



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

WEDNESDAY, 24 MAY 2006

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Wednesday, 24 May 2006

Members: Senator Payne (*Chair*), Senator Crossin (*Deputy Chair*), Senators Bartlett, Kirk, Mason and Scullion

Senators in attendance: Senators Allison, Carr, Chris Evans, Fierravanti-Wells, Heffernan, Kirk, Ludwig, Ian Macdonald, McLucas, Moore, Nettle, Parry, Payne, Robert Ray, Scullion and Webber

Committee met at 9.00 am

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Ellison, Minister for Justice and Customs

Attorney-General's Department

Management and Accountability

Mr Robert Cornall AO, Secretary

Mr Keith Holland, Acting Deputy Secretary, Criminal Justice and Security

Ms Kathy Leigh, Acting Deputy Secretary, Civil Justice and Legal Services

Ms Jan Blomfield, Acting General Manager, Corporate Services Group

Mr Graham Fry, General Manager, Information and Knowledge Services

Ms Sue-Ellen Bickford, General Manager, Financial Services Group

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Mr David Finlayson, Assistant Secretary, Public Affairs

Outcome 1: An equitable and accessible system of federal civil justice

Output 1.1

Ms Sandra Power, Acting First Assistant Secretary, Civil Justice Division

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch, Civil Justice Division

Mr Kym Duggan, Assistant Secretary, Family Law Branch, Civil Justice Division

Mr Peter Arnaudo, Assistant Secretary, Dispute Management Family Pathways Branch,
Civil Justice Division

Ms Karen Moore, Acting Assistant Secretary, Administrative Law and Civil Procedures
Branch, Civil Justice Division

Output 1.2

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division

Mr Jim Faulkner, Assistant Secretary, Constitutional Policy Unit

Ms Amanda Davies, Assistant Secretary, Classification Branch

Mr Karl Alderson, Assistant Secretary, Office of Legal Services Coordination

Output 1.3

Ms Philippa Lynch, First Assistant Secretary, Information Law and Human Rights Division

Mr Matt Minogue, Assistant Secretary, Human Rights Branch

Ms Helen Daniels, Assistant Secretary, Copyright Law Branch

Ms Joan Sheedy, Assistant Secretary, Information Law Branch

Output 1.4

Mr Bill Campbell QC, First Assistant Secretary, Office of International Law

Mr Greg Manning, Assistant Secretary, International Security and Human Rights Branch

Output 1.5

Mr James Graham, First Assistant Secretary, Office of Legislative Drafting and Publishing

Output 1.6

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division

Mr Steven Marshall, Assistant Secretary, Native Title Unit

Mr Richard Glenn, Acting Assistant Secretary, Native Title Unit

Output 1.7

Dr James Pople, First Assistant Secretary, Indigenous Justice and Legal Assistance Division

Mr John Boersig, Assistant Secretary, Indigenous Law and Justice Branch

Ms Katherine Jones, Assistant Secretary, Legal Assistance Branch

Outcome 2: Coordinated federal criminal justice, security and emergency management activity, for a safer Australia

Output 2.1

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Mr Geoff Gray, Assistant Secretary, Criminal Law Branch

Mr Craig Harris, Assistant Secretary, National Law Enforcement Policy Branch

Mr Chris Dennis, Director, National Law Enforcement Policy Branch

Ms Catherine Hawkins, Assistant Secretary, International Crime Cooperation Branch

Ms Sheridan Evans, Acting Assistant Secretary, Community Safety and Justice Branch

Mr Geoff Main, Director, Community Safety and Justice Branch

Mr Andrew Walter, Principal Legal Officer, International Crime Cooperation Branch

Mr Anthony Seebach, Principal Legal Officer, International Crime Cooperation Branch

Ms Victoria Bickford, Acting Principal Legal Officer, International Crime Branch

Mr Peter Thomson, Acting Assistant Secretary, International Crime Branch

Mr Nick Morgan, Section Head, International Crime Branch

Mr Richard Oliver, Executive Project Director, AusCheck

Ms Annette Bouchier, Executive Manager, AusCheck

Output 2.2

Mr Geoff McDonald, Acting First Assistant Secretary, Security and Critical Infrastructure Division

Mr Mike Rothery, Assistant Secretary, Critical Infrastructure Protection Branch

Ms Annette Willing, Acting Assistant Secretary, Security Law Branch

Ms Catherine Smith, Principal Legal Officer, Security Law Branch

Output 2.3

Mr Trevor Clement, Director General, Emergency Management Australia

Ms Diana Williams, Assistant Secretary, Emergency Management Policy

Mr Peter Channells, Assistant Secretary, Community Development

Output 2.4

Mr Martin Studdert, Executive Director, Protective Security Coordination Centre
Mr Paul de Graaff, Assistant Secretary, Counter-Terrorism Branch
Ms Leonie Mack, Assistant Secretary, Security Programs Branch
Ms Belinda Moss, Assistant Secretary, Information Coordination Branch
Ms Kelly Williams, Assistant Secretary, Policy and Services Branch
Mr Mika Kontiainen, Assistant Secretary, APEC 2007 Security Branch
Mr Lee Gordon, Executive Officer, Executive Services Section

Administrative Appeals Tribunal

Mr Doug Humphreys, Registrar
Ms Sian Leathem, Assistant Registrar
Mr Steve Wise, Finance Manager

Australian Crime Commission

Mr Alastair Milroy, Chief Executive Officer
Mr Andrew Phelan, Director, Infrastructure and Corporate services
Mr Kevin Kitson, Director, National Criminal Intelligence
Mr Michael Outram, Director, National Operations

Australian Customs Service

Mr Michael Carmody, Chief Executive Officer
Mr John Drury, Deputy Chief Executive Officer
Mr John Jeffery, Deputy Chief Executive Officer
Mr Jon Brocklehurst, Chief Financial Officer
Mr Murray Harrison, Chief Information Officer
Rear Admiral Russ Crane, Director-General Coastwatch
Mr Tom Marshall, Deputy Director-General Coastwatch
Ms Marion Grant, National Director Border Compliance and Enforcement
Ms Sue Pitman, National Director Cargo and Trade
Mr Matthew Corkhill, National Manager Cargo Systems
Mr Dane Cupit, Director Cargo Systems
Ms Jan Dorrington, National Director Border Intelligence and Passengers
Mr Andrew Rice, National Manager Trade Measures

Administrative Review Council

Ms Jillian Segal AM, President
Ms Margaret Harrison-Smith, Executive Director
Mr Robert Cornall AO, Member

Australian Federal Police

Mr Mick Keelty, Commissioner
Mr John Lawler, Deputy Commissioner
Mr Andrew Colvin, Chief of Staff
Mr Trevor Van Dam, Chief Operating Officer

Australian Government Solicitor

Ms Rayne de Gruchy, Chief Executive Officer
Mr David Riggs, Chief Financial Officer

Australian Institute of Criminology and Criminology Research Council

Dr Toni Makkai, Director

Australian Law Reform Commission

Professor David Weisbrot, President

Mr Alan Kirkland, Executive Director

Australian Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen PSM, Director

Mr Alf Mazzitelli, Chief Finance Officer

CrimTrac

Mr Ben McDevitt, Chief Executive Officer

Ms Nicole McLay, Chief Financial Officer

Family Court of Australia

Mr Richard Foster PSM, Chief Executive Officer

Ms Angela Filippello, Principal Registrar

Mr Stephen Andrew, Acting Executive Director Client Services

Mr Bruce Hunter, Executive Director Corporate

Family Law Council

Mr Kym Duggan

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive Officer

Mr Philip Kellow, Deputy Registrar

Mr Gordon Foster, Executive Director Corporate Services

Federal Magistrates Court

Mr John Mathieson, Chief Executive Officer

Ms Charlotte Stockwell, Executive Director Operations

High Court of Australia

Mr Christopher Doogan, Chief Executive Officer and Principal Registrar

Ms Rosemary Musolino, Acting Senior Registrar

Mr Lex Howard, Marshal

Human Rights and Equal Opportunity Commission

Mr Graeme Innes AM, Human Rights Commissioner and Commissioner Responsible for Disability Discrimination

Ms Pru Goward, Sex Discrimination Commissioner and Commissioner Responsible for Age Discrimination

Ms Karen Toohey, Acting Director, Complaint Handling

Ms Susan Roberts, Acting Executive Director Legal Services

Insolvency and Trustee Service Australia

Mr Terry Gallagher, Chief Executive and Inspector-General in Bankruptcy

Mr David Bergman, Adviser, Policy and Legislation

Mr Peter Lowe, Executive Director

National Native Title Tribunal

Mr Chris Doepel PSM, Registrar and Chief Executive Officer

Mr Hugh Chevis, Director Service Delivery

Mr Erwin Winkler, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Damian Bugg AM QC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Ms Stela Walker, Deputy Director Corporate Management

Office of Film and Literature Classification

Mr Des Clark, Director

Mr Paul Hunt, Deputy Director

Mr Steve Sanders, Business Manager

Office of Parliamentary Counsel

Mr Peter Quiggin, First Parliamentary Counsel

Ms Glenyce Francis, General Manager

Office of the Privacy Commissioner

Ms Karen Curtis, Privacy Commissioner

Mr Timothy Pilgrim, Deputy Privacy Commissioner

CHAIR (Senator Payne)—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. The committee will today commence its examination of the Attorney-General's Department, proceeding according to the order on the circulated agenda. The committee will begin with questions to the executives of the department. The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. The committee has agreed to the date of Friday, 14 July 2006 for receipt of answers to questions taken on notice and additional information. The committee requests that answers be provided to the secretariat in electronic format wherever possible.

I welcome Senator the Hon. Chris Ellison, the Minister for Justice and Customs and Minister representing the Attorney-General. I also welcome Mr Robert Cornall, Secretary of the Attorney-General's Department and officers of the department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, 'Procedures to be observed by Senate committees for the protection of witnesses', and in particular to resolution 1(10), which states in part:

Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken.

I also draw attention to resolution 1(16), which states:

An officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

Witnesses are reminded that evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. For the record, I note that there are either 1½ or two outstanding responses to questions remaining from the additional estimates round in February 2006. Eighteen hard-copy answers were given to the secretariat just a few moments ago. I appreciate that. We will distribute those hard-copy answers to senators, but that does make life a little difficult for us in terms of facilitating questions that may flow from those answers. However, we appreciate very much, Mr Cornall, the assistance in the answering of questions on notice from the last round. Your department has a much better strike rate on this occasion than previously. Minister, do you or Mr Cornall wish to make any opening statement?

Senator Ellison—No, I do not have any opening statement.

Mr Cornall—No, I do not.

CHAIR—For the record, Mr Jordana and Mr Govey are absent from proceedings. The committee has been formally advised of that and that acting for those two officers respectively will be Ms Leigh and Mr Holland. I understand Senator Ray is going to start with general questions before we go to the outcomes.

Senator ROBERT RAY—When did the department receive a copy of the Sheller report?

Mr Cornall—I will have to get advice on the date.

Mr McDonald—I think the Attorney received the Sheller report on 21 April. We would have received it a day or so after he received it. There was a secretariat provided by our branch to support the Sheller committee, but we kept the secretariat totally separate from the rest of our branch, so we did not see a copy until after the Attorney received it on 21 April.

Senator ROBERT RAY—Some time after that was it your duty to circulate it to other relevant departments, and, if so, who?

Mr McDonald—Yes. We handed copies personally to each contact in the DPP, the AFP, ASIO, DFAT, Customs, Immigration and, since around that date, AUSTRAC. Within our own department—

Senator ROBERT RAY—Did you mention PM&C in that?

Mr McDonald—No. I do not think we gave PM&C a copy at that stage. I think we gave PM&C a copy a few days later.

Senator ROBERT RAY—You gave them an electronic copy.

Mr McDonald—I would need to check that because I am—

Senator ROBERT RAY—I am basing it on evidence given at previous estimates in another room.

Mr McDonald—If you do not mind I would like to take that on notice.

Senator ROBERT RAY—Okay.

Mr McDonald—I thought only hard copies were handed out.

Senator ROBERT RAY—What is the classification of that report? Is it going to be tabled in parliament in June?

Mr McDonald—Yes. It has to be tabled within 15 sitting days of the Attorney receiving it, which means it will be tabled some time in mid-June. The classification is confidential.

Senator ROBERT RAY—Is the department, or I can ask this of the minister, disappointed that the contents of that report appeared in an article in the *Sydney Morning Herald* of 8 May?

Mr McDonald—Our conclusion was that the contents of the report had not appeared in the article. In fact, the article was indicative that whoever wrote it had not actually read the report. There were many inaccuracies in it. There were about six or seven statements about what was in the report that were not accurate.

Senator ROBERT RAY—I think we could both agree that the reporter had not read the report. I am not in a position to contest what may be in the report et cetera because of other duties I have in this parliament, and I do not intend to. But more often than not leaks of this type are not a matter of actually handing over the document but giving a summary, and sometimes a distorted summary, to the journalist. I think it is hard to argue that there is no basis on fact at all in this article. That is the part that concerns me.

Mr McDonald—If you examine the website for the Sheller review, you will see that it contains transcripts of the consultation hearings that occurred around the country in Sydney, Canberra, Perth and the like. In those consultation hearings Mr Sheller had a style where he would outline some of his preliminary views in quite some detail. Our feeling about this is that it is probably constructed from those transcripts.

Senator ROBERT RAY—Just before you do that—if you read the first paragraph, however, you are basically calling the journalist a liar, because it starts:

A high-powered committee appointed by the Federal Government has recommended ...

It is a major reconstruction to say 'has recommended'.

Mr McDonald—Yes. I would not want to call anyone a liar—

Senator ROBERT RAY—I think you just did, indirectly.

Senator Ellison—It would not be the first time, Madam Chair, that a journalist has written an article which the government—or, indeed, members of the opposition—have taken issue with. The clear point is that we do not believe that this is an accurate article.

Senator ROBERT RAY—Neither do I, and we are not arguing or discussing that, Minister. We are just making sure that the article is not based on a premature disclosure from somewhere within the government.

Senator Ellison—No. I can see where you are coming from.

Senator ROBERT RAY—Mr McDonald has thrown enough doubt on that to suggest to me that maybe this is not one that is not referred to the AFP—because that was one of the logical questions to ask.

Senator Ellison—Exactly.

Senator ROBERT RAY—And we are just going through that. Mr McDonald says, ‘It could’ve been completely reconstructed from other evidence.’ I can see that is right, although the first paragraph makes a very contrary claim. But I interrupted you.

Senator Ellison—We cannot explain what was in the journalist’s mind. All we can say is that we are satisfied that the article was not based on a leak of the report, as far as we can tell from the article—unless the journalist wants to give us some more information, which the journalist has not volunteered to do.

Mr McDonald—There is just one point I was going to make. There was an article on 21 April in the *Financial Review* where they said that Sheller described parts of the terrorism legislation as ‘a dog’s breakfast and constitutionally fragile’. That came directly from one of these statements in the transcripts. It would not be the first time that they trawled through transcripts to get information. That is why we came to this conclusion.

Senator ROBERT RAY—It stands to reason: that is a ridiculous statement! How could the Attorney-General’s Department produce a piece of legislation thus described? It beggars belief!

Mr McDonald—Terrible!

Senator ROBERT RAY—I have one other quick question, and I hope I am not anticipating questions by other members of the committee in this area. It was reported today that the government intends to legislate with regard to legal professional privilege and royal commissions. I have two questions about that. Firstly, can it have full retrospective effect with regard to Mr Cole’s inquiry? Secondly, what is the timetable, if it has been considered, for putting it through the federal parliament; is it intended that it will be put through by the end of the winter recess?

Mr Cornall—In relation to the timetable, it will be as soon as possible. So that is as far as we can take that question. The answer to your other question is that it is intended to have effect from the point of its enactment, and it would assist the Cole inquiry in respect of matters going forward from that point but not have retrospective application.

Senator ROBERT RAY—If, in the past, advice was given in a legal capacity, it was covered by privilege. If it is then, in the future, released for consideration, it would have a degree of retrospective effect. I am not opposing that, by the way; I am just wondering if it has been considered and if that is what the intention is.

Mr Cornall—I think the intention is that from the point of the enactment of the legislation a royal commissioner will be entitled to compel production of those documents.

Senator ROBERT RAY—But that does not really go to the principle I am asking about.

Mr Cornall—It will have effect from the day it is passed. It may well apply to documents and to advice that has been given in the past, but it will not enable the commissioner to—

Senator Ellison—Senator Ray, could you just outline again the point that he was making.

Senator ROBERT RAY—I understand that from the moment the legislation has effect Commissioner Cole can look at those documents.

Mr Cornall—And compel production of them.

Senator ROBERT RAY—And compel production of them. Like you, I certainly support that. But it has the effect that, when the actual advice was given and the documents were drawn up, they were operating under a regime that they thought would protect them. Therefore it has a retrospective effect. We do this in legislation occasionally, but we usually at least think about it.

Mr Cornall—The advice I am receiving, and what I understand to be the case, is that from the time that the enactment comes into operation the royal commissioner will be able to compel production of documents that are in existence and then he will decide whether or not a legal professional privilege should be sustained.

Senator ROBERT RAY—Thank you.

CHAIR—Continuing questions in general, I know there are questions from Senator Ludwig and also Senator Heffernan. Senator Heffernan has other committee commitments. We might try to facilitate that sooner rather than later this morning. But I will start with Senator Ludwig. Senator Heffernan is going to rejoin us with his material as soon as he can.

Senator LUDWIG—When is the Cole commission going to report? Has the date changed or is it still the same?

Mr Cornall—The report date of 30 June is still the official report date, but obviously, with a lot of the activity that is presently going on, we anticipate that that could well be the subject of a request for extension.

Senator LUDWIG—Has there been a request by Commissioner Cole at this point?

Mr Cornall—No, there has not.

Senator LUDWIG—Assuming that there is not a request and the report is handed down on 30 June, is the government going to table at that point or are there other processes in place to table at a later time?

Mr Cornall—Obviously the royal commissioner has to complete his task to his satisfaction and in accordance with his terms of reference. Given the circumstances that presently exist, we anticipate that it will be necessary for there to be an extension to that date. But obviously the government will accept the report from the royal commissioner when he is ready to offer it to the government.

Senator LUDWIG—Is the intention to table it or to make it public at that time?

Mr Cornall—As I understand it, there has been no decision formally taken in that regard at this stage.

Senator LUDWIG—If that changes in the next couple of days or we receive a request, can you let the committee know.

