

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
AUSTRALIAN FEDERAL POLICE

**Question No. 33**

**Senator Brandis asked the following question at the hearing on 23 February 2009:**

Can a copy of the lease for the new AFP headquarters be provided to the Committee?

If not;

- a) explain the operation of the escalated clause; and
- b) will Boulderstone Holbrooke have to pay a penalty to Stockland, and Stockland in turn pay a penalty to the AFP, if there is a delay in delivering the terms of the contract.

**The answer to the honourable senator's question is as follows:**

A copy of the Agreement for Lease and Lease (which is Annexure C) are attached.

A response is provided to each of the questions:

- a) The negotiated commercial agreement of the AFP and the building owner, Stockland, for the lease of the Edmund Barton Building includes a fixed annual increase of 3.5% in the unit price of rent.

The agreement also provides for a market rent review to be conducted at each five year anniversary of the lease, with the findings of the benchmarking assessment to be agreed between the parties or determined as a result of dispute resolution procedures through expert determination. As a result of the market rent review process, the maximum allowable increase on the previous year's rent is capped at no more than 15%. If the conclusions of the market rent review contemplate an increase which is less than 3.5%, or a decrease in rent, then the fixed annual increase of 3.5% will apply under the lease.

In reference to the documentation provided, the terms and conditions relating to rent review are set out in clauses 4 and 5 of the Lease.

- b) The AFP has entered into an agreement which contains requisite indemnities from Stockland to protect the interests of the Commonwealth and includes entitlements for the AFP to exercise its rights at common law for loss and damages caused by Stockland.

In addition to any other rights the AFP has under the agreement or at common law, the AFP has negotiated liquidated damages provisions with Stockland to apply in the event that Stockland is late in the staged handover of the Edmund Barton Building or the practical completion of the base building refurbishment works (currently scheduled for 10 August 2009). The liquidated damages are to the value of \$1 million and represent an assessment of the real loss or cost to the Commonwealth arising from the delay of Stockland. The liquidated damages would compensate the AFP to cover issues such as the cost of rent and outgoings of occupying current and alternative premises and expenses incurred by the AFP's contracted third parties for the fit-out of the Edmund Barton Building affected by the delay of Stockland.

In reference to the documentation provided, the terms and conditions relating to damages payable to the AFP if Stockland is delayed in completing the Edmund Barton Building are set out in clause 18 of the Agreement for Lease.