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SENATE

SELECT COMMITTEE ON THE ADMINISTRATION OF INDIGENOUS AFFAIRS

Reference: Administration of Indigenous Affairs

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SENATE

SELECT COMMITTEE ON THE ADMINISTRATION OF INDIGENOUS AFFAIRS

Tuesday, 29 June 2004

Members: Senator Crossin *(Chair)*, Senator Johnston *(Deputy Chair)*, Senators Heffernan, McLucas, Nettle, O'Brien, Ridgeway and Scullion

Senators in attendance: Senators Crossin, Heffernan, Johnston, O'Brien and Scullion

Terms of reference for the inquiry:

To inquire into and report on:

(a) the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004;

(b) the proposed administration of Indigenous programs and services by mainstream departments and agencies; and

(c) related matters.

WITNESSES

GIBBONS, Mr Wayne, Chief Executive Officer, Aboriginal and Torres Strait Islander Services 1

HAWGOOD, Ms Dianne, First Assistant Secretary, Indigenous Communities Coordination Taskforce, Department of Immigration and Multicultural and Indigenous Affairs 1

KENWAY, Ms Roslyn, Legal Counsel, Aboriginal and Torres Strait Islander Services 1

VAN BEURDEN, Mr John Charles, Consultant, Office of Aboriginal and Torres Strait Islander Affairs 1

VAUGHAN, Mr Peter Eric, Executive Coordinator, Office of Aboriginal and Torres Strait Islander Affairs 1

WATSON, Mr Pat Gregory, Chief Executive Officer, Aboriginal and Torres Strait Islander Services 1

YATES, Mr Bernard, Deputy Secretary, Aboriginal and Torres Strait Islander Services 1

Committee met at 2.21 p.m.

GIBBONS, Mr Wayne, Chief Executive Officer, Aboriginal and Torres Strait Islander Services

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WATSON, Mr Pat Gregory, Chief Executive Officer, Aboriginal and Torres Strait Islander Services

YATES, Mr Bernard, Deputy Secretary, Aboriginal and Torres Strait Islander Services

CHAIR—I declare open this public meeting of the Senate Select Committee on the Administration of Indigenous Affairs. The select committee was appointed by the Senate on 16 July 2004 to inquire into and report by 31 October on the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004, the proposed administration of Indigenous programs and services by mainstream departments and agencies, and related matters. Today's public hearing is the first formal event in the committee's inquiry and, following this briefing, the committee intends to travel and consult extensively with Indigenous and non-Indigenous communities. I welcome officers from various government agencies. The committee prefers all evidence to be given in public, but, should you at any time wish to give your evidence, part of your evidence or answers to specific questions in camera, you can make application to do so and the committee will give consideration to your application. However, evidence taken in camera may subsequently be made public by order of the Senate or this committee. I invite you to make an opening statement, following which we have a number of questions we wish to ask.

Mr Gibbons—Through contact with the secretary to the committee, we understand you are interested in a presentation on two matters: firstly, the new administrative arrangements for Indigenous services, and, secondly, the bill that is before the Senate.

CHAIR—That is correct.

Mr Gibbons—If you are agreeable, we are prepared to begin with a presentation, which Mr Yates will conduct, about the new Indigenous arrangements.

CHAIR—That sounds fine.

A PowerPoint presentation was then given—

Mr Yates—This is a quick overview to set a context for our discussions. The first slide is focused on the essential elements of the government's rationale for the changes, which goes not only to the ATSIC position, structure and leadership but also to the real weaknesses in the service delivery side of the house, with too much 'silo-ism', a lack of coordination and collaboration and insufficient recognition that the money being spent in different parts of the Commonwealth is not being linked effectively in a complementary way.

We really do need to focus on strengthening our service delivery to Indigenous Australians right across agencies, because the particular suite of programs that ATSIC-ATSIS were responsible for was only a fraction—less than half—of the Commonwealth's activity in Indigenous-specific program areas. There needs to be a strong focus at the regional level and, by and large, a fundamental principle of linking government and communities in partnership in order to ensure that what government does hits the ground effectively and that there is a shared responsibility between both parties around the outcomes.

There are some key features of the new arrangements that we need to keep in mind. Whilst the mainstream government agencies will now play a central role in service delivery, the money that is spent across the Commonwealth is, in a sense, being quarantined. There is no scope to transfer that money that was tied up in Indigenous-specific programs with ATSIC-ATSIS into programs and services for non-Indigenous Australians. There is a strong focus on doing business on a whole-of-government basis, rather than each agency doing its own thing in isolation, and looking to ensure a better complementarity between Indigenous-specific programs and services and those that are delivered by the mainstream. Many Indigenous Australians rely on mainstream services. That is where they get a lot of support. Indigenous-specific funding is a top-up and a supplement to specific programs, and how they work together is fundamentally important in achieving both effective access and effective outcomes.

Some of the key elements or principles of the new approach to mainstreaming are covered in this slide. People have interpreted these changes as meaning simply that we have taken a certain program and given it to another—and that has happened from time to time in the past, including with some program activity that ATSIC was responsible for, where it was given to another department. But really this is a fundamentally different approach across the Australian government area in terms of a collaborative model across agencies, getting the sort of leadership—both political and bureaucratic—that is necessary to ensure that things are done very differently, the necessity for flexibility to recognise the diversity of circumstances in which Indigenous Australians live, and the sort of services that will be most effective for them. There needs to be a focus on regional needs—because the circumstances in different regions are quite diverse, and homogenous approaches simply do not hit the mark—and a fundamental strengthening in the overall accountability for what government does for Indigenous Australians. It has been too much lost in the detail and the confusion of the arrangements that we have had historically.

At the national level, as part of this overall infrastructure, we are headed by a new ministerial task force that had its first meeting just recently. It will operate akin to a cabinet committee and will provide collaborative leadership and strategic direction across the Australian government area. That is to be supported by a secretaries group on Indigenous affairs, made up of all of the heads of departments who are responsible for Indigenous-specific programs. They will have a key role in supporting that ministerial task force to lead the coordination across the bureaucracy

and will prepare an annual report that will be able to be released publicly on progress under the Indigenous-specific programs across the full Australian government area—which we have not ever had in the past.

A new National Indigenous Council is being established. It will be an advisory council rather than a representative body. It will have leaders in specific fields, and a number of those are illustrated on the screen. It will be fundamentally there to provide advice on priorities, on the performance of what the government is doing, on its effectiveness. It will meet with the ministerial task force at least twice a year to provide advice to the task force. It will also meet with the secretaries group and individual departments in regard to specific areas, such as those they have particular expertise in.

The overall budget on Indigenous related programs across the Australian government area is just under $3 billion. The intent is not only to have that fundamental amount quarantined and not able to be dissipated into non-Indigenous areas but to have it applied quite flexibly into the future, rather than seeing it as boxed into specific specialist areas that have grown up historically for whatever set of reasons. So the intention is that it would be able to be used much more flexibly and redirected to changing priorities over time and support projects that go across portfolio boundaries. So the program guidelines will need to be a lot more flexible in order to make the difference on the ground.

Each year the ministerial task force will prepare a single budget submission that will look at the expenditure and the focus of the overall Indigenous budget to consider how it might be reallocated according to changing priorities to areas that are really working well and away from those that are not working so well. It will also examine new policy proposals that may be raised by individual ministers so that they can be looked at in a coherent and coordinated way. A submission would then be prepared for ERC about any changes in the budget and its distribution year by year.

The Commonwealth is only one player amongst many governments who are responsible for services on the ground. Indeed, state and territory governments probably have the bulk of responsibility for delivering fundamental services such as education and health. Linking in with those other governments, therefore, is an important part of the overall framework. COAG has a considerable history in trying to look at improved delivery in Indigenous affairs, and just last week there was further consideration of how that needed to be strengthened. COAG as a whole is committed to a new framework of principles on service delivery which are quite complementary to the general directions that the Australian government itself is pursuing under these new arrangements.

COAG also recently established for the first time a very effective mechanism through the Productivity Commission to provide a regular report on Indigenous disadvantage. It provides a tool for assessing overall performance in areas of health, education, employment and the like both across the country and state by state. Those reports are regularly coming through to COAG. The COAG trials will be continuing—building on the lessons that have been learnt from the early implementation of those trials, testing new ways of working and drawing lessons that can be applied more broadly. That will continue to be an important support to the overall changes that are being pursued.

In terms of Indigenous representation arrangements, I mentioned before the new National Indigenous Council. Whilst the government has supported the retention of regional councils for a further year, it will be looking to establish representative networks at the regional and community level to achieve fundamental inputs from Indigenous people as part of a partnership framework in what and how services are best delivered into their regions and communities. A key vehicle to pursue that at the regional level is what we have termed Regional Partnership Agreements, which are basically a framework of principles that can be established between government and regional representatives to guide how the government does business within that region. That would then be supplemented by agreements which we have called Community Shared Responsibility Agreements. They would be more detailed statements of what Indigenous people and the government will be doing collectively around a set of commitments to deliver services and to effect changes under the banner of shared responsibility.

In rural and remote areas, whilst mainstream departments will be taking over the responsibilities for various programs that have historically been with ATSIC and ATSIS, we will be retaining what we are calling a single shopfront or a multi-agency office, so we are not breaking up the existing ATSIS offices, of which there are some 22 across regional and remote Australia. They will continue to be a central point for the delivery and management of Indigenous programs. Over time we will be bringing other agencies, such as education and health, into those offices so that we have a single coordination point for engagement with regional Indigenous representatives, to guide the development of packages that will secure more effective investment of Commonwealth dollars and, desirably, to link with state, territory and local governments for what is done at the regional and community levels. Indigenous coordination centres will lead and coordinate the government effort in negotiating both those regional partnership agreements that I mentioned before and the community level shared responsibility agreements.

Mainstream departments will be bringing their expertise and capability to bear—and that is very much what is being sought by engaging them now under these new arrangements—in the construction of services for Indigenous Australians. Fundamentally the new arrangements bring a level of coordination, accountability and coherence to how those programs are applied and integrated at the local level.

The current slide is a basic picture of this. The left-hand axis shows the different levels of community, region, urban areas, state and national. The table shows the sorts of uses of consultative forums, the bureaucratic coordination that is required within and across government and jurisdictions and the kinds of agreements that we envisage being established at the different levels. It is an attempt to summarise the different elements of the picture.

I mentioned the fundamental importance of accountability of government, of bureaucracy and of secretaries, who are central to ensuring that their organisations deliver on their commitments, nationally and at the regional and community levels. Their obligations will be reflected in their performance agreements. Reflecting a shared responsibility model, Indigenous organisations which are used in service delivery also need to be accountable for how they spend the dollars that they receive through funding.

The last slide essentially tries to encapsulate in a diagrammatic form the various institutional elements of the new arrangements. They are very much embedded in the roles that APS agencies

are required to perform, because mainstreaming really is about harnessing the capability that we have grown, particularly across the Australian government area that we have direct control over, because the government are the ones who have the wherewithal to bring their IT or particular functional expertise to bear on what I think we all recognise is the fundamental area of Australian government public and state administration where we have been weakest—namely, the wellbeing of Indigenous Australians.

I have some handouts which I offer to table with the committee, not only of the last slide but a summation of the terms of reference of the ministerial task force, the secretaries group and the new Office of Indigenous Policy Coordination. People have been for some time obviously concerned to know which parts of ATSIC and ATSIS are being directed to which portfolios and departments. I have a neat summary of the distribution of those programs and functions as well. That was the bulk of what I wanted to do by way of introduction.

CHAIR—Thank you, Mr Yates. Do you have a copy of the PowerPoint presentation you have just given?

Mr Yates—Yes, and I have left it with the secretariat.

CHAIR—Was it amongst the papers you just tabled?

Mr Yates—Yes.