Mr Cornall—Yes.

Senator LUDWIG—More generally, you may be aware that Monash University is holding a conference in Italy. It is called ‘Access to justice: How much is too much’. Are you aware of that conference?

Mr Cornall—No, I am not personally aware of it.

Senator LUDWIG—Do you know if any of your staff are going to that, supported by the department?

Mr Cornall—Not that I am aware of, no.

Senator Ellison—No doubt they would have liked to. Whereabouts in Italy?

Senator LUDWIG—Prato. I will go one step further. Can you check to see whether any of your staff are being supported or are going there at taxpayers' expense. If they are going there personally, I do not want to know.

Mr Cornall—We do not have any history of attending those sorts of conferences in foreign countries.

Senator Ellison—They are pretty busy back here in Australia.

Senator LUDWIG—We will find out, I suspect.

Senator Ellison—The secretary has answered the question.

Senator LUDWIG—I would wait for the answer, myself. Is the Commonwealth providing any funding to that conference?

Mr Cornall—Not that I am aware of.

Senator LUDWIG—I note that there are a number of speakers who are Commonwealth officials, including the chief justices of the federal and family courts, the Solicitor-General, Mr David Bennett, and the Commonwealth Ombudsman. Do they receive funding to go to the conference—or do they take it out of their own budget or deal with it separately?

Mr Cornall—The chief justices' arrangements would be a matter for the courts. With the Ombudsman, it would be a matter for him and the Department of the Prime Minister and Cabinet. The Solicitor-General has some arrangements in his terms of engagement which include a provision for overseas travel and the opportunity to attend overseas conferences as a matter of his specific terms of employment. I do not have all those terms at my fingertips, but there are arrangements which cover some travel for the Solicitor-General.

Senator LUDWIG—It seems that continuing legal education credits for both New South Wales and Victoria are designed to at least provide lawyers with a tax deduction. Do you oversee any of those conferences under the CLE programs?

Mr Cornall—No, they are put in place by the jurisdictional law societies or authorities responsible for the continuing legal education program.

Senator LUDWIG—Do you play any role in regulating the CLE programs?

Mr Cornall—No.

Senator LUDWIG—Have you considered whether you should look at the continuing legal education program from the broad perspective of the Attorney-General's Department to ensure that it is at least oversighted, checked and regulated and that the education provided is appropriate and suitable for the lawyer fraternity more generally?

Mr Cornall—These are clearly a responsibility of the administering authorities in the various jurisdictions. They do have in place processes for accreditation of CLE programs so that they are awarded points and so on that go to meeting their mandatory continuing legal

education obligations. From the Commonwealth's point of view, we do have a considerable interest in the national legal profession program and ensuring that there are as few barriers as possible to a national legal profession. Obviously, continuing legal education is part of that, but in terms of the detail of the administration of programs and the accreditation of programs that is a level that I do not think is appropriate for the Commonwealth to be involved in.

Senator LUDWIG—Are you happy to leave that to the state bodies to regulate?

Mr Cornall—Yes, we are.

Senator LUDWIG—Where does the interface start and stop between a national legal professional approach from the Attorney-General and the approach of the bodies that decide what is and what is not appropriate for continuing legal education? You already have the judicial college. You already have a drive for a national model and a drive for a significant advancement in this area to make sure there are no impediments to practise in the various states. Do you think you should turn your mind to ensuring that the legal education that is provided is appropriate?

Mr Cornall—The first point to make is that the National Judicial College is of course a college for judges, not for practitioners. This is very clearly an area of constitutional responsibility for the state and territory jurisdictions. As in a number of areas, the Attorney-General in particular is very keen to harmonise laws to ensure there is as much consistency as possible in laws which really do need a national application even though the Commonwealth does not have constitutional authority in that area. Our position is that we would like to see the regulations in the legal profession administered in a consistent and harmonised way but, once again, the detail of the approval of CLE programs is really an administrative matter which we would see as appropriately dealt with by the administrators. I am not aware that there is any suggestion that the programs that are being approved are not in fact appropriate programs for continuing legal education accreditation.

Senator LUDWIG—Don't you think you should look at something where a conference has been organised by an Australian university that is going to Prato in Italy, where only four of the 15 speakers are from Europe and the remaining 11 speakers are from Australia or New Zealand? Presumably most of the conference goers are Australian. Don't you find that unusual?

Mr Cornall—I do not have a particular view about it. Obviously there are overseas conferences from time to time, but I think that if you did an analysis of the CLE programs that are accredited throughout Australia for mandatory CLE requirements you would find that the huge bulk of them are in Australia, and that this would be an exception to the rule.

Senator LUDWIG—I do not know whether I share your view about not being concerned about it, but in any event—

Senator Ellison—It is not really an area that comes within the Attorney-General's Department as to where these conferences are held. It is a private entity—the Monash University is running it. It is not really an area that we have anything to do with.

CHAIR—I understand that.

Senator LUDWIG—Clearly we do not, and that seems to be the point. Turning to something you might deal with, the Attorney-General has recently updated the legal services directions which govern public sector outsourcing. In fact, that is in 1.1. I am happy to go to 1.1 but—

CHAIR—I have questions in the general from Senator Nettle as well so I will go to those, and I will try to work out where Senator Heffernan is.

Senator NETTLE—I want to go back to the Sheller report that Senator Ray was asking about, and excuse me if I missed this while I was coming up. Did you say what the date was on which the report had to be tabled in parliament?

Mr Cornall—It is in mid-June, Senator.

Senator NETTLE—Is it the government's intention to table both the report and the response, or just the report?

Mr Cornall—The report.

Senator NETTLE—Is there any requirement for a timetable for the response?

Mr McDonald—The next step is for the Parliamentary Joint Committee on Intelligence and Security to examine the report. They will also provide a copy of the report and they will, as provided under the statute, determine whether they agree with the recommendations of the report. They may want to ask the department or the agencies further questions about it, and then they will, in turn, provide a report, and the government will provide a response to both.

Senator NETTLE—So the joint committee will get the report in mid-May when it is tabled in parliament, and that process will happen from then?

Mr McDonald—Sheller is required under the statute to provide the Attorney-General and the parliamentary joint committee with a copy of the report at the same time, so my expectation is—and my understanding is—that Sheller has already provided the parliamentary joint committee with a copy of the report.

Senator NETTLE—Are they able to start their deliberations prior to it being tabled in parliament?

Mr McDonald—That is a matter for them, although, because the parliamentary joint committee usually has a public consultative approach, I would not be surprised if they left starting it until the report is tabled—but that is a matter for them. I have not been advised by the parliamentary joint committee that they are ready to start looking at it.

Senator NETTLE—Is there any reason why the legislation could not operate as intended if the power to ban organisations was given to a judicial officer rather than to the Attorney-General?

Mr Cornall—Senator, that is a matter of policy for the government to consider and it would be inappropriate for us to respond to that at this point.

Senator NETTLE—Okay, perhaps I can ask the minister. The question was whether the legislation would be able to operate as the government intended if the power to ban organisations was given to a judicial officer rather than to the Attorney-General?

Senator Ellison—It is premature at this stage to answer that. I think we need to look at the review one step at a time. We will have a look at the Sheller report and consider that in the context. But certainly this has been debated in relation to previous legislation in the Senate, as you well know, and if I were to venture a statement at this stage I would be pre-empting the outcome of that report which, I think, would be totally inappropriate. Let us see what the report says and then we will deal with it.

Senator NETTLE—In the government response will it be the intention to respond to any specific recommendations made by the report—whether they are correctly or incorrectly reported in the media reports to date?

Senator Ellison—For a start, we do not believe that there is any report that has appeared in the media which indicates that someone has had access to the report. I think that has been canvassed in some detail in answers to the questions Senator Ray put earlier. In relation to the report, as with any report, why have a report and answer the questions before it is given? The very reason you have a review is to look at what it comes up with. For me to venture some statement at this stage would be inappropriate because we have a review. There will be a report which will be forthcoming, and the government will respond to it.

Senator HEFFERNAN—I put some questions to both Attorney-General's, which has partly responded—I can deal with that at another time during the committee's deliberations—and the AFP. I want to talk about, obviously, the judicial commission prospect. The AFP have responded to a series of documents which the Attorney-General's Department decided they did not want to verify, for their own reasons. The response, generally, from the AFP is as follows:

The documentation provided by Senator Heffernan is still under evaluation by the AFP. The information contained within the report to which Senator Heffernan refers has not been part of any formal AFP investigation ...

I want to come back to that but I will do so under the appropriate area. I want to deal with a much more sensitive issue. In terms of a process for people to gain and have confidence in the judiciary—I am talking about the federal jurisdiction—I want to focus people's minds on this area. A suppression order has been issued in the Coroner's Court in New South Wales pursuant to section 44(2C) of the Coroner's Act 1988. It goes through the order: that no report of the proceedings may be published—'proceedings' includes all aspects of the coronial investigation and the request, specifically including the post-mortem examination, the P79A report, the brief of evidence and other exhibits, the finding and the transcripts of proceedings; that no matter may be published, including the publication of any photographs, pictorial representation that identifies X as a person whose death was self-inflicted; and that no matter may be published, including the publication of any photograph, pictorial representation, that identifies any person as being a relative of that person. Section 44(2C) reads:

To the extent to which an order under subsection (2) prohibits the publication of any matter referred to in subsection (2A), the order continues to have effect after the coroner has made his or her findings, or after the jury has brought in its verdict, but only if the order expressly so provides.

In terms of public confidence in the judiciary and the processes of government, I do not think it is fair that, if I appeared before a particular judge and a day or two later, in a bizarre circumstance and in a bizarre way, this judge died, and there was \$10 million in the swing or

something that was pretty important to me in the swing, I think I would be entitled to know what the state of mind of the judge was when he heard my case a few days earlier. I would like you to respond to that. We are talking about a federal jurisdiction.

Senator Ellison—Can I just clarify this: the Coroner’s Court was a state court but the judge who died was a federal judge?

CHAIR—I am not aware of the details of the suppression order. I have no awareness of what Senator Heffernan is referring to but I am cognisant of the fact that he has begun this discussion by referring to a suppression order imposed in New South Wales and that this committee would be very mindful of the operation of that order in how this discussion progresses.

Senator HEFFERNAN—I appreciate the sensitivity of this but I also appreciate the public interest.

CHAIR—I understand that. I was not disagreeing with the proposition that you were putting forward; I was just saying that in continuing this engagement in the public process of the estimates the committee does need to be mindful of the evidence that you have put before it—that we are talking about a suppression order. But I will leave it to the minister or Mr Cornall to make any further comment.

Mr Cornall—A judge is appointed until the age of 70 and he or she holds office unless he or she is removed on the basis of proven incapacity or misbehaviour, so the answer to your question is that the judge was validly appointed, validly held office and validly discharged his or her duties at all times.

Senator HEFFERNAN—But it remains a fact that, if a judge in the federal jurisdiction, for whatever reason, is compromised—if he becomes incompetent, loses his mind; whatever happens—the only way to deal with it at the present time is to, without a discussion, convene both houses of parliament. I will not say what I would say down in the bush, but I know what it is—

CHAIR—And we know what you would say.

Senator HEFFERNAN—It is an impossible task. I think that the federal judicial process is seriously flawed when it cannot deal with these sorts of matters in any other way, and I can point you to other circumstances which are even more obvious than this. In due course, if someone will verify some documents I have given you all, it will become self-evident that the process is flawed. It is absolutely impossible. If I were a person who appeared before this bloke—and I have had complaints from people who appeared before this bloke—I would want to know what the hell was going on.

Senator Ellison—Madam Chair, I think there are two aspects to this.

Senator HEFFERNAN—Please pull me up if I step over the line.

Senator Ellison—A judge can be competently appointed and be carrying out his or her role as a judge, and in decisions that are made there is always the question of an appeal. If someone appears in a matter and the judge is affected in some way, I would venture that an appeal could be based on that if it were sufficient to interfere with the administration of justice. For instance, if there were evidence that a judge was mentally unfit, falling asleep—I

think that has been alleged—even the subject of criminal influence or in other ways affected, that could always be a ground for review of a judge’s decision.

Senator HEFFERNAN—But with respect, Minister—

CHAIR—Senator, please let the minister conclude.

Senator Ellison—That is one part of it. Then you look at it systemically and ask, where you have behaviour of a judicial officer which is not sufficient to form the basis of an appeal, what to do then. It may not be sufficient for there to be the removal of that judge, but it may be such that it would cause concern, although not sufficiently so as to go through the process that Senator Heffernan has mentioned or to appeal successfully. Then there is the question of what Senator Heffernan is getting at. As I understand it, the government has a protocol under consideration, and I can say that, without using hackneyed terms, active consideration would be applicable here. I think an accurate answer in relation to time and consideration is ‘in the very near future’, with respect to a protocol dealing with judicial behaviour.

Senator HEFFERNAN—But I have had some complaints about court proceedings that have been absolutely turned on precedent’s ear because of a certain set of circumstances underlying something that probably had something to do with this. If people do not really know what the score is, how can they ring the alarm bell? Here is a suppression order. How the hell do people in the street know when to ring the alarm bell? There is no process. I am here struggling not to make a fool of myself or the federal jurisdiction, but this is a pretty serious matter and this is the tip of the iceberg.

Senator Ellison—The government is looking at a process. I think it is fair to say that this has been on the agenda and discussed at this committee before. Questions of judicial behaviour and a commission have been discussed across the country. It is nothing new. I think in this particular instance Senator Heffernan has cited you have a suppression order by a state court as well as a state coroner. We really cannot go behind that decision—

Senator HEFFERNAN—I realise that.

Senator Ellison—because it is a court decision. I think that is half the issue that Senator Heffernan has raised here, the fact that we cannot talk about this matter because of the suppression order. That is not a matter of federal competence, if you like. We cannot do anything with it today, we cannot do anything with it as a government. It is a state court. There are avenues of action, no doubt, that might be taken in the state courts if someone was aggrieved with the decision of suppression. But, as far as the Commonwealth is concerned, we are considering a process—a protocol, as the secretary has said—in relation to how judicial behaviour may be reviewed. I do not think I can put it much stronger than that.

CHAIR—Thank you. Senator Heffernan, I am not sure whether anything can be added in terms of this specific point.

Senator HEFFERNAN—I realise there are some sensitivities, but could I just add that one of the problems I have with all of this stuff is that it is not a full and transparent process. I applaud the government and the Attorney-General’s Department for putting their mind to this because it is obviously a crack in the floorboards in terms of public confidence. I have learned the hard way many times that the courts are about the law and not necessarily the truth. Every

now and then the truth and the law intersect at the court door but not always. Having a secret is one thing; keeping it is what gets people into trouble. I do not think I can say much more than that.

Senator Ellison—For Senator Heffernan’s benefit, the AFP is appearing tomorrow.

Senator LUDWIG—I might deal with the idea of a judicial commission now, if that is appropriate. It seems that you are going to do something shortly, but go back and have a look at what Mr Howard said in answer to a question in the House. He said:

It is therefore time that the parliament, and in particular the government, gave more urgent consideration to a recommendation of the Law Reform Commission—most recently in recommendation 12, where it was recommended that the federal parliament should develop and adopt a protocol governing the receipt and investigation of serious complaints against federal judicial officers. It says:

For these purposes, a ‘serious complaint’ is one which, if made out, warrants consideration by the Parliament of whether to present an address to the Governor-General praying for the removal of the judicial officer in question, pursuant to s 72 of the Constitution.

I have to say, if you were waiting for this government to move, you would want less inertia than is demonstrated here. That was said in 2002. So, if you think it is urgent shortly, then it has been urgent for a while, it seems. If we take that as a short while, it will be another couple of years—or are you saying it might be a little bit over the horizon yet?

Senator Ellison—I think a good deal of discussion on this issue has occurred across Australia. It has not just been at the Commonwealth level; in fact the new Chief Justice in Western Australia has mentioned a judicial commission. He did so in his first address when he was welcomed to the court. I think that, across the board, attorneys-general have been discussing this. It is fair to say that this has had an impetus in recent times. I refer to my earlier remark, that I believe this will be given consideration in the very near future. I cannot take it further than that.

Senator LUDWIG—No. I am just surprised. It has been going on for four years. It looks like this government was hoping it would go away. It certainly has not. The inertia has built up and now you are being pushed into doing something about it. That is what it looks like, I have to say.

Senator Ellison—I think you will find that all the state and territory governments are in a similar position to the extent that this is a vexed question; it always is. We are dealing with the separation of powers, and we have to make sure that we get it right. The independence of the judiciary is a keystone of our whole Australian society as we know it, and we have to be very careful that we get the balance right—and I am sure all senators would agree with that. So if it does take a little time to get it right then so be it. I agree that there has been a recent impetus which has increasingly shone a light on this. I think Senator Heffernan has been at the front of it. But just the remarks that I mentioned earlier by the new Chief Justice in Western Australia indicate that this is an issue across more than one jurisdiction. But it is under active consideration and it is something that will be looked at in the very near future.

Senator LUDWIG—So you are suggesting that if something goes off the boil we should get Senator Heffernan to run it up again! I will keep that in mind!

CHAIR—I will regard that as a comment rather than a question, Senator Ludwig!

Senator Ellison—I can vouch for his talents as an advocate; he is a very strong one.

Senator LUDWIG—Can you tell me how many retirements are expected in the next three years from each of the federal courts, including the High Court, due to judges turning 70?

Mr Cornall—Justice Callinan is the next High Court judge to turn 70, which he will next year. We do not have information for three years, Senator; we have the most imminent retirements.

Ms Leigh—I will get someone to run through the lists and get that information to you.

Senator LUDWIG—For the Federal Court, the Family Court and the Federal Magistrates Court as well, and which cities they are retiring in. Does the government currently have a plan for dealing with the retirements—how those positions will be filled by replacements in those particular cities?

Mr Cornall—We will take all those questions on notice, if that is what you would like us to do.

Senator LUDWIG—Chair, I think we can move out of general questions.

CHAIR—I am advised by my colleagues that that concludes questions in the general area. Before we move to outcome 1, output 1.1, Mr Cornall, I understand the department has a requirement to table a number of corrigenda. It might be appropriate to do that now.

Mr Cornall—I was not sure we have the printed copy. We do have the details.

CHAIR—I have one. One has been given to the committee.

Mr Cornall—That is a typewritten one, isn't it? Yes. It is all right, Senator, we will table this now, as you asked.

CHAIR—It is appropriate for tabling. So you are tabling that?

Mr Cornall—Yes. I just wondered if we had the version from the printers, that is all.

