

SENATE ESTIMATES COMMITTEE  
INSOLVENCY AND TRUSTEE SERVICE AUSTRALIA  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

Provide information on the risk profile in connection with bankruptcy regulation.

**I am advised that the answer to the honourable Senator's question is as follows:**

Bankruptcy Regulation branch (Bankruptcy Regulation) has documented procedures for risk profiling registered trustees and the administration of estates. In addition, there are practices that are not documented to assess whether Bankruptcy Regulation will attend Part X creditors' meetings.

*Trustee Assessment*

An annual inspection is conducted by Bankruptcy Regulation for every Trustee with active estates.

Based on being scored on the characteristics below, Trustees are rated from 1 to 4, with 1 representing the lowest risk and 4 the highest risk. The factors taken into account are documented on a risk assessment form. Characteristics identified on the form are:

- Structure of firm – with national or larger firms assessed as a lower risk than smaller firms and sole practitioners;
- Qualifications and experience of support staff – with higher numbers of suitably qualified staff assessed as a lower risk;
- Bankruptcy Regulation's assessment of systems and controls;
- Number of complaints with material errors;
- Number of material errors found during inspection; and
- Number of trustee decisions overturned on review by the Inspector-General.

The rating is then used to determine the overall percentage of administrations sampled during Bankruptcy Regulation inspections.

*Sampling of Estates*

Sampling of estates for inspection uses a risk assessment model. Selection is based on:

- Debt level;
- Gross receipts;
- Dividends paid;
- Trustee remuneration;
- Trustees costs; and
- Administrations over 3 years old still active.

An appropriate sample size for each trustee is taken based on the total number of matters under the control of the Trustee and the rating assessed for each Trustee by ITSA.

Bankruptcy Regulation may then review the sample to ensure that it covers a range of different types of bankrupt estates and it may increase the sample should the full range of matters not be covered.

*Assessment of attendance at Part X creditors meetings*

While there are no documented criteria, instances when Bankruptcy Regulation will consider attendance at Part X creditors' meetings include:

- Examination of the s189A report from the controlling trustee and debtor's Statement of Affairs filed at ITSA offices identifies issues which indicate there may not have been full disclosure in the report to creditors of matters such as assets or potential recoveries, or there is reason to investigate possible offences under the Bankruptcy Act;
- When there is a history of poor meeting procedures by a particular trustee;
- When the debtor has a high public profile;
- When a concern has been raised in connection with a Part X proposal and one or more creditors request attendance at the meeting; and
- As part of an ongoing assessment of the practice standards of all trustees.

As noted in the reply to the Question on Notice number 556, this list is not exhaustive. For example, other factors that may be taken into account include:

- Where the majority of creditors shown appear to be related entities; and
- Where the dollar level of the offer to creditors is very low related to creditor level.

Trustees' conduct of Part X meetings is also taken into account as part of the annual assessment of Trustees and the risk profile characteristics (outlined above) are relevant in determining whether to attend Part X meetings.

In response to recent concerns about Part X meetings, and in accordance with ITSA's practice to direct resources to areas of perceived need, Bankruptcy Regulation has adopted a practice of attending a higher proportion of Part X meetings than has been the case in recent years.

Bankruptcy Regulation plans to document criteria for attending Part X meetings during 2003 as part of a revision of relevant procedural documentation.

SENATE ESTIMATES COMMITTEE  
INSOLVENCY AND TRUSTEE SERVICE AUSTRALIA  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

In regard to the release of the discussion paper for the Part X review:

- (a) Did the discussion paper invite submissions?
- (b) Can you supply details of where you have been and what organisations you have spoken to in relation to the Part X review?

**I am advised that the answer to the honourable Senator's question is as follows:**

- (a) The discussion paper invited written submissions to be provided by 17 January 2003.
- (b) ITSA and the Attorney-General's Department conducted a focus group in each State capital city during November. The focus groups have been attended by registered trustees, lawyers, creditors, debtors' representatives and academics. ITSA approached individuals, rather than organisations, inviting them to attend on the basis of their experience and contact with bankruptcy issues including Part X arrangements. The discussion paper was also circulated to members of the Bankruptcy Reform Consultative Forum.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

The Department identified two breaches of the model litigants guidelines by the Commonwealth agencies and remedial action has been taken

- a. What agencies are they?
- b. What breaches were identified in each case
- c. What litigation took place in respect of it?

