

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 27 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(100) Output 3.1: Indigenous Policy

Senator O'Brien (L&C 22) asked:

Was the Department or the Minister required to be a referee for the job Mr Hannaford did on the ATSIC review?

Answer:

No.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(101) Output 3.1: Indigenous Policy

Senator O'Brien (L&C 23) asked:

Was there a search done of Mr Hannaford's directorships – in other words, did you search for his name rather than the company names or was that deemed not relevant?

Answer:

On 16 September 2003 a search of the national names register of companies was conducted by the Office of Aboriginal and Torres Strait Islander Affairs. The search included the companies which are mentioned in Mr Hannaford's letter to Mr Ruddock on 10 October 2003.

Having identified the relevant companies, a senior officer of the Department telephoned the Australian Securities Investments Commission (ASIC) to establish whether Mr Hannaford was a director of any of the companies identified in the names register search. The officer was advised that Mr Hannaford was not a director of these companies.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(102) Output 3.1: Indigenous Policy

Senator O'Brien (L&C 65) asked:

Provide a progress report at each of the COAG trial sites to date.

Answer:

Work in the trial sites has continued to focus on two main areas: facilitating representative governance structures so that indigenous communities can engage with Government more effectively through the trials; and encouraging agencies to respond more appropriately to the needs of indigenous people.

In several sites these foundations have now been laid, and regional level agreements that commit communities and governments to particular responsibilities have been signed. Local level agreements that embody shared responsibility actions for particular projects are either being developed or have been agreed.

Agreements are a significant outcome in themselves, indicating a shared process and purpose for a community to identify its priorities for change and, with Government, identifying ways to achieve this.

An outline of progress in trial sites since 17 February 2004 follows.

ACT

A 'Shared Responsibility Agreement' for the ACT was signed by representatives of the ACT Aboriginal and Torres Strait Islander community, and governments on 15 April 2004.

The Agreement commits the partners to work together to support and strengthen local governance and enhance the capacity of government staff and community residents to work together more effectively. The four priority areas agreed in the Agreement are:

- assisting people to address trauma, regain confidence, build self-esteem and strengthen cultural identity;
- addressing the deleterious effects of substance abuse;
- addressing the many factors contributing to the over representation of Indigenous people in the criminal justice system; and
- addressing the many factors contributing to the disparity between the educational outcomes of Indigenous people (particularly children and youth), with those of the wider society.

Anangu Pitjantjatjara Lands

The growing difficulties on the Anangu Pitjantjatjara Lands led the SA Government to appoint in April 2004 a coordinator for the Anangu Pitjantjatjara Lands.

Despite this, work continues to implement the Regional Stores Policy. The COAG approach has meant that this initiative can be progressed in a holistic way, with a range of Australian and State government programs/services, community people and organisations (eg, community councils, schools) sharing responsibility for supporting discrete strands of activity.

Work is also progressing on another regional priority, to put in place new and improved service delivery systems across the AP Lands Region. This involves partnerships between a range of Australian and State government agencies and community organisations (for example, Centrelink, registration and licensing of vehicles and firearms, public access to internet and video-conferencing facilities).

Cape York

The Cape York Institute for Leadership and Policy began operations this year, with Mr Noel Pearson as Director. Representatives of State and the Australian Government through COAG are actively engaged with the Institute in developing a model of financial management and accounting for indigenous organisations. The aim is to ensure that organisations can operate in a way that is sensitive to the cultural and geographic characteristics of the region while meeting standards of accountability for all levels of Government.

Government, the Arakun community and Comalco have held extensive discussions about ways to increase indigenous employment in Weipa. As a result, a more tailored and responsive program support is being developed.

Cape York communities and government agencies across jurisdictions are working together to address poor retention rates in school and particularly the very high drop-out rate of children who leave the region for boarding school.

The Cape York community considers that natural resource management is a potential source of economic development for them. Ongoing funding is to be provided by the National Heritage Trust, allowing for the continued development of the network of land and sea centres funded under the first tranche of the National Heritage Trust.

Shared Responsibility Agreements have been signed in the communities of Hopevale and Lockhart River.

Wadeye

Year 11 has been established in the school this year, indicative of a renewed emphasis on education in the region. This follows from the successful strategy of 'no pool no school' that the community has implemented with Government support, which has led to increases in school attendance.

The construction factory that formed part of the Shared Responsibility Agreement is close to completion, and, in conjunction with the 'local jobs for local people' program that has been tailored to the community's needs, has created new employment and training opportunities. Up to 16 apprentices will be employed in the construction industry when they finish their training program.

East Kimberley

A series of local Shared Responsibility Agreements have been the focus of discussion and negotiation over the past few months. The Mulan community has negotiated an Agreement that develops school and weekend activities for and with its young people. A further strand of its agreement has been to reinvigorate culture through the provision of a meeting space for women elders and young women.

Three other communities are actively engaged with Governments in developing their Shared Responsibility Agreements.

Murdi Paaki

A workshop highlighting the importance of community governance was conducted in March 2004 with representatives of all 16 Community Working Parties, high-level representatives from governments and the Murdi Paaki Regional Council. The focus of the workshop was to build on previous community governance work and to ensure a clear understanding of the trial across the region and input into its future direction.

Work has commenced on the first local shared responsibility agreement to be negotiated with Dareton/Wentworth community following the development of a comprehensive community plan in Dareton. Work is also under way to assist in the development of community plans in the other 15 communities.

Shepparton

The Aboriginal Community Facilitation Group, the representative body developed through the COAG trial, and Government partners have agreed to focus in the short term on projects for young people. The "Youth at the Centre" project aims to generate aspirations in young Aboriginal people particularly in relation to the transition from education and provide them with support in chosen pathways.

Four working groups involving the community, state and Australian governments have been formed to address educational barriers across various ages of children to ensure better school performance and school retention.

Tasmania

A list of small projects that the community believes would contribute to increased self-esteem and harmony, with a consequent reduction in family violence, have been identified. These range from the acknowledged keepers of culture working with adolescents to transmit and preserve this culture, to family homes in the city to accommodate and nurture secondary school students needing to leave home to further their education/training.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(103) Output 3.1: Indigenous Policy

Senator O'Brien (L&C 65) asked:

In relation to the termination of Mr Geoff Clark's appointment as the Chair of ATSIC, provide a copy of the transcript of the Judge's remarks.

Answer:

See attached.



SPARK AND CANNON

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Perth	(08) 9325 4577
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**TRANSCRIPT
OF PROCEEDINGS**

FEDERAL COURT OF AUSTRALIA

VICTORIA DISTRICT REGISTRY

GRAY J

HEARING, INTERLOCUTORY and MOTION

No V 858 of 2003

**GEOFF CLARK -and - THE HONOURABLE PHILLIP RUDDOCK
MINISTER FOR IMMIGRATION**

No V 17 of 2004

GEOFF CLARK -and- THE HON AMANDA VANSTONE (AS MIMIA)

MELBOURNE

10.19 AM, THURSDAY, 15 JANUARY 2004

MS D.S. MORTIMER SC (instructed by Coadys) appeared on behalf of the applicant

MR R. ORR (instructed by the Australian Government Solicitor) appeared on behalf of the respondents

MS MORTIMER: Your Honour, before I begin, Mr Orr has just handed me an outline of submissions on behalf of the respondents, and I make no criticism of him for that, but it might be provided if your Honour is provided with a copy and - - -

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HIS HONOUR: Yours only landed on my desk this morning, so I've had a swift read.

MS MORTIMER: We're in your Honour's hands. I'm happy to proceed, your Honour, but it may be of some advantage if I read these and your Honour has a chance to read them before I commence. I'm happy to do it either way, your Honour.

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HIS HONOUR: Well, let's continue.

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MS MORTIMER: If your Honour pleases. Your Honour, this is the return of a notice of motion for summary judgment which was issued on 8 January 2004 in matter V858, and an application for an interlocutory injunction in proceeding V17 of 2004. I propose to take your Honour to the evidence that we rely on in a moment, but I want to give your Honour a brief outline of both applications. Your Honour, both applications arise out of two pieces of correspondence from the present minister, Senator Vanstone, to Mr Clark on 23 December 2003. I'll take your Honour to that correspondence in detail a little later. But essentially, the pieces of correspondence were these. In one letter, Senator Vanstone told Mr Clark that she was considering whether to terminate his appointment as a commissioner or revoke his suspension, and gave him until 16 January 2004 to make submissions on that question. Now, that piece of correspondence, your Honour, was not unexpected, given the course of events to that time. In the second letter, however - - -

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HIS HONOUR: So it can be expected that shortly after tomorrow, the minister will decide whether to revoke the suspension?

MS MORTIMER: Your Honour, we're not in a position to say when after tomorrow that might happen. If the minister - - -

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HIS HONOUR: There's no argument that there's a power to revoke. I mean, it's implied by the Acts Interpretation Act anyway, I would have thought.

MS MORTIMER: It has to be implied, yes, your Honour. We accept that. We accept that.

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HIS HONOUR: Your client has sought its exercise.

MS MORTIMER: The power of revocation?

HIS HONOUR: Yes.

5 MS MORTIMER: Yes, since - well, on various occasions, most recently on 4 December and then again on 19 December.

HIS HONOUR: Well, we can expect that there will be a decision of whether to exercise that power shortly, I imagine.

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MS MORTIMER: I imagine, your Honour.

15 MR ORR: Your Honour, sorry for interrupting, but your Honour has taken us to the crux of this matter and to whether these proceedings are really necessary or appropriate at this stage at all. I think the minister has indicated fairly clearly that she is about to consider whether to revoke the current suspension or to proceed to termination.

HIS HONOUR: Yes.

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MR ORR: She's set in train a process to doing that sensibly, in that she has obtained transcript of the County Court hearing, she has written to Mr Clark and given him an opportunity to be heard on that.