CHAIR—They are appropriate for tabling.

Mr Cornall—That is all I was getting at.

[9.48 am]

CHAIR—Okay. Thank you very much. We will receive those. We will move on to output 1.1. Who is starting in that area? Senator Kirk.

Senator KIRK—I will begin by asking: this financial year, how much has the department spent on outsourced legal services—that is, broken down into barristers and solicitors?

Mr Cornall—The figure for 2004-05 was \$5.696 million, which included GST. Were you asking about the current year to date?

Senator KIRK—Yes. I want to try and compare it with past years.

Mr Cornall—The current year to date figures we do not have here. We will get those figures for you.

Senator KIRK—Are you able to give me the figures that the department has spent on internal legal service for this financial year?

Mr Cornall—No, because we do not have a legal department as part of the divisions of the department. The Office of Legal Services Coordination, headed by Mr Anderson, provides legal advice on a range of areas. Any number of divisions within the department provide advice in their areas of speciality, but most of that is to the Attorney-General or the minister, or in our policy development role and we do not keep that as a legal services figure. Mr Anderson says that we can provide an estimate if you want it, but we do not keep it as a precise figure.

Senator KIRK—That would be helpful.

Mr Alderson—To provide an approximation, we would identify the number of officers in the department involved in providing legal advice and their salary and overheads. Based on that calculation, our estimate for the current financial year is \$0.95 million on internal legal expenditure.

Senator KIRK—Is that for this financial year?

Mr Alderson—Yes, this current one we are in.

Senator KIRK—Have you done any projected expenditure for the next financial year?

Mr Alderson—Only in the sense that it has been relatively stable in recent years, so we would expect that it would approximately the same.

Senator KIRK—I want to now turn to the legal services directions, which I understand have just recently been updated by the department. I understand the Office of Legal Services Coordination is going to now have a more significant role in monitoring the outsourcing of legal services and enforcement of the rules. Is this correct?

Mr Anderson—Under the revised directions, it is not that the department has a more significant role; the primary obligations remain placed upon the chief executives of departments and agencies in terms of how they actually make decisions about expenditure on legal services and how they monitor and report on that. The department does have quite an active outreach program in terms of providing education to departments and agencies to assist them, but it does not have an expanded role under the new legal services directions. It does not have a role in monitoring outsourcing as such. Outsourcing, insourcing or purchasing decisions are a matter for individual agencies. Our role is ensuring they comply with the legal services directions in the usage of legal services.

Senator KIRK—Is the role that of enforcement of the directions?

Mr Anderson—We have always had an enforcement role in the legal services directions since they were first issued in 1999. They have always had the force of law and there has always been the ability of the Attorney to issue a general or a specific direction, if necessary, as a remedy in a particular matter. However, our approach is to focus as much as possible on education and on ensuring that the purview in future is compliant, but if necessary we have required agencies to take certain steps to remedy breaches.

Senator KIRK—What has actually changed from your point of view under these new directions?

Mr Anderson—From our point of view relatively little has changed because we still have the same role we had and, for the most part, the obligations on the chief executives of agencies and departments remain the same. There are some obligations on chief executives such as reporting.

Senator KIRK—There is no change in the role of the Office of Legal Services Coordination under the new directions—is that right?

Mr Anderson—Our role remains essentially the same.

Mr Alderson—If it would be helpful to you and the committee, I have checklist of the new obligations under the 2005 directions. I would be happy to table that with the committee.

Senator KIRK—Thank you. I am trying to understand what the impact of the new directions will be. I am aware of the fact that the ANAO found last year that there had been a cost blow out in legal services. I am wondering whether or not this is the purpose of the new directions—to try to contain that in some way. Perhaps someone can—

Mr Anderson—The ANAO did not actually find that there had been a cost blow out. What they found was that over a period of five years our legal expenditure had increased by approximately 11.7 per cent in real terms, which is a relatively modest amount in the range of demands upon government for legal expenditure, national security and things like that. So they did not find that there had been a blow out. The purpose of the new directions is really just to incorporate learnings since 1999, to address issues that had arisen in the course of administering the directions where a greater degree of clarity was required to assist departments and agencies, and also to address one or two matters that had arisen that had not initially been covered by the directions and where we thought that they should be slightly expanded. The reporting requirement on agencies is a new requirement—that is an example of that, where they have to report their expenditure each year.

Senator KIRK—So is it fair to say that the new directions were not directed—if I can say that—towards trying to contain costs in any way?

Mr Anderson—Senator, as I have said, the obligation is on chief executives—as with almost any other kind of purchasing decision or budgetary resource deployment decision—to ensure that they identify their own needs and that they make appropriate decisions on how to meet those needs, whether from internal or externally sourced legal services. That has not changed. There was no change to the conceptual basis underlying the directions.

Senator KIRK—Was there any research conducted before the new directions were drawn up?

Mr Anderson—A discussion paper was issued, and a number of submissions were received in relation to that discussion paper.

Senator KIRK—Is that discussion paper available for the committee?

Mr Anderson—We could certainly provide it. It is available on our website.

Mr Alderson—In fact, Senator Kirk, we tabled a copy of that at the last estimates hearings in response to a question from Senator Ludwig.

Senator KIRK—I will have to follow that up. Thank you.

CHAIR—That really is in 1.2, isn't it, Mr Cornall?

Mr Cornall—Yes.

Senator LUDWIG—It says in output 1.1 'legal services'. The question then is why are legal services in 1.1 and yet—Mr Karl Alderson, you are the assistant secretary in 1.2, which is Office of Legal Service Coordination. Whereas if you look at 1.2 it says:

Support for the Attorney-General as First Law Officer, advice on constitutional policy, and promotion of Australian legal services internationally.

Do you do it internationally?

Mr Cornall—No, Senator. Output 1.1 is:

Legal services and policy advice on family law, federal courts and tribunals, civil procedure ...

It relates to the rest of the paragraph.

CHAIR—You have to read them together.

Senator LUDWIG—The 'and' should not be taken as a conjunction.

CHAIR—I am not up for a grammar lesson at 9.58, but I am keen to keep things as much in order as I can.

Senator LUDWIG—No, and I would normally. Okay, so I will read the 'and' not as a conjunction but as a legal services point.

CHAIR—I think Senator Fierravanti-Wells may have some questions in 1.1. Could I call for volunteers for 1.1 and we will see how we go.

Mr Cornall—Chair, just before we go on, we did provide the committee with a list of the various issues that are covered under each output and outcome. I can retable that if that is of any assistance to Senator Ludwig because it does itemise legal services directions under output 1.2.

Senator LUDWIG—I was just a bit concerned. I will stay with 1.1 seeing as we have Mr Alderson at the table. It is really Mr Anderson's comment that I seek. I think we went through this last time, but didn't the report find that there was a 23 per cent increase—which in my words is a blow out—between 1999 and 2000 and 2003-04 adjusted for inflation? That was page 14 of the ANAO report. If you do not think that is a significant increase then you and I beg to differ.

Mr Anderson—I draw your attention to page 31 of the report, where the ANAO said:

This yields a real increase in estimated spending from 1997 to 2001-02 of \$26.9 million ... or 11.7 per cent, over the five-year period ...

Senator LUDWIG—Yes, that is over a five-year period. But it was 23 per cent in 1999-2000 and 2003-04. But if you then look at cheapest outsourced lawyer, it cost 69 per cent more than an in-house lawyer. That is on page 61 of that report. It says that the number of breaches of the Attorney-General guidelines on legal services spending have occurred in agencies unbeknown to the Attorney-General's Department. We have had this conversation time and time again. I thought, originally, you were more of a watchdog. It seems to be that if you are you have no bark. What has happened is that, over time, you have started to address

it—and I thank you for that—but it is still the case, when you reflect upon the record, that the record is not particular good in terms of overlooking the legal spend, let alone your own department. But that is my view; clearly you have a different view.

The quality of public service management of legal costs ‘has been variable’—that is what it said—and a number of agencies require ‘significant improvement in these areas’—pages 17 and 18 at paragraph 28. Some agencies do not have ‘sufficient systems in place to monitor their workload and expenditure to enable them to recognise and respond appropriately to change’. That is on page 62 at paragraph 3.44. That is what the report says. I do not want to put a better gloss on it. They are the outcomes. Have you addressed all the recommendations in that report?

Mr Anderson—There are a number of matters to address in your comments. One point to note is that the ANAO certainly concluded that a number of agencies can do better. But they also noted that the government legal services market is not an even market in the sense that there is a very small number of agencies which are very large purchasers and a very large number of agencies which are relatively small purchasers. I understand the ANAO expressed views to the extent that small purchasers needed particular assistance. If you are an infrequent purchaser, you are less likely to have as good an understanding of how to manage legal services expenditure than if you are a frequent purchaser. I am not sure where the page reference is but the ANAO indicated that those larger purchasers generally have matters well in hand.

The fact that there has been an increase over the period is not unsurprising if you consider matters such as royal commissions, defence deployments and national security matters. There was obviously a considerable increase in immigration litigation, which is understood to have actually reduced future costs of legal services for Immigration because of the way in which it has managed its purchasing—particular changes it has put in place. It has been a process of agencies obviously learning and getting better at managing legal services procurement since the market was untied from 1 September 1999.

Senator LUDWIG—One would have thought you would have put that in place before you untied it. That aside, what about all the recommendations in the ANAO report—have they been finalised? Can you report that they have been concluded or actioned?

Mr Anderson—A number of the ones addressed to this department have either been addressed through the revised legal services directions or are being picked up in the department’s own revised legal services purchasing arrangements. We are going through a tender process for the department to commence on 1 July 2006. One of the recommendations which had been outstanding was the recommendation that the ANAO, together with the department, prepare some best practice guidelines to provide assistance to agencies. We understand that the ANAO is getting quite close to completion on those best practice guidelines, but that is a matter better directed to them.

Mr Cornall—I think one observation you made was about the department’s own expenditure. On the figures that I have, the department’s expenditure in 2004-05 was lower than every year between 2004-05 and 1998-99 with the exception of 2001-02.

Mr Alderson—Although Senator Kirk is no longer in the room, in response to her question about the current year's legal expenditure our projected expenditure for this financial year was \$6.3 million. We will provide the committee in written form with precisely where we are up to in the year to date. I can say in general terms we are about on target for that or slightly below.

Senator LUDWIG—How does that sit with the statement that there has been a lot of increase in the need for legal services because of the range of security issues where the AG is the first law officer but also the first security officer? Has it impacted on your department?

Mr Alderson—Many of those responsibilities, for example, rest with Australian Federal Police and Department of Foreign Affairs and Trade. I think Mr Anderson's comments are directed across government where there are many different reasons why different agencies in different years have particular demands in legal expenditure.

Senator LUDWIG—I am happy to try to sort out the program and go back to 1.1.

CHAIR—We will stay with 1.2 for a bit.

Senator FIERRAVANTI-WELLS—Probably to Mr Anderson: I commenced in the Attorney-General's Department in 1984 and had a 20-year career, so I saw legal services provided in the days under the old Deputy Crown Solicitor and then saw the various iterations as we moved to limited user pay and then on to the current system. While the report that Senator Ludwig is talking about focused on recent years—I have not been able to see it—has any work been done in terms of comparisons of the costs of legal services under what used to be, if I can call it, the old Deputy Crown Solicitor that went to the AGS and the current provision of legal services? Have we looked at those sorts of comparisons? When you look at the nature of the work that was done in the eighties and the sort of work which I was doing in the eighties and the work that I then went on to do in the 1990s, it still is legal work—a different sort of legal work but it still is government legal work. Have any such comparisons been done?

Mr Anderson—The best work of reference is the Logan report, which was done in 1997—it is available through our web site. It looked at the arrangements set in place for the purchasing and use of legal services across government and examined the possible cases for a changed model away from tied legal services to untied. It sought to produce details of expenditure under the tied arrangements although it was not entirely possible to do that because, to the extent that there were in-house legal teams, it was very hard to get estimates of that cost.

Senator FIERRAVANTI-WELLS—Although in past years—no doubt going back and certainly in my years—these sorts of expenditures were listed in annual reports. If you go back and have a look, the annual reports of Attorney-General's of previous years gave you an analysis of the cost of legal services because they were doing the legal work.

Mr Anderson—The committee chaired by Mr Logan sought to bring that information together in the report, and they estimated that the cost of legal services was \$197 million. That is the figure that comes to mind, but I could check that.

Senator FIERRAVANTI-WELLS—When you look at the sort of blow-out of the costs of legal services, has consideration been given to that? Yes, of course we have untied the work

and, yes, there are more people competing, but one of the reasons why there has been such a cost blow-out, I think, is because every new firm that does legal work for the Commonwealth has a period of time for upskilling and those sorts of things. It seems to me that competition has brought diversity but it has also brought us an increase in the costs. When we look at that sort of system, has there been a cost-benefit analysis done of the cost-effectiveness of those procedures as opposed to the sort of legal service delivery that we had in the past?

Mr Anderson—There has not been a cost-benefit analysis but the Tongue report is another report that was done in 2003.

Senator FIERRAVANTI-WELLS—Yes, I am aware of that.

Mr Anderson—That concluded that generally agencies and departments were very satisfied with the increased freedom that they had to choose how to meet their legal services needs. That was one of the issues that was canvassed by Mr Logan as well in terms of whether under a tied regime agencies were fully satisfied as to the quality and responsiveness of legal services then available.

Senator FIERRAVANTI-WELLS—I guess the point I am making is about the cost to the Commonwealth under one system. We saw over the years the cost of legal services when Attorney-General's was the provider. Is there now an acceptance that under a user-pays system, if I can put it that way, the cost will always be higher, and that is really what we are dealing with?

Mr Cornall—I think the answer is that the government has a view that market forces will set appropriate prices and competition will keep prices at an appropriate level. That is the view the government has taken which has driven this change, and, while the government is of that view, that is the way it will be. I repeat the remark made by Mr Anderson that we do not accept that there has been a cost blow-out based on an 11.7 per cent increase in fees over five years, particularly when you take into account the fact that in that period of time we had significant royal commission expenditure, which was not the case in the preceding years.

Senator FIERRAVANTI-WELLS—So you are just putting it down to exceptional circumstances rather than a particular continuation of the flow of legal work—

Mr Cornall—Certainly having two major royal commissions will increase your costs. That is a fact. I am saying that costs will increase over time, as they do in every other area, but I am picking up that I do not accept that there has been a cost blow-out.

CHAIR—My understanding, loosely speaking, is that that deals with 1.2. If we want to go back and discuss the courts and tribunals, ADR, administrative law, civil jurisdiction, legal procedure and the family relationship services program, we will go back to 1.1.

Senator LUDWIG—I just wanted to make sure that 1.2 was finalised.

CHAIR—I think we are done.

Senator LUDWIG—Probably not.

CHAIR—I always speak too soon. I am too optimistic.

Senator Ellison—We have finished with 1.2, haven't we?

Senator LUDWIG—No, we have finished with legal services.

CHAIR—Senator Ludwig was just telling me I have been way too optimistic. He is finished with legal services.

Senator Ellison—Can I just understand where we are at—we have started 1.1 and 1.2 and finished neither.

CHAIR—That is a reasonable summary. I am devastated by that.

Senator Ellison—It is impossible to just knock one off and then go on to the next one.

Senator LUDWIG—Shall we do 1.2 and then put 1.1 in reserve?

CHAIR—Okay.

Senator LUDWIG—We will come back to 1.1. That is probably the easiest way of dealing with it. This is the constitutional law area.

Mr Anderson—That is correct.

Senator LUDWIG—Does the department have a role in advising the government on the constitutionality of the recent changes to the workplace relations legislation, Work Choices, and did you advise them of any constitutional problems?

Mr Cornall—The broad answer to your question is that there have been a lot of people involved in providing advice to the government about workplace relations legislation and we have had a role to play in that but we certainly have not been the only participant.

Senator LUDWIG—Can you be a bit more particular? Have you played a role in providing broader advice on the issue of the constitutionality of the corporations power in particular?

Mr Cornall—We have been involved in giving advice to the government about those aspects of that legislation, yes.

Senator LUDWIG—Have you been asked for particular views about what the consequences might be for the corporations power and the use of the corporations power more broadly if the High Court goes in a particular way? For example, personal property securities is an area that has been on the agenda for probably more than four years too, but it has not been addressed.

Mr Cornall—I missed the start of that question. What has not been addressed for four years?

Senator LUDWIG—Personal property securities. I think there have been a couple of recent suggestions by the Attorney-General about looking at that again—and those on this side of the table will remember that that matter harks back four or five years now.

Mr Cornall—There has recently been the publication of a paper by the Standing Committee of Attorneys-General on the harmonisation of personal securities law. The Attorney has been one of the major movers for that process to be pushed forward by SCAG. We recently visited New Zealand. One of the purposes of our visit was to look at the New Zealand personal security arrangement to see what we could learn from that with a view to improving the situation in Australia. That area is under active consideration at the present

time, but it does require the participation of all the states and territories because the great bulk of the relevant law is law within the states and territories constitutional jurisdiction.

Senator LUDWIG—Do I need Senator Heffernan again?

Mr Cornall—No, I do not think so. The discussion paper is out for discussion and people are considering the matter.

Senator Ellison—The Commonwealth has pushed vigorously at two meetings of the Standing Committee of Attorneys-General that I have been present at, and the Attorney has been leading the fray on that. Certainly, it is an issue you have deal with across the board. It is not something that is entirely within our gift. As you know, the federal system, although very good, can work a bit slowly on occasions.

Senator LUDWIG—I guess that is the point of the question. If the High Court rules in a particular way—and you might have already given advice on that—the Attorney-General has indicated that he might not persist with trying to harmonise but might seek to legislate if the corporations power becomes available more broadly. Have you given advice to the Attorney-General on those issues?

Mr Cornall—We give advice to the Attorney and to the minister on a whole range of legal issues, and obviously the content of that advice is not appropriate to be discussed in this committee. But I think you can see from what the Attorney has done so far that he used whatever opportunities he had to push state attorneys-general and the attorneys from the territories to harmonise defamation law. That was a successful project that he undertook. He has been a great supporter of the national legal profession project, which was started by Daryl Williams when he was Attorney, and that also has moved forward a very considerable distance. He is also looking at that approach at harmonisation with personal securities. I think that is the preferred course of action he would take in the matter.

Senator LUDWIG—The *Australian Financial Review*, Tuesday, 24 January 2006, under the heading ‘Ruddock threat to grab state powers’ states:

Federal Attorney-General Philip Ruddock has warned state governments that they should agree to more uniform national laws or face further unilateral action by the commonwealth to make state laws redundant.