**I am advised that the answer to the honourable Senator's question is as follows:**

- a. There was one agency involved: the Australian Communications Authority (ACA).
- b. The first breach identified was reliance on a technical defence in proceedings in the Administrative Appeals Tribunal (AAT). While the ACA did not rely on this defence on the day of hearing, it did not give the other party prior notice that this defence would not be relied upon, which was a second breach. The AAT dealt with the situation by requiring the ACA to present its oral submissions first, when normal procedure requires the oral submissions of the applicant to be presented first. Both parties had already provided written submissions.
- c. No litigation took place in respect of the breaches.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.3  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

In respect of the seven community based counselling services funded under the Family Relationship Services Program, how much has been spent to date on each service?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Department of Family and Community Services (which administers the contracts with the services) has provided the following information.

The conciliation services funded under the Family Relationship Services Program have each received to date the following amounts, including GST:

Centacare Adelaide	\$362,518.43
Centacare Catholic Family Services	\$540,796.99
Family Mediation Centre	\$490,678.71
Relationships Australia Victoria	\$271,366.27
Unifam Parramatta	\$512,203.22
Centacare Sydney	\$258,851.60
Relationships Australia Queensland	\$393,512.08

The following table shows how much has been spent to date on each conciliation service in total by financial year.

State	Conciliation Service	2000/01	2001/02	2002/03 - YTD	Total
SA	Centacare Adelaide	\$38,542.90	\$214,340.41	\$109,635.12	<b>\$362,518.43</b>
VIC	Centacare Catholic Family Services	\$46,039.40	\$327,328.87	\$167,428.72	<b>\$540,796.99</b>
VIC	Family Mediation Centre	\$46,305.60	\$293,994.78	\$150,378.33	<b>\$490,678.71</b>
VIC	Relationships Australia Victoria	\$42,980.30	\$151,098.89	\$77,287.08	<b>\$271,366.27</b>
NSW	Unifam - Marriage and Family Counselling Service	\$47,850.00	\$307,213.51	\$157,139.71	<b>\$512,203.22</b>
NSW	Centacare Sydney	\$26,675.00	\$153,606.75	\$78,569.85	<b>\$258,851.60</b>
QLD	Relationships Australia Queensland	\$77,984.50	\$208,751.29	\$106,776.29	<b>\$393,512.08</b>
		\$326,377.70	\$1,656,334.50	\$847,215.09	<b>\$2,829,927.29</b>

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

In relation to page impressions for the Internet sites, can you separate the SCALEplus of people looking for legislation so that they do not take that as a page impression for your site?

**I am advised that the answer to the honourable Senator's question is as follows:**

The figures for page impressions and document views that have been provided to date relate exclusively to the Family Law Online web site. These figures do not include SCALEplus related access.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

In relation to the building and construction Royal Commission and the HIH Royal Commission are statistics available on a case by case, per person, per application, or is there payment to solicitors or counsel appearing?

**I am advised that the answer to the honourable Senator's question is as follows:**

68 applications (relating to 165 applicants) for financial assistance have been approved for the Building and Construction Industry Royal Commission and 38 applications (relating to 38 applicants) for financial assistance have been approved for the HIH Royal Commission.

The attached table provides a breakdown by solicitor and number of applicants for those applications that have been approved. It does not identify solicitors by name. If names were provided it would be possible to identify at least some applicants and the amount of assistance granted to them. This is in accordance with the long standing practice, endorsed by successive Attorneys-General, to treat applications for financial assistance in confidence. This practice extends to neither confirming nor denying that particular applications have been received. The Attorney-General referred to this practice in his response to a question relating to the HIH Royal Commission asked by Mr McClelland MP in the House of Representatives on 19 August 2002.

The attached table shows total amounts committed for applicants represented by solicitors. The commitment represents the maximum amount that has been approved for financial assistance for the purposes identified in the application. The fourth column shows total payments to solicitors. Payments are made on presentation to the Department of an itemised account, and other relevant receipts and invoices, by the solicitor. The allowable costs are set out in the Scheme guidelines. The commitment and payment amounts include amounts representing fees for counsel, where applicable.