25 HIS HONOUR: Transcript of the entire hearing?

MR ORR: Well, certainly a transcript of the judgments, which were available.

HIS HONOUR: The judgments, yes.

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MR ORR: She has, as my learned friend suggested, written to Mr Clark and given him an opportunity to be heard in relation to that decision, which, on our view, she is obliged to do. That opportunity expires tomorrow and there's correspondence which I can take your Honour to which suggests that Mr Clark wants to take up that offer and make submissions on that issue.

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HIS HONOUR: Yes.

40 MR ORR: My instructions are that the minister will, once those submissions on the issues have been received, proceed to decide that matter, and will do so - advised will do so within seven days of receipt of - - -

HIS HONOUR: Proceed to decide the question of revocation.

MR ORR: The question of whether she should revoke the current suspension and proceed to termination.

5 HIS HONOUR: Yes. Well, those are two separate questions, aren't they.

MR ORR: Well, they're really the question of what should happen to this current suspension.

10 HIS HONOUR: Well, they're not. They're two separate questions, because the question whether termination should follow from the current suspension has one further relevant factor, namely proceeding 853, in which the validity of the suspension itself is challenged, and I would have thought if the minister went ahead in the face of that or threatened to go ahead in the face of that, there might be occasion for interlocutory relief, assuming an arguable case is made
15 in relation to the validity of the suspension. But if she were to revoke, of course, there would be no problem - - -

MR ORR: Exactly, and it would be - - -

20 HIS HONOUR: - - - which is a reason why it seems appropriate to stay the court's hand at the present time.

MR ORR: Exactly, your Honour. In our view, the minister is about to make a decision. That decision - - -

25 HIS HONOUR: I wouldn't encourage the minister to view it as one decision. I would encourage the minister to view it as two decisions: (1) "Do I revoke the suspension? Well, if I do, there's no problem"; (2) "If I don't, then can I now go ahead and exercise the power to terminate? Well, I really can't,
30 because the validity of the suspension is challenged." That would be an appropriate approach for the minister.

MR ORR: Yes, your Honour, and I certainly will advise the minister that. But given that scenario - - -

35 HIS HONOUR: I mean, it would be ugly if the minister and the court got into a conflict about whether the minister should proceed in the face of a proceeding in the court.

40 MR ORR: Yes, your Honour, and there may be issues involved there, as you said, as to whether an injunction should be granted or not.

HIS HONOUR: Yes.

MR ORR: But our submission is those should be put to one side. There is the possibility - well, there is a process in place for the minister considering the application, and certainly a possibility that that will be the decision. That decision will be made shortly.

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HIS HONOUR: I would have thought there was more than a possibility. I mean, the grounds of the suspension have been undercut to a very substantial degree.

10 MR ORR: There are clearly, at the very least, significant issues about whether the suspension can be proceeded with.

HIS HONOUR: More than a possibility.

15 MR ORR: Yes, your Honour. But given that scenario, your Honour - - -

HIS HONOUR: But look bad in subsequent proceedings if it didn't happen, even.

20 MR ORR: Yes, your Honour; that's noted. But given that, your Honour, it just seems to us completely inappropriate that there be summary judgment of that matter be proceeded with at this stage.

HIS HONOUR: Summary judgment I'll come to in a moment.

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MR ORR: Yes. It just seems that that's a completely inappropriate course. It could well be, as you say, there will be further proceedings, but given where we're at - that is, that the time expires tomorrow, Mr Clark said he wants to make submissions, the department has indicated to me that that matter can be considered within seven days - it just seems inappropriate to proceed with this hearing at this time. That's our basic submission.

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HIS HONOUR: Thank you.

35 MS MORTIMER: Can I say this, your Honour. The first we've heard, as far as I'm aware, that the minister proposes to consider whether to revoke the suspension within seven days - that's news to us.

HIS HONOUR: Yes.

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MS MORTIMER: Most of what my learned friend has put to your Honour and what your Honour has said, we would not quarrel with and we would not be here about, but for the second letter on 23 December, the second "show cause" notice. Now, that is the event that, in our submission, changes the

landscape, because we say it is absolutely inherent, although the minister will not admit it, that that notice recognises there is a legal problem with the first suspension. Now, whether that is a problem with it - - -

5 HIS HONOUR: Why do you say that? I have difficulty seeing the legal
problem. I have difficulty seeing the problem with an administrative
decision-maker saying, "Look, there's an earlier decision. There a challenge to
it. I don't know whether it's valid or invalid, because the court hasn't told me
yet. I can see arguments both ways. There's another event on which I could
10 exercise a suspension power. I will consider whether to exercise a suspension
power in relation to that other event, and if it turns out that the first decision is
subject to some kind of destruction, then so be it, but I will consider whether to
exercise the suspension power in relation to the second event." I can't see a
problem from an administrative decision-making point of view with that
15 process of reasoning.

MS MORTIMER: Your Honour, again, not - - -

20 HIS HONOUR: If you can show me some authority that says that it's clearly
wrong, then of course it's clearly wrong, but I haven't seen any in our outline of
submissions.

MS MORTIMER: No, your Honour, it's not. Can I take your Honour back a
step in terms of the analysis of what's happened. What the proceedings in
25 V858 challenge since their amendment on 19 December are two things: firstly,
the original decision, the administrative decision on 13 August, but on and
from the date of the County Court decision, the validity of Mr Clark's
continued suspension. Now, that is an entirely different matter.

30 HIS HONOUR: I have a lot of trouble seeing that as well in the absence of
clear authority, because an administrative decision-maker must make a
decision on the state of facts that exist at the date when the decision is made.
Once a decision is made, a decision is made, isn't it? How can it be undercut
because the facts change?
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MS MORTIMER: Your Honour, because the suspension, the authority to
suspend is the authority to impose a continued status on a person, and it's
authorised only so far as the statute authorises it. Now, some of this depends,
your Honour, on our arguments about the construction of section 40, but what
40 we say essentially about that is that it is a process that contemplates proceeding
through to termination. Now, we accept that there may be an implied power to
revoke a suspension, but what we say - - -

HIS HONOUR: But that's the key to it, isn't it? I mean, if the facts change,

they don't undermine the validity of the initial decision, they provide the occasion for the revocation of it, which obviously the minister must approach properly and fairly, if only to avoid allegations of bias in relation to future proceedings.

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MS MORTIMER: That's so, your Honour, and that's without conceding that we can't attack the validity of the original decision. But put those issues to one side, because they really are not the matter in which we ask for summary judgment, apart from the - - -

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HIS HONOUR: Well, in a sense they are, because you say you attack the original decision, and your attack is on a basis that is unarguable so far as the respondents are concerned, and the problem with that is you seek to advance a particular interpretation of the word "conviction" or "convicted" - - -

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MS MORTIMER: Yes.

HIS HONOUR: - - - which depends to a large extent on the structure of Victorian law, and one thing that the meaning of a Commonwealth act can't possibly do is depend on the structure of Victorian law.

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MS MORTIMER: Your Honour, we accept that, but we use that by way of - - -

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HIS HONOUR: I have great difficulty in accepting, as I've read it in your written submissions, your argument about the meaning of conviction, which means your summary judgment application can't succeed, as I see it at the moment.

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MS MORTIMER: Your Honour, the argument about the construction of conviction is a secondary argument to our first one. Our first argument on summary judgment is the argument that we amended our application on 19 December to include, and it's simply this, that there is no longer a power in the minister to terminate Mr Clark's appointment because of the decision of the County Court. That being the case, the authority to continue his suspension, which is inextricably bound up with that power to terminate, that authority ceased also. That's our argument.

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HIS HONOUR: Well, I think it's a very difficult argument to succeed in, because, looked at from an administrative decision-making point of view, it's at least equally arguable that at the date when the decision was made - that's in August - a state of facts existed that, as the minister saw it, justified the making of that decision. Now, once that decision is made, it continues and the statute operates on it through the process of tabling the notice in parliament and the

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elapsing of 15 sitting days and so forth, and if at the end of that time the occasion arises to consider termination, obviously one of the things the minister would have to consider would be that the facts have changed in the meantime.

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MS MORTIMER: Your Honour, under the scheme - - -

HIS HONOUR: And, of course, there is occasion for revocation if the facts have changed in the meantime.

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MS MORTIMER: Well, our argument is stronger than that, your Honour. Our argument is that there must be revocation. That's the point.

HIS HONOUR: Well, you might be right, but - - -

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MS MORTIMER: See, that's the point. That's why - - -

HIS HONOUR: You might get revocation next week.

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MS MORTIMER: We say we should have got it on or about 4 December, and we asked for it, and we asked for it again on the 19th.

HIS HONOUR: You might have occasion for saying that there's been unnecessary delay, but you could have fixed that by applying for mandamus to require the minister to consider it.

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MS MORTIMER: Which we would have also been met, your Honour, with the argument that it was premature, and we acted in good faith that the minister was proposing to consider the grounds, and as I say, until we got that letter on 23 December about a second notice, as far as we were concerned, there was nothing wrong with the way the minister was proceeding. We assumed she was proceeding to act in a reasonably timely fashion.

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HIS HONOUR: Well, why did the second notice change that?

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MS MORTIMER: Because, your Honour, it is completely unnecessary if the first notice and Mr Clark's continued suspension is valid. That is, if the minister's view - the minister must have a view that something changed by reason of the County Court decision.

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HIS HONOUR: Well, not necessarily. As I say, if the minister says, "Look, there are some arguments around that the first decision is not valid at the outset or no longer valid, I don't know what the outcome of that is but an occasion has arisen that might form the basis for the exercise of the power to suspend, and

irrespective of whether the first decision is right or wrong or valid or invalid, I'll consider whether to exercise the power of suspension on the basis of this event." Now, I can't see a problem, from an administrative decision-making point of view, with that, and you don't advance any authority that suggests
5 there is a problem.

