said that several times.

**Senator XENOPHON:** Will you take on notice whether Customs is aware that Ms Ayliffe was interviewed by the AFP in relation to the Kessing matter?

**Mr Pezzullo:** What I am willing to take on notice—and I will take advice on this—is the extent to which I can disclose particulars of the AFP investigation. Whether they interviewed person X or Y, I will take some advice on that. If I am then able to respond to your question, I will do so on notice.

**CHAIR:** I think what Mr Pezzullo is saying is there might be someone in Customs who may well be aware the AFP interviewed that person, but it might not be able to be public knowledge that the interviewed even occurred. Knowledge that it occurred would reveal that. Within those constraints, are you happy for that question to be taken on notice?

**Senator XENOPHON:** I am not happy at all, Chair. I am grateful for your assistance. Let us go to general policy principles here because I agree with Mr Kessing: this whole thing is like a septic tank. From a general policy point of view, what harm would there be in disclosing the nature of the information I have requested? Leave aside the question of the Kessing case and Ms Ayliffe. If there has been an investigation about a section 70 matter—whether or not questions have been asked of a particular Customs officer, and the matter has been dealt with in the courts and Commissioner Negus considers the case is closed, even though I disagree with him—what is wrong with advising whether the AFP has interviewed a Customs officer? From a public policy point of view, how would that prejudice Customs or anything else for that matter?

**Mr Pezzullo:** In general terms, going back to our exchange a moment ago, in the ordinary course such an interview would be made known to the senior leadership of the agency. I accept that proposition. I am willing to take on notice whether I am in a position to put on the public record who—in this case, Ms Ayliffe—the AFP investigated. This is a general matter that I want to get some advice on, including by consultation with my partner agency, the AFP. If there is an ability for me to disclose that and, through a clearance process, I can get agreement to that then I am willing to put a response to your question on notice.

**Mr Wilkins:** I do not know the answer to the question, but there may well be considerations: for example, around privacy in that hypothetical case; forget about this particular case.

**Senator XENOPHON:** How so?

**Mr Wilkins:** If the AFP is investigating or questioning somebody and the media is going to make a lot out of this and put that person's identity before the public in some way then there may be a legitimate concern. I am not saying there would be, but you asked me hypothetically about considerations. Privacy is one.

**Senator XENOPHON:** Mr Wilkins, if a person's identity is already out there and it is narrowed down to a question of whether that person was interviewed by the AFP—

**Mr Wilkins:** You just asked a hypothetical question and I am giving you a hypothetical answer. Privacy could be one consideration in that sort of situation. I am not saying it is, but it



could be. I do not know the facts of the case. There may be other considerations. Off the top of my head I cannot think of them, but it would be sensible for Mr Pezzullo to at least take some advice.

**Senator XENOPHON:** I will not pursue it any further. I have a final question in relation to this is. I appreciate you taking note of Commissioner Negus's evidence earlier today. When Mr Kessing asserted that he disclosed the contents of those reports for which he was charged and prosecuted—although he continues to maintain his innocence in relation to the charges laid against him—Commissioner Negus effectively said, 'We didn't investigate it.' Given that was a Customs document and that Mr Kessing said to the *Australian* that that prima facie involves a potential breach of section 70 of the Crimes Act, what did Customs do when you heard about that?

**Mr Pezzullo:** I need to be very clear because I listened to the commissioner's evidence quite—

**Senator XENOPHON:** In September 2009, Mr Kessing alleged that he went to then shadow minister Albanese's office, discussed the contents of the report and showed a report to an adviser of then shadow minister Albanese. That report was taken out of the room for a while and, on the face of it, that would be a breach of section 70—a prima facie breach, but whether there are defences is another issue. He has admitted that and he went public on it. Would Customs be concerned about that and request that the AFP investigate it? Did you do so?

**Mr Pezzullo:** No. As Commissioner Negus said, his agency, which ordinarily looks at these kinds of disclosure issues, gave consideration to that matter and for the reasons that he outlined—

**Senator XENOPHON:** No, let's not go to the AFP. I want to know if you are concerned. If you are concerned that there has been a breach of section 70 concerning one of your documents or one of your reports, wouldn't you make a complaint to the AFP about that?

**Mr Pezzullo:** I think you are now asking me a hypothetical question. Ordinarily, in a case where there had not been an investigation, there had not been a conviction and that conviction had not been upheld on appeal, we might take a particular view. But in this case all of those conditions—

**Senator XENOPHON:** Mr Kessing was convicted under section 70 for giving information to Mr Chulov from the *Australian*.

**Mr Pezzullo:** To the journalist, yes.

**Senator XENOPHON:** This is a separate offence. This would be subject to a separate indictment, wouldn't it?

**Mr Pezzullo:** Hypothetically you asked me whether we took any action.

**Senator XENOPHON:** I am not being hypothetical about it.

**Mr Pezzullo:** We noted the media reports at the time and it is a matter for the AFP to take the matter forward. You heard Commissioner Negus's evidence today.

**Senator XENOPHON:** Isn't it a matter for Customs to say.

**Mr Pezzullo:** No.

**Senator XENOPHON:** Aren't you the complainant in this?

**Mr Pezzullo:** No. We are very concerned about the security of our documents. We are very concerned about disclosure of our documents. In the particular case you are asking about, there has been an AFP investigation, a conviction and an upholding of that conviction—

**Senator XENOPHON:** I am sorry, Mr Pezzullo; we are talking at-cross purposes here.

**Mr Pezzullo:** I do not think we are.

**Senator XENOPHON:** I think we are, because we have a situation here where it is a separate set of circumstances. Prima facie it is a separate offence yet Customs sought not to take that up with the AFP. That is the case, isn't it? You did not want to make a complaint about a separate offence.

**Mr Pezzullo:** We did not make a complaint. That is a factual answer to your question.

**Senator XENOPHON:** Can you give a reason as to why you did not make a complaint when, prima facie, this man is confessing to an offence under section 70?

**Mr Pezzullo:** I have no basis of knowing whether this was a separate disclosure that this former officer had made, whether it was—

**Senator XENOPHON:** Well, it is. He said he went to—

**Mr Pezzullo:** But whether that was a further one—

**Senator XENOPHON:** If you look at the information for which he has been convicted, that has been completely answered.

**Mr Pezzullo:** The answer to your question is: no, we did not look behind that. He has already been convicted for the disclosure to the journalist, which you have referred to. We made a judgment that there was no need to further pursue the matter. If the AFP, who conducted the original investigation, felt they needed to take it further, they would have.

**Senator XENOPHON:** Finally, isn't it the case that by Mr Kessing disclosing that he went to shadow minister Albanese's office and showed them the report—provided them with the report—and that other people had access to the report in itself have led to a train of inquiry that you have not pursued which could have indicated that the conviction against him in the first place was not a safe one?

**Mr Pezzullo:** I do not have any—

**Mr Wilkins:** Mr Albanese did make a statement in parliament to say that he dealt with the documents appropriately, as far as I can recollect. I am sure your office—

**Senator XENOPHON:** I am not having a go at Mr Albanese or his office—

**Mr Wilkins:** I understand that; I am just not leaving it unsaid, that is all.

**Senator XENOPHON:** By Mr Kessing coming forward with that information, which you have chosen not to investigate or to make a complaint about, it may—

**Mr Pezzullo:** We do not investigate disclosure offences under the Crimes Act; we refer those to the AFP. We did that on 1 June 2005, as I indicated—

**Senator XENOPHON:** Not in relation to when someone has put their hand up saying, 'I gave these'—

**Mr Pezzullo:** I am not sure that we would just keep referring the matter over and over again every time an officer or former officer came forward saying that they have disclosed it to that person or this person. The AFP has dealt with the matter based on the original referral of 1 June 2005.

**Senator XENOPHON:** Chair, I have some questions of the Attorney-General's office later on tonight about this.

**Senator TROOD:** I want to take you and your officers to something slightly different, which is about some of the provisions of the Customs Act, more particularly the tariff concession system. You are no doubt very familiar with the system, Mr Pezzullo. Some concerns have been raised with me about aspects of the operation of this system in relation to TCOs being made for goods that are actually produced in Australia; of local manufacturers suffering loss of business as a result of some TCOs being made; of consequent loss of consolidated revenue to the Commonwealth; of, perhaps, suggestions of deliberate fraud; and of, perhaps, suggestions of criminal activity in relation to TCOs. My first question is: can you tell me whether or not you have had any reason to review the operations of the TC system?

**Mr Pezzullo:** Before I ask Mr Mann to respond with any specific detail he wishes to put before the committee—and you may not wish to answer this—do you have specific allegations or specific matters that pertain to actual instances of the matters you have described?

**Senator TROOD:** I have some specific information, but I do not propose to reveal that here this evening.

**Mr Pezzullo:** I note that, Senator.

**Senator Ludwig:** The difficulty is that you have made a broad, unsubstantiated allegation on the public record which could potentially be damaging. Now you indicate that you do hold information which may reveal potentially an offence against the Commonwealth and that you intend not to pursue it or hand it to the relevant authorities, as far as I can gather. They may not be the facts, but it does seem that that is where we are heading. So, before we tip ourselves too far into this, I ask you to exercise caution. If you have information about any relevant offence, then you should, in my view, always refer it to the relevant authorities so that they may investigate.

**Senator TROOD:** Thank you, Minister. I am more than happy to bring these instances directly to the attention of Mr Pezzullo and his officers, but I do think I can ask some general questions about the operation of the scheme which will not embarrass any particular individual and nor, I think, will they embarrass the Commonwealth in relation to particular allegations.

**Senator Ludwig:** I do not object at all to you asking general questions here about the budget or about any matter that Customs may be able to respond to. My issue is your opening statement, which, rather than being a question, highlighted a disclosure of facts unknown to me that did put me on notice. I might have a look at the transcript to see specifically what you said, but it did create a concern in me.

**Senator TROOD:** I am delighted that I have done that because in fact it does raise some matters of concern. They are matters that I think are serious and they are matters that I think Customs should take seriously. I am very happy to detail the basis upon which I think those

concerns should be taken seriously, but I think at the moment we can deal with some general questions in a way which avoids any further embarrassment or, indeed, any further allegations with regard to—

**Senator Ludwig:** My comment was more directed at you, Senator, in the sense that, if you have in your possession information which should be made available which discloses an offence, quite frankly I would urge you always to pass it on to the relevant authorities. If that is not what you said in your opening statement, I withdraw my comment.

**Senator TROOD:** I heed your warning.

**Senator Ludwig:** I do not mind embarrassment to Customs—or to myself, for that matter. That is not my concern.

**Senator TROOD:** I do not intend to embarrass you, Minister, at least so far as I know. Mr Pezzullo, can you tell me whether or not TCOs are made for goods which local industry is producing or is actually capable of producing?

**Mr Pezzullo:** In noting the minister's caution, I will ask Mr Mann to respond, but I will caution all the officers at the table to avoid discussion of specific allegations or specific matters, which I think you have indicated you would prefer to do. I would make a general comment to the committee and to you in particular, Senator Trood, that if you do have specific matters that you feel should be brought to our attention—which, as I heard your question, potentially go to a defrauding of the Commonwealth—obviously we would be very interested to receive any information, which of course we would treat with the utmost confidence. Within those parameters, I will ask Mr Mann to respond.

**Mr Mann:** At a general level, we do include examining TCOs as part of our compliance assurance program. I am aware, though I do not have the details here tonight, of some instances where we have found revoked TCOs still being accessed, if you like. I can provide further particulars on notice about that. But I am not sure that those are the same instances that you may be aware of, so we certainly would be interested in any further information you have.

**Senator TROOD:** I am happy to draw that to your attention, but what I am exploring here is the principle. My understanding is that TCOs are designed where there is an absence of local industry capability. So my question, which I repeat, is: are there any circumstances where there might be an exception to that principle?

**Mr Pezzullo:** Perhaps the best way for Mr Mann to respond is with a few general words on the policy purpose of the TCO scheme, and then maybe we can take it from there.

**Mr Johannes:** The tariff concession scheme, as you have properly identified, provides for an exemption from duty where there is no local manufacturer of a good.

**Senator TROOD:** I understand that.

**Mr Johannes:** The process by which a person applies for a TCO and it is considered involves the publication of the application and a period of time for parties to notify their interest in that application process. In an application process, an applicant has to show that they have made reasonable efforts to identify whether there are other local manufacturers who can manufacture the good.

**Senator TROOD:** That is helpful, but—

**Mr Johannes:** But the process does not guarantee that a decision in all cases to grant a TCO will not lead to a decision which has been made where in actual fact there is a local manufacturer.

**Senator TROOD:** So, in your view, it is consistent with the operation of the scheme for a TCO to be granted even though there may be a local manufacturer of an item?

**Mr Johannes:** There is always a potential risk that that could occur.

**Senator TROOD:** You seem to be putting it on the basis that there may be by inadvertence the issuing of a TCO where there are in fact exists a local manufacturer.

**Mr Johannes:** That is correct.

**Senator TROOD:** What I am seeking from you is an understanding as to whether or not the scheme is primarily designed to deal with circumstances where there is no local manufacturer and, were it to come to your notice that there is a local manufacturer, that in fact a TCO should not be issued.

**Mr Johannes:** There is process for review of TCOs where it is subsequently established that the basis upon which the granting of the TCO was made was invalid.

**Senator TROOD:** Which is that there is no local manufacturer?

**Mr Johannes:** That is correct.

**Senator TROOD:** So the scheme operates on the principle that there is no local manufacturer?

**Mr Johannes:** That is correct.

**Senator TROOD:** Were it to come to your attention that there is a local manufacturer then, at least hypothetically or theoretically—that is to say, as the scheme operates—the TCO should be revoked. Is that correct?

**Mr Johannes:** There is a process for review and revocation of a TCO.

**Senator TROOD:** That is helpful. Thank you very much.

**Mr Mann:** If I could add to that, in the last year or so we did take steps to have applicants make greater efforts to determine that there is no Australian manufacturer, so I think we are cognisant of the situation that you are talking about. We have taken steps to try to ensure that the chances of issuing a TCO where there is a domestic manufacturer are lessened, but, as Mr Johannes said, it is possible. If it came to our knowledge we would review that and potentially revoke the TCO.

**Senator TROOD:** Following this line of discussion, will you revoke a TCO of your own volition—that is to say, if you discover that there is a local manufacturer—or do you work on the principle that a revocation can only take place if there is a complaint from local manufacturers? There might be someone who puts their hand up and says, 'Hang on a minute; I can do this.' Unless somebody raises their hand and draws your attention specifically to a capability, you are not interested.

**Mr Johannes:** In the circumstance where it is brought to our attention, that would be a clear situation, but there is a residual capacity to review a TCO. We do conduct reviews of TCOs and we have conducted reviews of TCOs in recent times. Where we consider that the

TCO may be ambiguous or may be capable of misinterpretation, those TCOs have been reviewed and revoked.

**Senator TROOD:** A TCO is granted for a period of time or a period of events, I assume—is that right?

**Mr Johannes:** That is my understanding.

**Senator TROOD:** During the period through which a TCO is granted, is there typically a review or not?

**Mr Johannes:** Sorry, my understanding is that a TCO, when granted, stands until reviewed and revoked. There are different schemes under which industry can seek exemptions from duty. There are a range of different schemes, some of which are for special purpose and some of which are more general.

**Senator TROOD:** But typically, if a TCO is granted then it will remain granted, as it were, for the life of the TCO.

**Mr Johannes:** That is correct.

**Senator TROOD:** You do not typically investigate a TCO once it has been granted, just to do a kind of probity check or anything like that? Is that correct? I understand that that might be very onerous activity. This is not a criticism; I am seeking to understand how you operate the scheme.

**Mr Johannes:** The area of TCOs has been more recently the subject of focus. We have undertaken, as Mr Mann indicated, some compliance activity around recently revoked TCOs. So we have focused on reviewing existing TCOs, particularly in relation to the issue of ambiguity and potential revenue leakage. There have been TCOs which have been revoked and we have undertaken compliance activity in relation to that. This is an area of potential focus for us for the coming financial year.

**Senator TROOD:** When you say 'potential focus' do you mean that you are concentrating on the recent abuse of the scheme?

**Mr Johannes:** The recent compliance activity has given rise to a reasonable concern that this is perhaps an area which we need to focus more attention on. We were already focusing attention on reviewing existing TCOs as part of a quality assurance process. As a result of the degree of non-compliance, which has been found in relation to the revoked TCOs, as a natural consequence, we are looking at it more closely.