## Scheme for Financial Assistance for Legal Costs before the Royal Commissions into HIH and Building and Construction Industry

Total payments and commitments made from 29 August 2001 to 30 November 2002.

	Solicitor/firm	Commitments <sup>3</sup>	Total amounts paid to solicitor. <sup>1</sup>	Total number <sup>2</sup> of applicants to whom commitments relate.
BCI	A	\$6,373		1
	B	\$21,276		3
	C	\$72,000	\$8,626	1
	D	\$23,920	\$13,024	1
	E	\$39,454		4
	F	\$120,200	\$26,152	3
	G	\$196,326	\$40,151	6
	H	\$9,528		1
	I	\$2,206,739	\$368,120	37
	J	\$76,300	\$28,759	11
	K	\$396,636	\$112,487	52
	L	\$276,368	\$82,627	42
	M	\$252,895	\$205,843	3
		<b>Totals</b>	<b>\$3,698,015</b>	<b>\$885,789</b>
HIH	N	\$335,000	\$221,645	1
	O	\$72,320		1
	P	\$99,500	\$4,348	1
	Q	\$280,000	\$72,859	1
	R	\$284,880		1
	S	\$42,156	\$19,505	1
	T	\$28,000		1
	U	\$260,000	\$10,223	1
	V	\$11,600	\$8,805	1
	W	\$288,956	\$173,490	18
	X	\$434,600	\$258,958	2
	Y	\$213,000	\$91,813	1
	Z	\$122,900		1
	AA	\$83,500	\$32,804	1
	BB	\$61,500	\$30,995	1
	CC	\$11,700		1
DD	\$211,104		3	
	<b>Totals</b>	<b>\$2,840,716</b>	<b>\$925,445</b>	<b>37</b>

<sup>1</sup> This is the total payment that has been made to each solicitor as at 30 November 2002. It may relate to only some of the applicants on whose behalf the solicitor has made an application because not all applicants have sought payment as at this date.

<sup>2</sup> In addition, as at 12 December 2002, there is an application by an individual who has not yet advised us whether they have retained legal representation.

<sup>3</sup> It is possible that the final total amounts for which payment is sought by some of these individuals will be less than the commitment allocated to them.



SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

In relation to the Workplace Relations Act, in the last financial year how much was spent on legal assistance under the Act?

**I am advised that the answer to the honourable Senator's question is as follows:**

In the 2001/02 financial year \$222,803 was spent on financial assistance under the Guidelines for the provision of financial assistance by the Commonwealth under Part XII of the *Workplace Relations Act 1996*.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

In relation to the Royal Commissions, could you advise as to financial assistance that has been refused, perhaps you could add a column to indicate if there have been any refusals and what grounds were given for the refusal for financial assistance.

**I am advised that the answer to the honourable Senator's question is as follows:**

The only applications that have been refused are those which fall outside the scope of the scheme for Financial Assistance for Legal Costs before the Royal Commissions into HIH and the Building and Construction Industry.

There have been some applications that did not fall within the scheme because the work for which funding was sought was performed prior to the application for assistance. The scheme envisages applications for financial assistance to cover future work, not work that has already been completed. This approach is consistent with usual legal aid practice.

There have also been applications where some portion of the claim was not accepted because the work had been performed prior to the application being made.

In addition, there have been cases where funding has been granted but not to the level sought by the applicant.

There are 44 applications for assistance pending under the Scheme for Financial Assistance for Legal Costs before the Royal Commissions into HIH and the Building and Construction Industry.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.3  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

Regarding the status of the reviews of the Western Australian and the New South Wales community legal services:

- a. how were the selections for appointment to the WA steering committee made?
- b. can you check if the New South Wales steering committee has been established, or if there are any names for that steering committee?

**I am advised that the answer to the honourable Senator's question is as follows:**

- (a) The Commonwealth and State agreed at officer level on the stakeholder organisations which should be represented on the review steering committee. The structure of the committee was drawn from the structure of previous committees established for similar reviews in other States.

The participating organisations then selected individuals to participate on the committee on their behalf.