MS MORTIMER: We don't advance any authority, your Honour, other than the statute, and that's what we say it turns on. We say that the scheme of section 40 does not contemplate that the power can be re-exercised while the
10 same commissioner - in relation to the same conduct. That is, both notices, both exercises of power deal with what the minister believes Mr Clark did on 2 May 2002 in the Criterion Hotel. That is expressed in both notices, and that is advanced by the minister.

HIS HONOUR: It's expressed ambiguously I think because the minister's belief is not formed on the basis of any examination of the evidence of what happened on that date, as I understand it. The minister's belief is formed on the basis of what a magistrate said about what a magistrate found at the end of a
15 court case about it.

20 MS MORTIMER: That's so, your Honour.

HIS HONOUR: They're two different things. The minister hasn't said, "Well, I've made my own inquiries, had my own investigations conducted, read a transcript of the evidence, make my own findings of fact." That's pretty clear
25 from the reasons.

MS MORTIMER: That's so, your Honour, but - - -

30 HIS HONOUR: It's the judgment that is the foundation point. It's the fact of conviction that causes the minister to believe that certain things happened on the date in May.

MS MORTIMER: Well, the minister, with respect, your Honour, doesn't put it quite like that. The minister is careful to put it - - -
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HIS HONOUR: I know the minister doesn't, but - - -

MS MORTIMER: The minister is careful to put it in relation to conduct as well.
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HIS HONOUR: Yes. Well, it's pretty clear that it's not the minister own separate view of what occurred on that date.

MS MORTIMER: No, your Honour, but - - -

5 HIS HONOUR: And it might have been. I mean, the minister is not bound by the criminal standard of proof. The minister might have ploughed through the whole transcript and said, "Well, on the standard of proof that I have to apply, it looks like this to me."

10 MS MORTIMER: I accept that, your Honour. We accept that there's likely to be a very broad construction given to "misbehaviour" and it could well include conduct that the minister makes up her own mind about. But, your Honour, the point that we seek to make - - -

15 HIS HONOUR: Can you tell me this. In relation to the misbehaviour instruments, have you compared them with other instruments applying to people in various other offices?

MS MORTIMER: No, your Honour, I haven't done that.

20 HIS HONOUR: Well, it might be a worthwhile exercise, because I'm not aware of any definition of "misbehaviour" that includes simply conviction of an offence for which there is a possible sentence of imprisonment, when in fact none has been imposed. I mean, if it were the case that these instruments required a higher standard of behaviour from indigenous office-holders than from other office-holders, well, there might be a very obvious answer to their validity, mightn't there.

MS MORTIMER: There might be, your Honour. There might be. But we don't press today before your Honour - - -

30 HIS HONOUR: No, I know you don't press it today.

MS MORTIMER: The validity of the instruments is a matter for summary judgment. Not in the least. We - - -

35 HIS HONOUR: No, I understand that. It did occur to me that it was a requirement of perhaps an unusual standard of behaviour.

40 MS MORTIMER: Well, your Honour, that in itself is evidence, in my submission, from other parts of the definition in the instruments which relate to, you know, arguments are meetings and things like that. The threshold set is low in terms of what the instruments say can constitute misbehaviour.

HIS HONOUR: Yes. Well, that's so. I seem to remember many years ago researching for authorities on the word "misbehaviour" and finding very little.

There's loads on "misconduct" but very little on "misbehaviour". I think the only case that I found involved a man and a woman on the floor of the bathroom that they were supposed to be cleaning in the workhouse, and that was said to constitute misbehaviour.

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MS MORTIMER: Your Honour, perhaps it's limited only by people's imagination.

HIS HONOUR: Of course, the term in the constitution relating to judges is "gross misbehaviour", which I suppose doesn't mean you have to do it 144 times.

MS MORTIMER: I imagine not, your Honour. I imagine not. Perhaps given what your Honour has said to me about your Honour's difficulty with our arguments - this is on the summary judgment, I want to deal with that first - perhaps I should take your Honour to the statute and submit to your Honour why we say it is as we say it is. Does your Honour have a copy of the act?

HIS HONOUR: Yes.

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MS MORTIMER: Your Honour, there are, as we've said in our written submissions, several points in the legislation where similar provisions in relation to suspension and then termination are provided for, and one of the other points we make is that some of the provisions about misbehaviour in terms of suspension and termination mirror the disqualification provisions, which are qualified by that provision in the act where the Federal Court has a jurisdiction to determine whether a person ought to nevertheless be able to stand as a commissioner, despite their convictions. The point of all those references, your Honour, is simply to make the submission that the act does not evince an intention that just because someone is convicted of something, they should automatically be ineligible to either stand as a commissioner or hold office as a commissioner. Section 40, your Honour, deals with suspension of a commissioner. As we say in paragraph 17 of our outline - - -

HIS HONOUR: But that's really an argument about the scope of the power to declare what misbehaviour is, isn't it?

MS MORTIMER: Yes, your Honour. Yes.

HIS HONOUR: Which is not something you say you pursue on the summary judgment issue.

MS MORTIMER: No, not on this - that's right. Not on this. But - no, that's correct, your Honour. Your Honour, it's a little difficult - well, I found it a

little difficult to follow this so I'd like to take your Honour through it. The word "commissioner" is defined in section 4 of the act to mean "a member of the commission". Now, your Honour needs to look, to understand what that means, at section 27, which is the power given to the minister to appoint people
5 as members of the commission. That power is then constrained by subsection 2, which directs the minister to appoint as members of the commission people who have been elected. So that the way the scheme of the act operates is that there are democratic elections which occur in accordance with the provisions of the legislation, and then there is a direction given to the
10 minister through section 27 that he or she is to appoint those people who have been elected as members of the commission, and that's how it ties in to the definition of "commissioner".

Now, when that has occurred, section 31A requires that those commissioners elect a chairperson. Once a person is elected as a chairperson, they cease to hold office under section 31A(3) as a representative of a zone. That place is vacated and there has to be a subsequent election to fill that vacancy. So that from that point, your Honour, the scheme of the act is that the only office held
15 by the chairperson is the office of chairperson.

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HIS HONOUR: Is chairperson, yes.

MS MORTIMER: Notwithstanding that, the scheme appears to be that that person remains a member of the commission, although no longer representing a
25 zone. That causes some confusion, or in any event, in my mind - perhaps only in my mind, your Honour - in looking at section 40, because section 40 of course doesn't talk about suspension of a chairperson.

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HIS HONOUR: The chairperson - only of a commissioner.

MS MORTIMER: Contrast, for example, section 127C, which is a similar power directed at chairs and deputy chairs of regional councils. There's 127C and then 127G in relation to deputies.

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HIS HONOUR: Did those amendments all come into the act at the same time?

MS MORTIMER: Your Honour, I can't answer that question as I speak to your Honour now. I'll check that.

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HIS HONOUR: If they did, you might have an argument that section 40 doesn't extend to suspension or termination of the office of the chairperson.

MS MORTIMER: Well, your Honour, we thought about that, and I can say to

your Honour that my provisional view was that as a matter of construction, looking at section 27 and looking at the definition of "commissioner", that that argument was not available, I regret to say, your Honour, but that's a view that I've tentatively reached. The point of taking your Honour through that first - - -

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HIS HONOUR: When did 31A come in, because the chairperson provisions, as far as ASIC itself is concerned, are fairly reasonable, aren't they?

MS MORTIMER: They are, your Honour, yes.

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HIS HONOUR: Mr Clark is the first one under this - - -

MS MORTIMER: Your Honour, the notes at the back are - no, 1994.

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HIS HONOUR: 1996, 1999, amended.

MS MORTIMER: And 127 - - -

HIS HONOUR: Repealed and substituted in 96 and then amended in 1999.

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MS MORTIMER: Your Honour, in our submission it's at least as clear that the office from which Mr Clark is suspended is the office of chairperson, because - - -

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HIS HONOUR: Well, where's the power to do that?

MS MORTIMER: That power has to be by reason of a reading of section 40(1), together with the definition of "commissioner" in section 4, and the way a person gets to be a member of the commission.

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HIS HONOUR: So a regional councillor isn't a commissioner?

MS MORTIMER: No, your Honour. That's right. That's right.

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HIS HONOUR: You only get to be a commissioner if you're elected to represent a zone.

MS MORTIMER: That's right, your Honour, and if the definition - - -

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HIS HONOUR: A zone consists of a number of regions?

MS MORTIMER: It does, your Honour, yes. Yes. If the definition in section 4 had read, "A member of the commission holding office under division 7," being the election provisions, we would have a very strong

argument.

HIS HONOUR: Yes.

5 MS MORTIMER: It doesn't say that though. It just says, "A member of the commission." The commission chairperson has to be a member of the commission. That is the only way he or she - - -

HIS HONOUR: Well, has to be to begin with.

10

MS MORTIMER: And remains, your Honour. All that happens is that they cease to hold office as a person elected.

HIS HONOUR: Yes.

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MS MORTIMER: So they cease to be a representative on the commission of that zone.

HIS HONOUR: Yes.

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MS MORTIMER: Therefore, in our argument, the only office - - -

HIS HONOUR: Well, I wouldn't abandon the contrary argument too quickly.

25

MS MORTIMER: We're not abandoning, your Honour, we're just not putting it forward on summary judgment, that's all.

HIS HONOUR: Yes.

30

MS MORTIMER: Again, it's not a matter - - -

HIS HONOUR: Yes, it's not free from doubt.

MS MORTIMER: It's not free from doubt, your Honour, no, but - - -

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HIS HONOUR: It's surprising in the light of 127C that there isn't a special provision for the suspension and removal from office of the chairman or chairperson of the commission if that's what parliament intended should be done.