CHAIR—It was remiss of me not to do this in my opening statement, but I want to place on record my thanks to you all for coming at such short notice. You would know that the committee only formally met on Thursday morning, and we have decided to kick this off fairly quickly—less than a week later—and get a briefing on the bill. But firstly I wanted to publicly thank you for making yourselves available and doing the work in such a short time. Mr Gibbons or Mr Vaughan, are there any other matters or opening statements you also want to make?

Mr Gibbons—With your agreement, we will probably walk you through the provisions of the bill now and then we are happy to take your questions.

Senator O'BRIEN—I have a couple of questions before we do that. I want to clarify a couple of terms that were used. You talked about regions in your presentation. How are they defined?

Mr Yates—Regions are not to be confined to the historical ATSIC regions, which have been recognised as not necessarily the most appropriate by Indigenous people or as the most effective focus for government service delivery. We will be approaching regions in a pretty flexible way. It may be that you have more than one regional partnership agreement within what might be termed an ATSIC region. Or you might envisage in the south-west of WA—the Noongah region, for example—going across the boundaries of what has been two separate ATSIC regions and to look at that as a target area. You might look at the Kimberleys as a grouping rather than in a fragmented way.

Senator O'BRIEN—The regions are not defined spaces at this stage?

Mr Yates—No.

Senator O'BRIEN—It is a term rather than a set of precisely defined areas?

Mr Yates—Yes, that is correct.

Senator JOHNSTON—Who has got the discretion to set those boundaries?

Mr Gibbons—They have emerged from negotiations with the local communities.

Senator JOHNSTON—Yes, but the minister has got the power in the act and she would be the one who ultimately determines what the boundaries are.

Mr Gibbons—That is so, but I come back to the flexibility to design these arrangements in a way that works with the local community. In effect, it is the local community agreement that will determine the boundary.

Senator O'BRIEN—There was a reference to ATSIS offices. Do I take that to mean that prior to 1 July 2003 they were ATSIC offices?

Mr Yates—Yes, they are ATSIC/ATSIS offices in regional and remote Australia. I can provide the committee with a list of those separately. I do not have it with me. As of 1 July, we will operate them as Indigenous coordination centres—essentially Australian government offices—and in future they will be made up of staff from a variety of different Australian government agencies. This will reflect the distribution of functions that have historically rested with ATSIC and ATSIS. As I mentioned before, we will see, over time, other Australian government agencies putting staff into those offices—some quite quickly, others progressively over time. For example, the people who have been particularly responsible for Indigenous health or Indigenous education programs and services will also be represented in those offices.

Senator O'BRIEN—In the charts, you mentioned there was the structure of consultation and you referred to regional networks and metropolitan networks. Are they defined things or is that a term yet to be expanded upon?

Mr Yates—That is still a flexible regime. There is no preconceived notion of what the boundaries around that need to be or should be. This will be very much guided by Indigenous representatives.

Senator O'BRIEN—The TSRA does not fit into this structure? I take it that it is entirely separate and not affected by this?

Mr Yates—It continues to stand alone in its regime that it has historically operated with.

Senator O'BRIEN—It is not affected by any of the task forces or the ICC?

Mr Yates—No.

CHAIR—Ms Hawgood, I understand you want to give us an update on the ICC or the COAG trials. Is that correct?

Ms Hawgood—I was not going to, but if you want me to, then I am happy to do that.

CHAIR—We will go to the briefing on the legislation and come back to you if we have any questions.

Mr Vaughan—I do not propose to go through the bill as such but simply to touch on a couple of the key features and issues that have arisen in some of the debate since the bill was introduced. The first point to emphasise or point out is that most of the changes which have just been described by Mr Yates do not depend on the passage of the ATSIC amendment bill. They are largely being done under existing administrative flexibilities. The passage of the bill, although it affects some details, does not affect the basic framework of what is proposed. The bill, if you follow the schedules of the bill literally, abolishes the ATSIC board, abolishes the regional councils, changes the role of the Office of Evaluation and Audit and deals with transitional savings provisions, and so forth. In a nutshell, it is just those three things: abolishing the board, abolishing the regional councils and dealing with the consequences of that.

The consequential changes will probably generate a degree of interest, and they have so far in the parliament. Those consequential changes fall into several categories. Some of them arise because the ATSIC board would be abolished on one date and the regional councils on a subsequent date. The structure of the act envisaged a relationship between the ATSIC board and the ATSIC regional councils, so the abolition of the ATSIC board creates a vacuum that has to be filled pending the eventual abolition of the regional councils. That is one of the significant consequential effects. There are things like misbehaviour on the part of a regional councillor, other than a chairman or a deputy chairman. At the moment that is handled by the board of ATSIC. If you abolish the board of ATSIC then you have to substitute someone else to discharge that function—in this case that would be the minister.

The second set of consequential changes that the act has to deal with is that ATSIC as an institution has found expression in a number of other pieces of legislation over time, and so it is necessary to amend those other pieces of legislation to reflect the fact that ATSIC will not exist any more. For example, there is a provision in the ATSIC act that allows ATSIC to grant land to the Indigenous Land Corporation. You would have to amend the provisions of the Indigenous Land Corporation act to dispense with the provision for ATSIC, which no longer exists. There are references to ATSIC in the provisions of the act affecting the Torres Strait Regional Authority, so you have to amend the Torres Strait Regional Authority provisions, given that ATSIC will not exist any more. The ILC is required, for example, to consult ATSIC in developing its Indigenous land use strategy. There will not be an ATSIC for it to consult in future, so it is necessary to amend the ILC act. So there is a series of consequential changes in other bits of the ATSIC act.

CHAIR—Could I just ask a question. Is there a plan for you to substitute who they would now need to consult or is that left silent in the act? Is that at the minister's discretion?

Mr Vaughan—It depends on the nature of the provision. Because there will not be a statutory replacement for ATSIC and the National Indigenous Council will not be a statutory body, nor a representative body as such, it is not appropriate to substitute the National Indigenous Council. You would have to take each example separately, as to where it occurs. For example, in the case of regional councillors who misbehave, instead of ATSIC being responsible for suspension or

termination, that would now be done by the minister. In the case of the Indigenous Land Corporation, where it is supposed to consult ATSIC inter alia in developing its Indigenous land use strategy, it would consult inter alia but not ATSIC, so to speak, because there is no substitute that you can replace ATSIC with in the legislation.

So it does depend a bit on the nature of the provision in the legislation you are dealing with as to whether it is appropriate or feasible to substitute another agency, entity or body for ATSIC. That is also the case with some of the other legislation that is amended by the bill as a consequence of ATSIC's abolition. For example, ATSIC has a specific role under the Native Title Act in respect of native title representative bodies and the recognition of funding. The act has to be changed to reflect the fact that someone else now—the secretary of the department in relation to funding or the minister in relation to recognition and so forth—has to discharge that function once ATSIC has gone.

Another example is references to ATSIC in the National Health and Medical Research Council Act, which says ATSIC will be consulted about the Indigenous member of the council. There will not be an ATSIC to consult. That raises, Madam Chair, the question you just hit upon. If there is not an ATSIC to consult in future, who would you substitute? There is no statutory entity that readily springs to mind. But it is normal, when ministers make appointments to bodies, that they consult a range of people anyway. So they are not confined to consultation with an ATSIC representative, in the case of the NHMRC, or in other such circumstances.

CHAIR—How many subsequent acts have you identified would need amending?

Mr Vaughan—There are 10 or 11. On page *ii* of the bill you can see them listed under schedule 4. It identifies the other pieces of legislation which over the course of time have had ATSIC inserted into them.

CHAIR—Does schedule 4 then outline the different changes of each of those acts?

Mr Vaughan—Yes.

Senator JOHNSTON—It is in the explanatory memorandum. The last two pages set out what precisely has to be done.

CHAIR—This also goes to the detail of each of the acts as well.

Mr Vaughan—The specific changes to each of those acts, yes—how they would be changed, such as the existing reference deleted, substituted or expressed in another way. There are two other aspects of the bill which I would like to make a few comments on because they have been the subject of some degree of debate or discussion since the bill was introduced. One is the question of the ATSIC assets and the other is the question of the Office of Evaluation and Audit. With ATSIC's abolition, its assets will have to be disposed of to other agencies or bodies of some kind. Aside from the pens and pencils, staff housing and so forth, ATSIC's major assets in terms of value are the home loan portfolio, the business loan portfolio, certain pastoral properties and the Regional Land Fund.

Senator JOHNSTON—Have you got values off the top of your head, roughly?

Mr Vaughan—They are in the ATSIC financial statements. I do not have the figures off the top of my head.

Mr Gibbons—We can provide you with a list of those.

Mr Vaughan—Item 191 of schedule 1 of the bill deals with the disposition of ATSIC's assets and liabilities. Basically, it provides that the former assets will be vested in the Commonwealth unless they are what are called class A or class B exempted assets. The bill then defines what it means by class A and class B exempted assets, those that will not be vested in the Commonwealth. Class A exempted assets will instead be vested in Indigenous Business Australia. That includes both the housing fund—that is, the home loan portfolio—and the business loan portfolio. They will not be vested in the Commonwealth. Class B exempted assets will be vested in the Indigenous Land Corporation. Those assets will include ATSIC's pastoral properties which it owns and the Regional Land Fund. So the four big ATSIC assets will go either to IBA or the ILC.

The bill provides that the method for assigning or transferring those assets to IBA and the ILC will be via a ministerial declaration. That method is chosen because it is the same method that was used in 1990 when ATSIC came into existence and when the assets of the former Department of Aboriginal Affairs and of the Aboriginal Development Commission were moved to ATSIC. That is the mechanism that was used.

Senator JOHNSTON—Does the Commonwealth pay stamp duty on these transfers?

Mr Gibbons—No, it is exempt.

Mr Vaughan—The other issue that has caused a degree of confusion rather than debate in a way is the role of the Office of Evaluation and Audit, which is dealt with under schedule 2 of the bill. The role of the Office of Evaluation and Audit is basically to scrutinise service providers in order to protect the delivery of services to Indigenous people. It looks over the shoulders of the service providers to monitor the way they discharge their functions. The existing provisions in section 76 relating to the Office of Evaluation and Audit—OEA, as it is called—allow it to evaluate and audit the operations of ATSIC and other portfolio bodies like the ILC and IBA and so forth and also to evaluate and audit the activities of individuals or organisations who are funded by those bodies to the extent that the evaluation or audit concerns those particular grants or loans. Those provisions will become meaningless once ATSIC no longer exists and the programs which it ran and the funding that came from those programs goes to other departments. Because the role of OEA is defined in the act in terms of the source of the funding rather than the programs. So there is a need to redefine OEA's responsibilities, because the old definition no longer applies.

The approach adopted in the bill is that instead of defining the role as at present in terms of where the funding comes from, the role is defined in terms of relevant programs; that is the phrase used in the act. In other words, in future OEA will be able to evaluate and audit relevant programs and, as defined in the act, that means grants or loans that are provided to 'further the social, economic or cultural development of Indigenous people'. That means, for example, that the role of OEA will not be confined, as it has been in the past, to CDEP or ATSIC programs as such but will also pick up other Aboriginal programs, such as in the areas of health and

education, which are run by those other portfolios. These are programs and activities and funding arrangements that were previously outside the scope of OEA.

Senator JOHNSTON—So you are saying social, economic and cultural development includes health and education?

Mr Vaughan—Yes.

CHAIR—So an expansion of the role of the OEA?

Mr Vaughan—An expansion of programs that previously were not caught. Otherwise what you would have is an ex-ATSIC program going to, say, DEWR, like CDEP, and it would continue to be subject by virtue of the bill to OEA supervision but a comparable program next door in the Department of Health and Ageing would not be subject to that.

Mr Gibbons—Or in DEWR? A DEWR ICC program, for example, would not be subject to audit, whereas the CDEP would be.

Senator JOHNSTON—This was a big problem, was it not? We had programs running everywhere with no-one overseeing them.