Following the passage of the Howard government’s workplace relations changes ...

And states further:

‘Over time, we might find as the commonwealth powers—particularly corporations power—[are] tested that there might be a wider range in which the commonwealth is able to move’, Mr Ruddock said.

‘In the end you don’t necessarily achieve the rational outcome—

He seems to have gone into economics—

by jawboning. Obviously, I will be alive to whatever powers the commonwealth has if it will help focus people’s attention on effective reform.’

The article goes on, but I am sure you have read it. Have you given advice or has Mr Ruddock sought advice about the implications of the Workchoices legislation for the corporations power in those areas that I have referred to: personal property securities, defamation and other matters, including partnership laws and conveyancing? If a wider interpretation is given to the

Constitution, particularly relating to corporations, will that be used or will that become available to be used?

Senator Ellison—That is a question of policy to the extent that Senator Ludwig has asked if a court decision goes one way or another what will the government do.

Senator LUDWIG—No, I asked have you got advice about that.

Senator Ellison—Certainly the department gives advice to the Attorney-General. No doubt it has given advice on occasions about the corporations power and other constitutional aspects for a whole range of matters. But, I think if you persist with the questioning of the secretary, it really is aimed at getting an answer of, ‘We did advise on the subject and that is the possible outcome of the High Court’s decision and the effect on the corporations power.’ I do not think it is appropriate that officials go to that extent with the advice because that is getting down into the subject matter of the advice. I think that it is fair to say that any decision as to what the government would do post the High Court decision would be based on the decision. You do not know what the decision will bring up. In the reason for judgment, there could be all sorts of things that we have to address. So I really do not think we can take it much further than that. There is a report of the Attorney’s comments. I will take it on notice, provide it to the Attorney and see if the Attorney wants to or can add anything to that. I will take that one on notice but I do not think we can pursue this much further because it really is starting to drill into the substance.

Senator LUDWIG—As I said right at the beginning, I am not seeking the advice. I have asked for it before and I know you will not give it to me so I am not going to ask for that. But I did and can ask for whether you have provided advice on that issue. I think that is permissible; it is certainly within the range of the advice that you can provide to say whether you have or you have not. It is entirely reasonable to ask, on a particular prospect or outcome of a case, if it goes one way of the other, whether the Attorney-General has asked for advice. The question is specific. It does not go too broadly. It is narrowcast.

Mr Cornall—I am not sure that that is my understanding of that. The mere fact that the Attorney or the minister might have asked for advice on something or that we had given advice in itself might be quite sensitive information in terms of development of policy or matters before cabinet or something of that nature. So I am not entirely sure that assertion is a correct statement of the position.

Senator LUDWIG—It was worth a try, though.

Senator Ellison—I can see what Senator Ludwig is saying. Normally, we would say to the question of did the department give advice on this: ‘Yes, they did, but the subject matter or substance we cannot talk about.’ But this is talking about something which may or may not happen in the future. I think the secretary is quite right to indicate that that could be more sensitive. It could indicate where the government is going or might go with its policy options. That is the cause for concern there, and that is the reason we believe that answering that could set a lot of hares running, as we know they do.

CHAIR—I think that might be Senator Ludwig’s plan, Minister.

Senator Ellison—Exactly.

CHAIR—Far be it for me to engage in conjecture.

Senator LUDWIG—So I can conclude yes and that you are not going to tell me. That will set it. And no response was received—there is my answer.

Senator Ellison—I do not think you should take that as acquiescence.

CHAIR—I believe the minister said that there was nothing further to say.

Senator LUDWIG—Is the censorship issue now in 1.2 or 1.3? It has been brought back into the department.

Mr Cornall—It is in Mr Anderson's division.

Mr Anderson—It is in 1.2 and it has been previously as well, because the department has had a joint policy role in classification for some years.

Senator LUDWIG—So I should ask it here. The broader question is: what is happening there? What is happening to the independence of the section? Has that now been drawn into the Attorney-General's web?

Mr Cornall—The independence of the Classification Board and the Classification Review Board will not be affected at all. They will remain independent bodies with an independent secretariat and they will perform their tasks independently. The policy, administrative and support roles will be undertaken by departmental officers.

Mr Anderson—There has also been no change to the fact that it is a cooperative scheme with states and territories. Any policy changes to classification have to be agreed with all jurisdictions.

Senator LUDWIG—Where will the policy advice come from if there is not a separate statutory office with its own staff? Where will the policy direction and the strategic work come from that is usually undertaken by a separate statutory body or a separate section—those types of things where you have the confidence of your staff to provide research and to go and seek direction under your leadership?

Mr Anderson—I commented that it is a cooperative scheme. In each of the state and territory jurisdictions the policy advice is provided from a department of the state or territory, and that is going to be the case for the Commonwealth as well. The Australian government will have its source of policy advice within the Attorney-General's Department.

Senator LUDWIG—But that source of policy advice, how will it then be provided? Will it be provided through the department?

Mr Anderson—The classification board and review board themselves have never actually had a role in the formulation of policy. That has always been a matter for governments and that will remain a matter for governments. So, while the staff of OFLC who have previously had an involvement in the development of policy and the carrying out of research will now be Attorney-General's Department officers, there is no actual difference in how the policy work, in itself, will be carried out and the advice given to government.

Senator LUDWIG—We have had a separate Office of Film and Literature Classification. Which functions, then, will be drawn back into the department?

Mr Anderson—From 1 July 2006 the policy function will be entirely within the department.

Senator LUDWIG—All right, just stop there. We are moving the policy department, which was in the Office of Film and Literature Classification—I am just trying to understand your earlier comments—to the department. When it sat in the office, whose policy did it reflect? It seems to be that you then say that it reflects the government's policy. But if the Office of Film and Literature Classification is an office that has a policy unit, and that policy unit is being shifted back into the department, does it not then become the department's policy?

Mr Anderson—Since 2002 the department and the Office of Film and Literature Classification have actually shared policy responsibility for classification, so we have worked together on all policy matters in any event, and jointly settled advice to government. But, yes, that policy function will now be entirely within the department.

Senator LUDWIG—So you no longer have to work jointly with them?

Mr Anderson—It is going to be very important to—

Senator LUDWIG—Perhaps you could answer that question—

Mr Anderson—I was going to say, Senator, not in the same way. We will still need to actually make sure that policy is appropriately informed by consideration of operational classification matters.

Senator LUDWIG—Yes, so you will not be working jointly with them to develop policy. You will develop policy within the policy section of the A-G's department and then you will consult with the board, will you?

Mr Anderson—Yes, there will certainly be consultation—and with industry and others, as is commonly the case.

Senator LUDWIG—Then, effectively, there will be a classification board and a review board without a policy section?

Mr Anderson—That is correct. The office itself will cease to exist as an FMA agency in the longer-term.

Senator LUDWIG—Won't those two bodies then lose an important source of policy formulation to inform themselves on these issues?

Mr Anderson—They do not actually formulate policy for themselves. They apply the classification code in making classification decisions. The policy formulation is quite separate to the actual Classification Board, which has statutory appointees, and the Classification Review Board, which similarly has statutory appointees.

Senator LUDWIG—What did the policy section do in the office of film and literature review board anyway?

Mr Anderson—They developed policy considerations for government—not for the boards, because the boards do not deal with policy.

Senator LUDWIG—Was it independent of government in that process?

Mr Anderson—It was an agency under the FMA Act and it worked jointly with the department on policy since 2002.

Senator LUDWIG—It is not just for the government—it is also for the council of ministers too, isn't it?

Mr Anderson—Policy is developed across the jurisdictions that were part of the cooperative scheme. There is a SCAG censorship meeting that occurs regularly and there are meetings of classification officials.

Senator LUDWIG—The short answer is yes.

Mr Anderson—Those meetings will continue.

Senator LUDWIG—But the policy will not be developed in the office as a separate and distinct entity from the government; it will be now developed within the government. Perhaps I do not see your point. Doesn't it move from an independent area of policy advice, which provided policy advice to the council of ministers, to a government department as an internal policy advice mechanism?

Mr Anderson—OFLC was a government agency that operated as part of government. Yes, it had discussions with state and territory policy areas. We have had similar discussions, and those discussions will continue.

Senator LUDWIG—So won't we lose that as a separate source of policy advice?

Mr Anderson—The function of OFLC was to develop policy for the Australian government.

Senator LUDWIG—That is right, so that will not be in that area. Where will it be?

Mr Anderson—It will be within the department, so there is no change in the sense that there is still within the Australian government a source of policy advice on classification that will work with other jurisdictions on classification policy.

Senator LUDWIG—But it will not be separate from the department.

Mr Anderson—It will not be separate from the department—that is correct.

Senator LUDWIG—You do not think it will diminish the process of making censorship policy?

Mr Anderson—I do not believe so.

Senator LUDWIG—So the day-to-day contact will be within the policy section of AGs, and it will be reporting to who?

Mr Anderson—It will be within my division.

Senator LUDWIG—So it will be reporting to you within your division. The policy division which exists now, does it report to you?

Mr Anderson—Yes, it does.

Senator LUDWIG—In what way?

Mr Anderson—The Attorney-General's shared policy role is within my division currently; the OFLC policy people do not report to me—just to make that clear.

Senator LUDWIG—No.

Mr Anderson—We jointly agree policy if any proposal is being developed, considered or put up to government.

Senator LUDWIG—We might have exhausted that policy. The change from the director of the Classification Board to where they are now part of the secretariat, their support, will come from who? You?

Mr Anderson—We are still working through the exact detail, but the proposal is that the policy area come to the department from 1 July 2006. All the public service staff of the OFLC will become staff of the Attorney-General's Department from 1 July 2006, but the other functions will come under the control of the department by 1 July 2007. The exact details of how the secretariat is going to work to support the boards is something that we are still progressing with the executive team of the OFLC.

Senator LUDWIG—So is there an outline of how it is going to be divided up? Issues like secretariat, support, research, speech writing functions—all those sorts of matters—where will they now reside?

Mr Anderson—That is exactly the sort of detail we are currently progressing with the executive management of OFLC.

Senator LUDWIG—Where do you think they are going to reside? Is there a view that the AG has of where they should reside?

Mr Cornall—When you say reside, do you mean physically where they are based or whether they are in the department or with the Classification Board?

Senator LUDWIG—All right, I will be specific: in terms of reside I mean who will employ them? Will they be employed directly by and responsible to Mr Anderson as direct line employees, who will then have to go through the OFLC, the board or Mr Anderson for work? In other words: do you have someone available to do this? Yes or no. Mr Anderson will have to oversee those staff, and so it changes the nature of employment. No longer does the OFLC have a secretariat, research or speech writers who they can direct and control. Mr Anderson will be in control of those employees and can say, 'These resources will be available.' 'These resources will not be available to you.' 'Yes, we can help you with that.' 'No, we can't.' It changes the relationship significantly in my mind. I do not know whether you share that but I am curious to find out.

Mr Cornall—It does. At the present time, we have an independent FMA Act agency with its own budget, its own management structure, its own head and its own responsibilities and accountability. That will change. The staff will become public servants. They will become members of the department. Outside of that will basically be the Classification Board and the Classification Review Board. Yes, that is a change. We are presently working through the allocation of staff to particular responsibilities, but they will be public servants in the department.

Senator LUDWIG—When you look at the independence and the ability to provide direction to their staff, for example, research direction, it appears that all of that will be lost.

Mr Cornall—The point is that the Classification Review Board and the Classification Board really do not need staff. They perform a classification function. They make decisions on material submitted to them for classification. In terms of the administration function, that will become a departmental function. As Mr Anderson has pointed out, we have shared the policy advice role with the OFLC officers for several years now and that will simply become a departmental function.

Senator LUDWIG—Now there are two sources of policy advice; post 1 July there will be one. The public role of the director is to explain classification decisions to the community. Who will support that function? That will have to be directed to Mr Anderson for secretarial support, speech writing, policy direction and all of those matters. That function is significantly altered as well.

Mr Anderson—The director will still actually need to be able to explain to the public the rationale behind particular classification decisions as he is the convenor for the review board. They will clearly need a range of support from the secretariat. I cannot say much more other than we are working through exactly what support they are going to require. It is not intended to in any way impinge upon the effectiveness of the Classification Board or the Classification Review Board in making decisions and in providing appropriate public explanation of those decisions.

Senator LUDWIG—The latter you have not adequately explained. The director will need support through direct staff to provide that public face to explain things to the community. If secretariat support resides in the department under your control, then it is a significant difference from what currently exists where he can, or she can in future, exercise their ability to task their employees as a separate body. If you cannot see the difference, I think everybody else can.

Mr Anderson—The mere fact that the staff are employed by the department does not actually preclude the director from being able to direct or control them. That is a question that we are working through currently with the executive team of OFLC in terms of what the needs of the boards actually are.

Senator LUDWIG—But they will not be able to employ the staff directly or decide on the skill sets that they require. They will be all decisions that you will make.

Mr Anderson—There is scope for delegations of powers to the director. That is a matter that we are still considering. I cannot actually say anything further than that.

Senator LUDWIG—When will you finalise that consideration?

Mr Anderson—We are working jointly with OFLC. The timetable is that those functions do not have to be under the control of the department until 1 July 2007. It might happen sooner than that; it depends. We do not have to do that immediately. We are working carefully through it with OFLC.

Senator LUDWIG—Was there any public consultation or consultation with the OFLC about the changes before they were announced?

Mr Anderson—No, there was not.

Senator LUDWIG—Did they read it in the paper?

Mr Anderson—Immediately following the decision there was contact with the director and very shortly after that, Mr Govey, deputy secretary of the department, did attend the OFLC and informed the staff. It has been an ongoing process.

Senator LUDWIG—Forgive me for not quite understanding this. If it is a usual change where you are rearranging the department or absorbing a section or an independent body into the A-G, I would have thought that there would at least be a consultative process, perhaps even some public consultation. But, rather, it has been done in a high-handed way: ‘You’re no longer going to have an independent body. You are going to be absorbed into the department. We’ll work it out later because the decision has been made.’ It seems to me that this has not been done in the way you have operated in the past. It seems to be a significant break from that process, unless you tell me that I am mistaken and that this is how you do it.

Mr Cornall—We have not had a lot of occasion for this to occur in the past. The occasion that comes to mind is when Emergency Management Australia was moved to this department from the Department of Defence. That was done as part of the Administrative Arrangements Order. I do not believe there was any consultation before that was announced, when the AAOs came out after the 2001 election.

Similarly, after the last election, there were a number of changes in the AAOs with the result that, for example, I think the Oceans Office was absorbed back into the Department of the Environment and Heritage—I might be wrong about the detail. I think there were a couple of other small independent offices that were moved back into departments. So I think there are precedents for it, which the government has implemented in recent years.

Senator LUDWIG—Are you saying it is par for the course?

Mr Cornall—No. I am saying it has happened in the past. It is not an unusual thing to occur if the government makes a decision to restructure some of the administrative arrangements. It is also in the context of the Uhrig review, where the government is looking to reduce the number of small bodies that it has and to move them back where it can to departments for more effective administration.

Senator LUDWIG—So you do not think it was administered effectively?

Mr Cornall—I am just commenting that it is in the context of the Uhrig review, which has looked at reducing the number of small agencies and moving them back where possible to departments.

Senator LUDWIG—What I am asking, then, is what decision was made—in other words, what motivated the decision to move it back? Was it simply motivated by trying to rationalise your resources or trying to save money? And, in those cases, why wouldn’t you have consulted first or at least advised them that that was the course you were going to take? Otherwise I am left with it being just vindictiveness.

Senator Ellison—No, it was not. It was part of the Uhrig review, as the secretary said. The process is another matter, but the decision flowed from the Uhrig review. It was not that the government had initially set out to put this in place. There was a review, broad ranging. As the secretary said, that Uhrig review was looking to minimise the number of small agencies that had grown up over time. I think that that is a very worthwhile exercise.

Senator LUDWIG—Yes, but the Uhrig review recommended consultation. I do not know how you rely on that. You did not consult; you just did it.

Senator Ellison—The process, as I said, is another issue. You said that the reason for it was vindictiveness. The reason for it came from Uhrig.

Senator LUDWIG—You said it was the Uhrig review.

Senator Ellison—We do not have to take everything on board Uhrig says, in any event.

Senator LUDWIG—It recommended consultation and you did not.

Senator Ellison—I do not see it is a problem at all.

CHAIR—I am not sure we are advancing the position at this point, Senator Ludwig.

Senator LUDWIG—Thank you, Chair. Given that it has the potential to affect the national classification scheme, were the states consulted?

Mr Anderson—We do not actually believe that it does affect the national classification scheme. It is simply a question of the administration of the Commonwealth agency. In terms of the requirements to consult with the states and territories, matters that go to the classification scheme—changes in policy, changes to the guidelines and things like that—are matters that are raised with states and territories and will continue to be raised with states and territories.

Senator LUDWIG—So will you check back now that you have made the decision to see whether or not the states are happy with the outcome or have you done that yet?

Mr Anderson—There has been discussion at SCAG between ministers.

Senator LUDWIG—What are the states' views about these changes? Have they made a comment about whether they are happy with the changes, happy with the outcome?

Mr Anderson—My understanding is that they accept that it is mirroring the situation with their own arrangements for policy within their own jurisdictions where they each have policy within a department.

Senator LUDWIG—Will you go back and talk to them about the secretariat arrangements when you finalise those to obtain their view?

Mr Anderson—Only if it is a matter which goes to the classification scheme, rather than simply a matter about the internal administration of the Commonwealth part of it.

Senator Ellison—Madam Chair, can I inquire as to whether we have reached any finality yet in relation to any of the two outputs we are looking at: 1.1 and 1.2?

Senator LUDWIG—We have nearly reached the finality of 1.2.

[10.45 am]

CHAIR—Minister, you will be pleased to know we have concluded 1.2 and we will now go to output 1.1.

Senator LUDWIG—I think the last time we were here I spoke to you about NADRAC's publications and report list on their website. It did not include a release date. I thank you. It seems that the department has taken that on board and made some changes, and that is

appreciated. I might deal with the family relationship centres as a general area. Is everything on track for the first 15 centres to open on 1 July 2006?

Mr Cornall—July 3.

Senator LUDWIG—July 3.

Ms Leigh—Which is a Monday.

Mr Cornall—July 3 is a Monday.

Senator LUDWIG—It is a Monday.