**Senator TROOD:** You use the term 'ambiguity' about whether a TCO should be granted. The ambiguity could relate to a great deal of things of course but one of the things it could relate to is some uncertainty as to whether a manufacturing capability exists around the country. Can you tell me whether you typically, usually, as a matter of principle, seek to go to any of the trade organisations or the industry organisations as a means of getting some sort of clarity as to whether capability exists?

**Mr Johannes:** We do that with the original application process.

**Senator TROOD:** So you generally do go to trade networks et cetera and try to clarify whether anybody, as part of a trade association –

**Mr Johannes:** And publicly available information through the internet and other sources.

**Senator TROOD:** Consulting with the industry body is a usual part of the way in which you do business. Is that fair?

**Mr Johannes:** That might be overstating the case. We undertake independent inquiry but in the time frames that you are talking about it is not what we would call a forensic inquiry. We look to the quality of the application. The process provides for the publication of the notice at the end of a prescribed period and then there is another prescribed period whereby any party can object to the grant of the TCO.

**Senator TROOD:** I see. So it is an intermittent process—perhaps even haphazard—in terms of consulting with industry.

**Mr Johannes:** The process is designed to place some onus on the members of the Australian industry. Notification of the application for a TCO is through public notice. There is a 30-day period and then if the application is justified a decision to grant the TCO is made and people then have a prescribed period by which they can lodge an objection.

**Senator TROOD:** Does this scheme have a value? Does it have an assigned program value to it?

**Mr Johannes:** I will just confirm the numbers but I think it is approximately \$1.5 billion.

**Mr Pezzullo:** I am assuming—and I will have this checked—that we project the likely take-up and then it is all put into the budget forecasting process. But I will just get Mr Mann to validate that or otherwise.

**Senator TROOD:** If I can just get some clarity to this, we can terminate this discussion and I will write to you, Mr Pezzullo, about the other matters.

**Mr Pezzullo:** Thank you, Senator, that would be much appreciated, and if there are material bits of information there that go to potential defrauding of the Commonwealth, of course we will absolutely pursue it with vigour.

**Mr Mann:** The duty concession attributable to the tariff concession system in the year 2010-11 was in the range of \$1.485 billion to \$1.641 billion.

**Senator TROOD:** So \$1.4 billion to \$1.6 billion.

**Mr Mann:** \$1.5 billion to \$1.6 billion.

**Senator TROOD:** Thank you, gentlemen.

**Senator RONALDSON:** Mr Pezzullo, are you aware of an interview conducted by the Prime Minister with Laurie Oakes on *Weekend Today* on Sunday, 27 June 2010 when Mr Oakes asked the Prime Minister:

Oakes: It's fair to say, isn't it, that as Shadow Minister after the 2001 Tampa election, as shadow immigration minister you were actually the substantive author of the policies which Kevin Rudd's government adopted. Is that fair?

PM: I was the substantive author of a policy paper which became Labor's policy. It was called Protecting Australia, Protecting the Australian Way.

Is that your understanding—and I think it probably should be, Minister—

**Senator Ludwig:** It is wrong house for that, as you well know.

**Senator RONALDSON:** Others have gone down and tried their luck down there—

**Senator Ludwig:** But not me.

**Senator RONALDSON:** As far as you are aware, are the comments made by the Prime Minister correct?

**Senator Ludwig:** I would have to look at the transcript and try to refresh my memory. I could not say that I have a broad recollection. I think I am an avid watcher of all of these shows, but I could not recall it just sitting here without refreshing my mind and having a look at the transcript. If there is a point that you are getting to, perhaps ask the question. It might be simpler.

**Senator RONALDSON:** Which I intend doing, Minister. Perhaps I will let you have a look at that and then if there is any issue that you take with my commentary—

**CHAIR:** Do you want to table it?

**Senator RONALDSON:** Yes, please.

**CHAIR:** What kind of document are you quoting from—a transcript, a letter?

**Senator RONALDSON:** I am quoting from a transcript from the Prime Minister's office, an interview with Mr Laurie Oakes on *Weekend Today*, 27 June 2010. I will work on the basis that the Prime Minister has been properly quoted when she said that she was the 'substantive author of a policy paper which became Labor's policy', which of course is the policy since she became Prime Minister.

Mr Pezzullo, I might have to place these on notice, or your officers might have the statistics: do Customs and Border Protection maintain statistics on the number of asylum seekers who have drowned at sea whilst trying to enter Australia?

**Mr Pezzullo:** Senator, we are aware of reports that go to that issue. I do not know that we keep, if you like, statistics, on the aggregated number of persons who may or may not have perished at sea.

**Senator RONALDSON:** Do you want to take that on notice?

**Mr Pezzullo:** Yes, I am happy to take that on notice.

**Senator RONALDSON:** On the basis of your answer, rather than going through the rather large number of questions I have about capsized boats where it is believed that men, women and particularly children drowned, is there anyone who would have more intimate knowledge of particular events, or would you prefer that those questions were placed on notice?

**Mr Pezzullo:** I am happy for those to be placed on notice. In terms of my role within the executive, when I am not acting CEO I am responsible for maritime people-smuggling matters generally, so if there are particular questions you wish to ask I am the relevant officer. But I am equally happy for you to place them all on notice.

**Senator RONALDSON:** I understand there have been some discussions with the chair and other committee members in relation to the time that this was to take tonight. There is probably half an hour of these questions, so I think, in fairness, I will just table those and get a full response—I will do that, Chair, and thank you for your indulgence.

**CHAIR:** All right. Thanks, Senator Ronaldson. We will break for dinner now.

**Proceedings suspended from 19:15 to 20:17**



**Attorney-General's Department**

**CHAIR:** Let us reconvene our consideration of the budget estimates for the Legal and Constitutional Affairs Legislation Committee. We have the Attorney-General's Department. I think we have finished outcome 1.

**Senator BOYCE:** I have a couple of follow-up questions.

**CHAIR:** In outcome 1?

**Senator BOYCE:** I am somewhat confused about where we got to last night, Chair.

**CHAIR:** I had thought we completed outcome 1, but if you have questions there, let us ask them.

**Senator BOYCE:** Mr Wilkins, last night you gave me a list of dates of when the Attorney-General's Department had provided legal advice around the plain packaging of tobacco products. You gave me four dates. Could you tell me, in each case, to whom the advice was provided? In each case it was the health department?

**Mr Wilkins:** I understand so. That is my advice, yes.

**Senator BOYCE:** You have referred to the health department as your client. Is there a cost to providing this advice to the health department?

**Mr Wilkins:** There could be. In the case of the Office of International Law, there could be. I am not entirely sure.

**Senator BOYCE:** Would you be able to provide that information either now or on notice?

**Mr Wilkins:** We will take it on notice, Senator.

**Senator BOYCE:** In relation to 1995, 2001 and the two dates in 2010.

**Mr Wilkins:** 1995 was advice provided by the part of the department that is now the Australian Government Solicitor. It was separated out later. It was then part of the Attorney-General's Department.

**Senator BOYCE:** But the other three times it was—

**Mr Wilkins:** It was the department.

**Senator BOYCE:** It was the department. Can you, on notice, tell me if there were legal costs involved and, if so, what they were?

**Mr Wilkins:** I have just been advised that we are unlikely to have records about costings back in 2001.

**Senator BOYCE:** Your best endeavours on 2001. But I am presuming you will know the two occasions in 2010. I continue to be intrigued, Mr Wilkins, by the fact that you provided advice on two subsequent days in December 2010. Are you able to tell me anything more about the scope of the advice on those two occasions? It would seem surprising if they were both full-blown briefs provided by the department.

**Mr Wilkins:** No. Except to say that they were issues around constitutional law and international law. They are two separate areas of law, Senator.

**Senator BOYCE:** One was about constitutional law and the other was about international law. Is that correct?

**Mr Wilkins:** Not exactly, but they were around constitutional law and international law; that is right.

**Senator BOYCE:** And they were the result of two separate inquiries or requests?

**Mr Wilkins:** I do not know that, Senator. They were just two separate issues; that is all.

**ACTING CHAIR (Senator Barnett):** On that same matter, I am advised that, according to an article in the *Financial Review* of 20 May, 'Big tobacco horrified by case costs', I think it was a freedom of information claim which was successful where it was advised that the government has budgeted for \$4.8 million to implement these new plain packaging laws for tobacco and \$10 million plus for legal costs. Is that accurate?

**Mr Wilkins:** I have no idea. I think you will have to ask Health and Ageing. It is not in my budget. I have no idea, Senator.

**ACTING CHAIR:** Well, they are legal costs. You are the Attorney-General's Department.

**Mr Wilkins:** Yes, but they are not in my budget. I really do not have any idea.

**ACTING CHAIR:** Let us assume that they are and it is accurate.

**Mr Wilkins:** But they are not in my budget.

**ACTING CHAIR:** No. I am not saying they are in your budget. I am just saying let us assume that there is a \$10 million—

**Senator Ludwig:** Then you should ask the health department.

**ACTING CHAIR:** Yes. That is fine. I have an article here. I am basing my question on the *Financial Review* of 20 May.

**Senator Ludwig:** Perhaps you could make it available.

**ACTING CHAIR:** Page 48. I am happy to table the document, if need be.

**Mr Wilkins:** Perhaps you could table it so we can have a look at it.

**ACTING CHAIR:** Do you want to see it?

**Senator Ludwig:** Let us table it. The context would be helpful.

**ACTING CHAIR:** There we go. I am happy to table it. So let us talk about that for a minute. The legal costs obviously relate to important legal issues, including constitutional ones, perhaps property rights, intellectual property rights and the acquisition of property rights. Have you provided advice to the health department with respect to such matters?

**Mr Wilkins:** Can you repeat, Senator, which areas? I was just reading this.

**ACTING CHAIR:** Sure. The government, it appears, has budgeted \$10 million for legal costs. Now, I assume, that is to defend the government's planned plain paper packaging tobacco legislation. It has been in the media that the various tobacco companies will prosecute the matter and litigate the matter because they, based on the advice I have seen and read, see that their property rights are going to be acquired or allegedly acquired by the Commonwealth government.

**Mr Wilkins:** I do not know that you can assume that is what the budget is for. That is why you should ask the health department.

**ACTING CHAIR:** What would you assume it is for?

**Mr Wilkins:** I do not know because it is not my budget and I have not been in the ERCA.

**ACTING CHAIR:** There is no other reason to assume anything else, because the government is introducing legislation and there is a budget for \$10 million in legal costs.

**Mr Wilkins:** Okay. That is your inference, Senator.

**ACTING CHAIR:** It is not my inference. I am referring to a *Financial Review* article of a few days ago.

**Mr Wilkins:** That is the *Financial Review's* inference, then, because there is nothing in here that tells me what the health department thinks it was for, and I have not seen their budget papers. That is all I am saying.

**ACTING CHAIR:** We can always ask the health department. But I am asking you because you are secretary of the Attorney-General's Department.

**Mr Wilkins:** I do not know what the money is for, Senator, because it is not in my budget.

**ACTING CHAIR:** Are you familiar with the proposed legislation? Have you sighted it?

**Mr Wilkins:** No.

**ACTING CHAIR:** You have not sighted it?

**Mr Wilkins:** No.

**ACTING CHAIR:** Nobody in your department has sighted the—

**Mr Wilkins:** I am sure somebody in my department has sighted it.

**ACTING CHAIR:** Let us get them to the table, please. I am happy to wait.

**Mr Wilkins:** I think the difficulty is, first of all, that the officer in international law, who has been working on this matter, is in Germany. Mr Faulkner has seen two or three provisions of the bill.

**ACTING CHAIR:** Let us get Mr Faulkner to the table. Let us start there. Mr Faulkner, could you come to the table, please. We can always Skype to Germany. We should be doing that with the budget estimates, given modern technology.

**Mr Wilkins:** We did not know that we were supposed to be answering questions about the health budget.

**ACTING CHAIR:** It is not the health budget. This is a legal matter. This is litigation. I will be coming very shortly to expenditure on legal costs for the Commonwealth government, about which you have previously answered. Mr Faulkner, what do you know about the plain paper packaging legislation? Have you sighted it?

**Mr Faulkner:** Very little. I have looked at one or two bits and pieces, but not much.

**ACTING CHAIR:** Pieces of what, Mr Faulkner?

**Mr Faulkner:** The draft legislation that has been released for public consultation.

**ACTING CHAIR:** Have you sighted it?

**Mr Faulkner:** Not as such. I have seen reference to one or two of the provisions in it.

**ACTING CHAIR:** When did you see the reference to one or two of the provisions in it?

**Mr Faulkner:** In the course of, as it were, the matter being drawn to my attention that the legislation had been released. To be terribly honest, I cannot precisely recall when. It is something that I have been generally aware of for a while.

**ACTING CHAIR:** A couple of weeks ago or several months ago? You can give an estimate and then tell us on notice when it was.

**Mr Faulkner:** I imagine a week or two ago I was conscious of it, yes.

**ACTING CHAIR:** Was that the first time you sighted the provisions of the bill?

**Mr Faulkner:** I believe so, yes.

**ACTING CHAIR:** What is your title, Mr Faulkner, and which section are you in?

**Mr Faulkner:** I am the assistant secretary in the constitutional policy unit.

**ACTING CHAIR:** Are you a member of the IDC?

**Mr Faulkner:** No.

**ACTING CHAIR:** Have you had any involvement or communication with members of the IDC?

**Mr Faulkner:** Only to the extent that I have talked to my colleagues in the Office of International Law occasionally about this.

**ACTING CHAIR:** Are those people in the Office of International Law members of the IDC?

**Mr Wilkins:** I said that last night, Senator.

**ACTING CHAIR:** It is a yes, is it, just to clarify for the record?

**Mr Wilkins:** Yes.

**ACTING CHAIR:** And is that Mr Manning or someone else?

**Mr Wilkins:** No. That is Mr Bouwhuis, who is in Germany.

**ACTING CHAIR:** He has escaped from estimates. Is there anyone else on the IDC who can be made available to the committee?

**Mr Wilkins:** I do not believe so, actually, Senator.

**ACTING CHAIR:** You have had very important legal advice provided to the IDC. Who provided the legal advice? Was it the Australian Government Solicitor or someone else from your division?

**Mr Wilkins:** As I said last night—I will go back over it again—on 17 December 2010, Mr Bouwhuis provided input to legal advice from the Australian Government Solicitor. On the 16th, Mr Bouwhuis provided input to advice from a couple of officers in the Department of Foreign Affairs and Trade. Then there is the 1995 advice and there was the—

**ACTING CHAIR:** Okay. Thank you. Was that in writing?

**Mr Wilkins:** I would assume it ended up being in writing because the implication from the advice that I have is that the AGS probably would have reduced it to writing, yes.

**ACTING CHAIR:** Mr Faulkner, based on what you have perused, were there more than one or two provisions that you saw of the bill?

**Mr Faulkner:** From memory, it was one or two provisions, yes.

**ACTING CHAIR:** And they related to international law matters?

**Mr Faulkner:** No. Not at all.

**ACTING CHAIR:** But you are in the international law office?

**Mr Wilkins:** No. He is in the constitutional law area.

**ACTING CHAIR:** Sorry. Apologies. So they related to constitutional matters?

**Mr Faulkner:** Well, broadly, yes, I suppose that is right.

**ACTING CHAIR:** What section of the Constitution?

**Senator Ludwig:** That it is going to disclose the content of the legal advice. It has been a longstanding practice that you are entitled to ask around the issue. I think we have now discovered probably the extent that you can ask around the issue. To the extent that we are now going to go to the content of the advice, can I say that it has been a longstanding practice of both this government and successive governments not to disclose the content of advice.

**ACTING CHAIR:** I am not seeking to disclose that, but I appreciate your contribution, Minister. Mr Faulkner, you are a constitutional lawyer?

**Mr Faulkner:** That is right.

**ACTING CHAIR:** Is the acquisition of property one of the areas of your special interest?

**Mr Faulkner:** It is certainly a matter that I turn my mind to from time to time, yes.

**ACTING CHAIR:** And do you provide opinion on it from time to time?

**Mr Faulkner:** My career stretches back more than 20 years and I have certainly thought about that sort of thing from time to time, yes.

**ACTING CHAIR:** And have you provided advice on it in the last several months?

**Mr Faulkner:** That is an extraordinarily broad question. No doubt I have talked to people within the department in many, many different contexts about the operation of subsection 51(xxxi) of the Constitution, which is the relevant provision, yes. But I am not talking here at all about tobacco necessarily.