Mr Vaughan—The previous regime was selective in its impact, because it was based on who funded them—that is, whether it was ATSIC or one of the Indigenous portfolio funding agencies—not on whether the program was an Indigenous-specific program per se. It applies the OEA remit across the lot. As previously, when requested by the minister, the OEA will be able to evaluate or audit the activities of individuals or organisations that are funded under those programs to the extent of the funding concerned. It will not, obviously, go to the income they have from other sources. In that context, the bill clarifies and puts beyond doubt a question that has dogged the Office of Evaluation and Audit to date—that is, a disputation as to whether the existing act allows OEA to look at the use of income by organisations where that income is derived indirectly from grant money or from grant funded assets. For example, if ATSIC funded an office building for an organisation and that office building generated revenue from other clients, or anyone in the world, there have been challenges as to whether OEA was empowered to look at the use of that rental income.

Senator JOHNSTON—This was the subject of litigation, was it not?

Mr Vaughan—Correct, it is the subject of litigation at the moment in the case of Bidgera.

Senator JOHNSTON—And there were adverse findings as to the power of OEA.

Mr Gibbons—There has been no ruling by the court yet. It is listed for hearing in September.

Senator JOHNSTON—Was an injunction given to restrain?

Mr Gibbons—There is no injunction. We simply have not proceeded in the face of—

Senator JOHNSTON—But this tidies that up and leaves no doubt.

Mr Vaughan—It tidies is up but with a qualification, whereby this power of OEA will only be exercisable where the funding agreement between the government agency and the organisation concerned explicitly provides for OEA's remit to extend to that income. If the organisation says up front, 'If you give us that office building and you want us to subject the rental income to potential OEA scrutiny, we are not going to agree to that,' then an agreement has to be reached between the funding agency and the organisation as to whether or not they will proceed. It is not a power that can be imposed upon organisations, simply by virtue of the bill itself, or it does not do so. That is all I want to say about the bill at this stage. I am happy to answer further questions about it.

CHAIR—Senator Scullion, I understand you need to go soon, so would you like to start the questions as you are on a short time frame.

Senator SCULLION—Thanks very much. Mr Vaughan, you touched on this subject in your presentation. This committee knows that its deliberations could take quite a long time to get through, particularly the consequential aspects and taking evidence. What impact would the length of time this takes have on your capacity to actually start service delivery in Indigenous communities?

Mr Gibbons—I might start the answer to that, Senator. The bulk of the changes that have been announced by the government, insofar as they involve Commonwealth programs, can move to the new arrangements from 1 July, and indeed will. However, those programs that rest on the ATSIC power—home loans program, part of the business loans portfolio—cannot move, so contingency arrangements have been put in place to enable those programs to continue but at a level of expense that would be unnecessary if the bill were to be passed now. The longer that period, the higher the cost in those contingency arrangements. And I suspect that, over time, the longer we wait for the outcome of the bill, there will be complications arising out of the contingency arrangements.

Senator SCULLION—If there is a delay, what are the direct costs—the ongoing costs—of running a board that effectively, I would have thought, does not have a great deal of outcomes?

Mr Gibbons—The board's cost, as provided for in a budget that was approved last week, is, as I recall, $3.1 million or $3.2 million a year. I can get the precise figure for you.

Senator JOHNSTON—How much was that?

Mr Gibbons—I think it is $3.2 million for the board.

CHAIR—I think $3.3 million is the ATSIC budget.

Mr Gibbons—Yes, it might be $3.3 million. I will get you the exact figure. That provides a minimalist budget for the board so it is meeting the statutory obligations that the government has.

Senator HEFFERNAN—What are these statutory obligations now?

Mr Gibbons—To pay them, remuneration, and—

Senator HEFFERNAN—What is the other side of the bargain? Paid to do what?

Mr Gibbons—Whether they do anything or not there is a Remuneration Tribunal determination and a statutory obligation to pay.

Senator HEFFERNAN—Do they have a job description now?

Mr Gibbons—They have a role defined in the act. They do not have any government programs to administer. They do not have any funds, via appropriation, to administer. The government has taken the view therefore that it will provide the absolute minimum by way of support.

Senator HEFFERNAN—That is all very polite bureaucratic speak, but what do they actually do? Do they do anything? What is it in everyday terms? If I am an ATSIC councillor, what is my job? When I get up in the morning, what do I do?

Mr Gibbons—Under the provisions of the act they have a role to represent the interests of Indigenous people who live in their constituency, which is a zone defined in the ATSIC Act.

Senator JOHNSTON—So they represent those interests of the constituency to whom?

Mr Gibbons—To governments—Commonwealth and state—and—

Senator HEFFERNAN—What we all seem to be asking is this: is ATSIC still alive and well? Do the board, the chairman and the deputy chairman all have defined roles or have they lost their roles?

Mr Gibbons—They have not lost their statutory role because the ATSIC Act—

Senator HEFFERNAN—Let us talk practically. Do they have a job to do from day to day? The act says one thing. In reality, would it be fair to say—

Mr Gibbons—The government has made it clear that it does not believe there is a job for them from 1 July.

CHAIR—So there is no provision in the budget to travel and for these commissioners to meet as a board?

Mr Gibbons—There is a limited provision in the budget for travel. The act provides for four meetings in a calendar year. The board has had three this calendar year. The budget provides for funds for another meeting. There are limited funds for communication—for telephones, for example. There is an allowance per commissioner for telephones.

CHAIR—Are they expected to move from their offices by Thursday?

Mr Gibbons—No. The government has indicated it will continue to provide an office for them to work out of in their zone.

Senator JOHNSTON—So they are funded for four meetings but they have only had three?

Mr Gibbons—It is in a calendar year.

Senator JOHNSTON—Okay, so they have got six months to go.

Senator O'BRIEN—The legislation provides, at section 7, what the functions of the commission are, so legislatively that is their job. As I understand it, and correct me if I am wrong, the government has said: 'We do not want you to do that job. We are going to take over those roles.' Is that how we should understand it?

Mr Gibbons—The government has decided it wants ATSIC abolished. It has put forward a bill. The bill has been referred to a committee. The government has nonetheless maintained that from 1 July there is nothing that it requires the ATSIC board to do. It has moved all of the programs to mainstream agencies. The appropriations for those programs were passed in the budget bills and will be provided to those agencies. There remain a number of programs that have their statutory base in the ATSIC Act, the home loans program being the largest, which is a self-contained fund of several hundred million dollars. Under the provisions of the ATSIC-ATSIS agreement that program is administered by ATSIS and will go on being administered by ATSIS in the interim. The management of the portfolio of business loans that were lent by ATSIC over the years is another matter that can only be serviced, under the ATSIC Act, by either ATSIC or ATSIS pursuant to the agreement and that will continue in the interim. Beyond that, there are no program responsibilities. However, they have in the act an advocacy role as defined, and the government believes that in the decision it has taken on the budget there are adequate resources for them to fulfil that limited role.

Senator O'BRIEN—How many ATSIC staff have received termination notices?

Mr Watson—I believe the number is 34.

Senator O'BRIEN—Can you tell me why termination notices were issued to research staff before the ATSIC budget for the coming financial year was determined?

Mr Watson—I am sorry, can I can just go back to the termination notices. A percentage of those 34 staff who were non-ongoing staff were employed specifically to provide services to commissioners. Some of those staff were ATSIS employees anyway and were translated to ATSIC to perform those services. So it is not necessarily strictly true to say that they were all terminated; some have just gone back to the previous positions they had within ATSIS. I do not have the precise figures on those, although in the first termination notices that were issued I think something like eight of the 16 were ATSIS employees.

Senator O'BRIEN—What does the number you gave me of 34 relate to? Is it the number of people whose positions disappeared?

Mr Watson—Their positions have disappeared, yes—there were something like 16 or 17 research staff and around the same number of personal assistants.

Senator O'BRIEN—The research staff got notice before the personal staff. Why was that?

Mr Gibbons—As I recall, the research staff were engaged to assist the board in its program responsibilities. With the decision to transfer programs away from ATSIC to the mainstream, the view was taken that they were not needed and so, pursuant to a provision of their contract, their services were terminated. With the other staff, the personal assistants, the decision was taken in the context of the finalisation of the ATSIC budget last week not to provide funds for personal staff for commissioners.

CHAIR—So they have to answer their own telephones, write their own letters, handle their own mail. Is that right?

Mr Gibbons—That is correct.

Senator O'BRIEN—I want to clarify a matter which arises from evidence to the Senate estimates last month relating to ATSIC staff. Mr Gooda told the Legal and Constitutional Legislation Committee that the term of employment for contract staff, personal staff, is 'tied to the tenure of the commissioner'.

Mr Gibbons—That is one of the provisions of the contract. Mr Watson might be able to explain the terms more clearly.

Mr Watson—I do not have a copy of the contract with me but the contract said words to the effect that the employment could be terminated at any time within the provisions of the Public Service Act. It gave an example—for instance, with the termination of the commissioner or if the nature of the work required to be performed changed significantly. Again, do not quote me on the words but I think that is a fair representation of the words that are in the contract.

Mr Gibbons—I think the provision you are referring to, Senator, was designed to provide for the maximum tenure. It was tied to the term of a particular commissioner as a maximum.

Senator O'BRIEN—In fairness, the evidence was a contrast between the assurances given to ATSIS staff and their contracts being continued and the ATSIC staff and the lack of certainty they had about the continuation of their contracts. The evidence was given in that context—as to why the personal staff might lose their jobs on 1 July if the bill went through. You are saying that there are other provisions which render the contract very uncertain from the start.

Mr Watson—Not so much very uncertain; the contracts that we provide for non-ongoing staff—temporary staff—generally have a provision that enables us to terminate that employment with the standard notices if the work that they were engaged for is no longer required to be performed. In this particular case, there were some additional phrases inserted into the contract so that there was a tie between the length of term the commissioner was engaged and the length of term the particular employees were engaged because sometimes commissioners leave their office for a particular reason and the next commissioner may have different needs in terms of the employees they want or the skills that are needed. We wanted some flexibility to be able to make those changes without necessarily being tied into long ongoing contracts of employment for staff that we no longer required.

Mr Gibbons—The arrangements are analogous to the staff employed by ministers under the—

Mr Vaughan—The Members of Parliament (Staff) Act. There are similar provisions.

Mr Gibbons—However, among the staff chosen by commissioners to work with them are a number of ongoing public servants. Those staff cease to work for commissioners but come back into the mapping process and are assigned to a position in an agency.

Senator O'BRIEN—You thought that might be 16 or 17.

Mr Watson—What I said was that of the first group, the research officers, there was about eight of that 16 but I did not have a figure for the second lot. I suspect that for the second lot, which are the personal assistants, it would not have been as high, but I can come back to you with the precise figures on that.

Senator O'BRIEN—Thank you, if you would. You will come back to us with the precise number of staff who will lose their jobs from 1 July or before as a result of these steps.

Mr Watson—Yes.

Senator O'BRIEN—How did it come about that staff received false termination notices by email earlier this month?

Mr Watson—In my group an officer was preparing a draft of the letters of termination. As part of the preparation she was using it as a mail merge document. The way a mail merge document works is that there is a list of recipients or names to be inserted in the letters at particular spots, which was the way the document was put together. She was in the process of sending it to one of her senior supervisors to get comment on the draft in preparation for it to go out when finally agreed. In the process of doing that she selected the wrong send button, if you like. There is a facility within the mail merge such that if you have the list of names as a small database that is attached to the letters in Outlook, which is part of the IT system we use, it picks up those names and, providing those names are on the Outlook address list, it automatically forwards the letter to those names. Immediately she saw that start to happen she recalled the document. It was successfully recalled in about half of the cases but unfortunately it got through to about half and was opened before she could successfully recall it. It was an error in administration. There was no intent to send anything out before it was approved by the appropriate officers.

Senator O'BRIEN—Could someone outline the process for determining the ATSIC budget for 2004-05? How did it work?