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MS MORTIMER: Well, perhaps I'll leave it to my learned friend to proffer some explanations for that. Your Honour, the - - -

HIS HONOUR: Are there provisions about the - I understand that the

chairperson is in practice a full-time salaried office, but are the other commissioners full-time salaried officers as well?

5 MS MORTIMER: Yes, that is the effect of section 30(1), although your Honour's previous question to me also needs - your Honour's attention should be drawn to 30(2). So it is possible that a person can hold both positions.

10 HIS HONOUR: Yes. Yes, I see that.

MS MORTIMER: But, no, commissioners hold office on a full-time basis.

HIS HONOUR: Yes. You can understand why section 30(2) exists.

15 MS MORTIMER: Yes.

HIS HONOUR: It's designed to enable commissioners at least to keep their ears to the ground as far as what's going on.

20 MS MORTIMER: That's so, your Honour. That's so. Now, your Honour, in section 40(1), the power of suspension is a power to suspend a commissioner - that is, a member of the commission - from office, and as I've already submitted, our construction of that is that the office in relation to Mr Clark must be the office of chairperson, because he holds no other office.

25 HIS HONOUR: That's why there might be an argument that the power simply doesn't apply, that parliament would have made special provision if - are there other officers to which commissioners can be - I suppose there's a deputy chairperson, isn't there.

30 MS MORTIMER: There is. There's a procedure for the election of a deputy chairperson in section 32.

35 HIS HONOUR: And again, no specific provision about that. Does the deputy chairperson cease to be a commissioner representing a zone?

MS MORTIMER: No, and the - - -

40 HIS HONOUR: There's an alternative deputy chairperson.

MS MORTIMER: Yes. Your Honour, section 33 perhaps is also relevant, section 33(1), which, in my submission, does assist to make it clear that the office held is the office of commission chairperson.

HIS HONOUR: Yes. Well, there might be an argument that the section 40 power simply doesn't extend as far as chairperson.

MS MORTIMER: Your Honour, the argument is there, but - - -

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HIS HONOUR: But it's not a summary judgment argument

MS MORTIMER: It's not one that we can properly press for summary judgment.

10

HIS HONOUR: No.

MS MORTIMER: The scheme of the act, in our submission, in section 40, is that the suspension power is subject to a condition precedent. That's the notice to be given in section 40(2).

15

HIS HONOUR: Yes.

MS MORTIMER: Unless and until that condition precedent is fulfilled, the power to suspend does not arise. So that the only circumstances in which the - no, I withdraw that. The first thing that the section authorises the minister to do and indeed requires her to do is to issue a "show cause" notice. That in itself, in our submission, contemplates that the person is not already suspended, because the person is being asked to show cause why he or she should not be suspended; that is, that a suspension in the future should not be imposed upon them. So we say that the very first thing that the act requires the minister to do if she is considering a suspension - it self-contemplates the person is not already suspended.

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25

HIS HONOUR: Again, looked at from an administrative decision-making point of view, I don't have a problem with there being one on top of another, if there is some question raised about the first one. I can't see that it is so beyond doubt that there is no power to go through the suspension procedure a second time just because there is already in existence arguably a first suspension.

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35

MS MORTIMER: Two things about that, your Honour. The first is that, whether it is permissible or not permissible depends entirely on the language of the statute, and your Honour in my submission needs to give careful consideration to the way this particular section is structured. It's not that there is a general prohibition on a suspension power of a kind and any given statute being authorised for a second time; it's whether this statute authorises the minister to do it in this circumstance. That can only be answered by looking carefully at what the process is, and in our submission, fundamentally taking into account the nature of the power. The nature of the power is to remove a

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democratically elected representative of the indigenous people from his office,
not only democratically elected representative to ATSIC but then again
democratically elected to the position of chairperson. A key aspect of the
section is parliament can disallow what the minister proposes to do, or has
5 done.

Now, those matters being taken into account are, in our submission, key to an
understanding of why it is a power that can be exercised only once, and the
process completed. Now, we are not submitting, your Honour, that it cannot be
10 exercised again in respect of the same commissioner at a later date. We don't
say that. But we say the vice with what is proposed at the moment is that there
can be an overlap. We say the section simply does not contemplate that.

HIS HONOUR: Well, I can't see that you can succeed on that argument to the
15 point of saying that there's no answer to it, which is really what you need to do
to get summary judgment.

MS MORTIMER: Your Honour, we haven't heard what the respondent says
is the answer to it.
20

HIS HONOUR: I think there's an answer to it.

MS MORTIMER: That's more important perhaps, your Honour. But can I
continue just to take your Honour through what we say about the section.
25 Perhaps that will give your Honour a chance to expand to me about why I'm
wrong. The condition precedent having been fulfilled - - -

HIS HONOUR: Well, I mean, you're wrong in the sense that, I suppose,
you're advancing a particular construction of the act which is not the only one
30 available. It is possible to construe the act to accommodate the very kind of
process that has occurred, and that's because, or partly because, of the presence
of an implied power of revocation, and partly because it might be the case, as
you say it is here, that there's some doubt about the validity of the first
decision. I mean, in a case where it really - let's divorce ourselves from the
35 facts of the present case. Why, on the face of it, couldn't a minister say, "Well,
there really is a very, very good case for suspending someone from office, but
there's some allegation that I've made a procedural error in relation to the first
decision. I'm not going to hang around until the court decides that and leave
the thing sort of up in the air. I'll do it again." Now, why could that not be
40 done? "I'll do it again in case."

MS MORTIMER: Because the power is spent, your Honour. The power is
spent and if that is the view of the decision-maker, there's one course and one
course only under this kind of scheme, and that is that the first suspension is

revoked.

HIS HONOUR: Well, show me some authority for that proposition and I will have much less difficulty accepting it.

5

MS MORTIMER: Your Honour, we have not been able to find any.

HIS HONOUR: No, and that may be because, in the process of administrative decision-making, such an authority doesn't exist.

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MS MORTIMER: It may be, your Honour, but there are two more plausible explanations. The first is that we haven't had a chance to research it through, for example, authorities outside Australia, but the more plausible explanation is that this is a particular scheme and this act has not been the subject of any judicial decision, this power has not been the subject of any judicial decision.

15

HIS HONOUR: I understand that it's a particular scheme, but it's not a particular scheme divorced entirely from the principles that apply to administrative decision-making. It must be enacted against the background of the law relating to administrative decision-making. It's about a particular form of administrative decision.

20

MS MORTIMER: But the most fundamental principle of administrative decision-making is that the power is constrained by the statute.

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HIS HONOUR: Yes, but there's - - -

MS MORTIMER: That's the beginning and end of the discussion.

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HIS HONOUR: But it's not a judicial power. There's no issue estoppel, there's no res judicata estoppel, there's no reason why the power can't be exercised again and again, and indeed the Acts Interpretation Act says it can, so often as the occasion requires. So to argue that a power is spent by the making of one decision is a very difficult thing to do. I can't see why, if there is some doubt raised about the validity of the first decision, an administrative decision-maker can't do it again.

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MS MORTIMER: Your Honour, of course, this is not our point on summary judgment. This is our point on the injunction. That's important, your Honour. We just have to show serious question on that.

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HIS HONOUR: Yes.

MS MORTIMER: That's not our point. The discussion between your Honour

and I occurred as I was walking your Honour through the section, but that's not our argument that we have to persuade your Honour about on summary judgment. That's our interlocutory injunction argument.

5 HIS HONOUR: I rather thought it was, but - - -

MS MORTIMER: No, your Honour, because what I had started my submissions to your Honour by was saying that the reason we are here is because the minister took what I describe as pre-emptive action by issuing its
10 second "show cause", which concerns my client, but - - -

HIS HONOUR: Of course it does.

MS MORTIMER: - - - but the circumstances of that, in my submission, also
15 demonstrate a recognition that there may be a problem with the first decision. Now, that problem could be of several kinds, some of which there may be arguments about, but we say to your Honour today the stand-out problem is the continued validity of the suspension after the County Court decision.

20 HIS HONOUR: But if you - - -

MS MORTIMER: Now, can I take your Honour to why we say that?

HIS HONOUR: But if you turn out to be right about what you say about the
25 first decision, then you will say, presumably, that it's void, and if it's void, then Mr Clark was never suspended.

MS MORTIMER: Not necessarily, your Honour.

30 HIS HONOUR: And the power can be reinvoked at any time. Well, it's one possible consequence. It may not be a necessary one, but it's one possible consequence of what you say, that the first decision was void and, if the first decision is void, then he's not under suspension and the suspension power can be invoked at any time.

35 MS MORTIMER: Of course, but that's not the minister's position.

HIS HONOUR: The minister's position doesn't matter at all. The minister's position may be completely wrong. The law doesn't depend on the minister's
40 position. Thank goodness for that.

MS MORTIMER: If that's the case, your Honour, that's all the more reason why the two arguments that we put forward should be determined, because if Mr Clark should not be suspended in law today, he should not be suspended.

We have asked the minister on several occasions since 4 December to grasp that nettle and tell us if that is what her view is, do it: revoke the suspension and then if she wants to proceed on the basis of the County Court conviction, well and good.

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HIS HONOUR: She may say, "I needn't revoke it - Bhardwaj. I can just go ahead and do it again."

MS MORTIMER: She hasn't said that, your Honour.

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HIS HONOUR: She wants to keep all her options open. People often do, and it may be entirely wrong of her to do that, but it doesn't mean you've got a good case for summary judgment when she does that.

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MS MORTIMER: Can I come to that, your Honour, because putting the construction issue about conviction to one side, which is really a secondary argument, the primary argument we say is plainly correct - and to which we've heard no answer as yet from the respondent - is that since 4 December County Court decision, alternatively, we say, from the start of that hearing, when the orders of the Magistrates Court were set aside, Senator Vanstone had no power under section 40(5) to terminate Mr Clark's appointment. That power vanished because the basis for the suspension vanished.