**ACTING CHAIR:** So \$10 million in legal costs. What would that provide you in terms of appearance at the High Court? Clearly, this is exactly where this type of litigation would go. The government is purportedly preparing for litigation in the High Court on constitutional and potentially other legal matters. How many weeks in the High Court? Mr Faulkner, can you provide advice on that? It is \$10 million.

**Mr Faulkner:** I do not think I could usefully comment on that. It would depend entirely upon the nature of the legal teams, who was involved and what kinds of complexity you were dealing with in terms of a case.

**ACTING CHAIR:** On a constitutional matter on the acquisition of property, how many lawyers would normally be involved?

**Mr Wilkins:** I think that is a little artificial, Senator.

**ACTING CHAIR:** I do not think it is artificial.

**Mr Wilkins:** This discussion is a little artificial. I do not think we can give you a sensible answer to—

**ACTING CHAIR:** I would like to know how many lawyers it takes to defend a matter in the High Court. This is the Attorney-General's Department. You must know that answer.

**Mr Wilkins:** It depends on the complexity of the matter.

**ACTING CHAIR:** It is an acquisition matter.

**Mr Wilkins:** If it were, say, the Solicitor-General, the Solicitor-General's salary is paid for. If it is not the Solicitor-General and if it is a senior counsel, then you would have to pay for the senior counsel.

**ACTING CHAIR:** But if the health department has \$10 million in their budget and they are wanting to use that funding for legal services, then that is in their budget. I am just asking what the cost to the taxpayer is.

**Mr Wilkins:** I will get back to that. We are working on a premise that this is for some sort of case in the High Court?

**ACTING CHAIR:** I am asking a specific question and I am seeking a specific answer.

**Mr Wilkins:** And I am telling you I do not know the answer, Senator.

**ACTING CHAIR:** You must know the answer. Somebody in your department would know the answer. It is a matter before the High Court. You deal with those matters regularly.

**Mr Wilkins:** It will vary. It will vary from matter to matter.

**ACTING CHAIR:** How many lawyers would be involved?

**Mr Wilkins:** That would vary from matter to matter.

**ACTING CHAIR:** One or 10?

**Mr Wilkins:** It could be 10. It would most likely be more than one.

**ACTING CHAIR:** But you have instructing solicitors.

**Mr Wilkins:** It depends on the complexity of the case. It depends on the sorts of issues.

**ACTING CHAIR:** We can obtain that sort of advice from the Australian Law Society and law institutes and any litigating lawyer. If you are refusing to answer or provide your best estimate tonight, then that is on your watch.

**Mr Wilkins:** No. I am not refusing to answer. I am saying that I cannot answer the question.

**ACTING CHAIR:** We have \$10 million expected to be expended on defending a bill which has not been introduced into the parliament and which has been sighted by officers of your department and no doubt by many others. Are you aware if the bill has been referred to the AGS for advice?

**Mr Faulkner:** Is that directed to me, Senator?

**ACTING CHAIR:** Yes.

**Mr Faulkner:** It is not a bill that is within this portfolio's control in that sense. I do not quite know what—

**ACTING CHAIR:** I am not asking you if you control the bill. I am asking you if you are aware if the bill has been forwarded to the Australian Government Solicitor for advice.

**Mr Wilkins:** As I told you, on 17 December, Mr Bouwhuis provided advice to the Australian Government Solicitor, so the answer is yes, Senator.

**ACTING CHAIR:** Very good. That is excellent that you have said that, Mr Wilkins, because until now you have not confirmed that the bill is before the IDC. But now you have.

**Mr Wilkins:** Sorry, I have to correct—

**ACTING CHAIR:** That is a matter that is being reviewed by the IDC and the committee.

**Mr Wilkins:** Let me correct myself. I am misleading you because the advice that I have does not say it was the bill as such.

**ACTING CHAIR:** That is what you just assumed, and everybody could assume that.

**Mr Wilkins:** So I assumed it was the bill, but it may well not have been. It may well have been other questions which led up to—

**ACTING CHAIR:** It may have been the formative version of the bill that is currently before, no doubt, the cabinet and the health minister. It may be a different bill to the one that Mr Faulkner perused, at least in part. I think we might leave it there for the moment. We will move on to other matters. I have other matters. We are in cross-portfolio. I will just check with colleagues.

**Senator HUMPHRIES:** If this issue is not cross-portfolio, I am sure you can direct me to the place where it is. I understand that the Commonwealth has a legal aid agreement with Norfolk Island along broadly similar lines to the agreements it has with each state and territory for the provision of legal aid to litigants based on Norfolk Island. I understand that recently litigants on Norfolk Island have been told there is no available money for the provision of legal aid to people living on the island for any matters Commonwealth or under island legislation. Is there anyone who can confirm whether that is the case and, if so, what the status of the agreement is with Norfolk Island?

**Mr Wilkins:** I might get Elizabeth Kelly, who is the deputy secretary, Senator, to address that question or at least the status of the Norfolk Island issue.

**Ms Kelly:** Responsibility for the external territories was moved to the department of regional Australia some time ago. Our understanding is that they are responsible for the agreement in relation to the provision of legal aid services. We are not aware that it is within the responsibility of this portfolio.

**Senator HUMPHRIES:** Ms Kelly, their understanding is that it is your responsibility. I asked them that question earlier this week and they said the responsibility for the legal aid arrangements are in the Attorney-General's Department.

**Mr Wilkins:** I think that might be a misconception, which we will obviously have to sort out, Senator. It may be something that we should be taking on notice and getting back to you. But my understanding, having had Norfolk Island in this portfolio for some time, is that there are a lot of mainstream services that were taken care of in a completely different way. A lot of services that are made available on the mainland are not made available on Norfolk Island and it was left up to, in that case, me being in charge of Norfolk Island when it was in this portfolio.

**Senator HUMPHRIES:** A legal practitioner on the island has told me that there is an MOU between the Commonwealth and Norfolk Island. It does provide for the provision of funds for legal aid related matters on Norfolk Island. I simply want to know what the status is.

If it is not this department, could you apprise the appropriate department that they have to answer the question?

**Mr Wilkins:** I think, Senator, I will have to take that on notice and give you some advice on it.

**Senator BOYCE:** But it is very worrying. They think they are in charge and they are not.

**Senator HUMPHRIES:** It is a matter of not only some concern but also urgency. I am told that there is no legal aid available to people who live on this island. They would be the only Australians anywhere in our nation who do not have access to legal aid, if that is true, and I am assured by a practitioner on the island that that is the case. I am not looking forward to the prospect of being able to find out next October when estimates comes back again what the situation is because that is five or six months of people not having access to legal aid.

**Mr Wilkins:** No. It will not take that long. We think that it is the New South Wales Legal Aid Commission. As you understand, the Commonwealth does not actually directly deliver legal aid.

**Senator HUMPHRIES:** It may be the New South Wales Legal Aid Commission, but that does not answer the question. They would be delivering that on a contract basis in the same way that the New South Wales department of education provides teachers for the schools on Norfolk Island.

**Mr Wilkins:** No. Not necessarily, Senator. With the legal aid agreements, the Commonwealth makes a contribution. But the legal aid is actually delivered by the state and territory legal aid commissions.

**Senator HUMPHRIES:** That is right. But it is your contribution. I am not suggesting you are contracted.

**Mr Wilkins:** In respect of Commonwealth matters, we do give money to the states and territories; that is right.

**Senator HUMPHRIES:** And to Norfolk Island?

**Mr Wilkins:** I am not entirely sure who is responsible for that.

**Senator HUMPHRIES:** Irrespective of who provides the services—and if it were the same as the states and territories, it would be most likely a state or territory legal aid function or office or whatever—

**Mr Wilkins:** We think it might be the New South Wales Legal Aid Commission.

**Senator HUMPHRIES:** I am asking about the Commonwealth's contribution to legal aid funding. I understand at the moment that there is no contribution from the Commonwealth under the MOU to Norfolk Island. That is what I want to find out about.

**Mr Wilkins:** Why do we not take it on notice? We may even be able to find out in the course of the next hour or so for you, Senator.

**Senator HUMPHRIES:** All right. That is fair enough. I will make an additional request. If you cannot find out and you establish that it is your department which is responsible for the provision of legal aid funding to the island—

**Mr Wilkins:** In respect of Commonwealth matters.



**Senator HUMPHRIES:** Commonwealth matters. I would appreciate a briefing from the department about where that stands at the moment. As I say, the issues there are urgent.

**Mr Wilkins:** I understand, Senator.

**ACTING CHAIR:** Senator Xenophon, we can pass to you. We can ask the department to do their best to respond to your questions.

**Senator XENOPHON:** Mr Wilkins, I will not surprise you by saying that I have questions to ask you about the Kessing case. Firstly, you have been here at estimates today. You have heard my concerns in relation to this. I will go to the issue of the pardon application. I know we need to be circumspect in relation to that. When an application for pardon is being considered, if new evidence has come to light that may exculpate a person had that matter been brought to the attention of the court at the trial, is that a factor that would be considered, in general terms?

**Mr Wilkins:** In general terms, I think that the way in which pardons operate around the British Commonwealth is if the evidence went to the safety of the conviction and cast doubt on the conviction, I think that would be the case, Senator.

**Senator XENOPHON:** Let us go to the circumstances here, where Mr Kessing alleged that he gave information to Mr Albanese's office when he was shadow minister and spoke to his staff and Mr Albanese about that. It seems that the Federal Police and Customs decided that they did not want to take that any further. But that could be relevant because the whole issue about Mr Kessing's case in terms of section 70 was that if there is evidence of more people having access to this particular document for which he was charged, that could go to issues about the safety of the conviction. As a general proposition, if you are looking at a section 70 Crimes Act case and it is about a leak of information and there is evidence that a whole range of other people could have had access to this, is that relevant? May I make it clear that I am not in any way suggesting that the information was leaked from Mr Albanese's office or anything like that. The fact is that a whole range of other people had access to this document.

**Mr Wilkins:** I have heard the discussion today. All I would say at this point is that of course that type of consideration could be relevant. It could be relevant.

**Senator XENOPHON:** Sure. I appreciate your answer. Given that the Australian Federal Police have said, 'Look, we've decided not to investigate this'—and I will go back to that in a minute—and given that there has been no investigation of those allegations made by Mr Kessing, which is relevant in the context of a section 70 prosecution, does the department, in order to properly consider a pardon application, have an obligation to consider those allegations and to investigate them in order to determine the weight of any pardon application?

**Mr Wilkins:** I think the answer to that is that we probably cannot investigate. We do not have the wherewithal to investigate it, actually. But, in any event—

**Senator XENOPHON:** In order to determine a pardon application, you need to look at the assertions made by the person seeking the pardon?

**Mr Wilkins:** Yes. Of course. We also need to look at the response from some of the people that you were talking to today and the DPP. And we need to look at what the courts have made of that in the past, too.

**Senator XENOPHON:** But if the courts did not have that information before them at the time, and there is fresh information which may raise questions about the safety of the conviction and of the process, it is a chicken and egg situation. If assertions are made upon which Mr Kessing is relying in his application for a pardon, the police are not investigating them and Customs is not looking at them, apparently, then what does the department do in order to determine whether those assertions made by Mr Kessing have relevant weight to determine whether his pardon application should be granted?

**Mr Wilkins:** If there is new evidence that renders a case sufficiently unsafe, then that is a question of judgment, and it is a forensic judgment. We would get advice on that and we would think carefully about it.

**Senator XENOPHON:** Thank you. So that means that you have not got advice?

**Mr Wilkins:** But we may not go into an investigation, Senator.

**Senator XENOPHON:** But you would get advice on it, though. And getting advice may require some forensic look at the assertions made?

**Mr Wilkins:** It might.

**Senator XENOPHON:** So as a result of the assertions made by Mr Kessing, they are not matters that have been looked at yet?

**Mr Wilkins:** There are alternative avenues for this to be re-examined as well.

**Senator XENOPHON:** The courts?

**Mr Wilkins:** Exactly.

**Senator XENOPHON:** The guy has not got any dough, Mr Wilkins.

**Mr Wilkins:** I heard what you said about that.

**Senator XENOPHON:** Does he have an opportunity for legal aid, then?

**Mr Wilkins:** Well, that is a question.

**Senator XENOPHON:** So it is not an unreasonable question for me to put to the Attorney, then, in relation to Mr Kessing as an alternative avenue?

**Mr Wilkins:** It is a possible alternative avenue. But the courts obviously would be going through the same mental processes to some extent as we are and having a look, without carrying out a huge investigation, saying, 'Okay, is this an issue which goes to the safety of the conviction to such an extent that one would actually begin to wonder whether it was correctly made?' One of the difficulties with the stuff that was produced today is that what is being asserted as evidence that the conviction was unsafe was the admission that some other offence was committed.

**Senator XENOPHON:** No. That is not quite right. Firstly, yes, there is an admission that a potential or prima facie breach of the Crimes Act was committed, but then there is an issue as to whether it was a defence by going to an MP. But would that be relevant to the issue?

**Mr Wilkins:** Technically not. But it is an odd state of affairs and you need to think that through.

**Senator XENOPHON:** This whole case is a very odd state of affairs, Mr Wilkins, a very odd state of affairs. But if there is evidence that a whole range of other people were aware of

these documents, that may be relevant to the circumstantial case that was mounted against Mr Kessing. Do you acknowledge that?

**Mr Wilkins:** It is possible it could cast doubt on that. You also need to look at the affirmative evidence that was produced in court about reasons for thinking why magistrates and a court of appeal thought that it was proved beyond reasonable doubt that he did do it. I do not really want to get into—

**Senator XENOPHON:** Neither do I. I just want to look at the principles and the processes. But it was a circumstantial case.

**Mr Wilkins:** Part of the equation is not only to look at issues that might raise doubts but also the strength of evidence that was available for conviction as well. So there are two parts to this sort of consideration. It is not an uncomplicated matter, as you have conceded, Senator. I am not sure that it is useful for us to have lengthy—

**Senator XENOPHON:** No. But while I am in this place, I will keep asking about Mr Kessing. Every estimates every year until I get chucked out of here, I will be asking about Mr Kessing until there is a satisfactory resolution.

**Mr Wilkins:** We take the issue very seriously. We will look at it carefully and any other matters that you want to put before the minister or us. We can take account of them.

**Senator XENOPHON:** From a general policy position, though, if somebody has admitted prima facie that there has been a breach of section 70, is there not a guideline that says you ought, as a matter of course, to look at prosecuting a matter? What are the prosecutorial guidelines?

**Mr Wilkins:** I do not know the answer to that. It is something we probably should have canvassed with the DPP. But I really do not know.

**Senator XENOPHON:** If you could take that on notice, that would be helpful.

**Mr Wilkins:** I am just advised it is still at the discretion of the AFP or the DPP to then prosecute under those circumstances.

**Senator XENOPHON:** That is right. And it was a discretionary decision made by the DPP, I think, not to prosecute Mr Grech, for instance.

**Mr Wilkins:** That is right.

**Senator XENOPHON:** Under very different circumstances. But not so long ago there was a decision made not to prosecute him for various reasons.

**Mr Wilkins:** That is right.

**Senator XENOPHON:** But no reason was given here. I do not think there was even an investigation about the documents going to Mr Albanese's office.

**Mr Wilkins:** I think what Mr Negus said was that there was not even an investigation; that is right.

**Senator XENOPHON:** That is right.

**Mr Wilkins:** And he used his discretion not to do that, or they used their discretion not to do that.

**Senator XENOPHON:** Customs, for whatever reason, was not in a position to advise or answer the question whether Customs officer Zoe Ayliffe was interviewed by the AFP. That

may arguably be relevant in relation to the issue of an application for a pardon in terms of the number of people who may have known about these particular documents. Whilst we have not received an answer from Customs, is that something that you may seek an answer for in order to properly consider an application for pardon?

**Mr Wilkins:** You are getting a bit further into this than I am capable of answering. I do not know who this person is, actually.

**Senator XENOPHON:** I am happy on notice to provide you documents and media reports in relation to that.

**Mr Wilkins:** We will certainly try and get a better understanding of the exchanges that occurred with this person.

**Senator XENOPHON:** Sure. I am happy to do that. I am sure at the next estimates I will have many more questions in relation to it because I am sure there will be further developments. You may remember at the last estimates I lent you my iPad.