Mr Gibbons—I believe the minister invited the ATSIC board to submit estimates for her consideration pursuant to the ATSIC Act. That advice, I think, asked for those estimates to be submitted in a particular form, as is required under the act. They submitted a budget. The minister considered it, refused to endorse it, and invited them to submit a more detailed budget with less money for the operation of the board, full funding for the operation of regional councils and for the operation of the home loan program. I am not sure what the board did—I was not involved in this—but I believe that it may have gone to the minister a second time and been refused, and then a final time in a form that was satisfactory to her and she approved the estimates, which has the effect of enabling a budget for ATSIC.

Senator O'BRIEN—Correct me if I am wrong but as I understand it that budget covers the requirements to pay under the Remuneration Tribunal?

Mr Gibbons—There are several sections to the budget. There is a budget for regional council salary expenses, regional council administration, commission salary, commission administration, ATSIC administration and the home loan fund. There is one other; do you recall what it is?

Mr Watson—I think there are some operating costs associated with both the home loans and the business loans in terms of the non-recoverable costs.

Mr Gibbons—Yes, there are some specific support funds for ATSIC divestment activities, for recovery of the debts under the home loan program—sundry administrative items that were listed in the budget.

Senator O'BRIEN—So the budget included the regional council budget. I thought that was already covered in the appropriation bill.

Mr Gibbons—Yes, in the expectation that the ATSIC bill would pass by 1 July, the appropriation bill provided for funds for regional councils. However, with the delay in the consideration of that bill, the regional councils continue under the authority of the ATSIC Act and their budget comes from ATSIC funds through the ATSIC process.

Senator O'BRIEN—So how were the figures for regional councils we were advised of in the estimates affected?

Mr Gibbons—In the estimates we provided the details that were in the appropriation bill. Off the top of my head I cannot recall exactly what it was but it was close to $10 million in direct costs, and there are indirect costs in the appropriation to DIMIA. Under the ATSIC arrangements the salary component of the budget is around $3 million—I can get the exact figure—and the administration operating costs of regional councils is about $9 million.

Mr Watson—The amount appropriated within the 2004-05 budget in total for regional councils was $9.6 million, of which around 2½ to three million dollars was salaries.

Senator O'BRIEN—How is that affected by the budget that the minister has now approved?

Mr Gibbons—The regional councils' budget now is in one specific document. It is the same as their budget last year. Had it been funded under the arrangements via DIMIA, their support would have come from two sources: a direct allocation to pay their salaries and personal operating costs, and another component with DIMIA to pay the support costs. Generally the amounts were pretty close to the same.

Senator O'BRIEN—So it is still about $9.6 million?

Mr Gibbons—No, it is about $12 million when you add the two together. Under the ATSIC arrangement, the budget is close to $12 million.

Mr Watson—I think the answer you are looking for is that the regional councils' budget is in the order of $9.6 million and if you add to that the $3.3 million for the commission support type budget you get to the $12 million.

Senator O'BRIEN—I see. So the regional council component is similar. The additional amount is to do with the retention of the national commission positions—

Mr Watson—That is right, yes.

Senator O'BRIEN—on the assumption that they run for a 12-month period.

Mr Watson—Yes.

Mr Gibbons—We will double-check those figures.

Senator O'BRIEN—Is there a document we could see?

Mr Gibbons—I will have to ask the CEO of ATSIC, but I think it is available. I cannot recall any reason why would not be.

Mr Watson—Are you suggesting that the document you want to see—

Mr Gibbons—It is the ATSIC budget; the ATSIC estimates that were approved by the minister.

Senator O'BRIEN—Does that include the salary for Mr Clark?

Mr Gibbons—In the commission component, it does.

Senator O'BRIEN—For a full 12 months?

Mr Gibbons—The budget has to be provided for a 12-month period but it is released on a quarterly basis.

Senator O'BRIEN—Are you budgeting for Mr Clark, the acting chair and the acting deputy?

Mr Gibbons—The board must submit a budget for a full year and it must be approved for a full year, but there is a provision for releasing it in part-year components.

Mr Yates—You are right, Senator. We are budgeting for two chair salaries—both the substantive chair and the acting chair.

Senator JOHNSTON—What is that salary?

Senator O'BRIEN—It is $240,000 a year, roughly.

Senator JOHNSTON—So it is $480,000 a year.

Senator O'BRIEN—How much has Mr Clark been paid since the suspension? It would be over $200,000, wouldn't it?

Mr Gibbons—It is coming up to 10 months.

Mr Watson—August last year.

Senator O'BRIEN—So about $20,000 a month. Is there an addition of entitlement beyond salary?

Mr Gibbons—That $240,000 includes some non-salary components—a vehicle et cetera.

CHAIR—So nearly half a million dollars of the $3.3 million goes in the salary of the suspended chair and the acting chair. Is that correct?

Mr Gibbons—I think that is close to correct.

Mr Watson—We would need to check that.

CHAIR—Close enough is near enough.

Mr Gibbons—Yes, close enough.

Senator O'BRIEN—Yes, in terms of the numbers we are talking about. When were the estimates approved?

Mr Gibbons—What was the day of the last board meeting?

Mr Watson—Last Thursday.

Mr Gibbons—Thursday of last week.

Senator O'BRIEN—Do I correctly understand you to be saying that the minister indicated what type of thing she would approve and that the budget estimates dealt with those?

Mr Gibbons—She cannot be prescriptive as to figures but she said, 'I am prepared to consider a budget that entertains a full allowance for the regional council operation, a minimalist one for the board and appropriate funding for the various programs.' There were, to my knowledge, three budget estimates submitted to her. It was the third that she accepted.

CHAIR—I assume there is no provision in the ATSIC budget for any extraordinary board meetings—is that correct? I understand the government will pay for only one more board meeting in the next six months—is that right?

Mr Gibbons—The budget provides for travel to a place—Canberra has been used as the place—for one meeting, notwithstanding that the act does not insist that a meeting take place

face to face; it allows it by telephone et cetera. So it is one meeting of all commissioners in one place in Australia, based on Canberra costs and accommodation.

CHAIR—So there is no provision for any extra board meetings over and above that?

Mr Gibbons—Correct.

Senator HEFFERNAN—But they could have a board meeting as often as they like over the phone, for the cost of a telephone bill?

Mr Gibbons—They can, yes.

Senator JOHNSTON—How many commissioners are there?

Mr Gibbons—Normally there are 18 but there are two vacancies at the moment.

Senator O'BRIEN—I was going to ask you about Mr Noonan. Has he not been appointed yet, although elected?

Mr Gibbons—He has been elected and I think the minister has approached him to do some checks. Mr Vaughan can tell you what is happening on that.

Mr Vaughan—That is correct. This is subject to confirmation, but the minister was proposing to write to him—and I think she has written to him—asking for his approval to do certain checks as to his personal affairs or his record.

CHAIR—So who made the decision to not fund the extraordinary board meeting on 16 and 17 June?

Mr Gibbons—That is not part of this budget process. That was a decision taken by, as I recall Mr Gooda explained, the acting chair and the acting CEO.

CHAIR—So they took the decision to not fund that board meeting?

Mr Gibbons—To not approve travel.

CHAIR—Up until this budget being approved for this financial year, what was the normal case with any extraordinary board meeting? If the board wanted to meet outside the four times a year, did they have to get approval from someone to do that?

Mr Gibbons—The chair has to call the meeting and the chair determines the location and the duration of the meeting. Individual commissioners must then seek approval to travel outside their zone. If the meeting is called by the chair and is convened by the chair pursuant to the relevant provision of the act, the CEO or the delegate would normally approve the travel request to attend the board meeting.

CHAIR—What happened on 16 and 17 June? Did the acting chairman cancel that extraordinary board meeting? Is that correct?

Mr Gibbons—I am a bit hazy. Was that the meeting in Cairns?

CHAIR—No, it was here in Canberra, as to my understanding.

Mr Gibbons—There was no meeting called.

Mr Watson—There was a proposed meeting for Cairns.

Mr Gibbons—I am getting this second hand, Chair, so do not take this as an authoritative account. As I understood it, there was a request made by a relevant number of commissioners to the acting chairman to convene a meeting. He convened a meeting in Cairns on a particular date. That was boycotted, including by most of the members that called on the acting chair to convene the meeting. There was a request to convene another meeting—for which I think those are the dates that you are referring to—which the acting chairman, I understand, declined.

CHAIR—There is an allegation that the acting CEO of ATSIC has not been given any form of delegation by the board. Is that correct?

Mr Gibbons—To my knowledge, that is correct.

CHAIR—If the acting chairperson calls a board meeting, is the CEO bound to fund that board meeting?

Mr Gibbons—The CEO would fund the meeting if it is a properly convened meeting, and the delegate in ATSIS would approve expenditure for the travel. But there are delegations that derive from the ATSIC Act which have not been made and there are delegations that derive from the Public Service Act which are available to the CEO.

Senator HEFFERNAN—Have you ever been in a telephone meeting?

Mr Gibbons—Of the board?

Senator HEFFERNAN—Of anyone?

Mr Gibbons—Yes.

Senator HEFFERNAN—You can have a board meeting anytime you like over the telephone; you do not have to travel.

CHAIR—You have still got to approve the funds for that.

Senator HEFFERNAN—It is just that it is sexier if you travel.

CHAIR—You have still got to approve the funds, though.

Senator HEFFERNAN—Yes, but for a telephone call you just stick it on the phone bill.

Senator O'BRIEN—The abolition of ATSIS on 30 June, as I understand it, will not take place now. It is contingent on the passage of the bill—is that right?

Mr Gibbons—Put simply, yes.

Senator O'BRIEN—How many staff will remain in ATSIS from 1 July?

Mr Watson—Around 80. At least half of those need to be retained in relation to the home ownership program. Around seven or so need to be retained in relation to the business development program. A number of staff are required to be retained to support ATSIC business, and one or two corporate people are required just to keep the organisation operational.

Senator O'BRIEN—I take it they are staff of DIMIA or have asked to go back into DIMIA after that.

Mr Watson—They are staff that are certainly mapped to other organisations at the moment. They are largely mapped to IBA, who are going to pick up those functions associated with the home ownership program and the business development program. The remainder are largely mapped to DIMIA, that is true.

Senator O'BRIEN—Will the Office of Indigenous Policy Coordination be established from 1 July?

Mr Gibbons—Yes.

Senator O'BRIEN—With you at its head, Mr Gibbons?

Mr Gibbons—Yes.

Senator O'BRIEN—Who will be CEO of ATSIS at that time?

Mr Gibbons—The minister has announced the appointment of Mr Watson as acting CEO of ATSIS from 1 July.

Senator O'BRIEN—The government has repealed regulation 7 of the lands acquisition regulations to prevent the disposal of land by the ATSIC board without the consent of the minister for finance. I wonder if we could get on the record the rationale for the repeal of the regulation.

Mr Vaughan—The effect of the repeal of the regulation is that ATSIC is now bound by the disposal provisions of the Lands Acquisition Act if it wishes to use its powers to grant land—for example, to give away one of its pastoral properties. The intention behind that was that it was the government's view that the existing ATSIC assets should be preserved so that questions on disposition were made by ATSIC's successor body, not by ATSIC, since the government's view was that ATSIC would be abolished. The successor body in this case, under what is contemplated in the act, would be the Indigenous Land Corporation. Those pastoral properties

would be transferred to ILC, which would then be able to make decisions as to appropriate disposal.

Senator O'BRIEN—Let me just get a clear delineation. As I understand it, and correct me if I am wrong, the regulation deals with the ATSIC board granting land. It does not deal with the ATSIC board selling land because the regulation never gave them an exemption with regard to the sale of property. Is that right?

Mr Vaughan—That is my understanding. Yes, that is correct.

Senator O'BRIEN—So the regulation was in place to absolve the ATSIC board from getting approval from the minister for finance to grant property.

Mr Vaughan—That is correct.

Senator O'BRIEN—Is it right that they were able to sell land with the approval of the minister?

Mr Vaughan—That is correct.