Ms Pidgeon—As the secretary just said, we are aiming for Monday, 3 July because we did not see much point in opening on a Saturday. Yes, we are on track. The selections have been made of service providers, and they are now recruiting staff and setting up premises. In some cases, they may have interim premises while they get long-term premises fitted out but all 15 will be operational on 3 July.

Senator LUDWIG—All of them will be operational.

Ms Pidgeon—That is our understanding at this stage, yes.

Senator LUDWIG—At this stage; do you think it will change?

Ms Pidgeon—I am not expecting it to change. Of course, they are independent organisations that are setting them up. I cannot guarantee it, but we are certainly expecting them to be open and providing services on that date.

Senator LUDWIG—Have all 15 contracts been signed?

Ms Pidgeon—Not all yet. Some have been signed; some are about to be signed.

Senator LUDWIG—They have not been signed! Which ones have not been signed?

Ms Pidgeon—I cannot tell you exactly because FaCSIA looks after the negotiation of the funding agreements. The last I heard last week was that two had been signed but I am not sure how many have been signed since that advice.

Senator LUDWIG—We are in late May and the contracts have not been signed.

Ms Pidgeon—In some cases.

Senator LUDWIG—Can anyone do any work without a contract?

Ms Pidgeon—They are establishing their premises and hiring staff.

Senator LUDWIG—Can they open before they sign a contract?

Ms Pidgeon—I should clarify: they are funding agreements rather than contracts but they are all expected to be finalised by the end of the month, so the end of May.

Senator LUDWIG—Which ones haven't been signed?

Ms Pidgeon—I do not have that information. FaCSIA does the negotiations and they are being signed as we sit here, I think. I can provide you with information about which ones have been signed to date by the end of today.

Senator LUDWIG—That would be helpful. Is there any reason to suppose that the other contracts will not be signed? When do you think all of them will be finally signed? Will they be signed before—

Ms Pidgeon—We are expecting them to be signed in the next few days and certainly by the end of month.

Senator LUDWIG—Can you let the committee know if that does not occur by the time the answers are to be returned to the committee—if they have not been signed?

Ms Pidgeon—We can do that.

Senator LUDWIG—I think that is after July, so it might prove interesting if they have not signed the contract and they are supposed to open. Do you know when the last contract was signed?

Ms Pidgeon—As I said, FaCSIA does the actual negotiation of the funding agreements. Because they are being negotiated at the moment, we do not have the information about when each one signs. But I can find out for you.

Senator LUDWIG—What is your role?

Ms Pidgeon—We have a policy and funding role. The FaCSIA responsibility is to actually administer the funding agreements and to undertake things like the data collection and so on and to pay the money. We provide funding to FaCSIA to pay on to the services.

Senator LUDWIG—Are you concerned that the contracts have not been signed and finalised when you have a 3 July start-up date?

Ms Pidgeon—We are not concerned because the organisations are all working to that date. It is just, in effect, a formality to have the actual funding agreement signed.

Senator LUDWIG—They have no money yet—is that right?

Ms Pidgeon—That is correct.

Senator LUDWIG—From the date of the signing of the contract, do they get a sum of money?

Ms Pidgeon—They get establishment funding once it is signed.

Senator LUDWIG—Up to that point of signing, there are a number of centres working away without funding. How do they employ staff and how do they complete the fit out for the officers?

Ms Pidgeon—They are all currently recruiting staff. I would be surprised if they had anybody who has already started. Some have already signed and some are about to sign. Nobody is saying that it is a problem.

Senator LUDWIG—As far as you are aware.

Ms Pidgeon—Yes, as far as I am aware.

Senator LUDWIG—Have you heard whether anyone is experiencing any difficulty? To hire staff, you need someone to head the organisation, at least. You cannot hire without that, I imagine.

Ms Pidgeon—These are not brand new organisations without existing infrastructure. Whether or not they were previously funded under our program, they are all existing organisations that are setting these up, so they have the capacity to do things like recruitment.

Senator LUDWIG—If the contract has not been signed or the funding agreement has not been signed, although they expect it to be signed there is no certainty that it will be signed.

Ms Pidgeon—I do not think anybody is in any doubt at this stage, because it is only a matter of exchanging the final versions of the documents at this stage. I understand that the signing is imminent in all cases. It will all happen very shortly.

Senator LUDWIG—I hope I never have to do conveyancing with you, Ms Pidgeon.

CHAIR—I don't think that is necessary, Senator.

Senator LUDWIG—What about if something happens? A range of things can happen. What contingency plans have you put in place if an organisation does not sign or cannot sign or if you find that something happens between now and the signing date that precludes them from signing or indicates to you that they should not sign or that you should withdraw the offer? What if they have spent money on the basis that it is going to be signed? I do not know about the A-G more generally but, given the number of lawyers in your department, I would expect a lot more certainty than a kiss and a promise.

Ms Pidgeon—Some of these questions are hypothetical.

Senator LUDWIG—These agreements are not signed.

Ms Pidgeon—We are talking about organisations that are on the verge of signing agreements or who have already signed them and are doing what they need to do to be open by 3 July. I do not really want to get into hypotheticals.

Senator LUDWIG—Where is the delay? Where are the funding agreements at the moment?

Ms Pidgeon—This is very much FaCSIA's role. Could I ask that those questions be asked of FaCSIA?

Senator Ellison—I think that is appropriate. We will take them on notice. I am not sure when that committee is sitting.

CHAIR—Next week, I think, Minister.

Senator LUDWIG—I will probably attend that hearing next week and ask them a similar question. If you cannot answer it, I am happy for you to say: 'I cannot answer it. You should direct that question to FaCSIA.' And I will then move on to my next question. What I do not want to happen is to not ask you here and find when I ask FaCSIA next week that they say, 'You should have asked the Attorney-General's Department that question.' I am caught then.

Ms Pidgeon—I understand that.

Senator LUDWIG—Unfortunately, the problem will be that I will ask you the question and if you cannot answer it then that is your answer, and I am happy to accept that.

Senator Ellison—We will watch out and if it is the case that FaCSIA says, 'Go back to Attorney-General's,' then please let us know. We will take it on notice and sort it out between

the two departments because I understand what Senator Ludwig is saying. We are not trying to obstruct things here—we are trying to be accommodating and we will make sure that that does not happen, but we will need know what FaCSIA's comments are next week if there is an issue.

CHAIR—Thanks, Minister.

Senator LUDWIG—What also led me astray, perhaps, is that in question time Mr Brough indicated that it was Mr Ruddock's responsibility.

Ms Pidgeon—The Attorney-General is responsible for the policy, the selection and the funding of the family relationship centres. The actual negotiation of the funding agreement and any time frames associated with that is FaCSIA's responsibility—the administering of those funding agreements, including the negotiation of them. The actual responsibility for the policy, and setting up the centres in a policy and funding sense, is certainly with the Attorney-General.

Senator LUDWIG—Where does the money come from? Who signs?

Ms Pidgeon—It is from the Attorney-General's appropriation and we provide the funding to FaCSIA to pay out to the centres.

Senator LUDWIG—Who signs the funding agreement?

Ms Pidgeon—FaCSIA.

Senator LUDWIG—Does the Attorney-General have a role in those funding agreements—to either tick off on them, check them or provide an additional signature?

Ms Pidgeon—Not at this stage of the process. When we were developing the family relationships centres policy and how that would be reflected in the funding agreement we were certainly involved—the Attorney and his office—in the draft funding agreements that became public last year as part of the selection process. But at this point, when we are actually finalising the funding agreements, they are between FaCSIA and the organisations, and they have not involved the Attorney-General.

Senator LUDWIG—So you have not played any role in the negotiation of the funding agreements that all?

Ms Pidgeon—We have provided advice to FaCSIA on particular points that we considered were important for them to cover in negotiations, but it has been FaCSIA's state and territory based officers that have done the actual negotiations.

Senator LUDWIG—What advice have you provided to FaCSIA then?

Ms Pidgeon—In terms of which are the particular emphases that we want to make sure are covered in relation to those negotiations. We, of course, were the department that selected and provided advice to the Attorney-General on the selection of the organisations so, where there were things which we particularly wanted covered in the funding negotiations, we advised FaCSIA of that.

Senator LUDWIG—Have you expressed any concern to FaCSIA about the time it has taken for them to get the funding agreements in place?

Ms Pidgeon—No, we have not.

Senator LUDWIG—So you think that it is an ordinary course to have them signed this late in the process? Is this something you would normally do?

Ms Pidgeon—Not normally. Normally that is FaCSIA's responsibility and, because none of the organisations have come to us saying it is too late or whatever, there has not been a need for us to make that sort of comment to FaCSIA.

Senator LUDWIG—They are the Attorney-General's responsibility, aren't they?

Ms Pidgeon—Yes.

Senator LUDWIG— Who gives the Attorney-General an assurance that the family relationship centres will be open by Monday, 3 July?

Ms Pidgeon—We have met with all of the organisations. The funding agreements' signing has not meant that we could not do other things. We have met with all of the organisations and talked to them about what their plans are, and we are given updates as those plans develop in terms of them being able to open. As I said, we are aware that in some cases there will be interim arrangements where they cannot get their fit out done in time for various reasons, but otherwise there has not been any indication that we will not be able to have them open on time.

Senator LUDWIG—None of that concerns you?

Ms Pidgeon—In what sense?

Senator LUDWIG—That you have had from 4 April to 3 July to get the A-G's family relationship centres up and running and open. This is heralded as an important step in family relationships. That is the time line that has been provided. You hope they will be open by 3 July. The time line seems short and unrealistic to me. You are the administrator of it, I take it. You say you are happy and that you have no concerns.

Ms Pidgeon—The organisations have indicated that they can meet that time frame.

Senator LUDWIG—And you are satisfied with that. Are you satisfied with the arrangements that have been put in place?

Ms Pidgeon—We are satisfied with what we have been told to date, that is right. In some cases, as I said, there will be interim premises. For example, in Townsville, there is a shortage of tradesmen to do fit-out because of Cyclone Larry. But they will be opening in interim premises. So there are some issues like that in relation to how complete the premises will be, particularly in Townsville, but that is not something that will stop services being available.

Senator LUDWIG—Do you know whether or not it is true that the Townsville office was advised to take whatever action was necessary even if it means opening in a tent? Do you know whether that statement was made?

Ms Pidgeon—I think that is exaggerating. We met with all the service providers and we certainly did not talk about a tent.

Senator LUDWIG—So that statement was never made?

Ms Pidgeon—Not by our department.

Senator LUDWIG—By anyone around the table?

Ms Pidgeon—I am certainly not aware of any such statement.

CHAIR—I think Ms Pidgeon can respond on behalf of the department but in relation to ‘anyone around the table’—

Senator LUDWIG—There is FaCSIA.

CHAIR—It is not Ms Pidgeon’s responsibility to respond on behalf of FaCSIA.

Senator LUDWIG—She might have heard it.

Ms Pidgeon—I did not hear it.

Senator LUDWIG—In which case you would be concerned—

CHAIR—Ms Pidgeon has indicated her response.

Senator LUDWIG—That is the point. I ended at that point. She said no. Thank you very much.

CHAIR—You did not, actually, but go on.

Senator LUDWIG—Will they provide the full range of services? Have you asked that question?

Ms Pidgeon—From 3 July?

Senator LUDWIG—Yes.

Ms Pidgeon—We would expect them to be able to do that.

Senator LUDWIG—Have you asked that question?

Ms Pidgeon—We asked them to tell us if they will not be able to.

Senator LUDWIG—And have they told you that they will not be able to yet?

Ms Pidgeon—We have not been told that, no.

Senator LUDWIG—What about Townsville? Has it indicated whether it will be able to provide a full range of services?

Ms Pidgeon—It has not told us otherwise.

Senator LUDWIG—Have you inquired?

Ms Pidgeon—They are talking about premises rather than services.

Senator LUDWIG—Have you inquired, given the circumstances that we now face, which is that you have a very short time frame from 4 April to 3 July? You have indications that some contracts for funding have not been signed to date. It has also been indicated that there are some who might have temporary accommodation rather than more permanent accommodation. And you have not asked whether or not the full services will be provided by that date?

Ms Pidgeon—We made it clear that the services are to be available from 3 July and that the organisations are to let us know otherwise. As the funding negotiations have been going on, we have been hearing when they are finalised. As I said, I will provide you with

information up to date as of today about how many are. At this stage we are not aware of any centres that are not going to have full services.

Senator LUDWIG—What interim arrangements have been put in place that you are aware of for Townsville, or others for that matter?

Ms Pidgeon—Where there are interim arrangements, it is in terms of using existing premises or premises they have available in the shorter term while they are waiting for more permanent premises to be finished.

Senator LUDWIG—Can you detail what interim arrangements you have been advised are going to be put in place for which offices and which locations?

Ms Pidgeon—We can provide that.

Senator LUDWIG—You do not have that here?

Ms Pidgeon—No. As I said, FaCSIA is dealing with the actual negotiations. I would not be positive that I knew about all of the detail. But we can obtain that and provide it to you.

Senator LUDWIG—It is more a question of what you have asked. You are the overseer. You have heard that there might be interim premises. Have you asked the question that comes to mind: are they suitable?

Ms Pidgeon—Definitely.

Senator LUDWIG—Are they appropriate? How long will the interim arrangements be for? Will you be able to provide the full range of services? They are questions that I as an overseer would ask to ensure that the money was going to be utilised effectively. More importantly, the services, the family relationship centres, are to be operational from 3 July. Have you asked those questions and asked for a response?

Ms Pidgeon—We have certainly been asking about interim arrangements to make sure they are appropriate. In some cases when we have had staff interstate, they have inspected those premises. We are satisfied that all the ones that we are aware of are appropriate.

Senator LUDWIG—Which ones have you inspected and are you satisfied with? The interim ones or the ones on a more permanent basis?

Ms Pidgeon—Some of both, but it is when we have had staff interstate. The FaCSIA staff have been dealing directly with the issues of premises and making sure that they are appropriate. We have added to that when we have been in the relevant states, but it is FaCSIA's responsibility to make sure before the agreements are signed that the premises are inspected and are fine.

Senator LUDWIG—Whose responsibility is it to make sure that the venues or the locations are safe, secure and appropriate?

Ms Pidgeon—In practical terms, that is part of the funding agreement negotiation, plus safety plans are required to be provided before they start up.

Senator LUDWIG—Do you ask whether or not that has been complied with?

Ms Pidgeon—I think you are putting things around the opposite way. We are requiring things to be ready. We are told when there is a problem with them not being ready. Because it

is a requirement, we do not go and ask: 'Is this requirement being met?' We are being told if there are any delays in permanent premises, for example, or whatever.

Senator LUDWIG—I understand. Say on 3 July you are then told that four are not up and running, their interim premises fell over and they are not in a safe and secure place. What do you do then?

Ms Pidgeon—We would be told long before that if there were any problems of that nature.

Senator LUDWIG—But how if you do not ask?

Ms Pidgeon—We have weekly telephone link ups with all the state and territory FaCSIA offices who are negotiating the contracts. They also provide information through the FaCSIA national office to us about any issues that might arise.

Senator LUDWIG—So you do ask during that process?

Ms Pidgeon—I think you are putting it around the opposite way. We would be told—and we are being told about interim premises, for example—when things are not going to be fully operational. New premises will be operational 3 July. It is not something we have to ask about. We have already made it clear what is required. The organisations know that and FaCSIA knows that. They provide us with information when things—for example, permanent premises—might be delayed.

Senator LUDWIG—You can then detail all the instances when that information has been provided that there is an interim arrangement and all of those instances where it does not meet the contract funding arrangements?

Ms Pidgeon—We can do that. It is the funding agreement.

Senator LUDWIG—So you have for each of the 15 an account, so to speak, where each one has indicated whether it has or has not met the funding agreement in terms of what is required through FaCSIA advising you that this requirement has not been met and that they have had to then seek interim accommodation?

Ms Pidgeon—If there is an issue about permanent or interim accommodation, we have been kept informed by FaCSIA.

Senator LUDWIG—Yes, so you would be able to advise the committee of that.

Ms Pidgeon—We can provide that advice to you.

Senator LUDWIG—Who decides whether or not more time would be available? Have any of the 15 asked for an extension on 3 July?

Ms Pidgeon—If there was an issue that there would not even be some interim arrangement, it would have to be the Attorney-General that made a decision about not opening on 3 July but, as I said, our understanding to date is that they will all be opening up some sort of premises on 3 July.

Senator LUDWIG—So there has been no request for an extension on 3 July by any of the 15 centres to you?

Ms Pidgeon—When we met with all of the organisations, which was at the beginning of May, there were discussions around whether there was any flexibility there, but we made it

clear then that there was not, so we do not have anything like a formal request because a discussion was clear at that time.

Senator LUDWIG—You have those meetings with FaCSIA weekly. Have they indicated whether there is any flexibility in the start-up date of 3 July?

Ms Pidgeon—FaCSIA was at the same meeting in early May, so everybody is working on the same premise that 3 July is the opening date. The only discussion has been about whether there will be more time needed for permanent premises rather than discussion about giving people extensions.

Senator LUDWIG—So you ruled out any flexibility.

Ms Pidgeon—That is right.

Senator LUDWIG—Why was that?

Ms Pidgeon—Because it is the government's expectation that there will be centres open on 3 July, as demonstrated by your questions.

Senator LUDWIG—Did you go back to the A-G and indicate that there have been requests for flexibility for the opening time and ask whether any of those could be extended?

Ms Pidgeon—I think that is getting into our policy advice to the Attorney-General.

Senator LUDWIG—Minister?

Senator Ellison—I can take that on notice and see if the Attorney-General can add anything to that. This is a matter that the Attorney-General has of course, but that sort of advice is advice to the minister and I will take it on notice.

Senator LUDWIG—What I am seeking is whether there has been any instruction from Mr Ruddock that there was to be no flexibility, that 3 July was to be the start-up date and, no, there was not going to be any consideration given to allowing flexibility for some centres, especially the ones with interim accommodation, now requesting an extension to the date.

Senator Ellison—I can understand that question and we will take it on notice.

Senator LUDWIG—You mentioned inspections earlier. Has the Attorney-General's Department or your section done any inspections of those sites?

Ms Pidgeon—As I said before, when we have had staff interstate for other reasons—

Senator LUDWIG—I see. They might have called in.

Ms Pidgeon—We called in, had a look, if we were able to. We have not been able to in all cases. But FaCSIA has the responsibility for ensuring the premises are appropriate.

Senator LUDWIG—So they were not formal inspections as such.

Ms Pidgeon—That is right. They were not formal.

Senator LUDWIG—They were not minuted.