**Mr Wilkins:** Yes.

**Senator XENOPHON:** It has been superseded now by iPad 2—lighter, faster. Have they given you one yet, Mr Wilkins?

**Mr Wilkins:** I am using a Kindle, actually, Senator. No, they have not given me one.

**Senator XENOPHON:** Kindles are much more literary, I think, than iPads.

**Mr Wilkins:** They have better screens, actually.

**Senator XENOPHON:** That is right. I do not doubt that. But that was in relation to assistance for native title test cases in the context of the wild rivers legislation, which has been, again, quite topical. I asked you questions about the process for an application for legal aid. I think you may have indicated there were issues in relation to the application.

**Mr Wilkins:** In relation to the application, you might recall we had a long discussion about the fact that there was legislation before the House. The fate of that legislation might have actually gone to whether it was worthwhile to run such a case. That is still before the parliament, I think.

**Senator XENOPHON:** But I thought it was a curious policy approach. If it is a private member's bill or a private senator's bill, you are saying by virtue of it being—

**Mr Wilkins:** But it is being considered by a committee.

**Senator XENOPHON:** You are saying that that in itself would preclude it being considered for legal aid?

**Mr Wilkins:** I think we can go back over that discussion last time. I did not say that it was the only consideration, but I said it was a consideration. The things that were wanting to be litigated about were in fact before the parliament. The parliament was yet to form a view on these things. We are asking for taxpayers' money to be spent to try to resolve an issue which may well be resolved by the parliament.

**Senator XENOPHON:** So if the parliament knocks out the opposition leader's bill in the next few weeks, would that in a sense revive the legal aid application by the Cape York Land Council?

**Mr Wilkins:** They can put in another application any time they like. All I am saying is that I think that was a material consideration. So it wipes out a material consideration—you could put it that way, Senator, yes.

**Senator XENOPHON:** If it is not before the parliament, that would be a material consideration in terms of considering whether it ought to receive legal aid?

**Mr Wilkins:** It would remove any argument that the matter is being dealt with by the parliament and, therefore, it is not appropriate, for that reason, to be considered for legal aid. That is right; it would remove that.

**Senator XENOPHON:** Mr Wilkins, you probably know the success rate of private senators bills and private members bills in this place.

**Mr Wilkins:** It is a different sort of parliament, Senator, at the moment.

**Senator Ludwig:** I would not be so confident, in a minority government, to make that statement, Senator Xenophon. I understand why you may make it, but I would not.

**Senator XENOPHON:** I did get three private members bills through in the South Australian parliament.

**Mr Wilkins:** This does appear to be a bill that is being treated seriously. There have been discussions. In fact, we have been giving evidence before parliamentary committees about it et cetera.

**Senator XENOPHON:** But I take the minister's point about it being a minority government. But at the time you knocked this back, that was not the case.

**Mr Wilkins:** It is not the only consideration that is afoot here. I think I mentioned to you off the record that there are other issues as well with that application.

**Senator XENOPHON:** Sure. I think all will be revealed in the next two or three sitting weeks as to the fate of that legislation.

**Mr Wilkins:** But they can, of course, put in another application. I just think it would probably be useful maybe to have a look at the way in which it is couched and the rigour with which it is actually argued et cetera. I do not think I can be much more forthcoming in this context.

**Senator XENOPHON:** Sure. Finally, I want to go back to Mr Kessing's case. Are there protocols or guidelines to deal with pardons? It is quite a rare thing for a pardon to be granted. What sort of precedent and approach does the department consider for the proper consideration of a pardon application?

**Mr Wilkins:** It is, effectively, an unfettered discretion. I think what I have discovered in the course of this particular application is that, in various British Commonwealth countries, and particularly states and closely related jurisdictions, pardons of this sort are very rare things. But the practice has built up in common-law countries. There are no protocols as such. It is a very wide discretion, but it is, to some extent, defined by the sorts of expectations over the years. You can see that in the sorts of cases and the sorts of reasons that have been given in places like the United Kingdom or Victoria or here. The fact is that it has to pretty well mean that new information has come to light which simply shows that the person was innocent.

**Senator XENOPHON:** One of the issues that is raised is whether all avenues have been exhausted through the courts.

**Mr Wilkins:** That is a material consideration, but it is not the only consideration.

**Senator XENOPHON:** Sure. But, if that material consideration is fettered by virtue of the applicant's lack of financial resources, that may be a factor, then, for a legal aid application?

**Mr Wilkins:** Yes. That is possible, Senator. That is possible.

**Senator XENOPHON:** I will leave it there for these estimates for now. Thank you very much, Mr Wilkins.

**CHAIR:** Have we finished cross-portfolio issues?

**Mr Wilkins:** Chair, we have the answer to the Norfolk Island question that Senator Humphries raised, if it is a convenient time. Katherine Jones has made some inquiries, I think.

**Ms Jones:** Norfolk Island has a legal assistance committee based on Norfolk Island. They have an arrangement with the ACT Legal Aid Commission to provide legal aid services on the island. Essentially, when a matter comes up, if they are unable to deliver the services themselves or there is a conflict issue, they will contact the ACT Legal Aid Commission and the ACT will arrange for a lawyer. The funding comes from Norfolk Island—I believe it is from the department of regional affairs, but I would have to check that. The ACT Legal Aid Commission have indicated they would stand ready to receive any requests from Norfolk Island.

**Senator HUMPHRIES:** Yes. But does the Commonwealth provide any funding for the provision of legal aid on the island, particularly with respect to Commonwealth matters? That was my question.

**Mr Wilkins:** You also asked what arrangements there were, Senator.

**Senator HUMPHRIES:** What arrangements are there with respect to Commonwealth funding of legal aid on the island?

**Mr Wilkins:** So it is a Commonwealth matter that they want to litigate on Norfolk, is it?

**Senator HUMPHRIES:** Yes.

**Ms Jones:** In terms of any funding that is available, I understand it is provided through the department of regional Australia.

**Senator HUMPHRIES:** If there is Commonwealth funding, it is done through Regional Australia?

**Ms Jones:** Yes.

**Senator HUMPHRIES:** Although they have said it is done through your department. But you are saying they are wrong?

**Ms Jones:** Our department does not administer any funding for legal aid on Norfolk Island.

**Senator HUMPHRIES:** That is what they say as well.

**Mr Wilkins:** Well, we do not. There are anomalies about Norfolk Island in relation to a whole range of areas, including, say, Medicare. There are different taxation arrangements on Norfolk Island.

**Senator HUMPHRIES:** Mr Wilkins, it is not a question of anomalies. The Commonwealth provides funding for Commonwealth legal aid matters throughout the nation. If you can assure me categorically that there is no Commonwealth funding provided to Norfolk Island for Commonwealth matters litigated on the island, I would be surprised. But that is what I am asking about. I am told by a practitioner on the island that there is an agreement that provides for the Commonwealth to contribute to the cost of legal aid in Commonwealth matters.

**Mr Wilkins:** But we are not saying, Senator, that the Commonwealth does not make any contributions. We are saying it is a matter for Regional Australia.

**Senator HUMPHRIES:** I am saying to you that they say it is a matter for you. I will ask the minister as a matter of procedure. When an agency is asked a question in estimates and the agency says, 'No, Senator, your question should be directed to another agency,' is there no provision for the agency being asked the question to show professional courtesy by ringing the other agency and saying, 'Senator So-and-so is going to ask you about this issue, because he asked us and we told him it wasn't our responsibility; it was yours'? Doesn't that make sense? Wouldn't that save a lot of time and angst in situations like this?

**Senator Ludwig:** Having experienced it from your side and being bounced between departments exactly as you have outlined—

**Senator HUMPHRIES:** It is not a political matter, Minister.

**Senator Ludwig:** I am not putting that. It is just a practicality that this occurs. The easiest thing to do now, and you are not closed from doing so, is to put a question on notice to Regional Australia.

**Senator HUMPHRIES:** But I cannot follow them up until October and this matter is, as I said before, urgent.

**Senator Ludwig:** You can put it to them on notice, which does that.

**Senator HUMPHRIES:** Yes, but my point is I can only put a question on notice and, by the time I get the answers back, I will not be able to explore the issues that they raise until estimates in October. As I say, the situation with legal aid on the island is relatively urgent.

**Senator Ludwig:** And this is something that has happened before, and it will happen again, where a department might refer you to another department and that department may in fact have got it wrong or it may have misinterpreted the question or it may have been a miscommunication. It has happened to me many times in the past. Yes, you are then left in the position of trying to agitate in some other way. You could take the opportunity of writing to the department. You could take the opportunity of asking for a private briefing from the department. You could take the opportunity of putting a series of questions on notice. I am trying to be as helpful as I can. When it happened to me, I am not sure that the person at the table was as helpful as I am being.

**Senator HUMPHRIES:** Perhaps not, Minister. I am not trying to make a political point. I am trying to sort out an issue which retards the ability of the estimates committees to get to the bottom of issues. Just a bit earlier this evening, Senator Barnett asked a question of Mr Wilkins about some legal advice. I think, Mr Wilkins, you said he should ask that question of the department of health. Would it be your practice to have someone from your department get in touch with the department of health, which is coming to estimates next week, and say,

'Guy Barnett's asking about this issue; you should be aware he's going to ask you about it'? Would that be your practice?

**Mr Wilkins:** No, not especially.

**Senator HUMPHRIES:** I suggest it would be a good idea to do that. Forewarned is forearmed. It means that the department concerned knows what is going to happen and Senator Barnett is more likely to get an answer to his question.

**Mr Wilkins:** Yes. But I was just about to say, Senator, that I am happy to try to sort this out with Regional Australia and come and talk to you about it.

**Senator HUMPHRIES:** Thank you for that offer, but that is not the issue I am raising in this instance. It is a question of procedure to prevent this situation arising. I would hope that the department of regional Australia did not think it was somehow clever or appropriate that you be left in the dark about this issue until it was sprung on you here. Nobody knows what is going on and there are people crossing backwards and forwards at the table trying to work out what the answer to the question is. If someone rang a couple of days ago and said, 'Listen, you are going to be asked this question,' it would have been avoided. It would have made the parliament's estimates process rather more efficacious. I am simply making a recommendation to you, Mr Wilkins, to perhaps discuss that at whatever meetings the departmental heads have from time to time.

**Mr Wilkins:** I am happy to take that on board, Senator, and I will actually raise it with the secretaries collectively. I think, mostly, that departments would, although not necessarily at my level. Somebody would actually pick up the phone and say, 'This is probably going to come up.' As with Senator Abetz asking who the lead agency was on Libya or Egypt or whatever it was, DFAT have been told that they are going to be asked some questions about that. So we can do that.

**Senator HUMPHRIES:** Thank you. They are all the questions I have.

[21:10]

**CHAIR:** Are we now moving to group 2? Are we going to do program 1.1 and work through it or just do all of group 2 together? Mr Wilkins, are we able to do all of group 2 at once, no matter what coloured ball we throw at you one after the other?

**Mr Wilkins:** I think so.

**CHAIR:** Your people are more than competent enough to do that, I am sure. Senator Pratt, perhaps you can go first.

**Senator PRATT:** Mr Wilkins, you probably know—and it seems like days ago now—that the Human Rights Commission appeared before us at the beginning of yesterday.

**Mr Wilkins:** They are in the portfolio, aren't they? Yes.

**Senator PRATT:** That is right. I asked them a question—

**CHAIR:** Was that just yesterday?

**Senator PRATT:** about the treaty proposal drafted by the World Blind Union, and the WIPO SCCR-22 meeting coming up in June. The treaty is about intellectual property and the ability to translate all works of literature into braille without needing to pay copyright fees. Graeme Innes was speaking about his support. He expressed it as kind of abiding by whatever



Australia would go forward with. We were hopeful there was something that would deal with the copyright question. I am really seeking to find out whether Australia has really dealt with that question.

**Mr Wilkins:** I might get Matt Minogue to answer this question for you, Senator.

**Senator PRATT:** Thank you very much.

**Mr Minogue:** As Mr Innes indicated, the Australian government and Australia have participated in previous sessions looking to resolve this. I think Mr Innes mentioned that there were three or four competing proposals or alternative proposals from various countries. We had previously indicated our support for one of those proposals, which indicated a two-step kind of approach, where there would be a recommendation of action that countries could take domestically, short of binding treaty action, with a view to concluding the treaty action after that.

**Senator PRATT:** So, in that sense, concluding treaty action will not happen at this particular meeting?

**Mr Minogue:** No. That is right. That would be a longer term job.

**Senator PRATT:** But it has progressed since then?

**Mr Minogue:** I think so, in the sense that the work behind the scenes in WIPO itself has been to try and compress the three or four alternative proposals to get consensus on the text from the various proponents. We have not participated in that. In fact, we have not seen the text. In those environments, it is held more tightly. The more views that get involved, the more disaggregated that can become. But it is fair to say, I think, from our representations and the conversations we have had with people who are involved—and, indeed, the feedback we have been getting from Mr Innes on the views of the World Blind Union itself—that we do have some cause to be quite positive that that could lead to a better outcome. We need to be careful not to overstate that, but I think it is fair to say that there is progress. With the World Blind Union, Australia's non-government delegation and Australia's government delegation, we will be working to support a good treaty outcome. I have to qualify that a little bit, because until we actually see the text we cannot do that. It will ultimately be a matter for the blind.

**Senator PRATT:** If that treaty outcome does deal with the copyright issues and people surrender their copyright for things translated into braille, would Australia consider supporting that? Clearly, yes, that treaty could be written in many different terms, but that is part of the question on the table.

**Mr Minogue:** Certainly, making material that is accessible available will be a definite part of it. It is the only way that can proceed.

**Senator PRATT:** It is not just braille; it could be audio or a number of other different formats.

**Mr Minogue:** It is probably too broad to characterise it as copyright material that will be freely available. That is too broad. I know you were not suggesting that would be the sum total of the treaty. But there are countervailing interests in terms of people's right to exploit their property and protect it and the interests of developing countries, which are slightly different from the interests of copyright content owning or producing countries, if you like. But, certainly, in terms of trying to achieve a consensus, we are supportive of that. The

government's position is to support a treaty outcome if that can be achieved. We think there do need to be some exceptions to copyright to allow that to happen. In fact, domestically, we do have exceptions in our own law now anyway, so it would not be inconsistent with our own domestic position.

**Senator PRATT:** So what is your understanding of what has specifically been proposed by the World Blind Union at this stage, in terms of what will be discussed?

**Mr Minogue:** I have not been involved in the discussions myself so I am probably not the best person to talk about that level of detail. But, in the interests of availability, accessibility and a proper return for content creators, there would be balances to strike. Australia has already managed to strike that in our domestic law: if there is a legitimately available work, it is accessible in Australia. So copies must be made available in Australia—that is what I am saying. We have already come to that view domestically, so we would be supporting similar concessions and a recognition of the rights of people with print disability.

**Senator PRATT:** I think that is probably about as far as I can take it at this stage, unless I have cause to reflect in the next couple of minutes while others are asking questions, Chair.

**CHAIR:** I think that is it. Senator Barnett, we will go to you, then.

[21:17]

**Senator BARNETT:** I have some questions on legal aid, which I think is under outcome 1.1. In answer to a question on notice in February, the department advised that more than \$4 million in taxpayer-funded legal aid will be provided to crew members of asylum seeker boats who are on trial in Australia this year on people-smuggling charges. I was also advised that 198 people-smuggling crew members were awaiting trial, 161 were awaiting investigation for possible prosecution, the cost of legal aid was \$5,000 a day and a further 353 have been arrested and charged. Can you provide an update on those figures, to start with?

**Mr Wilkins:** Which figures, Senator?

**Senator BARNETT:** We have 198 awaiting trial, 161 awaiting investigation for possible prosecution and 353 arrested and charged in total.

**Mr Wilkins:** From what date is that? These figures keep moving.

**Senator BARNETT:** I think it is over a 12-month period. I actually do not have the exact figure with me. It was an answer to a question on notice from February. I want the updated figures.

**Mr Wilkins:** That is what I thought you wanted. Iain Anderson will explain to you. These figures move around on a regular basis.

**Mr I Anderson:** As at 20 May, 292 crew had been charged and were facing proceedings. A further 62 crew in immigration detention were under investigation and potentially liable to be charged.

**Senator BARNETT:** Do you have the figures on how many have been prosecuted?

**Mr I Anderson:** One hundred and thirty-eight convictions of crew have been secured.

**Senator BARNETT:** From when to when?

**Mr I Anderson:** That is since September 2008.

**Senator BARNETT:** Can you provide either now or on notice the figures for how many convictions there have been since September 2008?