Senator O'BRIEN—Now, they can still do either but they must have the approval of the minister.

Mr Vaughan—Yes, in either circumstance.

Senator O'BRIEN—Mr Vaughan, on 15 April you wrote to the Secretary of the Department of Finance and Administration and said: 'The government intends to introduce legislation into the parliament in the budget sittings to abolish ATSIC with a view to passage before 1 July 2004. It is important that in the meantime ATSIC assets be protected for future Australian government use.' What does that mean?

Mr Vaughan—It depends whether, in using that wording, you—

Senator O'BRIEN—I am not using it; you were using it.

Mr Vaughan—Yes; I wrote to the letter. I comprehended, in that term, other government statutory authorities included in that, such as the ILC and IBA. Indeed, ATSIC itself is a government statutory authority. It is perhaps a loose term.

Senator O'BRIEN—You are being generous when you say it is loose terminology. I am drawn to those words because I was wondering whether the assets are being protected for the benefit of Indigenous Australians or, to quote you, 'for future Australian government use'.

Mr Vaughan—It depends whether you regard, as I did in drafting that letter, the ILC and IBA as part of the Australian government structure.

Senator O'BRIEN—Even if you go to the bill, on page 36 class A and class B assets are defined by ministerial declaration.

Mr Vaughan—That is correct—as to exactly which assets.

Senator O'BRIEN—What you are telling this committee is that this is the government's intention, but it is not actually in the bill. It requires a subsequent declaration by the minister to allocate assets to those particular classes of exempted assets. In the absence of a declaration they will not be exempted assets, will they?

Mr Van Beurden—No; that is right. The particular purpose of putting in those two exemptions was to allow assets to be transferred to the ILC or IBA.

Senator O'BRIEN—With the minister's approval?

Mr Van Beurden—With the minister's approval. As Mr Vaughan explained, that was the course used when the original ATSIC Act was put in place, and the reason is to provide sufficient flexibility for the minister to be able to make decisions on each particular asset.

Senator O'BRIEN—Are those decisions yet to be made?

Mr Van Beurden—Yes, they are yet to be made.

Senator O'BRIEN—In the absence of such a decision to exempt, they would be assets which vest in the Commonwealth.

Mr Van Beurden—Yes. That is the way the draftsman has done it: having a catch-all and then having exemptions for those two groups.

Senator O'BRIEN—I think the committee is going to receive a schedule containing the affected properties. Is this real property we are talking about?

Mr Vaughan—Yes—land, buildings et cetera.

Senator O'BRIEN—There is some question of valuations being supplied. What about other property which is not real property?

Mr Watson—There are other assets of ATSIC which relate to IT software and intangibles.

Senator O'BRIEN—I am thinking of something a bit more tangible than that. What about shareholdings?

Mr Watson—There may well be some shareholdings.

Mr Gibbons—I am aware of a shareholding that ATSIC owns in the Yipirinya shopping centre in Alice Springs and in Imparja TV. Unless they are divested—and I think the ATSIC board took a decision to divest some of its shares in Imparja last week—those properties would pass to the ILC or IBA—one of the two.

Senator O'BRIEN—Where in the act does it say that, or are you assuming that that is what the minister will declare?

Mr Gibbons—That is what the minister will determine.

Mr Van Beurden—They will be subject to the declaration process.

Senator O'BRIEN—Is there any impediment on disposal by the board in any other fashion? They are not covered by the Lands Acquisition Act, I take it.

Mr Gibbons—Shares are not covered by that act.

Senator O'BRIEN—Is there a requirement for the minister for finance to approve a granting of those shares, rather than selling them?

Mr Gibbons—No, not to my knowledge. I do not believe so. I think it is a question at the moment for the board to make a decision that they would like to divest the shares, as they did in the case of Imparja television last week, and then the negotiation of that divestment would occur. When there is agreement between the parties the divestment would be formalised. In the absence of any action by the board to divest, if the bill abolishing ATSIC is passed then the assets would be available for declaration by the minister to IBA or the ILC.

Senator HEFFERNAN—If there is a fire sale in the meantime, what happens to the process? If they are cashed up in the meantime is there any obligation as to where the money goes?

Mr Gibbons—They cannot sell the shares. They can divest them, as they decided to last week. They divested their class B shares in Imparja Television to Imparja—is that right?

Ms Kenway—I believe it was to Imparja.

Senator O'BRIEN—There is some restriction on who can hold shares in Yipirinya, isn't there?

Mr Gibbons—I believe there is. I am not fully across that, Senator. Do you have any knowledge of that?

Ms Kenway—I think there are some restrictions on who can hold shares in Imparja. I am not aware of restrictions in Yipirinya. That is not to say there aren't any, though.

Senator O'BRIEN—I thought there was a limitation that it could only be held by an Indigenous organisation but I may be confused between Imparja and Yipirinya.

Ms Kenway—I think that is Imparja but I would have to check that to be certain.

Senator O'BRIEN—Perhaps you could bring us up to speed on that.

Mr Gibbons—I would not be surprised. We can check that for you.

Senator O'BRIEN—In the case that the board wished to grant a property, how does the government consult with the board on matters such as a proposal to grant a property under the Lands Acquisition Act?

Mr Gibbons—The board would initiate the matter and would instruct the acting CEO to write to the minister for finance. That is how it would initiate the process.

Senator O'BRIEN—It would not be through any other minister; it would be direct to the minister for finance.

Mr Gibbons—That is my understanding.

Senator O'BRIEN—On the regulation matter, Mr Vaughan, in your letter to the secretary for the Department of Finance and Administration you say:

I therefore propose that regulation 7 be repealed.

Is it normal for that to be done at officer level rather than at ministerial level?

Mr Vaughan—That particular step had been sanctioned by the minister's office.

Senator O'BRIEN—Does that mean the minister or the minister's staff?

Mr Vaughan—They are one and the same from where I sit.

Senator O'BRIEN—I can think of certain events in the history of this government where the government would say absolutely that the minister's staff and the minister were not one and the same.

Senator JOHNSTON—This is not one of the ones where they chose to use that defence. That is true.

Senator HEFFERNAN—Would that be any different from any previous government?

Senator O'BRIEN—Probably.

Senator HEFFERNAN—I think it does not matter—

Senator O'BRIEN—I will leave you to prove that one. Under the legislation, upon the creation of ATSIS did ATSIC assets such as tables, chairs et cetera become ATSIS assets?

Mr Gibbons—No. There was an agreement that permitted the use of assets that were required for purposes of administration of programs to be used by ATSIS—for example, leases on buildings, vehicles, IT services—and progressively as leases have come up for renewal et cetera, the Commonwealth has taken those over.

Ms Kenway—The landholdings stayed in the ownership of ATSIC.

Mr Gibbons—The principle that has been followed in the drafting of the bill is that real assets that were in the hands of Indigenous organisations remain in Indigenous custody through ILC or IBA. Assets that were acquired for the purposes of administering programs would return to the Commonwealth for that purpose where they have not already been returned to or taken over by the Commonwealth.

Senator O'BRIEN—Item 190 in the bill provides that transfer dates for assets was to be Thursday of this week. I therefore assume there is a register of the assets which would transfer. Can the committee receive a copy of that?

Mr Gibbons—Certainly. In fact, in response to a question at Senate estimates I have provided that information. I do not think it has changed, so I will get it.

Senator O'BRIEN—If it has not changed, assuming we have got that document—I have not personally seen it—and we can get confirmation that it is the same, we do not need another copy of it. The committee secretary might—

Mr Gibbons—It is pretty easy. We can provide it tomorrow.

Senator O'BRIEN—Can I take it from your presentation today that you have described what the department believes will be exempted class A and class B assets or would you prefer to give us a full list of those assets on notice?

Mr Vaughan—We can provide the committee with a full list of the assets but as to which will fall into each category is a decision that needs to be made by the minister after passage of the legislation other than ATSIC provides.

Senator O'BRIEN—You have described in part the changed role of IBA. Are items 106 to 123 the only items in the bill that directly impact on the functions of IBA?

Mr Van Beurden—No, they go beyond 123—124 is about the housing fund—up to 128, I think.

Senator O'BRIEN—Up to and including?

Mr Van Beurden—Item 128, yes.

Senator O'BRIEN—Section 151 of the current ATSIC act provides:

Except as expressly provided in this Act or the *Commonwealth Authorities and Companies Act* … the Minister is not empowered to direct Indigenous Business Australia in relation to any of its activities.

The proposed new section 151, which is in item 110 of the bill, provides:

Indigenous Business Australia must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister.

That is a complete turnabout. What is the rationale for that?

Mr Vaughan—The logic there is that at the moment the minister has such powers in respect of the housing fund and the business loan programs administered by ATSIC; given that it is planned that those two functions be transferred to IBA, it is appropriate that the minister's powers to give general directions about them should also be imported into the IBA provisions of the act.

Senator O'BRIEN—What is the impact of subsection (2) of the new section 151? Does that mean it is a disallowable instrument?

Mr Vaughan—No, it does not mean it is a disallowable instrument—just as section 12 under the ATSIC Act, 'Directions by Minister', which is the equivalent provision, is not a disallowable instrument.

Senator O'BRIEN—Could you explain again the changed role of the Indigenous Land Corporation?

Mr Vaughan—Yes. Aside from inheriting the Regional Land Fund and possible pastoral properties from ATSIC, the Regional Land Fund will also be empowered to give money to Indigenous Business Australia. This is designed to facilitate that fact that you have got Indigenous Business Australia on the one hand with an economic development role and the Indigenous Land Corporation on the other hand with an interest in economic development on Indigenous land. It would make it easier for the two of them to collaborate if ILC were able to put resources through IBA for joint projects or joint ventures.

Senator O'BRIEN—Are items 129 to 152 the only items in the bill that directly impact on the functions of the ILC?

Mr Van Beurden—They are certainly the ones that affect the ILC directly. I am not actually sure if that is with or without some other minor consequential changes, although I am not aware that there are. They are essentially the provisions that will affect the ILC.

Senator O'BRIEN—Perhaps you can take that on notice and draw to our attention any other provisions that are relevant to the ILC.

Mr Van Beurden—Sure.

Mr Vaughan—One that occurs to me that I think is not in those provisions is the fact that the chairman of ATSIC is ex officio a director of the ILC. That provision is being removed, for example.

Mr Van Beurden—I think that is in those provisions.

Mr Vaughan—So it is already there.

Mr Van Beurden—There may be others though.

Senator O'BRIEN—While it is suspended, I understand that the chairman is not fulfilling the role anyway.

Mr Vaughan—That is correct.

Senator O'BRIEN—The acting chair is not fulfilling the role.

Mr Vaughan—I am not aware of the situation there.

Mr Yates—I think he is.

Mr Vaughan—But it is not under that provision. That is the temporary arrangement agreed by the ILC board; that is correct. There was a question of interpretation of the act as to whether the acting chairman of ATSIC could discharge that function in respect of being a member of the ILC board. There were varying legal views, legal opinions, on the construction of the act and to resolve the matter the minister made the acting chairman a temporary member of the ILC board. We satisfied the ILC board that it was properly constituted and satisfied the acting chairman, so everyone was happy.

Senator JOHNSTON—Mr Vaughan, when I look at the reforms to service delivery on the ground, I take it that logically those are held up because the bill is held up. What does that actually mean to the Aboriginal people on the ground? What are we not able to do for them that we want to do in terms of reforming service delivery that ATSIC has not been able to do because of the delay in the passing of this legislation?

Mr Vaughan—It means that the administration of the home loan fund and of the assets of the business fund by Indigenous Business Australia cannot occur pending passage of the legislation.

Senator JOHNSTON—So that is all on ice at the moment?

Mr Vaughan—Yes, that is correct. The programs are not on ice but the facilities and the intended future administration of them is frustrated for the time being.

CHAIR—Can people still get access to the loans?