- (b) The membership of the steering committee for the review of community legal services in NSW is still to be finalised. The Commonwealth members of the committee will be Ms Sandra Ellims and Mr Garry Burlingham. Legal Aid NSW has advised that its representatives will be the Reverend Harry Herbert and Ms Vicki Burge. The composition of the committee, including the position of chair, is still to be settled.

SENATE ESTIMATES  
LEGAL AND CONSTITUTIONAL COMMITTEE

ATTORNEY-GENERAL'S DEPARTMENT  
QUESTIONS ON NOTICE

**Senator Payne Tabled the following question at the hearing of 20 November 2002**

- (1) How long has the government's position in relation to the question of whether or not Australia would nominate a judge to the International Criminal Court been known?
- (2) When did Australia's position on that matter become public and how, if at all, was that decision communicated publicly?

**I am advised that the answers to the honourable Senator's questions are as follows:**

- (1) The Government had the nomination of a candidate for appointment as a Judge of the ICC under active consideration in October 2002 and reserved the option of nominating a candidate up to the date nominations closed on 30 November 2002.
- (2) The Government's final decision was not communicated publicly prior to 30 November 2002.

SENATE ESTIMATES  
LEGAL AND CONSTITUTIONAL COMMITTEE

ATTORNEY-GENERAL'S DEPARTMENT  
QUESTIONS ON NOTICE

**Senator Payne Tabled the following question at the hearing of 20 November 2002**

In relation to the appointments to the ICC will any women be appointed to the court in either capacities and has Australia a particular position on the matter?

**I am advised that the answer to the honourable Senator's questions is as follows:**

The election procedures for ICC judges require States to vote for a minimum number of candidates from each gender. Forty-five nominations have been received for 18 positions. 10 female candidates have been nominated. Each ICC State Party will now be required to vote for at least 6 female judges.

There are no gender requirements in the ICC Statute for appointments to Prosecutor and Deputy Prosecutor positions. Australia's position on appointments to these positions will have regard to gender requirements. It is very important that suitably qualified and experienced individuals are elected to these positions.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 2.1  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

In relation to the proposed gun controls, is there a figure on how many illegal hand guns circulate in Australia?

**I am advised that the answer to the honourable Senator's question is as follows:**

There are no figures available on how many illegal handguns are in Australia. Research by the Australian Institute of Criminology (AIC) indicates that in the period 1 July 1994 to 30 June 2000 a total of 25 171 firearms were reported stolen in Australia. Of these firearms, 14% (3 523) were handguns. The AIC does not have information on the number of stolen firearms recovered by police.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator Ridgeway asked the following question at the hearing of 20 November 2002:**

What programs and other measures does the Department have in place to reduce the rate at which Indigenous people appear in court and the rate at which they are taken into custody?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Attorney-General's Department's National Crime Prevention Program has a mixture of research and practical initiatives in place that may contribute to reducing the rate at which Indigenous people appear in court and the rate at which they are taken into custody. Many of these measures have an early intervention and crime prevention focus that may have benefits for all Australians, including Aboriginal and Torres Strait Islander peoples. However, under the National Crime Prevention Program there are a number of specific initiatives that are likely to have a greater direct impact on reducing Indigenous peoples' representation in courts and in custody than other initiatives under the program. These include:

- a national review of juvenile diversion;
- an Indigenous Youth Mentoring Scheme in South Australia;
- two Aboriginal Night Patrols in the Northern Territory; and
- a National Profile of Night Patrol Services.

In addition to these initiatives, the Department also provides funding for a juvenile pre-court diversion scheme in the Northern Territory, and jointly funds an Aboriginal Interpreter Service in the Territory. While the pre-court diversion program is for all juveniles in the Territory, both these initiatives are likely to have a direct impact on reducing Indigenous peoples' representation in courts.

The 12-month progress Review indicates that the NT Agreement is showing early signs of success. In the scheme's first year, there was a 31 per cent reduction in court appearances by juveniles. There was also a 51 per cent reduction in convictions of juveniles for all offences — a 44 per cent decrease in convictions of Indigenous juveniles and a 64 per cent decrease in convictions for non-Indigenous juveniles. Amongst Indigenous juveniles there was a reduction in detention/imprisonment orders of 41 per cent for property offences.