**Mr I Anderson:** That is September.

**Senator BARNETT:** That is okay. I am happy with that. Can you break that down on a yearly basis for us? Have you got that figure there?

**Mr I Anderson:** I do not have that figure here. I need to take that on notice.

**Senator BARNETT:** Okay. So we have 292 crew that have been charged. Let us just clarify it. They are being defended and represented by legal aid? They have the support of legal aid? Would that be accurate?

**Ms Jones:** Certainly, for some of the defendants; I could not say categorically every single one of them. But many of them are receiving assistance through legal aid commissions.

**Senator BARNETT:** Good. Again in answer to a question on notice, you advised that there was an estimated \$20,000 in legal aid bills for every crewperson tried for people-smuggling offences. I want to confirm that figure—if that is accurate.

**Mr Wilkins:** The figure was what, Senator?

**Senator BARNETT:** \$20,000 in legal aid for every crew member.

**Ms Jones:** Was that an average cost based on the experience of the Legal Aid Commission of Western Australia handling some of these matters?

**Senator BARNETT:** That is correct.

**Ms Jones:** So it is an average cost. I do not have a cost per individual matter.

**Senator BARNETT:** What about New South Wales and Queensland? Have you got figures for them? You have the average costs for WA. I would like to know the average costs in the other states. WA is obviously a predominant state, but clearly Queensland and New South Wales and other states would be relevant. Do you have those figures with you?

**Ms Jones:** I do not, Senator. I have to take that on notice.

**Senator BARNETT:** Take that on notice. Just break it down wherever they are—state and territory. I assume the Northern Territory as well. Take that on notice. Could you provide those figures and try and be as specific as possible for each case and then do an average across the state and territory?

**Mr Wilkins:** You want average costs, essentially, don't you, for the different states and territories? That is intruding a little. You want each specific individual's bill?

**Senator BARNETT:** Well, I think you could do that. There are 138 convictions and 292 crew. You would have to ask each state and territory legal aid. I am happy to compromise. Let us just go for the average and we will work it out that way. You do the total cost per state and divide the number of crew members into that and we will get an average per state. Can you do that?

**Ms Jones:** I think we should be able to do that, Senator.

**Mr Wilkins:** Yes, we should be able to.

**Senator BARNETT:** I am sure. Based on the last figures, we have \$20,000 of taxpayers' money per crew person. That is what we have got, based on the WA figures. I guess we are in

shock today. Senator Brandis tabled this advice from Chris Craigie, the Commonwealth Director of Public Prosecutions, who is having his funding cut.

**Mr Wilkins:** That is not right, Senator.

**Senator BARNETT:** That is for prosecutions of people smugglers.

**Mr Wilkins:** That is not right, Senator. We had this discussion last night—it was clear that he has not had his funding cut yet. There are still negotiations going on about what the sustainable budget line will be for the DPP.

**Senator BARNETT:** Mr Wilkins, I was there. I was present.

**Mr Wilkins:** And I made that clear last night.

**Senator BARNETT:** You made your views clear. Senator Brandis made—

**Mr Wilkins:** No, it was not my view; it was just extra information.

**Senator BARNETT:** Well, you were saying that there would be further discussions and negotiations. All we can go on is what is in the budget. All we can go on is what is on the public record. You are saying that it will remain under review and under consideration. That does not placate Senator Brandis or me or anybody else in the coalition.

**Mr Wilkins:** I was saying more than that. I said that the Attorney-General had arranged that supplementary funds would be made available at the DPP while these discussions were being undertaken. So the budget figures were not yet set in stone, and there were going to be discussions about a suitable level of funding.

**Senator BARNETT:** Mr Wilkins, there is a stark contrast here. I just want to draw it out before moving to other senators. This is a document that was tabled by Senator Brandis before dinner tonight. It is signed 'Chris Craigie SC, Director'. It mentions government decisions and says:

... as a result of budget related Government decisions there will be a significantly reduced allocation of resources to the CDPP in the coming financial year.

He goes on to say, in the second last paragraph:

Regrettably, as the CDPP expects that it will not be in a position to prosecute all matters currently referred, there will be an adverse impact on agencies' law enforcement strategies and the deterrent effect provided by prosecution.

So, on the one hand, we have a very significant amount of taxpayers' money for the defence of people smugglers and, on the other hand, we have evidence tabled as of today which says there is going to be a significant reduction in the efforts of the DPP to actually prosecute these people smugglers. Can you see the contrast, the chalk and cheese approach of this government?

**Mr Wilkins:** If what you said was correct, there would not need to be as much money for defence because there would not be prosecutions. But, in fact, what you said is misleading, Senator, because—

**Senator BARNETT:** How is it misleading? It is a public document. It was placed on the public record a few hours ago.

**Mr Wilkins:** Because Mr Craigie himself last night explained that that position was put out after the budget came down. Since then, there have been changes in terms of his budgetary situation and there are discussions occurring about a sustainable level of funding.

**Senator BARNETT:** There are discussions. That really does not answer the question.

**Mr Wilkins:** Well—

**Senator BARNETT:** Well, it does not, Mr Wilkins. It really does not.

**Mr Wilkins:** But, if you are right about him pursuing fewer prosecutions, then of course there would be less legal aid. Isn't that correct, Senator?

**Senator BARNETT:** Well, you can interpret it any way you want. It is \$20,000 per case. You have 292 charged. You have 62 being investigated in detention. You already have 354 potentially requiring legal aid.

**Mr Wilkins:** But, in any event, it was clear in the discussions last night that nobody was talking about resigning from any of the people-smuggling prosecutions. That was not one of the areas that Mr Craigie—

**Senator BARNETT:** Clearly, the matter for Mr Craigie is a very difficult one. He has many challenges—

**Mr Wilkins:** That was not one of areas that—

**Senator BARNETT:** which was most overtly clear to the entire committee last night. Chair, I have concluded on that matter. There are a range of other matters on family relationships, but I know other senators have questions as well.

[21:28]

**CHAIR:** I think we are dealing with 1.1, 1.3, 1.4 and 1.5.

**Senator TROOD:** Chair, I have questions on program 1.4—Family and relationships.

**CHAIR:** Let us go with you, Senator Trood.

**Senator TROOD:** My interest in family relationships relates to the intercountry adoption programs. Mr Wilkins, you will know I have an interest in this matter.

**Mr Wilkins:** Yes.

**Senator TROOD:** Can you please provide me with an update on the Ethiopian intercountry adoption program.

**Mr Wilkins:** We told you that we made progress last time. Do you want to know where we are up to now?

**Senator TROOD:** Yes. That is several months ago. I have some other questions, but I would like to begin with an overview of your assessment of the program. Ms Smith, can you answer that question for me?

**Ms K Smith:** Yes. The program is now fully operational and has everything in place to allow children to be matched with Australian prospective adoptive parents. As you would be aware from our previous correspondence, we have appointed an Australian representative, Ms Lelem Fesseha. We have a relationship with an orphanage, which is now referring children to the program. Those children are having their backgrounds thoroughly assessed, and matching processes are underway with Australian families. Ms Fesseha is also investigating further

possible potential orphanage relationships on our behalf as our representative and is also assessing appropriate development assistance activities. She is engaging, through our auspices, the Hague accredited adoption service provider to provide a thorough service in carrying out these processes.

**Senator TROOD:** That is all very gratifying. The service agreement with Ms Fesseha is complete?

**Ms K Smith:** That is correct.

**Senator TROOD:** So it has been signed off. When was that concluded?

**Ms K Smith:** Just recently—this month.

**Senator TROOD:** In May?

**Ms K Smith:** She has been operating previously under an arrangement directly with us. It has now been made a formal arrangement, including with the states and territories.

**Senator TROOD:** So that was formalised this month, was it?

**Ms K Smith:** The formal arrangement involving all the states and territories was executed this month, that is right.

**Senator TROOD:** I see. When I asked on the last occasion, I was told that there was progress in relation to one orphanage. I understood you or your colleagues to say that there was an intention to try to identify a second orphanage. From what you have just said, you have a relationship with one. Is that correct?

**Ms K Smith:** That is correct.

**Senator TROOD:** And which one is that?

**Ms K Smith:** The Tesfa children's orphanage.

**Senator TROOD:** Are you pursuing a relationship with a second orphanage at this juncture?

**Ms K Smith:** Yes. Our Australian representative is looking into several options at the moment, but no decision has been made.

**Senator TROOD:** And how well progressed are those activities?

**Ms K Smith:** She has a comprehensive assessment tool which we have provided to her and she is working to complete them to provide to us.

**Senator TROOD:** And how many agencies is she considering?

**Ms K Smith:** I am not sure of the final number. At the moment I think there is a couple that she is looking at, but I could not tell you that with certainty.

**Senator TROOD:** Are they in Addis Ababa?

**Ms K Smith:** I am sorry?

**Senator TROOD:** Where are they?

**Ms K Smith:** No. There is one outside Addis Ababa that we are aware of and another.

**Senator TROOD:** They are on the basis that they are orphanages that support this principle that the Ethiopian government insists upon, as I understand it. Is that right?

**Ms K Smith:** I think if you were to ask the orphanage about the subsidiarity principle, they probably would not understand what you are speaking about.

**Senator TROOD:** It may be a language germane to us, or a lexicon that we use amongst ourselves, but I suspect they have a local understanding of the concept in some way. I assume they would, since I gather that that has been an obstacle to our progress in the past.

**Ms K Smith:** The subsidiarity principle sits within the Hague convention on the protection of children with respect to inter-country adoption. It is a principle that we are conscious of when we seek to work in overseas countries. But the Ethiopian government is not a signatory to the convention. Nonetheless, all of our activities with overseas countries seek to apply that principle. But the orphanages themselves would not contemplate what that meant.

**Senator TROOD:** I see. So this is a principle that operates between governments, essentially?

**Ms K Smith:** It is a principle that underpins the Hague convention.

**Senator TROOD:** You said in your opening remarks that the program was fully operational. What does that mean? Have any children as yet been identified or allocated? Is the program operational to that extent, or not?

**Ms K Smith:** As I mentioned, the children have been referred to the program and are going through background assessments, and some initial matching processes are underway. Those processes are a matter for the parents who are involved and the representative state or territory government department which deals with the case management.

**Senator TROOD:** How many children—I am not sure what language you use here—have been 'allocated'?

**Ms K Smith:** 'Matched' is the initial step.

**Senator TROOD:** Let us use the word 'matched'. How many children have been matched?

**Ms K Smith:** Six children have been matched to date.

**Senator TROOD:** Can you tell me which states or territories they are in?

**Ms K Smith:** Because we are dealing with such a small number of children, that would reveal information about the particular parents known to the community, so I do not feel that is appropriate at this point.

**Senator TROOD:** So six have been matched. When did that occur?

**Ms K Smith:** It is not at a point where a match has been accepted. These are proposals coming from our Ethiopian representative to the relevant state or territory central authority, which is in conversation with the prospective adoptive parents. Prospective adoptive parents have not yet accepted or declined the proposals. So they are very much cases in progress at the moment.

**Senator TROOD:** So that is true in relation to all six children?

**Ms K Smith:** That is correct.

**Senator TROOD:** Do we have any notice or expectation that there will be further children to be matched in the near future?

**Ms K Smith:** We certainly have children who have been referred to the program and are having their backgrounds checked. So the next logical step is for them to be matched with appropriate prospective parents.

**Senator TROOD:** So, in addition to these six, there are others that are likely to be made available and will be allocated or matched in the near future?

**Ms K Smith:** That is correct.

**Senator TROOD:** Can you tell me how many are involved who are in that cohort?

**Ms K Smith:** There are approximately 15 children. It is something that is moving, so there have been a number of children come through and then another set. It is not our role to be quite closely watching the absolute numbers, but the number is in that vicinity.

**Senator TROOD:** On the matter of process, is the program for Ethiopia now being matched out of our embassy in Addis Ababa, or is it still being managed out of Nairobi, which I gather was the case previously?

**Ms K Smith:** Senator, the embassy in Addis Ababa is small and does not have a representative of the department of immigration. The predominant involvement of our embassy is for the immigration process, so Nairobi is still the centre for doing the immigration work that is associated with inter-country adoption. The post in Addis Ababa has no day-to-day involvement in the program.

**Senator TROOD:** Do you know whether there is an intention to place an officer in Addis Ababa to manage these things?

**Ms K Smith:** That would be a matter for the department of immigration. I understand at this stage that there is not, but you would have to ask that department.

**Senator TROOD:** That opportunity has now passed for the time being. Can you tell me whether or not the Attorney-General has contemplated suggesting to DIAC that there ought to be an officer there or that they be removed?

**Ms K Smith:** We have not. We have not felt it necessary. The relationship with the post in Nairobi has worked successfully and continues to do so. So at this stage we see no immediate need, or even longer term need, for an immigration post in Addis Ababa particularly for these cases.

**Senator TROOD:** We have had discussion on previous occasions about this MOU that has been contemplated. Mr Wilkins, you told me on the last occasion we met that we had reached a point where we did not regard the MOU as necessary and vital to the conduct of inter-country adoption. Is that still the position?

**Mr Wilkins:** I am not sure that is exactly it.

**Senator TROOD:** I am characterising your position as I understood it.

**Mr Wilkins:** Keep going. I am not sure that is exactly what I said.

**Senator TROOD:** I do not suggest they were your words. I am characterising what I took from the discussion.

**Ms K Smith:** The 1994 agreement is very much in place. There is not a problem with its continuation. The Ethiopian authorities have, as you know, a draft of some proposed amendments. Our Australian representative has had some informal discussions with the



appropriate departmental officer in the Ministry of Women's, Children and Youth Affairs as part of building a relationship with the appropriate Ethiopian authorities. They have indicated they are broadly happy with the thrust, but we have not moved further on that at this point. It is something that we are still negotiating the detail of prior to the settlement of that.

**Senator TROOD:** Can I characterise it in this way: it is still your intention to conclude a new MOU but, in the meantime, adoptions are taking place under the arrangements that exist under the June 1994 arrangements?

**Ms K Smith:** Yes, that is correct. Whether it is an MOU or a bilateral arrangement—its name is not of significance but its function is—it is to modernise the detail of the documentation between us. Nonetheless, the relationship continues with no ill effect from the fact that it is a 1994 agreement.

**Senator TROOD:** As I understand it, it is largely to recognise the fact that the Commonwealth, rather than the states, is actually the key level of jurisdiction in Australia now. Is that right?

**Ms K Smith:** That is correct. It is about updating the parties to the agreement. The government authority in Ethiopia has also changed from 1994.

**Senator TROOD:** Finally, I think I was advised in answer to question No. 89 that the estimated total fee now payable per application—this is answer (c)—is in the order of \$US12,000. Is that still the figure?

**Ms K Smith:** That is correct. We have settled the figure and formally advised it on the internet. The final figure for each application is \$12,000.

**Senator TROOD:** At what point of the process is that amount of money paid?

**Ms K Smith:** The figure is payable in two instalments. One instalment is paid when the file goes to Ethiopia; the other is paid on the allocation of a child.

**Senator TROOD:** So for those matchings that you referred to, those prospective parents have already paid part of this figure?

**Ms K Smith:** That is correct.

**Senator TROOD:** If they accept the allocation, they will now be expected to pay the balance of that amount?

**Ms K Smith:** That is correct.

**Senator TROOD:** Does that apply to prospective parents whose files have been in Ethiopia for a long period of time and who would have been unaware of the fact that the figure is now \$12,000? What I am seeking is clarification as to whether the figure for all circumstances, for all files, for all allocations is actually \$12,000.

**Ms K Smith:** For all files allocated after a certain date, that is the figure. Each time fees have been altered, prospective adoptive parents with files in Ethiopia have been advised of the situation by their state or territory representative.

**Senator TROOD:** Can you disaggregate that \$12,000? Can you break it down into some portions which are attributable to particular payments for particular purposes, or not?

**Ms K Smith:** Part of the fees are for the development assistance activities which have been included as part of the new Australian program. That is \$1,220. Another part is for

orphanage support payments, which is budgeted as \$1,820. These figures are available in our country program table on our public website. We have one for each country that we have a program in. It has extensive information, including the current fees.

**Senator TROOD:** I confess that I have not looked at the website. Does the website disaggregate this \$12,000?

**Ms K Smith:** It does indeed.

**Senator TROOD:** Thank you, Ms Smith. You have been very helpful. I am grateful to you.

**Ms K Smith:** Thank you.

**Senator PRATT:** I have a quick question on adoption before you leave the table. It has been some years since I had any involvement in this issue, so I am just trying to update my understanding of it. Clearly, the parent-child relationship is established by the states, but our responsibilities under the Hague convention are at a federal level. Historically, I understand that many of the relationships with the sending countries were established by the states, which is part of why some of the complexities about countries like Ethiopia have evolved. But I am a little bit unclear on how those relationships stand now in terms of whether states are still driving some of the sending country relationships or whether it is just the Commonwealth that is primarily responsible for that now.