Mr Vaughan—Yes, but through ATSIS, not through IBA. There is an opportunity cost in terms of that $3.3 million cost of continuing to run the commission. The Indigenous Land Corporation does not have management of the Regional Land Fund. They are some of the implications of the situation at the moment.

Senator JOHNSTON—What other programs did ATSIC administer and have on its books that it now has no oversight of? Has it all gone over to ATSIS?

Mr Gibbons—All of the programs, other than the ones mentioned by Mr Vaughan, moved to ATSIS and from 1 July will go to mainstream agencies. These include the CDEP; municipal services; the housing program; smaller programs associated with community participation, capacity development and return of remains; funding for arts centres, the sports program and the broadcasting program. They all go from 1 July to mainstream agencies.

Senator JOHNSTON—What are we calling the new body, which is not going to be as hands-on but is going to have some oversight? Is it the advisory council?

Mr Gibbons—There are several layers to the governance. There is the equivalent of a cabinet committee, the ministerial council. There is the Indigenous Advisory Council, which will meet twice a year with the ministerial council and twice on its own. Below that there is the committee of secretaries from all of the agencies that are involved in the delivery of policy in Indigenous matters. There is the Office of Indigenous Policy Coordination. That has several roles, one of which is to manage the Indigenous coordination centres and the two important instruments of coordination: the regional agreements and the shared responsibility agreements.

Senator JOHNSTON—But in terms of oversight and participation by Indigenous people in these very large programs—and I will come to the money side of it in a minute—whilst the bill is in this situation there is no Indigenous participation in any of these programs. There is no oversight, no understanding of, or self-determination in, what is happening. ATSIC has stalled. ATSIS is doing it but there is nothing filling the vacuum in terms of Aboriginal participation at this particular time. Is that correct?

Mr Gibbons—Certainly the ATSIC board is no longer involved in any oversight of or participation in these programs. The regional councils continue for a year. The Commonwealth and state premiers have agreed to a process of exploring alternative arrangements for consultation and involvement, at the regional level over the course of the next year.

Senator JOHNSTON—But that cannot happen until we pass the legislation.

Mr Gibbons—No, that will proceed.

Senator JOHNSTON—So the regional council aspect on the ground will proceed but the other peak body involvement—the ministerial type council—will not?

Mr Gibbons—No, there is no intention on the part of government, that I am aware of, to recreate a national representative body.

Senator JOHNSTON—Were they not just an advisory council?

Mr Gibbons—ATSIC?

Senator JOHNSTON—No, the council that is anticipated in this legislation.

Mr Gibbons—Sorry. It is not a statutory based council, no. It is being appointed as an expert advisory body to the government. I understand that appointment processes are under way.

CHAIR—Can the government do that regardless of whether or not the ATSIC Act has gone?

Mr Gibbons—It is not a statutory based body.

CHAIR—The government can still go ahead and do that?

Mr Gibbons—Yes.

Senator JOHNSTON—But at the same time paying ATSIC?

Mr Gibbons—Yes. It has to pay ATSIC while the bill remains.

Senator JOHNSTON—Where is the $79 million in savings that was mentioned in the explanatory memorandum? How do we derive that?

Mr Gibbons—I would prefer to give you on notice a document that sets that out.

Senator JOHNSTON—Sure. Can you tell us roughly where the predominance of savings is? I would like the document, to be definitive, but, generally, is it just in the restructure of administration?

Mr Gibbons—It was in the removal of some of the layers of governance in the process of administration, centring around the ATSIC structures.

Senator O'BRIEN—There is only about $20 million in the PBS for 2003-04 for ATSIC.

Mr Gibbons—Yes, but it relied on income from the repayment of loans, which is part of the calculation as well. I think the figure that the senator is quoting is a four-year figure, from memory.

CHAIR—It is over four years. You are going to provide us with a breakdown of how you arrive at that figure. Is that right?

Mr Gibbons—Yes.

Senator JOHNSTON—How do you anticipate benchmarking the success of mainstreaming in terms of service delivery?

Mr Gibbons—I think this is one of the quite interesting and exciting areas that I am looking forward to getting involved in. In this area of public policy, there has not been much by way of benchmarks or evidence based work. One of the key responsibilities of the office of Indigenous Policy Coordination is to start to invest in the development of an evaluation capability—a performance monitoring capability. There are clear obligations on that office and on the Secretaries' Committee to report publicly annually as well as periodically on a program basis. In that, it is planned to involve the academic sector and other agencies, for example the Productivity Commission, in that work.

Senator JOHNSTON—In a nutshell, this 1989 model that we have for ATSIC—why has that not worked? What has been the common thread that runs through why that has proved to be such a problem in terms of failure to tangibly deliver better outcomes on the ground and deal with general misconduct? What is the problem there? Why has the model not worked? You people work, live and breathe this model and you have done for some time. I am interested to know why it has not worked.

Mr Gibbons—I think Mr Yates outlined some of the reasons behind the government's view here. One is that ATSIC was not the exclusive provider of service. There are other arms of the Commonwealth government that are more significant in terms of the dollars that are invested in Indigenous Australians. Of course, the states are very significant players in a number of crucial

areas. The linkages between those three arms of service delivery or administration were not strong. That is over and above the issues around the performance of ATSIC itself. There is recognition by the government or acknowledgment in the new model that there would be a challenge in confronting Australia in respect of Indigenous Australians' needs. The united effort by all the players in the model that has been announced is designed to try to achieve more unity and more cohesion in the prosecution of policies here. Also, I think there were some inbuilt conflicts within the construct of the ATSIC model that were not reconcilable which diverted a lot of energy and attention away from service delivery and getting services on the ground. I do not think the blame rests exclusively with ATSIC. There are underlying methodologies that have not been challenged for 35 years that need to be examined.

Senator JOHNSTON—What are our Commonwealth service delivery officers called?

Mr Gibbons—Indigenous coordination centres.

Senator JOHNSTON—Could you give me a snapshot of how you anticipate they are going to work and what benefits they are going to bring? I note that the Pilbara region is not in the second schedule of the act. Let's talk about Geraldton for example, that is a community that I know pretty well, a lot of Aboriginal people live there. How is it going to function?

Mr Gibbons—The current ATSIS office in Geraldton will be converted to an Indigenous coordination centre in the new financial year. In the first few months it will be staffed by the staff who were in ATSIS but have now been moved into mainstream agencies. Progressively the department of education and the department of health will be locating staff there.

Senator JOHNSTON—Are these Commonwealth departments?

Mr Gibbons—Yes. And they will be in a number of locations, certainly in the Kimberley, although I am not so sure about further down yet. The state government are talking to us about putting some of their staff into the ICCs there.

Senator JOHNSTON—Broom or Kununurra?

Mr Gibbons—Broome and Kununurra, I understand.

Senator JOHNSTON—Everyone wants to go to Broome.

Mr Gibbons—And Kununurra. They are buildings that will house all Commonwealth staff and, in some cases, hopefully some state staff will be involved in service delivery or management of service delivery. The officers will be led by a manager whose responsibility will focus on coordinating the effort of the Commonwealth initially, through the vehicles that Mr Yates mentioned. These include the regional partnership agreements, which are designed to embrace the views of local representatives about priorities and needs. Then, at the lower level, at the extended family or community level, there are the shared responsibility agreements. They are two critical elements of the coordination toolkit, if you like.

Senator JOHNSTON—How do we get that office in, say, Geraldton out to a community in the central Gascoyne region, because that region has to be five hundred kilometres away? How

do we relate those people in Port Hedland or Karratha to the Pungmu community, which is 400 kilometres away? How do we hook those together?

Mr Gibbons—There is only one way to do it and that is to visit and to engage seriously. That is very much part of the agenda to consult and to develop shared responsibility agreements, which can only be constructed by sitting down with the people in the local environment and drawing up what it is the Commonwealth is going to provide and what it is the community is going to do to better their circumstances.

Senator JOHNSTON—Can you tell me how many officers you are going to have in Western Australia and what their locations will be.

Mr Gibbons—I will take on notice the exact numbers, unless Mr Watson can recall—

CHAIR—Could we have a list of where all of the ICCs will be. Are you able to give that to us?

Mr Gibbons—Yes, I think that is provided, but just to help you now, Kununurra, Derby, Broome—

Senator JOHNSTON—Derby and Broome—I see you have got that in your second schedule.

Mr Gibbons—Port Hedland, Geraldton, Perth and Kalgoorlie are the locations in Western Australia.

Senator HEFFERNAN—The Kununurra boys will be pleased. They have been trying to negotiate a deal to get on with that Ord water for a long time and they have been held up by other influences. I am sure the locals will come to a decision.

CHAIR—Just going back to that, do you have a list of where the ICCs will be located?

Ms Hawgood—We have one, but we do not have it with us today. We can provide it.

CHAIR—While we are on that, it is not intended that there be an ICC in Darwin. Is that correct?

Mr Gibbons—In general, we are not planning an ICC in the major capital centres. The offices of the mainstream agencies are too large to bring together into one physical location, but we are working on alternative coordination mechanisms. In some locations—and Darwin is one—we are talking to agencies, including the Territory agency, about almost a super-ICC which involves both Territory and Commonwealth officers.

CHAIR—I think Darwin more than any of the other capital cities is a place where there is a huge movement of people from the regions, from Katherine up—

Mr Gibbons—We recognise that.

CHAIR—and from all the islands across the top—Bathurst and Melville—right across to north-east Arnhem would come into Darwin before they would go to Katherine or Cairns. I do not think Indigenous people in the Top End from remote communities would know to go to FaCS or Health or the current existing agencies. If there were a case for an ICC in a capital city, if that is what you want to call Darwin, then I think Darwin is it. You might want seriously to reconsider that.

Mr Gibbons—We certainly are, Senator.

CHAIR—There has been some concern expressed by people in the islands and in remote communities across the top about a one-stop shop, basically.

Ms Hawgood—We are looking at a special arrangement. We are looking at Darwin in just those ways, and it might be a different arrangement in Darwin to anywhere else. It will be via a coordination centre that will have a number of roles. One of those roles will be like other ICCs, where it will need to have responsibility for the remote areas, such as the Tiwi and Wadeye, and a number of other areas that are traditionally serviced by government agencies located within Darwin. The other role will be about coordinating across the urban area of Darwin itself. So we are looking at an arrangement that might have a task force or be a project team type of arrangement which has officers from a number of agencies, both of the Australian government and the NT government, located in that coordination centre. Those discussions have not been finalised at this point, but that is the kind of thing that we are looking at.

CHAIR—Physically in Darwin they are located within the same block—FaCS, Health and Ageing, and the current ATSIC offices.

Mr Gibbons—Yes. There is no resistance, Senator. We are looking to try and do something quite innovative there. I am sure, from what I have heard from the NT government, they are just as keen to do something like that as well.

Senator JOHNSTON—Can you refresh my memory about the IBA. Who sits on the IBA? How many members does it have? That is a statutory body, isn't it?

Mr Vaughan—Yes. The IBA has a board of directors consisting of a chairperson, a deputy and seven other persons.

Senator JOHNSTON—Appointed by the minister?

Mr Vaughan—They are appointed by the minister, but there are some qualifications applying to the appointees—for example, at least one of them has to be an ATSIC commissioner. They have to have certain qualifications.

Senator JOHNSTON—What are those qualifications?

Mr Vaughan—At least four of them have to be Aboriginal persons or Torres Strait Islanders. At least one must be a commissioner of ATSIC, as I said. And each of them must be a person who the minister is satisfied has experience in either (a) industry, commerce or finance, or (b)

Aboriginal or Torres Strait Islander community life or enterprises. When there is expected to be a vacancy the minister has to consult the board about suitable replacements.

Senator JOHNSTON—I think our model has got the—what is it called, OEA?

Mr Vaughan—Office of Evaluation and Audit.

Senator JOHNSTON—They are now overlooking the IBA, are they not?

Mr Vaughan—They would now be overlooking the IBA, but I am just checking whether in fact they do not already have that remit as well. Yes, they do.