Ms Pidgeon—That is correct.

Senator LUDWIG—Is Mr Ruddock going to open all the centres? Have you received advice on that?

Ms Pidgeon—That will be up to him. We have not discussed details about openings at this stage.

Senator Ian Macdonald interjecting—

Senator LUDWIG—Do you know something that I do not? If that advice is available before 14 July, if there is a timetable put in place, perhaps you could let the committee know regarding Mr Ruddock. Perhaps, Minister, you might be able to inquire.

Senator Ellison—Yes, it is more appropriate for me to take that up I think, Madam Chair.

CHAIR—Thank you, Minister.

Senator Ellison—I will take it on notice. Of course, it has been a very big worthwhile initiative that the Attorney-General has been involved in, so I would imagine he would have a very keen interest.

CHAIR—I am sure he will.

Senator LUDWIG—I am just wondering whether or not the uncompromising timetable, as it seems to be, has been driven by the need to open them or by a timetable set by the minister. Perhaps you could tell us whether he has planned to visit particular areas at particular times post July and whether that would coincide with the requirement for the centres to be open on those days so he could call in and visit them—that as a consequence we have a pretty tough timetable set with no flexibility.

Senator Ellison—I think it is important with these things for the relevant minister to be involved. I think there is a lot of merit in that. Senator Macdonald said he hoped the Attorney-General would be involved and I share that sentiment. Of course the Attorney-General is busy and he might not be able to do every one. But, knowing the Attorney-General as I do, I am sure he will be very keen to be involved. I will take that on notice and provide the committee with as much information as I can.

Senator LUDWIG—The Attorney-General's Department is not aware of any planned trips by Mr Ruddock to visit those centres in due course?

Ms Pidgeon—Not any coming up. He has visited Lismore because he was there, but I do not have knowledge of any other.

Senator LUDWIG—Mr Cornall, you do not have any knowledge?

Mr Cornall—No, I do not personally. The Attorney is very active in his visits to areas of interest throughout Australia.

Senator IAN MACDONALD—You might say to the minister that, if he cannot do the Townsville one, I would be happy to fill in for him!

CHAIR—Indeed, Senator!

Senator LUDWIG—That will be a bunfight with the sitting member!

CHAIR—Any further questions, Senator Ludwig?

Senator LUDWIG—Yes. Will the FRCs be seen as independent community organisations or will they be seen as government services or delivery agencies? There are two models you can adopt. You can adopt a model where it has the Australian government branding, for want

of a better word, or a model where it is funded by the government but looks more like a community service. Although they can look very similar, they can certainly be branded differently.

Ms Pidgeon—It is the latter. They will be branded as family relationship centres, but that will include the fact that FRCs are an Australian government initiative. So they are not government agencies and they will not be set up to look like government agencies, but it will be quite clear that they are funded by the government.

Senator LUDWIG—And how will that be done? Are there requirements in the contract that they have to meet?

Ms Pidgeon—We will soon be finalising the actual badging requirement. But in these funding agreements, they have to follow the style guide for badging.

Senator LUDWIG—What is that?

Ms Pidgeon—That is a logo that we have been developing which does include a reference to it being an Australian government initiative, and then there will be other rules about what else they can put in their signage.

Senator LUDWIG—Can you make that logo and design available to the committee?

Ms Pidgeon—It is not quite finalised, but we can certainly do that when it is finalised.

Senator LUDWIG—Will it have the coat of arms and the words ‘Australian government initiative’ or something?

Ms Pidgeon—That part is yet to be finalised, but it is normal for an Australian government initiative to have a coat of arms and words to that effect. But the FRCs will also have their own logo.

Senator LUDWIG—Has a decision been made about how big and how prominent that will be?

Ms Pidgeon—That is what is still being settled.

Senator LUDWIG—Do you need permission from PM&C to use the coat of arms and the Australian government brand?

Ms Pidgeon—I think I will hand over to my colleague who has been dealing with the branding issues.

Mr Arnaudo—We have been working very closely with the Government Communications Unit to ensure that we comply with any relevant guidelines the government has about branding for funded services such as these.

Senator LUDWIG—Do you need PM&C permission to use the coat of arms and government branding?

Mr Arnaudo—We consult with them and we provide them with drafts of the different logo designs, including the application of the coat of arms and the Australian government initiative branding as well to ensure that they comply with the government’s guidelines about branding.

Senator LUDWIG—So there is a compliance process to go through?

Mr Arnaudo—Yes. The Government Communications Unit of Prime Minister and Cabinet administers that.

Senator LUDWIG—And you are doing that at the moment?

Mr Arnaudo—Yes.

Senator LUDWIG—That has not been finalised then?

Mr Arnaudo—It is close to finalisation.

Senator LUDWIG—How is it finalised? Do they give you a stamp of approval for a particular coat of arms and words like ‘funding initiative’?

Mr Arnaudo—They make it clear to us that this is a design that complies with the design guidelines that the government has applied to the use of the coat of arms.

Senator LUDWIG—Does it comply with the guidelines?

Mr Arnaudo—Yes.

Senator LUDWIG—So you are not seeking an exemption from the guidelines?

Mr Arnaudo—We are not seeking an exemption from the guidelines in terms of the application of Australian government funding.

Senator LUDWIG—What are you seeking an exemption from?

Mr Arnaudo—We are liaising with the Government Communications Unit about the finalisation of how the brand will be applied to the logo design.

Senator LUDWIG—You need an exemption for that, do you?

Mr Arnaudo—I do not think it is an exemption; it is more about going through the process of seeing how the guidelines will be applied to the logo design.

Senator LUDWIG—You have lost me.

Senator Ellison—There is a GCU, a Government Communications Unit, which reports to the Ministerial Committee on Government Communications—and that is chaired by the Special Minister of State. The GCU looks at all information campaigns, if you like, by Commonwealth departments and runs a ruler over them to make sure they conform to the communications policy of the Commonwealth government. Obviously, you want some form of uniformity when you are dealing with Commonwealth publications. Things could become confusing if you did not have a federal government initiative labelled as such. One can only imagine the confusion that could reign if that was not controlled.

So what the GCU does is look at the proposed communication strategy in any particular instance and make sure it conforms to government policy. There are often variations made to accommodate the target audience; Indigenous communication strategies are some that spring to mind. So that is all it is—going through that process of approval. It is not necessarily going there to say, ‘Look, we don’t want to be part of this.’ It is merely going there and saying, ‘This is what we propose; is it okay?’ And the GCU runs its ruler over it.

Senator LUDWIG—What if they do not give you permission? It is getting late in the process. To get that information up, you have to have plate glass or presumably the ability to put up a sign somewhere.

Senator Ellison—I would not see that in this case it is a big deal, because the weightier matters are where you are looking at government advertising, which is a different issue.

Senator LUDWIG—You mean the extraordinary amount of money you have spent.

Senator Ellison—The very good communications campaigns we have had to inform the Australian public.

Senator LUDWIG—Do you know the 1800 number?

Senator Ellison—Which one?

Senator LUDWIG—The terror hotline.

Senator Ellison—1800123400.

Senator LUDWIG—I see you have coached Senator Minchin!

Senator Ellison—The one I like is the 1800061800 Customs line. That is my favourite.

CHAIR—If we all start reciting phone numbers, this could take a while.

Senator Ellison—Getting back to this issue, if it is advertising—radio, television—of course that is a lot more complicated. But my experience with this sort of thing, as a minister who formerly had responsibility for it, is that it is fairly straightforward.

Senator LUDWIG—So, as I understand it, you are going through the compliance process, you expect it to be completed shortly, you do not need to seek an exemption—it is matter of fitting within the guidelines—and you say that your logo and statements fit within the guidelines. It is now a case of waiting for a final tick. Have I got that right?

Mr Arnaudo—That is correct, yes.

Senator LUDWIG—Have any of the 15—do you call them clients?

Ms Pidgeon—Service providers.

Senator LUDWIG—Do they know what the badging requirements will be? I suppose they have not seen the final product yet.

Ms Pidgeon—They have not seen the final product. They saw an earlier draft, but they have not seen the final product. They will as soon as it is ticked off.

Senator LUDWIG—Do you seek input from them about whether or not they are comfortable with providing that degree of prominence to a coat of arms and ‘government initiative’?

Ms Pidgeon—No, because it is a requirement of the funding agreement that they follow the badging. It is national badging. If we had 15 and ultimately 65 organisations all having an opinion, we would have great difficulty in keeping a national consistency, I think.

Senator LUDWIG—Have any of them expressed a difficulty with it so far? Have they objected to it or said, ‘We don’t want to be associated too closely with the government’?

Ms Pidgeon—There have been comments made, but, as I said, they were on an earlier draft, not on what we have got to at this stage.

Senator LUDWIG—So the draft was different from where you have got to now?

Ms Pidgeon—It depends on where we end up. Depending on what gets ticked off, it may well be.

Senator LUDWIG—I think I am with you. I might have to leave that question until such time as we have a final design. Will the 15 service providers be consulted about the final design?

Ms Pidgeon—No. As I said, it is a matter of national consistency, not a matter of consensus.

Senator LUDWIG—So it would not matter even if they did complain: if they want their money, they will have to agree to it?

Ms Pidgeon—They have already provided comments. We will be finalising it. We are aware of their views. There will not be further consultation.

Senator LUDWIG—So none have suggested that they will pull out if they are not satisfied with the final design or layout?

Ms Pidgeon—Absolutely not. Nobody has suggested that they would pull out.

CHAIR—It would be like saying you would not work in the Senate because its colour is red.

Senator LUDWIG—I think it carries with it more than that.

CHAIR—I don't know—some people do not like red!

Senator LUDWIG—In terms of the tender process, was due diligence conducted on all of the successful applicants?

Ms Pidgeon—In terms of due diligence, I am not sure. We did have financial viability checks as well as addressing a whole range of information in the assessment process. For this sort of funding agreement process, I do not think due diligence as such is the type of process that we would use.

Senator LUDWIG—What did you use?

Ms Pidgeon—I can give you the documentation which sets out both the criteria and the process, if that would be helpful.

Senator LUDWIG—Yes, it would. The question was more about making sure that you as the funder are confident that the service delivery provider has due diligence. That, in fact, is what a due diligence analysis does. It also checks that the referees that people have given check out and those sorts of issues.

Ms Pidgeon—We did check referees. We had an external consultant, KPMG, look at their financial viability and provide advice on that. The service providers also had to provide a lot of information, as you will see in the documentation, about their organisation and their governance and so on.

Senator LUDWIG—Did you conduct interviews with the providers?

Ms Pidgeon—No, that was not part of the selection process.

Senator LUDWIG—Did KPMG do a report on each of the providers or did they do it collectively for all of them?

Ms Pidgeon—They did a report on the financial viability of each of those who had got past the early stages of the selection process.

Senator LUDWIG—Is that commercial-in-confidence or is it available to the committee?

Ms Pidgeon—I will have to take that on notice.

Senator LUDWIG—That is why I asked.

Ms Pidgeon—I am a bit concerned about that because they have given us the financial viability and the capacity of existing organisations to set up a centre, so their existing financial details are involved.

Senator LUDWIG—But you are satisfied that they have all met the benchmark that you set?

Ms Pidgeon—Yes, all of those selected have.

Senator LUDWIG—What was the benchmark that you set in terms of financial viability?

Ms Pidgeon—The final conclusion for financial viability was low, medium or high risk.

Senator LUDWIG—Were all of them low risk?

Ms Pidgeon—Some of them were medium risk but, when we looked at the reasons for that, they were not things that would be of concern.

Senator LUDWIG—Were any of them high risk?

Ms Pidgeon—No.

Senator LUDWIG—How many were medium risk?

Ms Pidgeon—I would have to take that on notice.

Senator LUDWIG—I might come back to that question. I will not ask you to provide it at this point in time, so we will not deal with it at this juncture. I might reflect upon it during the day and decide. Is there a review of the tender process under way?

Ms Pidgeon—Yes, there are a number of things happening. The two departments which did this together, FaCSIA and AGD, are looking at the process to see how we will do it in the next round. On our side, that includes internal audit having a look at it for us. We are also asking Deloitte to seek feedback from applicants about the tender process, so that will help identify any issues that we would like to improve on next time.

Senator LUDWIG—If it is available, maybe that document could be made available to the committee. Has it been finalised?

Ms Pidgeon—No, it has not been finalised. We are waiting for the funding agreements to be signed so we can give feedback to unsuccessful applicants and then all applicants will be asked for feedback.

Senator LUDWIG—At that juncture, then, it would be helpful to receive that document. I take it you have read drafts of the Deloitte report?

Ms Pidgeon—No. Deloitte have not started their collection of feedback yet. That will happen after the funding agreements are finalised. But we can certainly provide you with the Deloitte report when it is finalised.

Senator LUDWIG—Thank you. They might ask a question like, ‘Why didn’t you interview the 15 service providers?’

Ms Pidgeon—Keep in mind that there are a lot more than 15 applicants, so—

Senator LUDWIG—Yes, but this is a significant amount of money. How much is it per contract?

Ms Pidgeon—The documents relating to the selection process, which I have offered to hand up, do set out each location, what was advertised as the funding—that has been slightly adjusted upwards with further funding that has become available through the child support response. But that will give you an indication, anyway, of the amounts of money involved.

Senator LUDWIG—Just generally, upwards of how much money?

Ms Pidgeon—I will give you an idea. In terms of ongoing funding—because there is establishment funding as well—we are talking about amounts ranging from roughly \$700,000-\$800,000 through to over \$1 million. Probably the highest is just under \$1.4 million in ongoing funding, and then on top of that there is an amount for establishment funding and some small increase which is part of the child support response.

Senator LUDWIG—So you would not normally conduct an interview with applicants for amounts of money between \$700,000 and \$1.4 million?

Ms Pidgeon—With the very comprehensive information that they were required to provide, which you will see from this documentation, plus the referees, on this occasion we did not interview. It could be that in the future we decide to do that, but it is not something that we considered to be an essential part of it.

Senator LUDWIG—It would take too long, would it?

Ms Pidgeon—That is one thing we would have to take into account. But I think the comprehensive nature of the information that they had to provide, plus the referees, means that I do not know how much you would add with an interview.

Senator LUDWIG—You might not have been able to finalise it by 3 July if you had had to interview them.

Ms Pidgeon—I could not comment on that, because if we had decided to interview we would have had to build it in somewhere. I do not know how it would have affected the time frames.

Senator LUDWIG—How many applicants were there in total?

Ms Pidgeon—I undertook at the last estimates hearing to give you that number when the funding agreements had been signed. As you know, they have not all been signed yet. I expect to be able to give you that information in the next couple of weeks when they are all signed.

Senator Ellison—We will take that on notice and, once that point has been reached, we can do that.

Senator LUDWIG—When you have had a look at the Deloitte report, perhaps you could provide us with information on how much that tender review process is going to cost the department as well. Or will that be met by FaCSIA?

Ms Pidgeon—No, we would expect to pay for that.

Senator LUDWIG—So, without an interview, you relied on only the documents that were provided?

Ms Pidgeon—There was extensive documentation provided, and referees.

Senator LUDWIG—Did you interview the referees?

Ms Pidgeon—Yes. We contacted the referees of all the ones that were to be recommended.

Senator LUDWIG—How many were recommended?

Ms Pidgeon—In terms of the centres?

Senator LUDWIG—Yes.

Ms Pidgeon—There were 15 locations; we recommended 15.

Senator LUDWIG—So the selection process was that you selected them on the papers and then you checked the referees?

Ms Pidgeon—Yes.

Senator LUDWIG—When are you going to start the tender process for the second tranche of FRCs?

Ms Pidgeon—We are still deciding that, and that will also depend a little bit on the feedback that we get.

Senator LUDWIG—I am sorry; is there a feedback mechanism?

Ms Pidgeon—That is the Deloitte mechanism that we talked about before.

Senator LUDWIG—So you expect it to happen something like this: the FRCs will be up and running and you will have a review of the tender process—Deloitte will report—and then you will enter the second tranche.

Ms Pidgeon—As I explained, we are as departments already considering the next process and what happened in the last one. The Deloitte report is particularly to get feedback from applicants, to see what insights they can give us—where they have found something to be difficult or otherwise. When we get that feedback, we will also have our own assessment of the process and we will then settle on a future process.

Senator LUDWIG—So you have not started the tender process for the second tranche, that is clear.

Ms Pidgeon—We have not started that, no.

Senator LUDWIG—Has a decision been made on whether the next 20 FRCs will be opened on 1 July 2007?

Ms Pidgeon—Yes, the next 25. I can hand up information about which will be opened when, if that would be helpful to the committee.

Senator LUDWIG—It would be, thank you.

Ms Pidgeon—The information I am handing up includes other services, but you will see that it covers the family relationship centres.

Senator LUDWIG—You are also doing your own internal review of the tender process, I take it?

Ms Pidgeon—Yes.

Senator LUDWIG—Do you have any views or have you finalised any recommendations about the tender process and how you would do the next round?

Ms Pidgeon—Not yet.

Senator LUDWIG—Are there any lessons to be learned from the current round?

Ms Pidgeon—I am sure there are, but we have not reached any conclusions yet.

Senator LUDWIG—You are going to avoid the short time frame next time, I take it?

Ms Pidgeon—We would prefer to have a longer period, yes, at this stage.

Senator LUDWIG—Time is running out again, I suspect.

Ms Pidgeon—As I said, we have not settled our time frames yet.

Senator LUDWIG—The media have referred to the FRCs as crisis centres—ABC New South Wales Mid North Coast did. Have you seen any of that?

Ms Pidgeon—When are you talking about?

Senator LUDWIG—It was on ABC News Online on 2 May 2006 under the Coffs Harbour news, entitled ‘Ruddock inspects work on family crisis centre’. It says:

Work is progressing on the first family crisis centre for the NSW north coast.

I am happy to give you a copy.

Ms Pidgeon—I was aware of that coverage, yes.

Senator LUDWIG—Does that alarm you?

Ms Pidgeon—We are used to the media not always describing things accurately. We certainly do not see them as crisis centres, but the media does not always get things exactly right.

Senator LUDWIG—Did you contact the ABC to correct the record—to give them the AG’s view about them?

Ms Pidgeon—No, I do not believe we did. Given the number of ways that people describe the centres, it was not a serious matter that they called it a crisis centre.

Senator LUDWIG—So you don’t mind them being referred to in that way?

Mr Cornall—Senator, we would obviously prefer them to be referred to by their correct name, but we cannot be answerable for the media’s exaggeration or inaccuracies. Also, there is not a huge amount that can be done after the event to get these things corrected.