**Ms K Smith:** Certainly the situation has changed. You are obviously aware of the history of inter-country adoption in Australia. The Commonwealth is now responsible for maintaining our relationships.

**Senator PRATT:** With all sending countries?

**Ms K Smith:** Yes, that is right. We work very closely with our state and territory colleagues. They are certainly involved in any major activities. We provide the conduit, if you like, for the communication with those overseas authorities.

**Senator PRATT:** Are children predominantly going to very dispersed states, or are different nationalities of children cohorting in particular jurisdictions?

**Ms K Smith:** All programs are open to all states, so a child may be adopted from any country into any jurisdiction in Australia. There are certain patterns where historical preferences exist. Nonetheless, the adoptions are widespread across Australia for each of the different sending countries.

**Senator PRATT:** Is that because there are communities of adoptive parents who kind of get an understanding of what goes on in a particular country?

**Ms K Smith:** It could be.

**Senator PRATT:** I think that goes a long way to answering my concerns and gives me a current understanding of the situation. Thank you.

**Senator BARNETT:** I have some questions that I would like to ask on behalf of other colleagues about family relationship services and centres. There was a decrease in funding for the Family Relationship Services Program of \$2.544 million between the 2010-11 and 2011-12 budgets. That is program 1.4 in the budget papers. The PBS says that this is 'due to measures in the 2010-11 budget'. Can you please detail what these measures were and their implications?

**Mr Wilkins:** Toni Pirani can give you some details on that.

**Ms Pirani:** It represents the introduction of the measures that were announced last year for not only a reduction of funding across a range of internal government spending but also for the means testing in the family relationship centres, which was originally to take effect on 1 July this year but has actually been delayed by six months and will commence on 1 January 2012.

**Senator BARNETT:** I will be coming to the delay shortly and seeking confirmation regarding that. I am seeking details with regard to the funding cuts and the implications of those cuts. Where will those cuts be? How many jobs will be affected? Have you got details in that regard?

**Ms Pirani:** As would you recall, FaHCSIA administer the program on our behalf. They are currently entering into funding agreements with our service providers as their contracts expire on 30 June this year. The new contracts will reflect the change to funding. We would not expect there to be a reduction in staffing or services as a result of those reductions, as they were put in place essentially to reflect that the centres would now be recovering from clients a contribution towards the service that the centres provide whereas previously those services were a guaranteed three hours free.

**Senator BARNETT:** When will that new contract be consummated?

**Ms Pirani:** They are currently being negotiated for commencement on 1 July this year.

**Senator BARNETT:** That is not far away, is it?

**Ms Pirani:** No. But negotiations are—

**Senator BARNETT:** When will they be signed?

**Ms Pirani:** As soon as the specific details are in place with each of the service providers.

**Senator BARNETT:** Can you guarantee they will all be in place by 1 July?

**Ms Pirani:** It appears to be proceeding very well at this stage.

**Senator BARNETT:** And that is between FaHCSIA and each of the individual centres?

**Ms Pirani:** Indeed.

**Senator BARNETT:** It appears to be, but you cannot guarantee that they will be in place by 1 July?

**Mr Wilkins:** No. I do not think we can guarantee it, but it appears to be going well.

**Senator BARNETT:** That is a pity because we are nearly into June and they start on 1 July. We are sitting here and we do not have a guarantee that they will start. I make that observation. Let us move on. The *Australian* newspaper delivered a report on 10 May that was headed 'Cuts put disputes back in courts'. It says that the Attorney-General has indicated that a \$9 million cut to the family relationship centres would be delayed for six months and then applied as a four per cent reduction from 1 January 2012. It says:

After a one-year campaign of lobbying by the sector, Attorney-General Robert McClelland has written to the peak body representing centres, agreeing that the \$9m cut from family relationship centres would now be delayed for six months and then applied as a 4 per cent reduction from January 1 next year.

Is that delay still going ahead? Why did the Attorney-General decide to delay the \$9 million? Why was six months chosen as the period of the delay?

**Ms Pirani:** I should clarify that the \$9 million reduction was \$3 million per year across all of the services. So it is not \$9 million per year; it is \$9 million over the three years. The government has agreed for the centres to commence recovering some fees from clients from 1 July but with the reduction to their funding actually not taking effect until 1 January. So there will be a six-month period during which the service providers will be introducing that regime and bedding it down, if you like, before the actual funding—

**Senator BARNETT:** So the six-month period was chosen for that purpose—so that it was a transition phase?

**Ms Pirani:** Indeed.

**Senator BARNETT:** And you think that, by the end of that six months, everything will be sorted and they will be hunky-dory and they will be back on track?

**Ms Pirani:** We would certainly hope so.

**Senator BARNETT:** That is the objective, is it?

**Ms Pirani:** As you would recall, these measures were announced in last year's budget. We had thought that there would be a 12-month period for the centres to be preparing their forms and information and things like that. We have taken quite a significant amount of time to consult with the sector in relation to the issues that they are confronting.

**Senator BARNETT:** Thank you. I would like your response to this statement, which is again from the *Australian* newspaper:

Family Relationship Services Australia yesterday said analysis showed that even with the funding extension, 2500 families would receive no service or wait up to 12 weeks for an initial assessment...Family Relationship Services Australia...yesterday said that even with the funding extension—

Do you agree with that statement? I wonder if you can respond to that. That is really the question.

**Ms Pirani:** I am not sure of the basis on which those figures have been calculated. I do not think that we would agree that there would be any significant change in the services.

**Senator BARNETT:** Will there be a diminution in the services available to families? If so, how many families will miss out on services? I am happy for you to take that on notice if you cannot answer.

**Mr Wilkins:** We do not think there will be.

**Senator BARNETT:** You are saying no families will miss out on service?

**Mr Wilkins:** We are simply changing the structure of payments, that is all.

**Senator BARNETT:** But you are saying no families will miss out on services and there will not be a wait of up to 12 weeks for an initial assessment?

**Ms Pirani:** All families will continue to receive one hour of free dispute resolution, and only certain families will be charged for the second and third hours. We do not foresee that there will be a significant change in the waiting times, although obviously that is something that we will continue to ask FaHCSIA to monitor on our behalf.

**Senator BARNETT:** With respect, when you say 'significant change', will there be a negative change, a disappointing change, or are you expecting no change?

**Ms Pirani:** We are not expecting a change, but we will monitor that.

**Senator BARNETT:** That is fine. If you say that, I will take you on your word. You are not expecting any change?

**Ms Pirani:** Indeed.

**Senator BARNETT:** Thank you. Apart from the delay of the \$9 million cut until 1 January 2012, which is the \$3 million a year that you referred to, are all other cuts that were part of the \$43.9 million cuts mentioned in last year's budget estimates still coming into effect from 1 July this year?

**Ms Pirani:** Some of them took effect last year. The remaining ones take effect from 1 July this year, which means there are no further increases.

**Senator BARNETT:** That is fine. Senator Williams has a special interest in this area and I would like to ask some questions on his behalf. He has expressed concern about family dispute resolution being means tested. He has expressed concern about the reduction in funding for post separation family counselling and the funding reduction for other remaining post separation services. He is particularly concerned about the Tamworth centre. He says there will be a \$20,000 budget cut for 2011-12 starting in January next year and then a further \$47,000 cut each financial year for the next two years. Does that sound accurate to you for the Tamworth centre?

**Mr Wilkins:** What is the question?

**Senator BARNETT:** Senator Williams says there will be a \$20,000 budget cut this financial year, starting in January next year, and then a further \$47,000 cut for each of the next two years for Tamworth.

**Mr Wilkins:** We have not got anything about a Tamworth centre in our budget. What budget line is this?

**Senator BARNETT:** This is under the family relationship services centres. Would this be funded through FaHCSIA, or through your budget? This is negotiations, I presume, with FaHCSIA.

**Ms Pirani:** The actual dollar figure for each family relationship centre would depend on their current level of funding because it is four per cent across each of the centres. It would really depend on what that cut is. It is not \$45,000 each year. There will be a reduction of an amount this year and a further reduction next year, but they do not lose another chunk in the year after that. Once that reduction is made, it is an ongoing reduction.

**Senator BARNETT:** Let us go to a few more specific questions. The family relationship centres now have to charge \$30 for the second and third hour for clients who earn over \$50,000 per annum. Previously all three hours were free. So the government is now charging? Is that accurate?

**Mr Wilkins:** We just said that in answer to your questions.

**Senator BARNETT:** As the large majority of clients that benefit from the services of family relationship centres earn less than \$50,000, will they therefore not have to pay for the service?

**Ms Pirani:** Yes. That is correct.

**Senator BARNETT:** They will have to pay for that service?

**Ms Pirani:** No. If they earn less than \$50,000, they will not pay for that service.

**Senator BARNETT:** But if they earn over that?

**Ms Pirani:** If they earn over \$50,000, unless they are on a social security benefit or have a health care card, they will not have to pay.

**Senator BARNETT:** So the future of the centres is now dependent on how much they raise? That is part of the business model, is it not? They must raise the money through their clients to obtain the funding necessary?

**Ms Pirani:** Yes.

**Senator BARNETT:** If they do not raise the money, what happens to them? Do they have to reduce their staff or cut their cloth accordingly? Would that be a fair assessment?

**Ms Pirani:** If that turns out to be the case. But I guess we would be keeping an eye on that.

**Senator BARNETT:** That is the outcome. It is up to them, is it not? They have to make those decisions, which is obviously very difficult for them. In the last financial year, Centacare New England North-West in New South Wales had over 2,100 clients within the programs in which budget cuts have been made. Senator Williams is concerned that this will almost certainly mean this number will increase. I guess that is an observation which he has made. What action would you take to ensure that centres such as the one at Tamworth will be able to meet this increasing demand in services rather than burden the family law court with more work? His final question is: for those people who cannot afford the \$30 hourly fee or do not want to pay it, where do you suggest they go to get that same counselling service that a month ago they were getting for free?

**Mr Wilkins:** I assume they are rhetorical questions, Senator.

**Senator BARNETT:** That last one obviously highlights the concerns that he has for his local community. Is there anything else you wish to add?

**Senator BOYCE:** I want to ask a question on that. Ms Pirani, you said if a centre was not generating the funds to support its work, you would be keeping an eye on that. What does that mean?

**Ms Pirani:** FaHCSIA on our behalf collect a lot of data in terms of what happens in our services and they provide that information to us. We are always keeping an eye on how our services are performing in terms of waiting times and demand to ensure that the spread of services is correct and that the funding levels are correct. So that is something that we monitor on an ongoing basis. As the contracts come up for renewal into the future, there are opportunities to look at that. In fact, we have particular services that have special pressures from time to time that they draw to our attention. We provide advice to the government on what they might be able to do about that.

**Senator BOYCE:** Does that involve extra funding on occasions?

**Ms Pirani:** Yes, it does.

**Senator BARNETT:** I have a question regarding the Safer Suburbs program. I know Senator Humphries has a long list of questions regarding emergency management. Just to clarify, is Safer Suburbs in group 2?

**Mr Wilkins:** I think it is in group 3, Senator.

**Senator BARNETT:** I was advised otherwise, but I am happy to be directed.

**Mr Wilkins:** It is in group 3.

**Senator BARNETT:** Let us check with the chair if there are any other questions in group 2.

[22:04]

**Senator BOYCE:** I have some in 1.5 on Indigenous law and justice.

**CHAIR:** We will go to you.

**Senator BOYCE:** Mr Wilkins, I am asking these questions here because I am not entirely sure where to ask them and I am hoping the expertise in the area would be in Indigenous law and justice. Is the department aware of a national group called the Aboriginal Disability Justice Campaign?

**Mr Wilkins:** Apparently not, Senator.

**Senator BOYCE:** I had better briefly explain who they are. They are a coalition of 12 organisations that are interested in disability issues and legal issues for people with disability and advocacy around disability and law. Their main focus is to look at how we can improve the way we handle Aboriginal prisoners with intellectual disability, cognitive impairment and autism, who are often incarcerated for long periods of time, often in maximum security, because there are currently no other pathways or options within the legal system. So my next question is: has the Attorney-General's Department looked at this issue of Indigenous justice? If so, what programs do you have around the area or what research are you doing?

**Mr Wilkins:** This is a fairly big topic. We might need to take that on notice. You will appreciate that a lot of this stuff happens in the states and territories.

**Senator BOYCE:** Absolutely; but it does happen in all the states and territories.

**Mr Wilkins:** I have been involved in a number of discussions with the Australian Institute of Judicial Administration. I am on the council. It has been looking at doing research around this area, and I know the Australian Institute of Criminology has done some research around this area. Various states and territories have a lot of programs. I know that we have had discussions about trying to evaluate various programs. There is a lot of disparate work that we touch on in different parts of the department. If you have a specific focussed topic that you are interested in, maybe we can pull some stuff together on this.

**Senator BOYCE:** My area of interest is what involvement, if any, the department has had in looking at options that could be evaluated, researched or suggested around pathways for Aboriginal prisoners with intellectual disability, cognitive impairment or autism who have been incarcerated.

**Mr Wilkins:** I think we should take that on notice. I do not want to overstate it, but there have certainly been discussions among national justice CEOs—that is sort of my level—around some of these issues. There has been work done between officers in my department

and the states and territories in terms of programs in the Indigenous justice area, which include some issues around, for example, the rehabilitation programs in prisons. But whether there are specific things dealing with cognitive impairment, I do not know. I can only take it on notice and come back to you, I think.

**Senator BOYCE:** Thanks, Mr Wilkins.

**CHAIR:** Is this still group 2?

**Mr Wilkins:** Yes.

**Senator BARNETT:** I have some questions on behalf of the federal member for Canning, Mr Randall, who has a special interest in the Safer Suburbs program. I have a number of questions relating to that program.

**Mr Wilkins:** That is actually group 3, Senator.

**Senator BARNETT:** Yes, I know.

**CHAIR:** I want to make sure we have finished questioning in group 2.

**Senator PRATT:** I want to ask about some announcements. I think there was some media in April about the anniversary of the Royal Commission into Aboriginal Deaths in Custody.

**CHAIR:** Which is, I think, group 2 still.

**Mr Wilkins:** Yes.

**Senator PRATT:** I understand that there is work between Community Services, Indigenous Affairs and the A-G's Department. There was a report that put a spotlight on significant issues in terms of the rates of deaths in custody. I think it was noted that the National Indigenous Law and Justice Framework was highlighting the importance of the commission's work as a foundation document in producing more equitable outcomes for Indigenous people in the justice system. I think it also highlighted alcohol abuse as a significant issue. I would really like an update on the work that the A-G's Department is doing in relationship with what is happening within the FaHCSIA and the Indigenous affairs portfolio.

**Ms Kelly:** Senator, I do not think we caught the first report that you referred to. Who was that report by and what did that report concern?

**Senator PRATT:** It is the 20th anniversary of the report of the Royal Commission into Aboriginal Deaths in Custody. It was the acknowledgement of those issues, I suppose, 20 years after that report. I beg your pardon; I should have made that clearer.

**Ms Jones:** The Attorney-General's Department is working very closely at the moment with the Department of Family, Housing, Community Services and Indigenous Affairs, FaHCSIA, in relation to Indigenous community safety issues. I think in your question you made reference to the National Indigenous Law and Justice Framework, which was endorsed by all governments back in 2010. It is now the significant driver of work throughout the country in terms of strategies and programs around Indigenous community safety issues. In particular, I think you noted that there is a strategic goal within that framework that is providing commitments for all governments to look at ways to reduce incarceration rates for Indigenous people. It is really the key framework through which we are trying to drive different approaches with the states and the territories in relation to reducing incarceration rates.



There is obviously a range of programs that both departments are responsible for that have an impact in this space. We are responsible for the Indigenous Justice Program. Under the Indigenous Justice Program we fund a range of projects relating to prevention, diversion and other activities to try to keep Indigenous people out of contact with the criminal justice system. I can provide more detail in relation to that. There is also obviously the broader work in the Closing the Gap agenda, because there are so many factors that contribute to the reasons that people come into contact with the criminal justice system. That certainly is part of the whole equation in looking at this issue.