Senator JOHNSTON—There is an increased workload on the IBA, given this legislation—is there not?

Mr Vaughan—Yes. The effect of the legislation, the transfer of the ATSIC home loan and business loan programs, would be a substantial enlargement of IBA activity.

Senator JOHNSTON—What have we done to beef up the support for the IBA in terms of public servants who know what to do with all of these assets?

Mr Vaughan—At the moment IBA has to live off the income from its investments and, by definition, that imposes a constraint on its staffing resources: it has to generate enough income to support its operating costs and make future investments. With the transfer of the former ATSIC home loan program and business loan program, some budget funded staff would come with that so that there would be a significant increase in IBA's recurrent resources and staffing resources correspondingly.

Senator JOHNSTON—Let us turn for the moment to rep bodies. I note that, in passing, we have affirmed that the funding of rep bodies for native title purposes through this legislation goes across to the A-G's department, who have set that out, doesn't it?

Mr Vaughan—No. There is a bit of a misconception afoot on that.

Senator JOHNSTON—Tell me what is happening with that.

Mr Vaughan—The funding of native title rep bodies will come to the Office of Indigenous Policy Coordination as part of the Department of Immigration and Multicultural and Indigenous Affairs. Regarding the role that ATSIC previously had in advising the minister on rep bodies and funding issues, that function will now be exercised within the department rather than by ATSIC.

Senator JOHNSTON—What do we anticipate? I could not see any real guide for the department as to how they evaluate what are legitimate sums to be budgeted for rep bodies to conduct their native title business. What is the template for that? Do you have any ideas?

Mr Vaughan—You have opened a longstanding, complex and vexed question, as I think you are possibly aware.

CHAIR—That is probably why he asked you, going by Senator Johnston's record.

Senator JOHNSTON—I am just interested to see the starting point for this, because the A-G and ATSIC did not have any real idea of how to try and evaluate what each of the rep bodies—of which there are, I think, 15, excluding New South Wales and Victoria, from memory—do around the country. There was no set formula or approach to work out how much money each of them needed to conduct the litigation, the negotiation and the general oversight of the claimants within their regions. What are we doing about that?

Mr Vaughan—There are two or three issues. Mr Gibbons and Mr Yates might want to elaborate on this. One is that the funding pattern for rep bodies is very much historically based. For example, it has not been significantly rejigged in the light of, say, the Yorta Yorta decision or the Western Lands Commission decision, which would suggest that there are large areas of south-eastern Australia where native title does not significantly exist any more. That has not as yet led to a significant reapportionment of rep body funding away from the south-east to elsewhere. The rep bodies in those areas would say they are already underfunded anyway. That takes you to the second question of how you transit to the point of introducing some sort of outcome based or performance based method of funding rep bodies—as, indeed, do other organisations in the sector to some extent. In an ideal world you might say that you would fund the rep bodies on the basis of the number of claims, the number of concluded ILUAs or whatever. That can simplify a rather complex situation. That is the second element in the equation, moving not only from a historically based towards a needs based funding pattern but also towards one which reflects performance and outcomes as well.

Mr Gibbons—I will add just one point to that. I think there is also a need to look at the way we fund so that we do not necessarily lock funding into decisions taken at the beginning of a funding period, in a way that does not allow the funding to be moved to match demand, because you can never properly anticipate demand at the beginning of a funding period. If you have made block grants available you have tied up resources notwithstanding those patterns of demand, and that has led to a lot of complaints not just in this area but in a raft of other areas as well.

Mr Vaughan—Also from time to time issues arise as to the effectiveness of some of the rep bodies in using their resources. There was a recent case in south-west Queensland where a significant amount of money was processed in the form of cash. It is very hard to assess effectiveness when there is a lack of an audit trial as to where the money actually goes.

Senator JOHNSTON—Do you anticipate that applications for funding from rep bodies to departmental officers is going to be a more difficult process than it was through the ATSIC model into the future?

Mr Gibbons—Just moving from ATSIC to officers will, in itself, remove it from some of the political pressures. What is needed is an evidence base to underpin decisions on the distribution of resources.

Senator JOHNSTON—What do you mean by 'evidence based tool'?

Mr Gibbons—Responding to demand without some examination of the underlying demographics, the issues that Mr Vaughan has talked about in his particular area about the native title status in each particular part of the country, performance issues, et cetera you are often flying in the dark.

Senator JOHNSTON—So to some extent you anticipate being called on to make value judgments as what are good bets and what you are going to fund and what you are not going to fund?

Mr Gibbons—I think we want to move away from finger-in-the-wind value judgments to more research based judgments.

Senator JOHNSTON—You and I can say 'finger in the wind' but I can tell you that the claimants think that the whole sun and the moon goes with their claim. Every claim they have got they want to see funded and they want to see it pursued, even if it has from our perspective limited legal merit. How are we going to deal with that?

Mr Gibbons—I am not talking about officers getting involved in which claimant will be funded; that is for the rep bodies to determine. That is their reason for—

Senator JOHNSTON—But you have got a rep body in the south-east and the south-west.

Mr Gibbons—I was talking about how we distribute the budget that is made available by the parliament to support rep bodies.

Senator JOHNSTON—How are you going to distinguish between a rep body that would support the Ward claim, for instance—Miriuwung-Gajerrong—and say the Nyoongah claim? How are you going to do that, because the two claims on the face of it have completely different legal legitimacy, given the state of the law? Are we going to have officers who are going to say, 'I'm going to give this much money to Wayne Bergman up in the Kimberley Land Council and I'm not going to give anything—or less, because I perceive there is a problem—to Mr What's-His-Name in the Nyoongah Land Council'? How are we going to do that?

Mr Gibbons—I think as Mr Vaughan and I said earlier, we are going to put more effort into understanding the environment before we make those allocations to individual rep bodies. But once the allocation is made we are not going to say we will fund that claim versus that claim. That is for the rep bodies to do.

Mr Vaughan—I think it is partly analogous to the situation where you have a community or group that comes to government with requests for funding for a legal test case—a constitutional challenge, or something like that. This happens. Indigenous groups went to ATSIC in the past and non-Indigenous groups go to the Attorney-General's Department for legal aid assistance. It is normal in those circumstances to make some sort of preliminary assessment as to whether the challenge has got any potential merit in it. That is one criteria, obviously—whether it has potential merit. The other one, of course, goes partly to the Nyoongah versus Miriuwung-Gajerrong situation. You would obviously in a situation of limited resources be looking to put your limited resources into those cases, claims and bodies with the greatest merit and chance of

success. But, as Mr Gibbons says, government has to be a little bit circumspect and arms length about this, because government is often a respondent to the claim.

Senator JOHNSTON—You raise an exceptionally good point. I am looking for checks and balances, and I am looking for some objectivity, so that the stakeholders can have some confidence that their applications are being treated fairly. Have we got anything in mind to do that? I think that is worthy of some consideration. If we are going to move it into where I think there is going to be some degree of efficiency, some benchmarking and some evaluation, what are the checks and balances on that that you have in mind, given that the Commonwealth is likely to be a respondent?

Mr Gibbons—It is more a change from the Commonwealth as a respondent to the Commonwealth as a supporter of the rep body process. That is why Mr Vaughan was quick to point out that it is not going to Attorney-General's. I stress two things: one is our determination to bring a more evidence based approach to funding; and the other is that under the proposals the operation of the rep bodies will come under the scrutiny of the Office of Evaluation and Audit.

Senator JOHNSTON—I did not see that; which part of the legislation does that?

Mr Gibbons—That goes to the reference that I think Mr Vaughan made earlier about appropriate programs and the definition of 'appropriate' programs.

Mr Vaughan—Relevant programs—

Mr Gibbons—Relevant programs, I am sorry.

Mr Vaughan—which are designed to further the social, economic or cultural development of Indigenous people.

Senator JOHNSTON—So that includes the actions of rep bodies under the Native Title Act, does it?

Mr Vaughan—It would. In fact, rep bodies would already be covered under the existing act because they are funded by ATSIC, and the scope of the OEA is defined by reference to the funding source at the moment.

Senator JOHNSTON—But the OEA do not do that now.

Mr Vaughan—There is nothing under the act to prevent them from doing so.

Senator JOHNSTON—No, but they have not done it in the past, have they? So this is section 113 of the bill?

Mr Gibbons—There is another provision in the bill—

Mr Vaughan—It is on pages 56 to 57 of the bill.

Mr Gibbons—which potentially provides some incentive for rep bodies to be more efficient, and that is again moving the process of funding away from an exclusive reliance on grants to funding on the basis of performance.

Senator JOHNSTON—What actually is the Office of Evaluation and Audit? In the bill under section 193X, 'Functions of the Office', it has functions (a) through to (f). It is like the Australian National Audit Office, except it is specifically designed to work under the umbrella of Indigenous service delivery, isn't it?

Mr Vaughan—That is part of the difference. Its scope is confined in that way in terms of subject areas. The other thing—probably more to the point—that distinguishes it from the Australian National Audit Office is that its activities are subject to direction by the minister or, in the past, the commission. So, whereas the minister cannot direct the ANAO to examine a particular program or organisation, the minister can direct the Office of Evaluation and Audit to do so.

Senator O'BRIEN—It is curious language.

Mr Vaughan—Which?

Senator O'BRIEN—The bill says 'at the request of the minister' and you quite correctly say it is at the direction of the minister.

Mr Vaughan—Sorry, I was reading from the existing provision. It says 'when requested to do so by the minister or the commission'. The bill uses slightly different language.

Senator O'BRIEN—It is still 'at the request of the minister'; it is the same thing.

CHAIR—On page 57 of the proposed act—the bill—it still says 'when requested to do so by the Minister'.

Mr Vaughan—That is right; it does too—yes, at the top of page 57.

Senator JOHNSTON—So you are very confident that the words 'social, economic and cultural development' are able to provide the OEA with the power to review health delivery and the performance of rep bodies under the Native Title Act 1993?

Mr Vaughan—There would be no doubt in respect of rep bodies under the Native Title Act. If you got to the area of health delivery, where you are spanning a situation from, say, an Aboriginal medical service at one end of the spectrum to a public hospital in downtown Sydney at the other, somewhere along that spectrum I think you begin to encounter the limits of the OEA's remit.

CHAIR—What about something like the Office of Hearing Services, for example, being contracted by OATSIA to undertake provision of hearing services?

Mr Vaughan—If it were contracted by OATSIA under an Indigenous-specific program it would, almost without doubt.

CHAIR—It would fall into this?

Mr Vaughan—Yes.

CHAIR—Senator Heffernan, do you have any questions?

Senator HEFFERNAN—How much money is tied up in the housing fund?

Mr Gibbons—It is $300 million or $400 million, I think—several hundred million.

Senator HEFFERNAN—Under the new arrangement, is there a chance that that might end up in private funds?

Mr Gibbons—This is the home loan lending fund we are talking about. It is a quarantined fund for home loan lending. If it is assigned to IBA, my understanding is that it is quarantined.

Senator HEFFERNAN—What will they do with it?

Mr Gibbons—They will lend it to Indigenous home purchasers under terms that are the same as they are now.

Senator HEFFERNAN—So they cannot put it out to someone and manage it for them?

Mr Gibbons—They will be receiving the staff from ATSIS to manage the program. They will be obliged to continue to operate under those arrangements.

Mr Vaughan—There is an existing power for ATSIC in respect of the home loan fund to enable loans to be made—

Mr Van Beurden—To provide money to commercial lenders. In theory, ATSIC can do that at the moment; in theory, IBA will be able to do so. But ATSIC has not done it and we think it is unlikely that IBA would do it either.

Senator HEFFERNAN—But there is nothing to stop all that being given to someone to build a shopping centre in the middle of Sydney or something?

Mr Van Beurden—There is because the money has to be used for housing purposes for Indigenous people.

Mr Vaughan—But what it could be used for, for instance, and what ATSIC could have used it for in the past, is to go to a bank and say, 'We're running a home loan program and are basically providing the loan. We would like to enter into an arrangement whereby we provide the interest rate subsidy and the bank provides the loan and we act as guarantor.' You could get more loans that way.