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HIS HONOUR: She might recognise that. She might say, "Yes, that's quite right," when she comes to consider the question of termination. She might say, "Absolutely. Can't do it."

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MS MORTIMER: Your Honour, we've put that to her in correspondence for over a month.

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HIS HONOUR: Yes, but she's yet to give you a decision, and she will give you a decision. If she says, "That argument is rubbish," then you can come and seek to have the decision set aside. That's pretty clear.

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MS MORTIMER: Your Honour, meanwhile Mr Clark has to remain suspended from his elected office. The question of whether the minister may or may not agree with that and may or may not decide in accordance with that we say is, with respect, not the right way to approach the summary judgment question, because that argument is either right or it's wrong. We put strongly to your Honour that it's right, and the minister has refused to tell us whether she agrees with that argument or not.

40

HIS HONOUR: Yes, but that's probably because she hasn't made a decision on it yet. She's going to consider it when the deadline for submissions passes.

5 She doesn't have to make, as it were, an interlocutory decision, give summary judgment against herself. She can say, "I'm going to make a decision. Make submissions to me." On the face of it, you've got a pretty strong argument. If the minister says, "No, it's rubbish," then you might have a good case for an interlocutory order in that situation. I can't make predictions, but it does seem to me there's something in the proposition that the power to terminate when the facts have changed becomes problematic. But it's not such a clear argument that it could be said to be a case for summary judgment.

10 MS MORTIMER: Your Honour, we say absolutely it is, and there could be no other reason for the second show cause notice unless the minister recognised that.

15 HIS HONOUR: The second show cause notice is irrelevant to the question of summary judgment. Whether it did or didn't exist, if you had a case for a summary judgment, you had a case for summary judgment. The second show cause notice can't give you that. It can't give you what you didn't that.

20 MS MORTIMER: No, your Honour, it can't give us that, that's so, because it's an argument in law.

HIS HONOUR: Exactly. It can't give you that. It might just be a complete mistake on the minister's part.

25 MS MORTIMER: We say it's a recognition, your Honour, that there's a problem.

HIS HONOUR: But recognition or otherwise doesn't give you a case.

30 MS MORTIMER: No, I accept that.

HIS HONOUR: To say that the minister recognises that there's a problem is irrelevant. You've either got a case for summary judgment or you haven't.

35 MS MORTIMER: Yes. We say we have, and we say - - -

HIS HONOUR: But it's a construction argument based on a particular construction of the act which is open to another construction.

40 MS MORTIMER: Your Honour, with respect, the respondents haven't proffered that construction and - - -

HIS HONOUR: Whether they've proffered it or not, I can see that there is another possible construction, and you can't have summary judgment in those

circumstances; you simply can't.

MS MORTIMER: Your Honour, I haven't as yet completed my submission about what our construction is.

5

HIS HONOUR: Well, I've read your written submission. I know what you say in broad terms. If you've got anything additional, obviously I'll hear you, but it does strike me that you can't succeed for summary judgment on a controversial argument about construction of the statute. It's a very simple problem.

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MS MORTIMER: Obviously we can't, your Honour, if it's a controversial argument, but there's certainly - - -

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HIS HONOUR: I think it is, because I can see a contrary argument. It may not be a very good contrary argument, it might be a good contrary argument, I don't know, but it's a contrary argument.

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MS MORTIMER: With respect, can I just ask your Honour again to articulate what your Honour says is the contrary argument so I can attempt to deal with it?

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HIS HONOUR: The contrary is just in the application of administrative law principles. At the date in August when the decision was made, the state of facts existed - this is the argument; I'm not saying it's right - justifying the decision. Once the decision is made, through it goes. If the facts change, they undo the decision. There's a process laid down in section 40, and at the end of that process the minister has to consider whether to exercise the power to terminate. That seems to me to be a tenable argument. When the minister comes to consider the exercise of the power to terminate, one of the obviously relevant things is that the facts have changed.

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MS MORTIMER: Your Honour, can I put this answer and ask your Honour to look at the section. The supervisory task of parliament is committed by this section on the suspension power, not on the termination power; that is, the way the parliament has framed this legislation is that the grounds that the minister suspends on are the grounds that the parliament will consider either do or do not justify suspension and, implicitly in the scheme, justify termination, because the act requires no other step to be taken. The act says once parliament does not pass a resolution requesting the minister to set aside the suspension, the minister can terminate the appointment.

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HIS HONOUR: But it's still a discretionary power to terminate the appointment.

MS MORTIMER: Yes, it is, your Honour.

5 HIS HONOUR: The word "may" is there, and the Acts Interpretation Act now says the word "may" means a discretion. There's no longer room for the Julius v Bishop of Oxford-type argument that "may" really means a duty, not a power.

10 HIS HONOUR: I accept that, your Honour, but the scheme is that the grounds that parliament examines are contemplated to be the grounds that the termination discretion will be exercised on. That is plainly the scheme of this particular section. Otherwise the positioning of that parliamentary supervision makes no sense. Otherwise it would be put after the termination. There would be a proposed termination.

15 But what this scheme contemplates is that the grounds will remain identical. That means, in my submission, that it's inherent that when the minister comes to exercise that termination discretion, if the grounds no longer exist or have changed, there is no power to terminate.

20 This is our argument, your Honour: take again the facts away from this. Suppose a commissioner was convicted by a Magistrates Court and then on appeal to the County Court the charges were completely dismissed. The argument must be that there is no power to terminate that appointment. That must be correct, your Honour.

25 HIS HONOUR: I don't know that it must be. That argument could be that the change in facts is something that the minister would have to take into account, and it would be a very brave minister who said, "Well, even though there's been now a complete change in the facts, I'm going to go ahead and exercise the power." You've got to credit ministers with some rationality.

30 MS MORTIMER: Your Honour, that's a separate matter. The question before your Honour is whether in those circumstances, hypothetically, section 40 - - -

35 HIS HONOUR: I mean, it would be a Wednesbury unreasonableness lay-down misere if the minister said, "I don't care that you've been acquitted on appeal. I'm going to go ahead as if nothing had changed just because parliament hasn't - - -"

40 MS MORTIMER: Your Honour, there might be all sorts of other administrative law grounds but there's one that stands out: there is no power. There simply is no power. That is what the scheme contemplates, and it does not contemplate that if that situation were to arise the decision-maker can keep

the commissioner on indefinite suspension.

HIS HONOUR: The minister must obviously consider the exercise of the power. That's another issue altogether. The minister can't just let it ride.

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MS MORTIMER: And that's because, in our submission, on this scheme the whole scheme is directed towards the termination of the appointment.

HIS HONOUR: But it's the application of ordinary administrative law principles. The exercise of the power can't be delayed for no good reason.

10

MS MORTIMER: Your Honour, there may be reasons proffered, for example, appeals, whatever, but our position on the construction is if there is no power to terminate because the grounds have changed, then the suspension cannot be authorised under the act any longer. From the day those grounds changed - on my hypothetical, from the day the charges are dismissed - where in section 40 is the continued suspension authorised?

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HIS HONOUR: But, you see, your difficulty is that you're focusing entirely on a question of conviction in a particular context, namely, that of Victorian law and the right of appeal from a hearing de novo, as the High Court insists we must call it, in the County Court. There is a vast range of things contemplated by the question of misbehaviour on any view. How must change does there have to be before the suspension falls over, and who measures the change? Who decides that a change has occurred? Surely the only way that there can be a decision about whether a change has occurred is that the minister has to look at it again, and be invited to do so, and decide whether to invoke the suspension. That surely must be the only way it can happen.

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MS MORTIMER: Let me take an example to address your Honour's concern far removed from the present. Let's take the example of mental incapacity, which is another ground. Let's assume for the purpose of argument that a commissioner is certified under relevant mental health legislation.

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HIS HONOUR: Do they still do that now? Do they still certify?

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MS MORTIMER: They do, your Honour.

HIS HONOUR: They do.

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MS MORTIMER: I'm not sure who "they" is, but that process still occurs. The minister then complies with section 40(2), considers the submissions - - -

HIS HONOUR: Says, "I must suspend you."

MS MORTIMER: Looks at the certification, suspends the commissioner, lays the ground - that is, the fact that the person has been certified - before parliament. Parliament does not - - -

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HIS HONOUR: Parliament does nothing.

MS MORTIMER: Parliament does nothing. The 15 sitting days expire and - - -

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HIS HONOUR: The commissioner gets a clean bill of health.

MS MORTIMER: Exactly.

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HIS HONOUR: Gets a piece of paper saying they're sane.

MS MORTIMER: Exactly.

HIS HONOUR: Something that I've never had.

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MS MORTIMER: In those circumstances we say the same construction applies. The power in subsection (5) of section 40 cannot be exercised because the grounds - - -

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HIS HONOUR: You see I say that shows the problem with the case because no decision-making power is committed by this section to any medical practitioner who says, "This person is no longer ill and I'll say so." No decision-making power at all. The only possibility is that - well, there are two possibilities: one is that the clean bill of health, having been given, the minister is invited to exercise or chooses to exercise, of her own motion, the power to revoke on the basis that the ground has now been undercut or, when the minister comes to consider termination, she says, "Well, I can't terminate any longer for this reason because this person is well now."

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MS MORTIMER: The minister might say though, your Honour, "I don't believe that certificate."

HIS HONOUR: The minister might and with good grounds the minister might turn out to be right. But that's just a question of investigation on administrative law grounds of the minister's decision to terminate. Parliament can't have intended that the decision-making power should rest entirely with other unnamed, unattributed sources in respect of all sorts of things.

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MS MORTIMER: Your Honour, we don't say it does. What we say is that

parliament - now, we are dealing with democratically elected people - so in that sense, that's in our submission, very important. The power ought to be construed as significantly constrained. Your Honour ought not to give an unnecessarily expansive construction to that power.