Senator LUDWIG—No, but you can be diligent about trying to correct the record where you can and you can be diligent about putting out press statements to say, for instance, ‘The minister is visiting a family relationship centre.’ Was any of that done?

Mr Cornall—The minister’s media is done through the minister’s press officer.

Senator Ellison—Any question on that I can take on notice and direct to the minister’s office. I think there is a way to do it.

Senator LUDWIG—There is a concern that if you do not correct the perception they will attract people that are seeking financial assistance—in other words, for crisis issues—when it is not the appropriate place to go. They will be likely to be badged with a coat of arms and they will have a statement about that. If you do not scotch that image you will find that these places will soon become known as crisis centres and they will attract people who are seeking help legitimately and may be in a crisis.

Mr Cornall—I take your point, and we will monitor if that becomes a common usage. I understand from Ms Pidgeon that it has not been used on other occasions. Obviously, the promotion at the time when the centres are opened will very clearly make their function as a relationship centre apparent.

Senator LUDWIG—What is being done to educate people about the family relationship centres and what their role and responsibilities will be?

Mr Arnaudo—Part of the government’s package announced last year in the budget included funding to allow a campaign to accompany the changes to the legislation and also the changes to the family law system which include the new services, including the family relationship centres. As we are coming closer to those services being opened and ready to accept customers, we will have a media communication strategy in the local areas where those centres are up and running to make it clear what services are available at the centres and how they can assist families improve their relationships.

Senator LUDWIG—What type of strategy? How much is being to be spent? Is there a media buy—TV, radio, print? Are there advertisements in train?

Mr Arnaudo—The government’s package in the budget included \$5.7 million over two years to develop and implement a campaign that raised awareness of the new services as well as the changes to the legislation. At this stage, at the local level, we are very much looking at, for example, local newspaper press advertising the fact that there is a new centre or service in that area. We will also be looking at local radio in contained catchment areas, which allows us to target particular audiences and also in some situations at outdoor advertisements—shopping centres or bus areas; those sorts of areas—to make it clear that the new service is available in their local area.

Senator LUDWIG—Do you have it broken down by local area for the spend this year—in other words, what you intend to spend in particular areas for the opening of the 15 FRCs or the regional area in terms of both media buy—radio, print or television?

Mr Arnaudo—We do not have that broken down for this financial year because we are not expecting to have to spend that for this financial year. The centres will be opening next financial year and we will only be doing the advertising once they are up and operational.

Senator LUDWIG—So there are not going to be any advertisements up to 30 June?

Mr Arnaudo—Not for local services.

Senator LUDWIG—What about a more general statement?

Mr Arnaudo—With the changes to the legislation commencing on 1 July, we will be very soon commencing a national campaign to raise awareness of the changes to the legislation.

Senator LUDWIG—What is that exactly?

Mr Arnaudo—It is likely to be very much based in weekend newspaper magazines and *Women's Weekly* or *New Idea* type magazines. One-page type advertorials will outline the main changes to the legislation and refer people to our website where they can obtain more information.

Senator LUDWIG—How much is that going to cost?

Mr Arnaudo—I would have to take that specific question on notice but it is part of the component of the \$5.7 million.

Senator LUDWIG—Perhaps you could and also indicate if you have got a draft or a copy of what the material is that you are going to print or put out—if that is available.

Mr Arnaudo—I can take that on notice as well.

Senator LUDWIG—Or the general type of expenditure on what the changes might be. If you do not have a composite or draft then the message—that is, the type of information you are trying to convey—and the media types you are going to use to do that. There is not going to be any local spend prior to the start-up date of 3 July?

Mr Arnaudo—That is correct. Until the centre is up and operational, we will not be advertising.

Senator LUDWIG—So post July, for the second half of the next financial year, do you have an idea of how much is going to be spent locally in those 15 regions, or towns, as the case may be?

Mr Arnaudo—We can take that on notice and provide that to you—in terms of our general expectations, of course.

Senator LUDWIG—If it has not solidified into a radio, print or TV buy at this point then—

Mr Arnaudo—It does not include television.

Senator LUDWIG—All right. I am adding that in just in case.

Mr Arnaudo—But I can say straightaway that television is not included in this.

Senator LUDWIG—So it will be print and radio.

Mr Arnaudo—It will be print and local radio, where that is available, basically—and outdoor advertising as well. Sorry, I should have added that.

Senator LUDWIG—What sort of outdoor advertising?

Mr Arnaudo—Posters in shopping centres, on the backs of buses—that sort of outdoor advertising.

Senator LUDWIG—Ms Pidgeon, where this crisis centre idea starts to take hold, what sort of help will be provided to the FRCs to ensure that they have appropriate mechanisms to respond to people in crisis who come into the centres and divert them to more appropriate service providers?

Ms Pidgeon—I should say that one of the roles of the centres is in fact to be a place people can go to get information about other services. And, while we do not describe them as crisis centres and do not really want them promoted that way, they will have information for people about a range of other services. You mentioned financial assistance; that would be included. Obviously, it would also include things like domestic violence and housing problems. So the centres will be well equipped to provide referrals on to other services, as well as dealing with cases that are more specifically about family relationships.

Senator LUDWIG—It struck me that you must have employed an advertising company already.

Mr Arnaudo—Yes.

Senator LUDWIG—Who is that?

Mr Arnaudo—It is a firm called Gatecrasher. They are based in Perth.

Senator LUDWIG—They always have to have innovative names, don't they? Will advertising for the first round—that is, up to the spend this year—be TV or just print and radio?

Mr Arnaudo—There is no television.

Senator LUDWIG—Have any scripts been approved by the Ministerial Committee on Government Communications yet?

Mr Finlayson—We have been through the process with the ministerial committee, and the advertising has been approved through that process.

Senator LUDWIG—Can you provide the committee with copies of that?

Mr Finlayson—Yes.

Senator LUDWIG—Did the ministerial committee make any changes?

Mr Finlayson—As is always the case, advertisements are refined based on testing. To that extent, there were changes, but they were relatively minor.

Senator LUDWIG—Does the Attorney-General have a role to play in this? Can he ask for changes?

Mr Arnaudo—The Attorney-General, the minister?

Senator LUDWIG—Yes.

Mr Arnaudo—Yes.

Senator LUDWIG—And did he ask for any changes?

Mr Arnaudo—Again, as part of the process of refining the different advertising products, we look at the focus testing and we take account of the views of the minister. It also goes through the process of the Ministerial Committee on Government Communications, on which the Attorney is represented as well as the Minister for Families, Community Services and Indigenous Affairs.

Senator LUDWIG—Is any other material planned outside of what you have just said?

Mr Arnaudo—At the national level, there is also some internet based advertising to bring attention to the changes to the legislation that are coming up on 1 July. That is essentially it.

Mr Finlayson—There is also telephone directory information.

Mr Arnaudo—Yes, the Yellow Pages.

Senator LUDWIG—Are the results of the audience testing, the focus groups that you mentioned, available to the committee?

Mr Arnaudo—I think we would have to take that on notice. It really feeds into that.

Mr Finlayson—Generally speaking, research on campaigns is not released until after a campaign; at that stage a decision is made.

Senator LUDWIG—If you could take it on notice for that point. It would be prior and, if not prior, at the point of conclusion of the campaign.

Mr Finlayson—An assessment is made at that time, yes.

Senator LUDWIG—So we can regard it as a live request until such time as a determination is made. If radio ads are contemplated, has a decision been made as to where they will run?

Mr Finlayson—The advertisements are designed to run in the local communities where the centres will be located.

Mr Arnaudo—We are being very careful there. In some areas—for example, large metropolitan areas—there really is not a radio station that would cover the specific area that the centre is expected to. So radio will largely be used in regional areas to alert people to the fact that there is a family relationship centre.

Senator LUDWIG—Will they focus on information about the centre, or will they explain the impact of the recent changes to family law?

Mr Arnaudo—The local radio advertising will be very much focused on the services which a centre can help families in that area with.

Senator LUDWIG—And the print media?

Mr Arnaudo—The print media in the local area will again be focused very much on the services that the family relationships centre can offer.

Senator LUDWIG—Is there any expenditure on explaining the impact of the recent changes to the family law?

Mr Arnaudo—There is, and that is more at a national level. There will be print media advertisements as well as the internet to alert people to the changes in the legislation.

Senator LUDWIG—That is what I asked about earlier—

Mr Arnaudo—That is correct.

Senator LUDWIG—You have got the text of that to make available to the committee?

Mr Arnaudo—Yes.

Senator LUDWIG—I guess there are two parts. Have you worked out a schedule for when you will run the changes to the family law and when you will run the print and radio advertisements dealing with the family centres?

Mr Arnaudo—Yes.

Senator LUDWIG—When is that scheduled for?

Mr Arnaudo—Most of the changes to the legislation come into effect on 1 July. In the month leading up to it, there will be press advertisements at a national level, and we will follow that through for the rest of the coming financial year. At a local level, once the centres are up and running there will be a local campaign around that targeted area. That will run throughout the year as well.

Senator LUDWIG—Do you expect that to conclude in the financial year?

Mr Arnaudo—The financial year 2006-07.

Senator LUDWIG—So there is not going to be a broad media campaign about the family relationship centres at a national level?

Mr Arnaudo—That is correct. With only 15 of 65 family relationship centres set up in the first year, it would not really be an effective way of getting the message out to people who might find the services of the centre useful. At the beginning we are very much phasing in the awareness campaign as the centres are opened up over the next two or three years.

Senator LUDWIG—So you do not want to create an unmet demand?

Mr Arnaudo—Yes.

Senator LUDWIG—The local advertisements will then run during 2006 to 2007. So it will be the second half of next year and the first half of 2007?

Mr Arnaudo—It will be the second half of this year and the first half of 2007.

Senator LUDWIG—Minister, can you assure us that there will not be effectively an advertising campaign for the Liberal Party, but it is actually going to be about family relationships centres?

Senator Ellison—You made a quantum leap there—from family relationships to the Liberal Party!

Senator LUDWIG—It seems that you spend a lot of money on advertising.

Senator ELLISON—And all of it is very useful for the public too. We have found that people appreciate being told what the government is doing and assisting them with areas such as Centrelink benefits and the like. This advertising will be focused on not just a target audience of one group of the community; it will be quite broad based because, naturally, anyone could be involved. Family law, as we know it, touches everybody in some way or

another and it is very important that it be advertising which is properly researched and communicated. I have every confidence that, with the processes we have in place, it will do that job. There certainly will not be any political aspect to it.

Senator LUDWIG—So they will be genuine advertisements informing Australians of their rights and how to attend the family relationship centres and the like.

Senator Ellison—It will be focused on the initiative and where people can go and what they can do if they are in a situation which is applicable. It will be focused and very much researched on what we need to do with this advertising. That is what we always do at the Ministerial Council on Government Communications and the GCU, which I mentioned earlier, the Government Communications Unit. It is very much focused in that regard, and I have experienced it myself where it has gone through several rounds of testing of advertising to ensure that the message is there, is clear and understood.

Senator LUDWIG—Perhaps forgive me for not always thinking that it is when I see the ads, but I guess we will judge that when they turn up. Let us hope that they genuinely live up to that high expectation that has been set. In the way that you are going to run the campaign, will you do it on a monthly basis—there are two parts to it: there is a national campaign that will run during 2006 up to July 1 or 30 June and a national campaign that will continue after that about the changes to the family law, or will it end at that point?

Mr Arnaudo—The campaign at the national level for the first two years effectively is very much focused on the changes to the legislation because they are new. The government announced in this year's budget in May some additional funding for a broader campaign that will be focused more on helping families build better relationships. It is also to make them aware of the services that can assist them to do that, such as the family relationship centres, and also other services that are funded by the Attorney-General's Department or by the Department of Families, Community Services and Indigenous Affairs. That was \$19.9 million in the last budget.

Senator LUDWIG—When will they run?

Mr Arnaudo—They will run from July 2007 once the funding that we have got at the moment comes to an end.

Senator LUDWIG—Has any decision been made on the content of those and how much media buy?

Mr Arnaudo—Not at this stage. The funding has been approved in the last budget but, as this campaign rolls out, we will also be planning for the campaign that commences from July 2007.

Senator LUDWIG—So you have got \$19 million to spend on the national campaign from the end of 2006 to the beginning of 2007.

Mr Arnaudo—That funding commences from July 2007.

Senator LUDWIG—How long is that to run for?

Mr Finlayson—That is over four years.

Senator LUDWIG—If we come back to the current expenditure, is it for the end of 2006 beginning 2007 for the local information about the 15 centres? Is that front-end or back-end loaded? It is going to be more concentrated at the beginning of 2006 or 2007 or is it spread out month by month? I suspect you do a frequency graph of some description as to how you expect the media to run during that period.

Mr Finlayson—It will be spread across the year; however, it is true to say that in the first six months there will be a greater spread.

Senator LUDWIG—How do you plan for that? Do you ask for that to be dealt with in that way and purchase it in that manner?

Mr Finlayson—We seek advice from the government's advertising agency, the buying agency, as to the best way to get the messages out that we want and therefore the best media mix.

Senator LUDWIG—What advice did they give you?

Mr Finlayson—They provide advice on how we can best spread our media buy to get the best impact.

Senator LUDWIG—What form does that take? Do they give you a letter or do they tell you, 'Here's a frequency graph' and how to do it?

Mr Finlayson—It is known as a media schedule, and it is a graph that sets out how the buy that they recommend is structured.

Senator LUDWIG—And you are going to follow that?

Mr Finlayson—Yes, we take the advice of the government's agency.

Senator LUDWIG—Can the committee have a copy of that?

Mr Finlayson—We can make that available. There is possibly some finetuning, but we will make it available once it is fine.

Senator LUDWIG—Perhaps you can note that—that it is a draft or it requires additional finetuning.

Mr Finlayson—Yes.

Senator LUDWIG—The budget also provides increased funding to FRCs to provide advice on child support matters. I think that is in the portfolio budget statement at page 188. When the tenderers applied for the money, were they aware that this would be an additional responsibility they would be required to take on?

Ms Pidgeon—The tender documents did flag that there would be a particular role in relation to child support. So it was in there, in the operational framework which was part of the tender documentation. It was not spelled out in any more detail at that stage because the government decision had not been made on exactly how much money would be provided and for what degree of involvement. So the tenderers were aware of it. They have been given some additional money as a result of it.

Senator LUDWIG—Sorry; they have been given additional money?

Ms Pidgeon—The budget measure you just mentioned—

Senator LUDWIG—Yes.

Ms Pidgeon—has enabled some additional money to be given to family relationship centres and other services, starting next financial year, over and above what was originally advertised, because there will be more demand for them, we think, due to people adjusting their child support arrangements or their parenting arrangements as a result of the child support changes.

Senator LUDWIG—Is there a schedule of how much additional money each centre will receive?

Ms Pidgeon—We could provide that.

Senator LUDWIG—That would be helpful, thank you. I envisaged at first that the centres would be involved in trying to, for example, help couples going through family breakdowns and resolve child support issues, while at the same time dealing with other issues as well. Now the family relationship centres will have an expanded role, won't it increase exponentially the number of clients that might come to the centres as they try to renegotiate child support arrangements and the like?

Ms Pidgeon—As you said a moment ago, child support issues would of course always have been part of the centre's responsibility, in terms of discussing parenting arrangements with clients.

Senator LUDWIG—But that is at the point of relationship—

Ms Pidgeon—That is right. Therefore, because the child support arrangements may well create demand among people who had previously set their parenting and child support arrangements and may well be reviewing those or get into dispute over them, that extra demand has been recognised in this new funding.

Senator LUDWIG—But that is an extraordinary increase in the population using the services, isn't it?

Ms Pidgeon—It may be, but some of that—

Senator LUDWIG—How many then choose to use the services is a different issue. But there could be an extraordinary expansion in the client population, because there is a move from those coming to you for immediate service to those looking at the centre for the first time. We know what those figures are roughly per annum, and you can break that down per month. But now you are going to the long tail that already exists, with everything that has gone before for the last 14 years.

Ms Pidgeon—The likelihood of additional demand for that very reason is why the government has provided this funding in the budget. And I should add it is not just for the centres—because of course this year we will only have 15—but also for other services and the advice line that is being set up.

Senator LUDWIG—Yes, but, given that every single Child Support Agency case is to be reassessed by 2008 under the child support reform, I imagine it will not be a minor role but a significant role—in fact, a very large role—that these family relationship centres might have to play in this area.

Ms Pidgeon—The funding that has been provided in this budget is in recognition of the fact that there will be a greater demand.

Senator LUDWIG—So you agree with me that there could be quite a large demand in this area?

Ms Pidgeon—We are waiting to see what the demand is, because reviewing child support does not mean that people then get into dispute over it, but there may well be an increase that will need to be dealt with, either at centres or with the advice line or other services.

Senator LUDWIG—How did you reach the \$48.4 million over five years?

Ms Pidgeon—We did a lot of work with the Child Support Agency to try to predict what demand might be. Then we looked at how much of that demand is likely to be taken up by centres, given that in the first year there will only be 15, and other services and the advice line.

Senator LUDWIG—Did you do any modelling to come up with the figure of \$48.4 million over five years?

Ms Pidgeon—We worked out different scenarios based on different percentages of Child Support Agency clients coming to centres, the advice line or other services. We used as indicators referrals that the Child Support Agency has made in the past to relationship type services and what the take-up might have been, so we did a fair bit of number crunching around the different scenarios and different percentage referrals and so on.

Senator LUDWIG—What percentage relates to \$48.4 million over five years?

Ms Pidgeon—That is broken up further into some additional funding for centres, some additional funding for other dispute resolution and counselling services and also for the advice line. It also allows for a telephone dispute resolution capacity to be developed for the advice line.

Senator LUDWIG—Coming back to that first question, though, is that modelling available?

Ms Pidgeon—I will have to take it on notice. I do not know if a single model is available. We did use a number of—

Senator LUDWIG—Perhaps *indicia* might be a better word.

Ms Pidgeon—I think we can provide the factors that we took into account.

Senator LUDWIG—What percentage do you think will be used by the family relationship centres as re-engagement?

Ms Pidgeon—I do not think we can talk in those sorts of percentage terms.

Senator LUDWIG—I thought you mentioned percentages.

Ms Pidgeon—What we did was look at the percentage of referrals we might get from the Child Support Agency, particularly of change of assessment clients. I can certainly provide you with the sort of assumptions that we took into account.