Senator HEFFERNAN—You could gear it up?

Mr Vaughan—Yes. That is an existing capacity for ATSIC under the existing act, and the same option would be available to IBA, but it does not amount to—as I think the apprehension was—the money being given for unintended purposes.

Senator O'BRIEN—Are you suggesting that there could have been an ATSIC version of Wizard Home Loans? I think that was the method used by that business.

Mr Vaughan—I think that goes to the question of the skills of appointees to the board of IBA.

Senator HEFFERNAN—And, in the same way, the shopping centre, for instance, in Alice Springs cannot be sold off to non-Indigenous interests?

Mr Gibbons—ATSIC has shares in the organisation.

CHAIR—Shares in Yipirinya?

Mr Gibbons—In Yipirinya—it does not own it outright.

Senator JOHNSTON—So that its equity would only go if it resolved to dispose of that equity?

Mr Gibbons—Yes, and I am not sure if there are caveats on it.

Ms Kenway—On the shares?

Mr Gibbons—Yes.

Ms Kenway—I am not sure how you would caveat shares.

Mr Van Beurden—In any case, given IBA's functions, which are to promote investment for Indigenous people, we would not expect that they would do anything but ensure that it remains in Indigenous hands. It would have the same power as ATSIC in those terms.

Senator HEFFERNAN—Yes, but could they if they wanted to?

Mr Van Beurden—I am not sure about the legal situation.

Senator JOHNSTON—If they own shares and the shares are defeasible, they can dispose of them as they would wish, if they resolved properly to do that.

CHAIR—There would be nothing stopping whom to do that?

Senator JOHNSTON—They are like any ordinary shareholder.

Mr Gibbons—We are talking about the IBA in the context of the bill.

Senator JOHNSTON—Have they got a controlling interest in that shopping centre?

Mr Gibbons—I think they have, but we will take that on notice.

CHAIR—I have some quick questions, and then I will hand over to Senator O'Brien. Have the changes you gave us today about the allocation of programs to different departments been gazetted yet?

Mr Gibbons—Yes.

CHAIR—When was that gazetted?

Mr Gibbons—The administrative arrangements orders were approved by the Governor-General last Thursday and gazetted on Thursday.

CHAIR—I have a question in relation to CHIP money.

Senator JOHNSTON—What money is that?

CHAIR—It is money for the Community Housing Infrastructure Program, CHIP. Who is now making decisions about the allocation of expenditure of that money?

Mr Gibbons—Today or in the next financial year?

CHAIR—Today, in the last month or so.

Mr Gibbons—ATSIS.

CHAIR—In relation to the minister's announcement about the no school, no pool program, are those swimming pools being paid for out of CHIP money?

Mr Gibbons—I think some of them are but some may not be. I will have to check the source of the funds. Some decisions have been taken recently to release funds to the states for housing and to the Northern Territory and South Australia to invest in some pools for schools, in partnership with the Northern Territory and South Australian governments. Certainly, some of that is sourced from housing infrastructure funds, but I am not sure if all of it is.

CHAIR—So some of the money is for the pools?

Mr Gibbons—I will have to check. I cannot recall.

CHAIR—Can you take that on notice?

Mr Gibbons—Yes, sure.

CHAIR—Also, in particular, there has been a recent announcement that $500,000 will be given to Milikapiti for a swimming pool. Is that $500,000 coming out of the CHIP money?

Mr Gibbons—I would have to take that on notice. I think so, but I am not quite sure.

CHAIR—Who is making that decision? Who is deciding to put money that has been predominantly set aside for housing infrastructure into a swimming pool? There is no doubt that research shows the benefits of swimming pools, but I would have thought that that CHIP money should predominately have been used for housing infrastructure, seeing that there is a chronic need for that.

Mr Watson—The appropriation is made at the outcome level. The outcome level for ATSIS is right at the top of the total appropriation. The minister has certain flexibilities to be able to move moneys within the output levels—flexibilities which have been provided by government to move moneys between programs to meet emerging needs.

CHAIR—So are you saying that the allocation of the CHIP money to possibly pay for swimming pools has been made by the minister?

Mr Gibbons—I am saying that, within certain limits, the minister has the prerogative to move moneys, if she wishes, to fund projects in other outputs.

CHAIR—That must have happened if the CHIP money has not been used for housing infrastructure, but has paid for swimming pools.

Senator JOHNSTON—Swimming pools are infrastructure, surely.

CHAIR—No. It is housing infrastructure like broken toilets and taps in showers.

Senator JOHNSTON—I thought you said 'housing and infrastructure'.

Mr Watson—The funding has been provided from within the total appropriation of funds to ATSIS, which is about $1 billion, so it can be moved between any of the outputs within that total appropriation to fund an expense of this type.

CHAIR—Can you take on notice for me whether—in relation to any of the pools that were announced in the no school, no pool program and the $500,000 allocated to Milikapiti—one cent of that money has been taken out of the CHIP.

Mr Watson—Sure. I wish to come back to the home ownership program. Just for the record, $330 million is the current loan portfolio, which is being let on 3,600 active loans.

CHAIR—We need a clarification about the functions and allocations of OATSIA. The health functions and allocations of the Office of Aboriginal and Torres Strait Islander Affairs will still sit within the Department of Health and Ageing, so those OATSIA functions will remain unchanged. Is that correct?

Ms Kenway—That is right.

Senator O'BRIEN—I refer to the list of program functions and allocations that we were given today. Do all those allocations take effect on 1 July?

Mr Gibbons—Yes, although the appropriation will not move till August.

Mr Watson—The functional responsibility starts on 1 July. The actual movement of the funds to the other agencies may take place a little later, perhaps some time in August, but it will be backdated to 1 July.

Senator O'BRIEN—What budget does each of these compartments have, or has that not yet been determined?

Mr Watson—The budget, in line with the appropriations provided in 2004-05, has been provided to the department of immigration. The CEO of Immigration will be the person authorised to expend those moneys up until the time of the section 32 transfers that occur under the FMA Act.

Senator O'BRIEN—How much will be transferred in each case? That is the question I am asking.

Mr Watson—The amount that we transfer is yet to be determined, but it will be that program share of the total appropriation which was provided to DIMIA.

Senator O'BRIEN—Who will determine that?

Mr Watson—That will be determined in conjunction with the department of finance.

Mr Gibbons—That is a question of the receiving agencies negotiating and that being endorsed by the department of finance. It is the same procedure that is followed with all administrative arrangement functions. There has to be an agreement of the giving and receiving agencies that is signed off by the department of finance. If there cannot be any agreement, then the department of finance intervenes.

Senator O'BRIEN—I take it that we are talking about quarantined moneys.

Mr Gibbons—Yes, quarantined for Indigenous services. Each agency has to put in place mechanisms to track the funds and OIPC has the responsibility to report on the usage of the funds.

Senator O'BRIEN—So they are coming out of the current appropriation for DIMIA?

Mr Gibbons—The quarantine, as I understand it, is broader than just DIMIA.

Senator O'BRIEN—Sure, as there are some appropriations that have already gone to some departments and there is the money from DIMIA, which is a substantial part of this allocation. Why isn't it possible to have simply broken these programs down to amounts allocated, or is it all from the original budgetary allocation when you totalled up the appropriation?

Mr Watson—That is true. There are two components, one of which is the administered appropriations, which are those which are the program type funds. There has already been an indicative split provided of that, which is very much in line with the historical allocations to those programs. The other is the departmental split. That is basically being agreed with the other agencies at the moment, based on staff allocations and other one-off allocations which are

provided in that sort of departmental allocation. We would be able to provide you with the administered allocations to the other agencies.

Senator O'BRIEN—As for the detail of the amount of the allocation which has yet to be determined, could you give us the block amount of those funds that are in question?

Mr Watson—On departmental?

Senator O'BRIEN—Yes.

Mr Watson—It is $173 million, which was the total departmental appropriation of ATSIS which will be divided amongst the nine receiving agencies.

Senator O'BRIEN—Why is the family violence program being split?

Mr Gibbons—As I recall, there are two parts to that—one part that is going to the Department of Family and Community Services and that is a discretionary program, and the other that is going to the Attorney-General's department to run the family violence legal centres around the country. There are 13 at the moment; they are expanding to 26 next financial year.

Senator O'BRIEN—How does that split the funding—how much for each department?

Mr Yates—The majority goes to Attorney-General's, as it will be responsible for managing the family violence prevention legal services, and a small amount—$2 million to $3 million, as I recall—for family violence will be transferred to the Department of Family and Community Services. But again in that area there was some further new policy announced in the budget that will be adding to that amount.

CHAIR—So none of it is going to the office of women's policy?

Mr Yates—The Office of the Status of Women?

CHAIR—Yes.

Mr Yates—No, not from this break-up.

Senator O'BRIEN—I wanted to clarify something that arose in my mind with this split-up—for example, IBA is going to DEWR?

Mr Gibbons—The portfolio responsibility?

Senator O'BRIEN—Yes.

Mr Gibbons—Yes.

Senator O'BRIEN—Where the act refers to 'the minister' in relation to IBA, which minister does it mean?

Mr Gibbons—It will be the DEWR minister.

Senator O'BRIEN—How will that be dealt with in the legislation? Maybe I have missed it. It is just not clear to me that that is split up in the legislation.

Ms Kenway—It does not have to be. A reference to 'the minister' in an act takes you to the minister which the AAOs have designated is the minister. The Acts Interpretation Act does that for you.

Senator O'BRIEN—So in each case where there is reference to the minister and a function, that is—

Ms Kenway—You look at who administers that part of the act.

Senator O'BRIEN—So it is moveable, depending upon another administrative order?

Ms Kenway—Yes.

Senator O'BRIEN—Was any agreement reached last week at COAG which impacts on this measure; and, if so, can we have the details?

Mr Yates—You are right. I did allude in my presentation to the fact that COAG did, as part of its review of progress on reconciliation and Indigenous issues, agree to a framework on service delivery, a principles framework, and I have a copy of the extract from the communique released by COAG, for the benefit of the committee.

Senator O'BRIEN—I have a number of other questions, but I will put them on notice.

Senator JOHNSTON—Mr Vaughan, if you could quickly flash to page 79 of the bill, I just want to confirm that in the references in section 30(c) to the 'secretary of the department', repeated in section 31—these are the amendments that are applicable to the Native Title Act—the department is in fact DIMIA, not the A-G's Department.

Mr Vaughan—That is correct. The administration of the Native Title Act is split between the two ministers, between the Attorney-General and the minister for Indigenous affairs. This reference to the funding of rep bodies is a function of the minister for Indigenous affairs.

Senator JOHNSTON—Good. Thank you.

CHAIR—Thank you. We do have quite a number of other questions, but we do not have the time. Senator O'Brien and I certainly have quite a few we would like to put on notice through the committee secretariat. I am not sure about other committee members who are not present; we would need to ask them if they have questions for you about the act or the administrative arrangements. I am wondering if we could try to negotiate a deadline for the answers to those questions.

Senator O'BRIEN—A binding or a non-binding deadline?

CHAIR—Would, say, 30 July, the same day submissions are due, be too unreasonable for the answers?

Mr Vaughan—Yes, subject to seeing the questions!

CHAIR—Oh, so you want total negotiation, do you!

Mr Vaughan—We are flexible.

CHAIR—I do not want to give you an unreasonable amount of time, but I also do not want to hold up some of the work of this committee. So if we make it perhaps 30 July, the same day that submissions close?

Senator O'BRIEN—ASAP, looking at that as a final date.

CHAIR—If you can get them in earlier, that would be fantastic.

Mr Vaughan—No later than that.

CHAIR—Thank you very much for your attendance today. As I said earlier, I appreciate the fact that you managed to get here and give us a briefing with less than a week's notice, so thanks very much.

Committee adjourned at 5.00 p.m.