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HIS HONOUR: Parliament's role in this is not to say whether the facts have changed or not. Parliament's role is to say whether or not the suspension, on the facts as they existed at the time the decision was made, was appropriate or not.

10

MS MORTIMER: Exactly, your Honour. It is a political approval - - -

HIS HONOUR: Yes.

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MS MORTIMER: - - - on the grounds that the minister gives.

HIS HONOUR: If the grounds change then the minister obviously reconsiders if invited to do so or of her own motion.

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MS MORTIMER: Your Honour, but that's our whole point. The scheme is firstly that political approval is necessary and appropriate and then - your Honour shakes his head - but that is the only explanation for subsection (4).

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HIS HONOUR: I don't shake my head, I grimace in evaluating the proposition.

MS MORTIMER: That, we say, is why subsection (4) is in there because parliament has chosen to make it necessary that political approval be given to the removal from office of a democratically elected commissioner.

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HIS HONOUR: I wouldn't have thought it was political approval, I would have thought it was a method of supervision of the minister.

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MS MORTIMER: By the political arm.

HIS HONOUR: Well, by the legislative arm. The minister is responsible to the legislature - - -

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MS MORTIMER: I accept that, your Honour.

HIS HONOUR: - - - and this is a way of ensuring in effect the principles of Westminster ministerial responsibility are upheld in that respect, your Honour.

MS MORTIMER: Exactly, your Honour, ensuring a high level of accountability for a minister who proposes to remove a democratically elected official.

5 HIS HONOUR: Yes.

MS MORTIMER: The way parliament has done that is to impose that supervision, that accountant ability after the suspension is made and the grounds of the suspension are given to parliament. That is the basis for parliament's assessment.

10

HIS HONOUR: But I can see that parliament has any role in relation to changed facts. It's not equipped to investigate them. There's nothing in the section that says that it has got to look at the facts as they are on any one of the 15 sitting days up to the very last.

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MS MORTIMER: No, your Honour.

HIS HONOUR: It looks at what the minister says - - -

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MS MORTIMER: Exactly.

HIS HONOUR: - - - and what the minister says is - and parliament says, "Well, that's going too far" or "That's okay."

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MS MORTIMER: Exactly, your Honour, and it is that supervision, that process of accountability that authorises termination. That, and none other, your Honour, in our submission.

HIS HONOUR: I don't know that it does because the minister then must decide whether to terminate. If the minister was required to terminate, if the word "shall" appeared in subsection (5) as it appears in subsection (7) then your ground would be a great deal stronger because the minister would have no further role. But the minister has a discretion and the discretion has to be exercised on proper principles and one of the very obvious things that the minister would be bound to take into account would be a change in the facts, change in the circumstances that led to the suspension. The minister wouldn't say, "Oh, well, parliament said this suspension is all right, so I've got to go ahead and terminate on this basis." The minister would say, "Well, do the facts, as I now know them to be, justify termination at the end of these 15 sitting days in both houses?"

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MS MORTIMER: Your Honour, has posed the question rhetorically from the minister, "Do the facts, as I now know them justify the termination?" but of

course if we talk in terms of considerations and what a minister is bound to take into account, that whole analysis in administrative law drives us back to what the section authorises or requires and it can only be a relevant consideration if the section requires that to be considered. Now, our construction is that the section requires a consideration of changed facts because otherwise the termination is not justified.

HIS HONOUR: But your contention is somehow changed facts, whatever they might be, undermine the suspension power after its exercised automatically and I can't see how that argument could apply because we know not what changes might occur; we know not how significant they may be. Does any trivial change in the facts undermine the suspension power or does the minister have the responsibility to consider revocation of the suspension if asked to do so or perhaps on her own motion if changed facts come to her notice. Now, it seems to me that the second of those is the proper option and there's no room for saying changed facts of themselves can operate to undermine the suspension and render it somehow invalid after the event.

MS MORTIMER: Perhaps I have been loose with my language, your Honour. It's perhaps better than to say changed facts but to look at the words in subsection (3) which are "ground of the suspension". If the ground of the suspension no longer exists - and I take your Honour back to the incapacity example - if the ground of the suspension no longer exists, there is no power to terminate. If there is no power to terminate, then there is no power to continue the suspension. That doesn't mean from the day it was made it's invalid, but what it does mean is from the day the ground of the suspension no longer existed this section does not authorise the suspension.

HIS HONOUR: What happens in the case of a mentally ill commissioner - and this is not by any means a far-fetched example - the suspension is on the basis of certification of mental illness, the person is given a clean bill of health, on your argument the ground has gone so the suspension has gone so somehow the person automatically goes back to work, there's no decision-making involved or anything like. Then there's another episode and a further certification. Does the suspension spring back into life or is it gone for ever once the grounds have changed and it has to be done all over again?

MS MORTIMER: The minister has to exercise the power again. The suspension can't come and go. That is certainly not the scheme of the act.

HIS HONOUR: Well, I think it can't go. I think it can't go without someone making a decision and that person is the minister.

MS MORTIMER: The only decision the minister can make your Honour is to

terminate the appointment or revoke the suspension. Those are the two options.

5 HIS HONOUR: Yes, not to terminate would be a valid decision but that would probably involve a requirement to revoke the suspension because the suspension is only for a particular purpose. But an exercise of the power to decide whether to terminate that results in a non-termination would probably have the effect of revoking the suspension, the whole thing would be spent. But I can't see that the suspension can be revoked by the occurrence of events that don't involve any decision on the part of the minister, that's the thing I'm struggling with.

15 MS MORTIMER: Of course the suspension can't be revoked, your Honour, but like in many other administrative law situations, a court can declare that a section no longer authorises something and it may take a declaratory situation, that is what we have pleaded in our amended application. You see, your Honour, the whole need to imply a power to revoke into this section is because it is contemplated there are circumstances where the suspension will no longer be lawful to continue.

20 HIS HONOUR: But the implication of a power to revoke is, by way of the Acts of Interpretation Act, in all statutory powers unless a contrary intention appears. Every power to do something involves a power to undo it, that's what the act says.

25 MS MORTIMER: Of course, your Honour. But what lies behind it? What lies behind it is that that is necessary implication because in some circumstances the continued doing of something will be unlawful. That's our point.

30 HIS HONOUR: That might be one of the reasons for exercising the power, but it's not the only reason.

35 MS MORTIMER: It may not be, but we say in this circumstance that is why one, in this section, needs to imply a power to revoke because, for the reason of the discussion between your Honour and I, there will be circumstances where the termination power cannot be lawfully exercised and the only thing that can be done is to revoke. Now, it that's right, that implication is needed because our argument is correct because the suspension power is no longer hinged on anything lawful.

40 HIS HONOUR: Well, that's the problem with the argument, because it seems to me that the suspension power and the effect of the suspension decision must continue until some other decision is made and the disappearance of the basis

for the original decision would obviously be a very good ground for revoking it. Indeed it might be said that the decision was perverse if it was otherwise. But it's - - -

5 MS MORTIMER: I fear I'm starting to repeat - - -

HIS HONOUR: There is no automatic effect from changed circumstances, that's the problem. From the disappearance retrospectively from the original ground, there is no automatic effect that I can read into this act.

10

MS MORTIMER: Your Honour, we say there's a series. The termination power can't be exercised. The respondents, as I understand, do not offer any construction of this section that would justify, for example, in the incapacity situation or the acquittal situation, a lawful basis for the termination power. If that's right, then there is no continued authorisation for the suspension because the whole of the section does not contemplate that a democratically elected person can continue to be suspended where there's no power to terminate them and where the grounds of their suspension have disappeared. That is why there must be an implied power to revoke, we accept that.

15

But it is because, in our submission, our argument is right that that is so in the context of this section. Now, your Honour, I think I'm going to just start repeating myself if I make any further submissions on that.

20

25 HIS HONOUR: Yes.

MS MORTIMER: The issue in relation to the - - -

30 HIS HONOUR: I think you can assume fairly safely that summary judgment is not on.

MS MORTIMER: If your Honour pleases. I ought to perhaps formally read the affidavits that we put in support of it. Does your Honour require me to do that?

35

HIS HONOUR: Why, in those circumstances, shouldn't I leave it to see what decision the minister makes? What's the point of interlocutory relief that would stop the minister making any decision when the minister might make a decision in favour of the applicant?

40

MS MORTIMER: Your Honour, the interlocutory relief we seek is in relation to the second proposed suspension, and that's a different kettle of fish. We seek that on entirely different grounds, one of which your Honour has already indicated to me your Honour is not disposed towards, which is the issue about

whether there can be an overlap in the exercise of the suspension power. But the other one is apprehended bias, and we seek that. We seek to persuade your Honour that there's a serious question to be tried on that.

5 HIS HONOUR: Usually you wait and see what the result is. You don't stop a decision being made. I mean, there might be apprehended bias but you get a decision in your favour. You can't complain about apprehended bias if you get a decision in your favour. It's rare to stop a process on the basis of
10 apprehended bias, especially when you can look back afterwards and say, for instance, "What were the reasons given?" because they might themselves cast light on the state of mind of the decision-maker.

MS MORTIMER: We accept it's rare, your Honour, but this is a fairly unique
15 circumstance in this sense, that the deadlines the minister has given us are the same for both, and the minister has said to us she will revoke the first suspension before she imposes any other suspension, if that's what she determines to do.

HIS HONOUR: Well, that's a fairly logical thing to say.
20

MS MORTIMER: It's not only logical, your Honour, but that at least must be an obvious consequence of section 40. Can't have two suspensions in place at the same time. The section does not contemplate that. Now, if that's so - - -

25 HIS HONOUR: But it's not evidence of bias to say, "And if I were to do this, I would also do that - - -"

MS MORTIMER: No, it's not, your Honour.