**Senator PRATT:** I am interested to know within that context the constitutional issues between states versus our relationship with the Northern Territory. There is a lot of good work going on in states like WA and the Northern Territory but, in terms of the federal government's relationship with driving those outcomes, constitutionally they are quite different. I find it somewhat of a perplexing national debate that so much of that debate is focussed on what goes on in the Northern Territory. Clearly there are significant issues in remote communities in Western Australia, South Australia and Queensland. We seem to be having a proxy national debate via the Northern Territory. There is lots of good work going on in states like WA, but I am very unclear about what the national relationship is regarding how we are inputting into the reform and outcomes on those questions of Indigenous alcohol abuse in the states as opposed to just the Northern Territory.

**Ms Jones:** Quite clearly, as the secretary noted, this area is significantly a state and territory area of responsibility. The Commonwealth has tried to play a leadership role of driving the National Indigenous Law and Justice Framework, funding particular projects that we think will influence states and territories in terms of best practice, be it in rehabilitation type programs, prisoner through-care programs or restorative justice programs. In terms of a national perspective, we also participate actively in the remote service delivery framework. There are 29 Indigenous communities around Australia that have been identified to have intensive work between the Commonwealth, state, local government and the nongovernment sectors. As to the spread of those communities, I think there are 15 in the Northern Territory and about four or five in Western Australia.

**Senator PRATT:** I think that underscores my point in terms of the Commonwealth's focus when these things emerge in the Northern Territory versus what goes on in other states. There are almost as many remote communities in Western Australia as there are in the Northern Territory. Clearly, WA has its own constitutional responsibility for these things, but it does make it quite a confusing national discussion.

**Mr Wilkins:** This is something that you should have a longer conversation with FaHCSIA about. There are two quite different programs. One is the Northern Territory program and then there is another one for remote Aboriginal communities, which is Australia wide. There are significant constitutional differences, as you would understand. Particularly in the areas of law and order, incarceration and public safety there is probably even less purchase for the Commonwealth, if you like to think of it, than in some other areas constitutionally.

**Senator PRATT:** I did not mean to interrupt you mid-stream. I apologise, because I interjected as you were talking. I am interested. You were talking about how there are 15 in the Northern Territory and perhaps half a dozen or so in WA. So please continue from there.

**Ms Jones:** One aspect of the work we are doing in these remote service delivery sites is that in each community there has been an extensive consultation process. They have developed local implementation plans. Underneath those plans, in many communities they have developed community safety plans, where the communities themselves have identified critical issues that they would like to see addressed in terms of the community safety needs of their own particular community. The Attorney-General's Department, FaHCSIA and all other Commonwealth agencies as well as state and local agencies have been involved in them. There is a broad range of issues that people are involved in. Sometimes it might relate to alcohol treatment facilities. Sometimes it might relate to street lighting. Sometimes it might relate to policing. So it is a matter of them working with the different levels of government to try to address the needs that have been identified by those communities.

**Senator PRATT:** It strikes me that in general terms the level of engagement that the Commonwealth has on driving resolutions for that community engagement on the ground that is happening in states like Western Australia is not generally recognised.

**Ms Kelly:** Senator Pratt, I might be able to assist. The other way in which these complex state and territory issues are addressed is via the national partnership agreement on legal assistance, which has created a focus on early intervention and prevention. A national advisory body was established under that national partnership agreement. It is representatives are a Northern Territory magistrate, a Western Australian Aboriginal legal service, the Law Foundation of New South Wales, the head of New South Wales legal aid and a community legal centre representative. That body met last week. Very much a focus of that body was to learn from experiences, particularly in relation to Indigenous early intervention and prevention successes, and to apply those generally throughout Australia in the legal assistance sector. So that is another way.

The Commonwealth's influence in relation to legal assistance is its ability to bring all of those bodies together to learn from one another. Certainly there is some very positive work occurring in WA that was of great interest. The Northern Territory magistrate, who is a member of that body, spoke at length about the work going on in the Northern Territory in relation to alcohol. That prompted a very significant discussion in that body of what other jurisdictions could learn from that.

**Senator PRATT:** I just hope we have a more truly national discussion about those issues rather than a quasi national debate.

**CHAIR:** Before we move on to group 3, under the Indigenous law and justice area, I want to ask you a question about night patrols. I know the ANAO has just completed an audit of night patrols. In respect of the Northern Territory, the funding either goes to organisations or to the shire councils. I then assume they employ the people themselves who work in the night patrols. Is that correct?

**Ms Jones:** Senator, that is correct. We fund, I think, the eight shire councils and then one nongovernment organisation. I think I have that number right in terms of the shire councils. They employ regional coordinators who oversee the patrols. Usually the local people in communities are employed to deliver the night patrol services, although sometimes there are people from outside the communities that come in and are employed on that basis.

**CHAIR:** So are they still reporting quarterly to you, or is it yearly now?

**Ms Jones:** I believe that we are still requiring quarterly reports for most of the providers. But that is one of the issues that the ANAO report commented on.

**CHAIR:** In their quarterly reports, do they need to indicate to you how many people have been employed in that quarter, be it full time or part time, and how much money has been spent on salaries, or is the quarterly reporting purely the number of pick-ups or number of clients they have assisted and how they have assisted them?

**Ms Jones:** Senator, I would probably have to take it on notice, just in terms of the detail. My understanding is that we do get regular information on the number of people that are employed and actually delivering the services because that is something that we monitor on a fairly close basis. So we do receive that information.

**CHAIR:** Could you take on notice, then, and provide for me exactly what is required in the quarterly reports and how those shires or organisations acquit the money you provide to them?

**Ms Jones:** Yes.

**CHAIR:** Particularly in terms of salaries and wages and employment costs. Are we going to move on to group 3 now?

**Senator PRATT:** Yes.

[22:24]

**CHAIR:** We will now move to group 3. That means that people associated with group 2 can go.

**Senator BARNETT:** I have questions on Safer Suburbs. I will be as quick as I can because I know Senator Humphries has some important questions under the disaster financial support section. I understand the government in this budget put in \$5.2 million extra over three years for the Safer Suburbs program. It continues the renaming of the successful Howard government National Community Crime Prevention Program, with both programs being funded in this budget, according to page 35 of the PBS. The National Community Crime Prevention Program ends in 2012-13 and the Safer Suburbs program will end a year later in 2013-14, according to page 34 of the PBS. If that is wrong, please correct that on the record. I would like to know with regard to the Canning electorate—again, I am happy for you to take this on notice—in which financial year the following election commitments will be funded: \$85,000 for Waroona Football Club lighting; \$50,000 in seed fighting for Roleystone skate park; \$25,000 to Legal Ink for anti-graffiti management; \$15,000 to Jarrahdale youth group for a half a basketball court; and \$80,000 for the City of Mandurah anti-graffiti removal team and band, noting that the City of Mandurah has submitted an application for Safer Suburbs funding but for CCTV cameras, not an anti-graffiti removal team. So if you are happy to respond or take that on notice, that would be appreciated.

**Mr Wilkins:** Senator, I will ask Mr Iain Anderson to address those questions.

**Mr I Anderson:** I will seek some clarification first. The amount of funding for the Safer Suburbs program is \$5.42 million. I do not think that is a figure you mentioned.

**Senator BARNETT:** I had \$5.2 million.

**Mr I Anderson:** It is \$5.42 million over three years. In terms of the actual programs themselves, we are currently working through the processes required under the

Commonwealth grant guidelines in getting full project bids. Then we will be going through a process of drafting up and agreeing on the full suite of grant documentation, agreeing on milestones and going through the audit requirements and that sort of thing. So it is not possible at this point to say in which financial year the program funding will necessarily occur. It is our experience with this and other similar programs that sometimes it takes longer than initially envisaged for a community organisation to actually deliver the full program. You mentioned, for example, the NCCPP and the funding for that continuing. The funding for that continuing in fact just reflects the fact that some programs have not yet been completed under that program. Similarly, with Safer Suburbs, it is likely that projects will take a while to complete. We are not necessarily saying in which financial year they have to occur. It is mainly that they need to occur properly in accordance with the grant documentation and then have a full acquittal process.

**Senator BARNETT:** But there are budget papers which indicate that they conclude at a certain time. That is on page 34.

**Mr I Anderson:** Yes, that is right, Senator. Notionally, at least, the funding is—

**Senator BARNETT:** Well, it is in the budget papers. I do not consider that notional, Mr Anderson.

**Mr I Anderson:** No, Senator. But, as you pointed out yourself, funding for the NCCPP has been carried forward. The reason it has been carried forward has been that some of these projects do not occur in the time frame that the community organisation originally proposes. So the budget papers provide that there be \$1.5 million expended in the first year, \$3.3 million in the second year and \$0.5 million in the third year. If, as may happen, some of those community organisations take longer than they envisaged to complete those projects, funding would need to be carried forward into a subsequent budget year, as happened with the NCCPP.

**Senator BARNETT:** Mr Anderson, thank you very much. I ask you to review the *Hansard*. If there is anything that is not accurate in the *Hansard*, could you take that on notice and clarify it in a response to a question on notice?

**Mr I Anderson:** Certainly, Senator.

**Senator BARNETT:** Thank you. And likewise to those specific questions regarding those special projects for the Canning electorate, which is so important. I know Don Randall has been working very hard for his local community. He is hoping that those promises will be met, obviously.

**Mr I Anderson:** Yes, Senator.

**Senator HUMPHRIES:** I want to come back to questions from the last episode of estimates in February this year. They concern the reasons behind a declaration to allow AGDRP to people living in the Gascoyne region of Western Australia.

**Mr Wilkins:** I cannot hear you, Senator.

**Senator HUMPHRIES:** I am speaking as loud as I can. I asked on the last occasion, Mr Wilkins—I am sure you recall—quite a few questions about the reasons for a delay by the Attorney-General in declaring AGDRP to people affected by floods in the Gascoyne region of Western Australia. I pointed out that the Western Australian government wrote to the federal

government on 31 December 2010 setting out the basis on which citizens in the affected areas of the Gascoyne should be eligible for AGDRP. I noted that the payments were not in fact authorised by the government until 11 February, some six weeks later. I asked about the reason for that delay and it was suggested to me that there was additional information that the Commonwealth needed to obtain before it would be able to declare the area eligible for AGDRP. That question was taken on notice. The suggestion was made in the course of my attempts to get these answers that there may have been information that the Western Australian government had not provided which delayed the declaration of the areas as eligible for those payments.

I have, in fact, now got the answer back to my question. It leaves me no better informed about the reasons for the delay. The answer is to questions 75 and 78 taken on notice. They suggest that Western Australia has indeed suffered one of the most severe flood events or disaster events in history. It records that the Gascoyne River had one of the highest flooding levels on record. More than 800 properties in the Gascoyne region were disconnected from power as a result of the floods and approximately 150 people registered at evacuation centres. I quote:

The state of Western Australia has experienced a particularly severe disaster season.

I also understand that the Prime Minister herself went to the Gascoyne on about 5 or 6 January to examine the damage that had been done by the floods. Presumably she was able to see that the damage was severe and would have had more than enough first-hand evidence of the need for the area to be appropriately flood declared. So I come back to my question, which I asked again and again on the previous occasion and still have not had answered: why did it take from 31 December, when the Premier wrote to the government seeking appropriate flood declarations, to 11 February for the people in this part of Western Australia to be able to receive that AGDRP?

**Senator Ludwig:** I want to clarify something. Of the AGDR payments that were made, were they made from the latter date or were they made from the date the flooding occurred? They would have got one payment.

**Senator HUMPHRIES:** They could not have been paid before the declaration was made by the government.

**Senator Ludwig:** No. They did get a payment, though.

**Senator HUMPHRIES:** They got other payments under other schemes but not AGDR payments of \$1,000 for each adult and \$400 for each child.

**Senator Ludwig:** I am just trying to satisfy myself. Are you complaining that they did not get any payment, which was AGDRP?

**Senator HUMPHRIES:** No. I am complaining that those payments only became eligible six weeks after the flood event.

**Senator Ludwig:** And those who applied for the payment then received the payment?

**Senator HUMPHRIES:** Well, presumably many people did not apply for the payments until they were eligible to do so. There is no point in applying for a payment if are were not entitled to get one.

**Senator Ludwig:** I was just trying to work it out. So it is the time line that you are most interested in, not whether the person got a payment or not?

**Senator HUMPHRIES:** No. I am not suggesting people did not get paid. I am suggesting that they had to wait six weeks for those payments. I contrast that with the situation in Queensland, your own state, Minister, where the appropriate declarations were made within a few days of the flood events occurring and people were getting those moneys very quickly and appropriately into their bank accounts after the flood events. Why did it take six weeks in the case of Western Australia?

**Mr Wilkins:** We have attempted to answer that.

**Senator HUMPHRIES:** As I understand it, the state applied on 31 December. The state was flooded during December. These floods were earlier than in Queensland. They were flooded in December, as I am sure you know, Senator Pratt. The Premier wrote on 31 December, I am advised, with a necessary request to the Commonwealth for that kind of flood declaration to be made. It was put to me at the last estimates that there was some further information that needed to be obtained. You, Senator Ludwig, suggested that this might have been information that was required from Western Australia itself.

**Senator Ludwig:** Yes.

**Senator HUMPHRIES:** I am not aware of any information that Western Australia had not supplied. The answer to my question does not suggest there is any information from Western Australia that was not supplied. The answer does not give me any information that was not supplied or available to the Commonwealth in order to make that assessment. Can I now have an answer to my question?

**Mr Wilkins:** I think we have attempted to, maybe in a rather roundabout way, indicate the sort of information that is required to make these decisions, which is not always apparent. In some cases, it is more apparent than others. But I might ask the director of emergency management, EMA, to talk about this matter.

**Senator HUMPHRIES:** Is that his responsibility?

**Mr Wilkins:** Yes, it is. It is mine ultimately, but I take advice.

**Mr Darby:** The AGDRP comes under the Social Security Act. The relevant minister must be assured that the event is of such significance that a government response is necessary, taking into consideration the number of individuals affected, the extent to which the nature or the extent of the event is unusual and the severity—as I said, the number of people who have been impacted by that event. At this stage, we in EMA—it is a bit of memory on my part—were dealing with a number of events that were going on at that time. It is also my memory that in Western Australia there were a number of events of flooding that continued after that Carnarvon event. So even getting impact data for the Carnarvon area was difficult. There were a number of high flood levels of the Gascoyne River during that period. We are actually waiting for the full impact of those other events to stabilise before we actually move forward on some of this.

**Senator HUMPHRIES:** I want to interrupt you there. There are two issues you have raised there. One is that you are waiting for other flooding—

**Senator Ludwig:** You should not interrupt him. You should allow him to finish his answer, quite frankly.

**Senator HUMPHRIES:** Okay. Proceed, Mr Darby.

**Mr Darby:** Then we take impact information from the Bureau of Meteorology; from the state governments, which have generally got the best information available; and from Geoscience Australia. We then inform the minister. It is up to the government to make the determination of a declaration of the AGDRP. It is not something which can actually be requested by the state. It is purely a Commonwealth government declaration and it is up to the government to make that declaration.

**Senator HUMPHRIES:** Are you responsible for garnering that information to put before the Commonwealth minister?

**Mr Darby:** Yes, we are. Yes, I am.

**Senator HUMPHRIES:** When did you put it before the minister or his office?

**Mr Darby:** I would need to check that date. I do not have it with me.

**Senator HUMPHRIES:** That is the question I essentially asked on the last occasion. I asked you what information had to be provided that was not provided to the government at the point when the Western Australian Premier wrote to the government on that matter.

**Mr Wilkins:** Well, we attempted to answer that question.

**Senator HUMPHRIES:** With respect, you did not, Mr Wilkins. You described in general terms the kind of information which a government normally seeks to find out about an abstract situation. I asked you specifically what information was missing in the case of the Gascoyne. I contrast that with a situation where apparently the information was available very readily and quickly to the minister with respect to Queensland. Within days he was able to make the appropriate declaration, but in Western Australia it took six weeks. I still want to know what information was missing and why was it not available until 11 February. Conversely, was it available? Was it put by Mr Darby to the minister's office much earlier than that? Is the reason for the lack of a declaration the fact that the minister did not get around to considering this issue?

**Mr Wilkins:** We have attempted to explain the information.

**Senator HUMPHRIES:** Have you, Mr Wilkins? You have explained the process. You have not explained what happened in this particular case, and that is what I was asking about.