30 HIS HONOUR: - - - when you say that's what would be required to be done.

MS MORTIMER: No, it's not. It's the timing of it that we say gives rise to the inference. It's the fact that we have called on the minister expressly, several
35 times, to revoke the present suspension, and then if she proposes to suspend Mr Clark again, then so be it. But the way that we say the minister has foreshadowed she proposes to exercise her powers under section 40 lead to one inference and one inference only, and that is that she wants Mr Clark to remain continually suspended.

40 HIS HONOUR: Well, if you say that she should have exercised the power to revoke earlier, then you should have sought a remedy in relation to that, and you haven't, and if dilatoriness is the real complaint, then from what Mr Orr has said, it will be cured pretty soon.

MS MORTIMER: No, dilatoriness is not the real complaint, your Honour. The real complaint is that there is no basis for Mr Clark's continued suspension, and that the minister, by her correspondence, acknowledges that she will not have in place two suspensions at once. Now, if that's right, there is
5 no proper explanation for her refusal to revoke the current one, other than that she proposes to have Mr Clark continually suspended.

MR ORR: I haven't said much, but there's been no refusal to revoke the current suspension. The minister has written to the applicant saying she is
10 considering whether to revoke. It's been given a timetable of tomorrow. The applicant said he wants to make submissions on that issue. There's been no refusal to revoke, your Honour.

HIS HONOUR: As I said, if the complaint is dilatoriness, then you might
15 have been able to do something about it, but I don't see the problem. I don't see a bias case.

MS MORTIMER: Well, it's not actual bias, your Honour. We don't plead
20 that.

HIS HONOUR: No, I understand that.

MS MORTIMER: What we say is that any fair-minded observer looking at
25 this, in the absence - - -

HIS HONOUR: What would be the consequence if there were to be
apprehended bias? Who gets to exercise the power? Does there have to be
another minister sworn in for that purpose or something?

MS MORTIMER: No, your Honour. It's an apprehension of bias - - -
30

HIS HONOUR: Is there a doctrine of necessity that says, "Well, the minister
is the only person who can make the decision anyway, so apprehended bias is
not a ground for preventing the making of the decision"?
35

MS MORTIMER: Your Honour, in some circumstances, there may be, but
our submission is not that there will always be an apprehension of bias against
this minister in relation to the exercise of any suspension power against this
applicant. What we are saying is, in relation to the present circumstances - that
40 is, where there were convictions by the Magistrates Court, an appeal the same
day, the minister was put on notice through our correspondence throughout
2003 about the nature of that, suspended him anyway, knows that's under
challenge, knows we amended our application to plead expressly that from the
day of the County Court decision, the power to suspend was no longer

authorised, and that - she knows all that. She's asked by us to revoke the suspension. She does not revoke the suspension. Instead, she issues us with another notice referring to the County Court thing, the very thing we say has vitiated the first suspension.

5

HIS HONOUR: Well, as I say, I can't really see the problem with that.

MS MORTIMER: Well, that's a problem for us, your Honour.

10 HIS HONOUR: I know you say there is, but I can't really see the problem with that.

MS MORTIMER: We say that - - -

15 HIS HONOUR: I think you've got to wait and see what happens. It will be a brave minister who says, "Well, given what's occurred, I'll terminate."

MS MORTIMER: Well, for the first time, your Honour, today we have a statement from the minister's counsel that he has been instructed there will be an answer within seven days in relation to the first suspension.

20

HIS HONOUR: Shouldn't you wait for that?

MS MORTIMER: We might not have been here at all if we'd been told that before.

25

HIS HONOUR: You might not, but shouldn't you wait for it, given that?

MS MORTIMER: Can I clarify, your Honour, from my learned friend that that is in relation to the question whether to revoke the first suspension or whether it's in relation to the second "show cause" notice as well?

30

HIS HONOUR: Even if it's in relation to both, how can you stop the minister doing two things on one day?

35

MS MORTIMER: We don't say that we can stop the minister doing two things. What we're saying in relation to the interlocutory injunction - put to one side the construction argument that your Honour has indicated your Honour doesn't agree with - that there's an apprehension that the way the minister has gone about it means that she is determined to continue his suspension; that is, that she has made up her mind on the second "show cause" notice. Otherwise the occasion for its issue - - -

40

HIS HONOUR: Wait and see if she does and then run that issue on another

interlocutory application, I would say.

5 MS MORTIMER: Your Honour, I have a proposal that I'd like to put to the court, and I'd just like to seek some instructions on that, if your Honour could give me five or 10 minutes to get some instructions?

HIS HONOUR: A proposal of what kind?

10 MS MORTIMER: Well, in light of what your Honour has said to me about the course that might be taken. I take your Honour to be saying that your Honour at the moment is not disposed on either of the applications before you, and I'd like to get some instructions to propose a course of action, taking into account what Mr Orr has said about the seven days.

15 HIS HONOUR: You're not able to tell me what you want?

MS MORTIMER: I want to get some instructions first, your Honour. That is, in my submission, reasonable.

20 HIS HONOUR: Yes. Do you have any objection to that, Mr Orr?

MR ORR: No, your Honour.

25 HIS HONOUR: How long do you think you'll need?

MS MORTIMER: 10 minutes.

HIS HONOUR: Till 10 to 12 or 5 to 12?

30 MS MORTIMER: 5 to 12, your Honour.

HIS HONOUR: All right. I'll adjourn till 5 to 12.

35 MS MORTIMER: Thank you very much.

HIS HONOUR: If you need further time, let the court officer or my associate know.

40 MS MORTIMER: If your Honour pleases.

ADJOURNED [11.42 am]

RESUMED [12.01 pm]

MS MORTIMER: Your Honour, in light of the matters that have arisen this morning, and in light of the respondents confirming through their counsel to me that the minister will be able to make a decision on both issues - that is, the first suspension and the second "show cause" - within seven days or so, we ask
5 that the court adjourn both the motion and the interlocutory application for a period shortly after the expiration of that seven days.

HIS HONOUR: Which, the summary judgment motion or - - -

10 MS MORTIMER: Yes, your Honour.

HIS HONOUR: Why wouldn't I just dismiss that?

MS MORTIMER: Because, your Honour, if the minister refuses to revoke the
15 first suspension, that motion remains, in my submission, live.

HIS HONOUR: Yes, but I - - -

MS MORTIMER: And the most appropriate motion, rather than - - -

20 HIS HONOUR: - - - in effect take the view that it's not going to succeed, so why should it continue to stale? I mean, your proceeding stays alive and you can pursue the question of the validity of the first suspension to a trial, but why would you entertain any hope of getting summary judgment on it?

25 MS MORTIMER: Because, as I understand what your Honour has put to me this morning, the construction issue that troubles your Honour about our summary judgment is that there remains a discretion to be exercised by the minister whether to revoke the suspension because of the change of grounds.
30 Now, if the minister makes a positive decision not to do so, that only means that she is also making a positive decision to proceed to termination, and the summary judgment - - -

HIS HONOUR: Well, I don't accept that that follows, but in any event, I don't
35 think you're going to succeed on summary judgment.

MS MORTIMER: Well, if your Honour is disposed to dismiss it, so be it, but we propose, with the respondents' consent, that both matters be adjourned. I've sought some agreement from my learned friend about a date, and he has
40 proposed 28 January, which is a Wednesday, and we're content with that, your Honour.

HIS HONOUR: Yes. I think that I would be available on that date.

MS MORTIMER: Your Honour, there's the question of costs. My learned friend has instructions, I think, to ask for costs.

5 MR ORR: Yes, your Honour. We'd seek an order for costs of and incidental to today's hearing. In our view, these proceedings today have always been premature and inappropriate and should have awaited at very least the minister's decision.

10 HIS HONOUR: The only thing about that, I suppose, is that apparently it came as news to the applicant that the minister would be likely to make a decision within seven days. Otherwise there had been no indication of that. Am I right?

15 MR ORR: Well, your Honour, it has always been the minister's position, since 23 December when the notice was issued, that - was to give the applicant until tomorrow to make submissions in relation to both matters.

HIS HONOUR: Yes.

20 MR ORR: Now, the issue about seven days really flows from the fact that if submissions are made tomorrow, the minister is happy and would have always expedited that. But the seven days isn't so much an issue. I mean, the issue is that it was always the minister's intention to consider revocation and perhaps termination. That was stated to the applicant. The applicant was given a time
25 within which to make submissions. That time was not elapsed. The applicant has indicated that he wants to make submissions on that issue. It's clearly premature to have brought those proceedings before that time was lapsed, and we have pointed it out to the applicants on a number of occasions; that is, in at least two pieces of correspondence.

30 HIS HONOUR: But you're consenting to the summary judgment application being adjourned over, apparently.

35 MR ORR: Well, to a time after the minister has been given an opportunity to make the decision, which has always been our case. I mean, you're true, your Honour; we could have pressed formal judgment on the summary application. But in order to resolve this in a reasonably amicable way, I'm happy to say, well, we'll just adjourn that matter and see what the minister's decision is because they might all well fall away.

40 HIS HONOUR: It would be amicable to leave it to me to work out the costs on the 28th, wouldn't it?

MR ORR: Well, I can't see that anything that happens on the 28th will be

relevant to whether today's proceeding was appropriate. If I could just say to your Honour that we did write - and I can take your Honour to these letters - to the applicant's solicitors on 30 December 2003 in response to their letter and said that:

5

We confirm that the minister is currently considering what action she should take in relation to the current suspension. Please let us have any further submissions regarding that matter by 16 January 2004.

10

Paragraph 4:

We regard any application in the current proceedings or any further proceedings at this time as premature.

15

That's a letter from the Australian Government Solicitor to Coadys dated 30 December 2003. There was a further letter of 8 January 2004 from the Australian Government Solicitor to Coadys, again saying similar things and concluding:

20

We confirm our view that any application in the current proceedings or any further proceedings would be premature at this time. Accordingly, we reserve our client's right to produce both this correspondence and our letter dated 30 December 2003 on the question of costs, in the event the proposed application is pursued.

25

It was again a letter in which we asked whether further submissions were being made, and further, in an affidavit filed by us yesterday, we have a letter which I also rely on from Coadys to the Australian Government Solicitor, which says:

30

Whilst we reserve all our client's rights, we confirm that we intend to make further submissions by 16 January 2004 in relation to the current suspension and the "show cause" notice.

35

So that's the applicant confirming that he wished to make submissions in relation to the minister's decision. Now, in our submission, that correspondence and the earlier correspondence of 23 December 2003 shows that the timetable set in place by the minister was to say that she was considering whether to revoke the suspension or proceed to determination, and gave the applicant a reasonable period in which to make submissions on that matter, and that since that date, the solicitors for the minister have said to the applicant's solicitors on two occasions that because of that timetable, any application before the minister's decision would be premature, and in addition to that, the applicant's solicitors have said they indeed want to make

40

5 submissions in relation to the minister's decision, and that those submissions will be made in accordance with the timetable by tomorrow, 16 January. In our submission, that course of conduct shows that it was never appropriate to bring the proceedings on this day, and that it was always going to be premature to bring those proceedings before the minister had made her decision. The minister's timetable for making that decision was always a reasonable one.

10 HIS HONOUR: I don't necessarily reject those propositions, but I don't think that I should determine them today. It seems to me to be satisfactory to reserve the costs in both proceedings and perhaps to look at them on the 28th when the question of any interlocutory relief might be resolved.

MR ORR: If the court pleases.

15 MS MORTIMER: If your Honour pleases.

HIS HONOUR: In matter number 858 of 2003, I make the following orders:

- 20
1. The further hearing of the motion the subject of the notice of motion filed on 8 January 2004 be adjourned to 28 January 2004.
 2. The costs of today be reserved.

25 In matter number 17 of 2004, I make the following orders:

1. The further hearing of the application for interlocutory orders be adjourned to 28 January 2004.
2. The costs of today be reserved.

30 MS MORTIMER: If your Honour pleases.

HIS HONOUR: Thank you, Ms Mortimer. Thank you, Mr Orr. Adjourn the court, please.

35 **MATTER ADJOURNED AT 12.08 PM UNTIL WEDNESDAY,
28 JANUARY 2004**

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 27 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(104) Output 3.1: Indigenous Policy

Senator O'Brien (L&C 66) asked:

In relation to Mr Geoff Clark's suspension, provide the legal costs to the Commonwealth so far in relation to the original suspension challenge and in relation to the current challenge.

Answer:

The total legal costs paid by the Commonwealth both in relation to the original suspension challenge and in relation to the current challenge are, as at 22 June 2004, \$94,147.01.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 27 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(105) Output 3.1: Indigenous Policy

Senator O'Brien (L&C 70) asked:

What expenses has the Commonwealth incurred seeking legal advice and otherwise responding to the legal challenge by the ATSIC Board of Commissioners against the establishment of ATSIS?

Answer:

The amount approved for payment by the Office of Aboriginal and Torres Strait Islander Affairs concerning the legal challenge by the ATSIC Board of Commissioners to the establishment of ATSIS is \$11,932 as of 22 June 2004.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 27 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(106) Output 3.1: Indigenous Policy

Senator Harradine asked:

1. Is the Department aware of the “Book Up” system in the Northern Territory, where businesses take control of the debit cards and personal identification numbers of Aboriginals who are then restricted to purchasing from that one shop?
2. Is the Department aware of concerns that one shop in Katherine:
 - has over 250 debit cards and PINs;
 - that people are unable to pay rent or purchase anything outside the one shop; and
 - that community workers with their clients attempting to recover their cards have been threatened with trespass orders by a shop?
3. Is the Department concerned about the devastating effects the “book up” practice has on Aboriginal people participating who find their entire Centrelink incomes withdrawn fortnightly by small traders as a result of having to purchase goods on credit?
4. What is the Department planning to do to address the problems some people have with budgeting which may oblige them to use credit and to protect the privacy rights of people to purchase food or other goods from a shop without having to hand over both their debit card and their PIN?

Answer:

1. The Department is aware that various forms of “Book Up” arrangements can occur in remote Indigenous communities.
2. No. Whilst the Department is aware of “Book Up” practices occurring, it does not monitor individual “Book Up” arrangements.
3. The Department is concerned about the potential for abuse in “book up” arrangements and the limitations to privacy and control of personal finances.
4. The Government has provided funding to several programs to assist and educate Indigenous people in financial management of their earnings. These have included:
 - \$4.4 million over four years towards additional financial management projects such as those already operating in some Cape York communities;
 - this is on top of \$1.5 million announced by the Prime Minister in August 2003 to extend the Cape York projects, and a further \$90,000 allocated to assess the feasibility of establishing an Indigenous operated credit union to support them; and

- \$400,000 for the *Mange Kulu Economic Education and Money Management Project* to help Wadeye residents learn about money, income management, the tax system, banking services and a broad range of economic issues.

Centrelink also offers the service of Centrepay to recipients of welfare payments, whereby money is deducted from a person's payment to cover regular bills such as rent, electricity or food. Centrelink is also trialing weekly income support payments in the Alice Springs area to assist in the management of family budgets.

Further, the Government has announced, in February 2004, the development of a national consumer and financial literacy strategy. The high level taskforce overseeing this development includes the Coordinator of the National Indigenous Consumer Strategy and hopes to improve the levels of consumer and financial information and education.

The five year National Indigenous Consumer Strategy, endorsed by the Ministerial Council on Consumer Affairs (MCCA), will consider education, policy, legislation and enforcement issues. Its objectives are to improve Indigenous consumers' knowledge of rights and their access to consumer protection programs, and to educate traders and service providers of their rights and responsibilities concerning Indigenous consumers and communities.

In September 2003, ASIC launched a free comic *Moola Talk* to educate remote Indigenous communities on their consumer rights and responsibilities.

In addition, Government agencies have been meeting with representatives of the banking industry to work towards providing opportunities for better money management for Indigenous people, particularly so since May 2002 when Reconciliation Australia hosted the workshop 'Improving Banking and Financial Services for Indigenous Australians'.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 27 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(107) Output: Aboriginal and Torres Strait Islander Services

Senator O'Brien (L&C 24) asked:

Has there been any communication over the past month that expressed significant concern about the government's announcement of the abolition of ATSIC?

Answer:

A total of 21 letters were received by ATSIC and ATSIIS in relation to the abolition of ATSIC, together with 13 emails via the ATSIC website.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 27 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(108) Output: Aboriginal and Torres Strait Islander Services

Senator O'Brien (L&C 30) asked:

Can you provide a breakdown of ATSI ongoing staff by state and territory, the number of Indigenous staff in each of the regions and by regional office area?

Answer:

ATSI Ongoing staff by State and Territory as at 22 June 2004

ACT:	398
NSW:	114
NT:	130
QLD:	159
SA:	88
TAS:	16
VIC:	53
WA:	137
TOTAL:	1095

Indigenous Regional Office Staff

Adelaide Regional Office	9
Alice Springs Regional Office	14
Bourke Regional Office	8
Brisbane Regional Office	18
Broome Regional Office	11
Cairns Regional Office	23
Ceduna Regional Office	4
Coffs Harbour Regional Office	7
Darwin Regional Office	21
Geraldton Regional Office	8
Kalgoorlie Regional Office	11
Katherine Regional Office	11
Kununurra Regional Office	8
Melbourne Regional Office	10
Mt Isa Regional Office	9
Nhulunbuy Regional Office	6
Northern Areas Regional Office	13
Perth Regional Office	14
Port Hedland Regional Office	10
Queanbeyan Regional Office	8

Rockhampton Regional Office	11
Roma Regional Office	6
Sydney Regional Office	13
Tamworth Regional Office	8
Tennant Creek Regional Office	5
Townsville Regional Office	9
Wagga Wagga Regional Office	9
West Kimberley Regional Office	9
Total	293

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 27 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(109) Output: Aboriginal and Torres Strait Islander Commission

Senator O'Brien (L&C 30) asked:

Can you provide a breakdown of ATSIC ongoing staff by state and territory and the number of Indigenous staff in each of the regions and by regional office area?

Answer:

ATSIC ongoing Staff by State as at 22 June 2004

ACT	21
NSW	10
NT	11
QLD	14
SA	4
TAS	2
VIC	4
WA	13
TOTAL	79

ATSIC Indigenous Staff by State as at 22 June 2004

ACT	11
NSW	4
NT	4
QLD	8
SA	4
TAS	2
VIC	4
WA	7
TOTAL	44

ATSIS Indigenous Staff by Regional Office

Adelaide Regional Office	9
Alice Springs Regional Office	14
Bourke Regional Office	8
Brisbane Regional Office	18
Broome Regional Office	11
Cairns Regional Office	23
Ceduna Regional Office	4
Coffs Harbour Regional Office	7

Darwin Regional Office	21
Geraldton Regional Office	8
Kalgoorlie Regional Office	11
Katherine Regional Office	11
Kununurra Regional Office	8
Melbourne Regional Office	10
Mt Isa Regional Office	9
Nhulunbuy Regional Office	6
Northern Areas Regional Office	13
Perth Regional Office	14
Port Hedland Regional Office	10
Queanbeyan Regional Office	8
Rockhampton Regional Office	11
Roma Regional Office	6
Sydney Regional Office	13
Tamworth Regional Office	8
Tennant Creek Regional Office	5
Townsville Regional Office	9
Wagga Wagga Regional Office	9
West Kimberley Regional Office	9
Total	293