**Mr Wilkins:** I think Mr Darby just tried to do that, Senator.

**Senator HUMPHRIES:** No. He said he did not recall when he put the information to the minister.

**Mr Wilkins:** No. He has tried to explain what information we were seeking in that case.

**Senator HUMPHRIES:** No. He has explained what kind of information he needs to seek in any case.

**Mr Wilkins:** No. He was talking about the Gascoyne, as I understood it.

**Senator HUMPHRIES:** Okay. I will take Mr Wilkins at his word. What information was missing specifically, Mr Darby, from the information in front of you, let us say, at the point when the Prime Minister visited the Gascoyne? She went there herself. She looked around.

Presumably she met flood affected people. She looked at places where flooding had occurred. Would she not have been able to provide direct information to the government that the flooding had occurred, it was severe, it had resulted in people's homes and businesses being damaged? What was missing at that point in time that prevented the government from making the appropriate declaration?

**Mr Darby:** Senator, we come back to what the requirements of the legislation are in terms of an event which is of such significance that a government response is required—the number of individuals who have been impacted and the extent to which the disaster is unusual.

**Senator HUMPHRIES:** The more unusual it is, the greater the need for an emergency response, is it not? If people have been affected on a large scale, as your answer suggests—

**Senator Ludwig:** You have interrupted again.

**Senator HUMPHRIES:** It does suggest—

**Senator Ludwig:** You have interrupted Mr Darby again. If you would not mind just letting him—

**Senator HUMPHRIES:** I am not getting an answer. That is why I have interrupted, Senator Ludwig.

**Senator Ludwig:** Well, that is not a reason to interrupt. You can ask that when the witness finishes his answer to the question that you have asked. Then you can say it again, if you like.

**Senator HUMPHRIES:** Can I have an answer? Can you answer the question I have asked?

**Mr Darby:** I cannot answer the question specifically about what sort of information we were lacking at that time. But I know the sorts of information that we do seek—the percentage of individuals who have been impacted in a community and how that relates to that community and the community impacts overall.

**Senator HUMPHRIES:** Yes. You have told us that this time and you told us that on the last occasion and you still have not told us the answer I specifically wanted to know, which is: what information was absent from your portfolio of information that prevented the declaration from being made? I have not got time to question you further, Mr Darby. I ask you or the people at the table to take on notice the same question I asked you to take on notice on the last occasion, which is: what information was missing from the government's information about this incident in the Gascoyne? Who eventually supplied the necessary information and specifically when? When did you, if you are the responsible officer, provide that information to the minister to allow the declaration to be made? Can I have that information on notice, please.

**Mr Wilkins:** Well, we can on notice see if we have that information. What you want us to do is sketch out a series of events which may not be recorded, actually. If you have to collect information to discharge the various aspects of that statute, it is—

**Senator HUMPHRIES:** With respect, Mr Wilkins, how could it not be recorded? Mr Darby would not have flown to Australia—

**Mr Wilkins:** When to when?

**Senator HUMPHRIES:** I would like to finish my question. Mr Darby would not have flown personally to Western Australia to search through files or take photographs of flood



sites himself. He would have relied on information being supplied to him. Presumably it was supplied by letter or email or possibly telephone call, all of which I assume would have been recorded at some time. So, yes, surely all the information he was after must have been recorded and he should be able to answer the question I have asked.

**Mr Darby:** Senator, we were going through a process of building up a picture. To actually identify what particular elements we were missing would be difficult. But we can see what sort of things we were building up, what elements of that picture we were building up, and attempt to provide you an answer.

**Senator HUMPHRIES:** Well, please answer those questions on notice. Would you also please give me some explanation as to why that information was apparently hard to obtain in Western Australia but was easy to obtain in Queensland, where the declarations were made very quickly after the flooding concerned? I want to move to a different area—the crisis coordination capability provision in the budget. I note that this has been funded in previous years. In the budget this year, it appears as if there is no ongoing funding for that particular activity. On page 35 of the PBS, it shows that the line item for national crisis coordination capability is zero in the upcoming financial year and the out years. But in last year's PBS, there was a quite substantial amount of funding allocated to it. So why has that disappeared?

**Mr Wilkins:** I suspect it is because it is finished or about to be. Is that right?

**Mr Darby:** Yes, I believe it is. Senator, I believe that is because the expenses to do with the Parliament House briefing room have finished. That was a project which was finished in this financial year.

**Senator HUMPHRIES:** I do not understand why, then, in last year's portfolio budget statement there were figures against this item not just for 2011-12 but all the way through to 2013-14. Why was it thought to be a project with five-year implications at that point that now turned out to be a project with only a one-year implication?

**Mr Darby:** I would probably need to take that on notice to see how that has translated.

**Mr Wilkins:** It sounds like an accounting issue, to me.

**Senator HUMPHRIES:** It does sound like that, yes. Could you find out for me, please?

**Mr Darby:** We have finished the Parliament House briefing room aspect, but there is the crisis coordination capability project, which is ongoing. But for some reason, that got shown under that, so I am not too sure where that now sits.

**Senator HUMPHRIES:** When is the other project due to be completed?

**Mr Darby:** The other project is due to be completed at the end of this calendar year, but there will be some ongoing expenses running through to the end of the financial year as well. But most of that is a capital expense.

**Senator HUMPHRIES:** The end of this calendar year would mean it should have some budget marked against it for the 2011-12 budget. But there is nothing in it for the 2011-12 budget. So I think there is an accounting issue there. Can you tell me where the national crisis coordination project stands at the present time, the one in Barton? You said it was going to be completed by the end of the year. I take it that it is more than half built at this point in time?

**Mr Darby:** It is substantially complete. It is a facility within a building here in Canberra, which is both office spaces and a crisis coordination centre, which will allow us to link

appropriately and securely to states and territories, to other crisis coordination centres for other Commonwealth departments and provide us the ability to take in liaison officers from other government departments in a crisis.

**Senator HUMPHRIES:** Sorry to flit around here, but I have not got much time. I turn to the announcement in September last year that the emergency alert would be upgraded to become a location based system at Commonwealth expense. This might have been somewhat prescient because I am aware that at the inquiries being held in Queensland and Victoria there has been some criticism of the emergency alert system. I understand that partly at least revolves around the fact that the alerts go to, at the moment, registered addresses of the mobile phones rather than where the phones necessarily might actually be. At the point of the publication of MYEFO, there was no dollar amount indicated against this project. Are you able to tell me now what the dollar amount is for the project?

**Mr Wilkins:** Senator, I can. I would prefer to brief you privately on that, the reason being that we are involved in a tender process at the moment. If I could do it that way, I would be happy to maybe after this even explain to you the amount.

**Senator HUMPHRIES:** Thank you for that. I accept that offer.

**Mr Wilkins:** We are not doing the tender process, but we are providing the funds. Victoria is running the tender process on behalf of the states and territories.

**Senator HUMPHRIES:** That is fine.

**Ms Leon:** Senator, I come back to the question you asked a moment ago about the national crisis coordination capability. In the 2010-11 budget papers there was ongoing funding in the forward years of 2011-12, 2012-13 and 2013-14 of amounts a little over \$450,000. Those amounts have now been transferred to the Department of the Prime Minister and Cabinet because they were the ongoing funds associated with the Parliament House briefing room and the management of that facility has now been transferred to PM&C.

**Senator HUMPHRIES:** That is logical. Thank you. So you have offered me a briefing on the tender process. Thank you very much. You seem to have acknowledged with this upgrade to an emergency alert that a location based system of alerts is an important development in providing warnings in places where the warnings are actually most pertinent. Either directly or through a tender process devolved to another stakeholder such as, in this case, Victoria, why will the department still not explore alternative systems that are location based, such as, for example, the Yellow Bird technology, the proponents of which have written to the government? I understand the government has declined to even attend a demonstration of that technology.

**Mr Wilkins:** I am not aware of that.

**Mr Darby:** Senator, I am aware of it only peripherally. I have not been aware of it in this job, but I was aware of it in my role in the Northern Territory. Our assessment of it then was that it did not actually meet the requirements we wanted. I could not comment on it in terms of the Commonwealth government.

**Mr Wilkins:** I am not aware of it, Senator. But there was, once again, a Commonwealth-state process looking at options before we embarked on this. I am not aware of this particular technology myself.

**Senator HUMPHRIES:** I am advised that the proponents of this technology have made several attempts to have the Commonwealth at least look at it. I know that they have written to the Attorney-General and he has responded about the technology and about that issue. I would be surprised if you had not given him advice about his response in the letter that he wrote back to the proponents. Can I appeal to you then—

**Mr Wilkins:** We can give you a bit more information, I think, Senator. I might get Tony Sheehan to answer.

**Mr Sheehan:** The Attorney has, as you say, written to the states and territories to bring to their attention the Yellow Bird alert. I understand he has also written to other Commonwealth colleagues in respect of it. The states and territories, obviously, have autonomy to select what warning devices or systems best suit their circumstances. But you are correct: the Attorney has been engaged in that way.

**Senator HUMPHRIES:** Of course, the Commonwealth is funding what we might call a template national warning system, which presumably is therefore easier and more efficacious for states to pick up since it is a complete model that can be rolled out quickly in states that choose to participate. So it would seem to me appropriate for the Commonwealth to at least be aware of the capabilities of this system. If the Attorney-General is writing to states urging them to look at it, then it would be surely incumbent on Commonwealth officers, particularly those in EMA, to at least examine the technology. Could I ask you, Mr Darby, to at least meet with these people and look at their technology and see whether it might not better meet the requirements of providing that template system I spoke of, satisfying yourself that that may or may not be the case rather than relying on second-hand information about it?

**Mr Darby:** Yes, Senator. Somebody will. It does not fall directly under my area. One of my understandings—it might not be correct—is that this system is an opt-in system whereas the location based and emergency alert system is not opt-in; it will go to everybody.

**Senator HUMPHRIES:** I understand it is an opt-in system. With respect, if you have not met with them to see what the technology does, it is very hard for you to comment on what the technology does or does not do. Again, I urge you to consider at least meeting with these people. It includes Associate Professor Steve Robson, who has been the professor of emergency medicine, I think, at the Canberra Hospital and a former director—a person formerly in your role, Mr Darby—of Emergency Management Australia, or its predecessor. I suggest that a short period of time spent with these people would not be unprofitable.

**Senator Ludwig:** Chair, we are now getting to an interesting stage where not only do we ask questions but we ask people at the table to make appointments when their evidence was that the topic is peripherally outside their area. I am not talking about the veracity of the issue or not—

**Senator HUMPHRIES:** Well—

**Senator Ludwig:** Let me finish. You had your chance. If Senator Humphries does want to progress it because he believes it is a suitable solution, he can ask them to contact the relevant department and—

**Senator HUMPHRIES:** I have.

**Senator Ludwig:** let me finish—make all of those things available. If the department and the relevant minister choose to have a look at it, it is ultimately a matter for them. It is not a

matter for you to come to estimates and make appointments on behalf of public servants that sit at the table. It just seems an astonishing thing to do. I do not think you mean to do that. If you mean to raise the profile of the issue, then I think you have successfully done that. But I am not sure you have done it in the right place. That is my only concern.

**Senator HUMPHRIES:** Minister, firstly, I am concerned that Australia has the best possible technology to deal with a crisis of the kind that we saw over the recent summer. If that means advocating for other technologies to be examined which have not previously been examined, I will do so from the privileged position of membership of this committee. Secondly, the proponents have written to the department and have not had, I am advised, a satisfactory response. Thirdly, if it is not Mr Darby's area of responsibility, whose is it? He is the head of Emergency Management Australia.

**Mr Wilkins:** It is actually Mr Rothery's. As I have explained to the Senate before, there is a policy area, a response area and a capability area. So it is Mr Rothery, probably, who is not here at the moment. We can organise for someone. I would like myself to know what, if anything, we know about this. We will take some steps to look at it, Senator.

**Senator HUMPHRIES:** I would appreciate it if that were to occur. I want to ask about emergency spectrum for emergency services in Australia. You would be aware, I assume, of the issue about what is the appropriate reservation to be made in the broadcast spectrum for the use of emergency services. Has a position been reached by the government with respect to what that reserved emergency spectrum ought to be?

**Mr Wilkins:** I might just ask Tony Sheehan, who is the deputy secretary, to explain to you where we are up to on this issue, actually.

**Mr Sheehan:** The Attorney-General's Department has been involved with this issue for some time and is a member of both the National Coordinating Committee for Government Radiocommunications and the Law Enforcement and Security Radio Spectrum Committee. This issue is something that we have focussed on closely. We have been coordinating work with the public safety agencies to understand what their requirements are. They have provided us a good deal of information. Recently, on 10 May, the Attorney-General and Minister Conroy convened a round table with the public safety agencies. The focus of that discussion was around the possible allocation of spectrum for the development of capability by the public safety agencies. It was agreed at that meeting that we would form a steering group to do further work around the issue that ACMA is working on in respect of replanning the 800 megahertz band. Through that work, we would understand what the requirements were in terms of the potential allocation and coordinate the development of an understanding of the way in which that would be used to provide an effective mobile broadband communication outcome for the public safety agencies.

**Senator HUMPHRIES:** So a decision is yet to be made about that?

**Mr Sheehan:** The government has not announced any decision, but it was clear from that meeting that we were committed to that path forward of work with the agencies.

**Senator HUMPHRIES:** Any idea when that decision will be made?

**Mr Sheehan:** I cannot comment on when an announcement will be made, but I am clear that we will be progressing quickly with this work through the steering committee to try to build that position as quickly as possible.

**Senator Ludwig:** Chair, just quickly, I have additional information which I think goes to Senator Barnett's question about Safer Suburbs. There are 21 Safer Suburbs projects and \$5.42 million was appropriated in the appropriations bill, which passed on 24 March 2011. Since then, AGD has been finalising funding agreements with various organisations, mainly local councils. There are five separate projects in Canning. One I think we went through. The City of Mandurah had \$80,000 for graffiti removal. Two was Waroona Football Club and three was Serpentine. The other two projects, which were the legal link and anti-graffiti projects in Armadale, are on track, as is the project at Roleystone. Mr Randall's office has discussed things with Minister O'Connor's office as recently as 23 May. I just thought that would be helpful.

**CHAIR:** Senator Humphries, we are going to need to finish there. Very quickly, Senator Furner has some questions, Mr Wilkins, that he would like you to take on notice. He will read them into the *Hansard* for you for later reference.

**Senator FURNER:** The questions are related to the AGDRP. What is the support for primary producers and small business payments; the number of applications; the number of recipients; the total amounts paid in both areas of those payments; and fraudulent claims both investigated and prosecuted.

**CHAIR:** Take those on notice. That brings us to the end of our estimates hearings for the legal and constitutional affairs committee this week. In closing, I will mention publicly on behalf of this committee that this will be Senator Trood's and Senator Barnett's last period that they will spend with us in estimates. They probably have very big smiles on their faces and are thinking, 'Thank God for that.' Senator Barnett, you are here. Senator Trood has gone. We want to acknowledge on the record the effort and energy that you have put into estimates processes over many, many years. This time next year, I want to be assured that you are still watching us somewhere and are not sitting back watching the State of Origin with a beer in your hand enjoying yourself while we are plugging away until 11 o'clock at night. I know the committee will have many, many chances to say farewell to Senator Barnett and Senator Trood, but this is their last estimates process, so publicly and on the *Hansard* I want to acknowledge them and thank them for the work they have done both in government and in opposition.

**Senator Ludwig:** Chair, from the other side, can I just associate myself with your remarks and concur with them.

**Mr Wilkins:** On behalf of the bureaucrats on this side of the table, all the best.

**Senator BARNETT:** Do you mean that really?

**Mr Wilkins:** No. But wishing you well.

**CHAIR:** What goes around comes around, as they say in this business.

**Mr Wilkins:** We are wishing you well. No, we wish you well. We have had our differences from time to time and tensions, but you have handled them with great civility and good humour, so thank you.

**Senator BARNETT:** Thank you, and thank you to the Chair and to the minister and Mr Wilkins. I know I speak on behalf of Senator Trood as well. As the current deputy chair and a former chair for many years of this committee, I have considered it a great honour to be a member of this committee. I believe these estimates processes are a fantastic part of our

democracy, providing accountability across the sector. I have very much enjoyed being part of it despite the lengthy hours. I certainly appreciate the work and effort on your side of the table, Mr Wilkins, and all the departments and agencies accordingly. So thank you for those words. It is greatly appreciated. I know Senator Trood feels the same way.

**CHAIR:** Thank you everybody. We will not see you again until about November.

**Committee adjourned at 23.04**