Senator LUDWIG—The percentages that you have been referring to would perhaps be helpful then.

Ms Pidgeon—They would be included in the assumptions.

Senator LUDWIG—Are they significant? Do you recall what they might be?

Ms Pidgeon—It depends on what you mean by significant. We do not assume that all Child Support Agencies clients will be coming to get help. That is unrealistic. We are looking at percentages of change of assessment clients, particularly, who might be referred. Again, we do not assume that all of them will take up referrals to the centres.

Senator LUDWIG—What percentage do you think will?

Ms Pidgeon—I do not have the final assumption. There was the number of percentages looked at.

Senator LUDWIG—Are you concerned that that could distract them from their core role?

Ms Pidgeon—Helping parents deal with parenting arrangements is their core role; child support is just part of that.

Senator LUDWIG—It is part of it, but you would not want it to be their main or core function, though, would you?

Ms Pidgeon—I think that is extremely unlikely. Child support will be an important part of the help that they give parents because, when you are settling parenting arrangements, you are in effect also dealing with child support.

Senator LUDWIG—In terms of finalising the negotiations, have any of the service providers indicated that they have a problem finding staff?

Ms Pidgeon—They are currently recruiting and interviewing almost as we speak. I think some of them were interviewing over the last week. At this stage I have not been hearing problems about staffing. Certainly there were some concerns at earlier stages about whether there would be enough people answering the ads and so on, but, as of last week, I think the people who had been concerned about that had fields and they were about to start interviewing.

Senator LUDWIG—There is no money for training of the family relationship practitioners in this area, is there?

Ms Pidgeon—That is not correct. The applicants had to submit budgets, and they would have included training as part of their ongoing budget. On top of that, we are providing induction training or orientation training in June for family relationship centre staff.

Senator LUDWIG—Those that are available?

Ms Pidgeon—That is correct.

Senator LUDWIG—But you will not get all of them at that point.

Ms Pidgeon—There will always be staff coming on at various times, as with any service. We will have other training programs, and we will also be developing e-learning versions of the training.

Senator LUDWIG—So is there any more induction planned, other than the June one?

Ms Pidgeon—We are having two programs in June and we will probably have another one in July.

Senator LUDWIG—So how much is being set aside for training for family relationship practitioners?

Ms Pidgeon—Are you talking about by centres themselves?

Senator LUDWIG—No, out of A-G's budget as distinct from the provision of money for the family relationship centres.

Ms Pidgeon—Our training covers not just practitioners but also managers, first point of contact staff, advice line staff and other advice line employees. We do not have a final figure yet, because we are just getting numbers in now, but I should be able to provide you on notice how much of our budget we use.

Senator LUDWIG—That would be helpful. That would be more for day-to-day management issues and how you then deal with that. I am talking about practitioners and the type of qualifications you would expect in the family relationship centres. Do you have it in the contract what level of expertise you require people to have?

Ms Pidgeon—In the operational framework, which you will see when you get these documents, they are required to be appropriately qualified and, if they are mediators, for example, they would currently need to be qualified to meet the family law regulations, but there is a process for developing further standards.

Mr Arnaudo—I think we explained that at the last estimates hearing as well. The Community Services and Health Industry Skills Council process is under way for determining competency standards for family dispute resolution practitioners or mediators and counsellors as well as children's contact workers.

Senator LUDWIG—Is there any money for that to make sure that they will end up with appropriate training and accreditation and be recognised within the framework of standards?

Mr Arnaudo—Do you mean money for the centres?

Senator LUDWIG—No. Let us think separately from the centres for a second: there are going to be family relationship centre practitioners—people required to work there as a broader group, who may not only work in one centre. It seems that we are now talking about making sure that they are appropriately qualified, accredited and trained to appropriate standards. So there is a next step that gets developed—the step of ensuring that they are recognised in the standards as having a certain level of accreditation, because then you have a better idea that people are meeting those standards and that they have an accreditation level and you have confidence that they are providing the service with that appropriate training. Is there any money in the A-G's budget to pursue those issues?

Ms Pidgeon—Can I reiterate that all service providers are supposed to (a) employ people who are already qualified but (b) have further ongoing training in their own budget, as any service like this would have. We do not have additional funding for them on top of that, because that is an integral part of their core funding and they will already be required to be qualified under the family law regulations. When the new competencies come in, there will be a period of three years for them to be assessed against the new competencies. It is not

something that we need to provide additional money for, given that training is a normal part of the budget.

Senator LUDWIG—What accreditation do you require them to have? Can you give me an example of the types of skills or professional qualifications they should have?

Ms Pidgeon—The family law regulations which govern practitioners such as mediators do require them to have relevant tertiary qualifications, and then there are a series of guidelines set out in the regulations governing training and supervision.

Senator LUDWIG—What relevant tertiary qualifications do you expect them to have?

Ms Pidgeon—That is not specified in the family law regulations, but in practice they are usually things like psychology, social work—and law if they are doing mediation in a legal setting.

Senator LUDWIG—Have you had a look at the skill sets available to see whether those skills are available to the family relationship centres?

Ms Pidgeon—Sorry. I did not understand the question.

Senator LUDWIG—If you are going to require family relationship centres to tender for federal government funding and then say, ‘As part of that federal government funding, we require you to have suitably qualified staff,’ and those qualifications are expected to be university degrees in related areas, have you looked at whether those skills are available?

Ms Pidgeon—I should add that, under the Family Relationships Services Program—and the centres are part of that program—there are also quality standards, which include appropriate professional qualifications. When FaCSIA has reviews of organisations against the requirements under the program, one of the things that are looked at is professional qualifications.

Senator LUDWIG—Have you looked at whether or not people in a particular regional area will have suitably trained and qualified people to man their family relationship centre?

Ms Pidgeon—One of the issues, when we were looking at locations, was whether an area was too small to be able to produce or support the number of professionally qualified practitioners you would need. It was certainly a factor that we took into account when we were considering what recommendations to make about locations.

Senator LUDWIG—Did you take into consideration whether there are enough qualified people to meet those requirements?

Ms Pidgeon—As I said, we looked at the size of the population centres. We did not go and do surveys of people within those areas, because of course you can recruit from elsewhere. You do not have to recruit from your particular location.

Senator LUDWIG—Do you know whether or not the skills that you require in the centres are in short supply?

Ms Pidgeon—Overall generally, right through the human services sector, there are workforce issues about demand. That is one reason, in fact, that we are developing the competency standards—to broaden the different ways you can come into the sector. We are

aware if that. The organisations are aware of that. However, we do not see that as a reason not to set up new services.

Senator LUDWIG—So you know there is a skill shortage in this area. Have you looked at encouraging things like scholarships and increasing funding to universities as a way of addressing an obvious skill shortage? Given that you have 15 centres and you are going to have 65, you are going to be a major provider, through the service provider, of qualified people in regional and remote or city areas throughout Australia eventually. There will be a huge demand for qualified people to be at these centres. Have you considered the wider implications and how you can encourage people into these areas?

Ms Pidgeon—This is a broader issue than just the centres. The Family Relationships Services Program already has more than 100 providers in several hundred outlets around the country. It is not a new issue. Both FaCSIA and Attorney-General's Department have been doing work on what strategies there might be. That work is continuing, looking at the sorts of things you mentioned.

Senator LUDWIG—The problem you face is that you would not want the accreditation standards to lower, would you, to get people in?

Ms Pidgeon—No.

Mr Arnaudo—Our intention and the intention of the skills council is to try and map out what the current competencies are out there in the industry, and that is why it is very important that that process involves asking the industry what their standards are. So we do not expect it to lower the level of competency for all of those workers.

Senator LUDWIG—So it is your intention to make sure that there will be people who have the training and accreditation required to deal with the protection of people such as those who are at risk of suicide, domestic violence and so on, and you will ensure that practitioners can comprehensively understand mental illness issues and be able to address them appropriately. You are going to have all of those dealt with?

Mr Arnaudo—Yes. Those are things that the industry does already. Those are core competencies that workers in this area need to have in order to do their jobs effectively.

Senator LUDWIG—And you will ensure that there will not be a diminution or a reduction in the standards that are currently in place?

Mr Arnaudo—Our intention is not to have a decline in the standards.

Senator LUDWIG—What is going to be in place as far as quality assurance feedback mechanisms from 3 July?

Ms Pidgeon—There is a range of mechanisms. FaCSIA is responsible for the performance monitoring of the centres. That includes data collected on a regular basis and reports that are required under the funding agreement. The detail of those is something to direct to FaCSIA. On top of that, we are developing an evaluation framework which will be used to evaluate the centres but also other parts of the reform package and the reform package as a whole.

Senator LUDWIG—How regularly will that come back to you? Will there be reporting mechanisms monthly?

Ms Pidgeon—There is monthly reporting in terms of data to FaCSIA. We get reports from FaCSIA on issues that might come up. We do not get all the data. Part of FaCSIA's role is the performance monitoring.

Senator LUDWIG—Will the IRB still be used as a conduit for information or feedback?

Ms Pidgeon—IRBs are a matter to direct to FaCSIA. They are funded by FaCSIA—

Senator LUDWIG—It is not a requirement for you as part of the contract?

Ms Pidgeon—That is correct.

Senator LUDWIG—I will ask FaCSIA. This is always a tricky one between you and FaCSIA: the location of the sites. Who selected—

Ms Pidgeon—That is a matter for us. FaCSIA provided us with some data. We put it together with other data in making our recommendations.

Senator LUDWIG—What did FaCSIA provide you with?

Ms Pidgeon—They provided us with their analysis against a number of demographics. I think I provided it to you last time.

CHAIR—You did.

Ms Pidgeon—I can give you another copy if you want it.

Senator LUDWIG—There is the data from FaCSIA—I think that was that huge document that I got on CD, with the raw data.

Ms Pidgeon—The CD was what we had, which was basically ABS data: population broken down into different demographics. We did not get the raw data, and that is why you did not get it.

Senator LUDWIG—You just gave us a list.

Ms Pidgeon—I gave you the list of what was in that. We did not get that raw data; we just got their conclusions—in fact, I think it was a work in progress at the time—in relation to relative need. It was our job to take into account things like population, accessibility, distribution of other services and so on.

Senator LUDWIG—You already provided the data from FaCSIA to this committee last time?

Ms Pidgeon—I said that the data from FaCSIA would have to come from FaCSIA, because we did not have the raw data from FaCSIA.

Senator LUDWIG—Do you have the final list from FaCSIA now?

Ms Pidgeon—FaCSIA has published a needs analysis document, which we have, but it is also on their website, I think.

Senator LUDWIG—I can grab that from their website. But in terms of FaCSIA providing you with a list, did they provide you with a final list?

Ms Pidgeon—No. While we were putting together information they gave us how they ranked, against a whole lot of factors, a range of places. They did not give us a list as such. We put together the rankings against those factors, such as young families and so on, and then

looked at what was not included in that, which were things like population, accessibility and distribution of other services.

Senator LUDWIG—There was a question also in the House of Representatives for which a ranking of the data from FaCSIA was provided to us. That is the list that you got from FaCSIA. It ranks—

Ms Pidgeon—That was the information on ranking that we got but it was never intended to stand alone. FaCSIA has confirmed that that data was always intended to be looked at in conjunction with other information such as population data.

Senator LUDWIG—But it represents FaCSIA's ranking of locations according to indicators of need.

Ms Pidgeon—It indicates need but it does not take into account other things. It was not their list of the preferred order of locations; it was, rather, just their ranking of need against various factors that they had put together. I think you need to ask more questions of FaCSIA about their ranking. That confirmed it was not intended to be stand-alone in terms of rankings.

Senator LUDWIG—I accept that. Do not take it as a personal criticism. Just refer me back to FaCSIA when I step there. In terms of when you looked at it, Alice Springs, for argument's sake, ranked highly, but it does not have an FRC.

Ms Pidgeon—Alice Springs' population is, of course, much lower. There are issues there to balance between need in a small population and the fact that we needed to have 65 spread around the country. That is an example of where we had to take into account a range of issues.

Mr Cornall—On the Alice Springs point, the Attorney-General put out a press release yesterday in which he pointed out that the centre that will open in Darwin will include a permanent presence in Alice Springs.

Senator LUDWIG—Some good must have come out of my comment, then.

Ms Pidgeon—No, that was already decided.

Senator LUDWIG—When was that decided?

Ms Pidgeon—I do not know for sure.

Senator LUDWIG—That is the trouble with volunteering information, isn't it?

Ms Pidgeon—I cannot be sure that it was flagged in the application, but I think it probably was. Certainly shortly after, as soon as the negotiations started, it was made clear.

Senator LUDWIG—Perhaps you can go back and have a look at that to see when that was flagged, in what way it was flagged and what information was provided to that service to say that they would be required to provide an outreach centre—I guess that is what you would call it.

Ms Pidgeon—Yes, we can do that.

Senator LUDWIG—You could also then indicate whether or not you have provided any additional money to fund that outreach centre and, if so, when that was negotiated and when that was made available.

Ms Pidgeon—I can answer now. The selection documentation required them to provide a service to Alice Springs and the money that was included in the selection documentation included the funding to do that. Because Darwin has such a large catchment and also a large Indigenous population it in fact has the most funding of any of the 15 family relationship centres.

Senator LUDWIG—Was some of that money earmarked for a presence in Alice Springs?

Ms Pidgeon—It would have had to be. Whether we knew that it was to be a permanent presence at the time they made their application or not is what I will need to take on notice, but they certainly are and always were required to provide a service to Alice Springs and other population centres.

Senator LUDWIG—You may not know now so you might want to take on notice what that presence will involve in terms of the service to Alice Springs.

Ms Pidgeon—Yes, I will provide those details.

Senator LUDWIG—You do not have those now?

Ms Pidgeon—I have some idea of them, but it may not be comprehensive, so I will come back to you on that.

Senator LUDWIG—Are you able to say what you know at this point in time?

Ms Pidgeon—There is at least a permanent presence, a permanent office, there.

Senator LUDWIG—Bendigo—doing the Bs—and Burnie also ranked significantly high. Why didn't they get an FRC?

Ms Pidgeon—Can I remind you that the Attorney made decisions and we made recommendations. I do not want to get into specific recommendations about specific places, but we had to spread 65 around the country. That would be a general comment.

Senator LUDWIG—Did you make the recommendations—when I say 'you' I mean your section—specifically for Bendigo and Burnie and did the AG change them?

Ms Pidgeon—We put a range of options to the Attorney. I do not think it is appropriate, because that really is policy advice, to talk about the detail of the options that we put to him.

Senator LUDWIG—So Bendigo, Burnie, Caboolture and Fremantle were recommendations but the Attorney-General changed them, Minister.

Senator Ellison—We do not, as we said earlier, advise the minister. As to what the minister accepted or did in relation to the advice by the department, I will have to take that on notice. It is not a process I was privy to but I will certainly take that up with the Attorney-General.

Senator LUDWIG—The FaCSIA list only had 66 locations, so you only had to pick 65—one less—but there are additional—

Mr Cornall—Ms Pidgeon has gone over that: the FaCSIA data was only one component of the information that was used to consider where the appropriate places for the centres were. That was not regarded as a list of 66 places where centres should be.

Senator LUDWIG—How many did you then have? Did you have another list, Ms Pidgeon?

Ms Pidgeon—I think the information we might be relying on was just some information that we had during the process. It was not intended to be a complete list or a list of preferred order of merit or something from FaCSIA at all; it was an indicator of how different places with very varied populations ranked according to the various factors they were looking at. That had to be put together with population and other issues such as accessibility and where other services are distributed. All of that was put together in what we recommended to the Attorney. The Attorney did not see anything like the document I think you might be referring to—I am assuming it was the one that was released as a question on notice recently.

Senator LUDWIG—Yes, it was. I am happy to make that available to you if you do not have it.

Ms Pidgeon—If it is that one—

Senator LUDWIG—It is the same one. It has got data from FaCSIA: rank, state and territory—

Ms Pidgeon—That was very much just part of a process—it was not even at the end of the process. It was information that they did not intend to say that this is where the location should be, but rather to say that these are our rankings against different factors, and then we take into account other factors such as population.

Senator LUDWIG—But my question went a bit broader than that. I then went to: there are those from FaCSIA—and I will ask those next week; if it is not me, someone like me—but in terms of your list, do you have a ranking list?

Ms Pidgeon—Not as such.

Senator LUDWIG—I was trying to work out how you then say you looked at theirs, you took it into consideration. You did not use a pin on a map. You took a range of factors into consideration to work out locations. So you must have decided on which locations and which areas and then compared them to FaCSIA or overlaid them.

Ms Pidgeon—No. I think I explained previously at earlier hearings that we had put together a lot of information, including the FaCSIA information, and we looked at each region. If you went purely on, for example, where all the population is, you end up with all the centres in metropolitan areas. We had to look at accessibility issues within metropolitan areas and in regional areas. We went region by region and had a look at all of the factors: the FaCSIA rankings within those regions, the populations, the transport hubs—all those sorts of things. We had to come up with the best fit for that region.

Senator LUDWIG—Minister, the problem that the committee faces or at least I face in questions about this is that the department says they made a list available to the Attorney-General—

Ms Pidgeon—Can I clarify: I did not say we had made a list available; we provided him with options for each region. We did not have a list or a ranking as such.

Senator LUDWIG—Is that available?

Ms Pidgeon—That is our policy advice to the Attorney-General.

Senator LUDWIG—Without seeing that, the difficulty is that I am left to draw this conclusion: if Bendigo, Burnie, Caboolture and Fremantle were options that ranked highly in terms of need, why did the final list include, for instance, Strathpine instead of Caboolture? I do not know why that would be so. If you look at the demographics of Strathpine and Caboolture and the need in both areas, Caboolture would win out. The next one further north is in Maroochydore, and the ones after that are in Upper Mount Gravatt and Chermside. Strathpine is not that far away, as the crow flies, from Chermside. I have a little bit of an advantage here because they are on the north side and I have lived in that area.

Did the minister change them for reasons that only the minister knows? The lists that we have show where the need is; we have no idea what the recommendations or options were because you say that that is advice to government. We are then left with looking at the results of where the locations are, and we do not know and cannot understand why that is so. I would have thought that the minister might have decided it for himself. That is the conclusion I could draw. I might be wrong; I would certainly like that clarified. I would certainly like to be corrected and be told that the minister did not say, ‘Look, we won’t have one at Caboolture; we’ll have one at Strathpine because it’s in a Liberal electorate.’

Senator Ellison—I am advised that the list you are referring to is not one that was before the Attorney when he made the decisions. I will confirm that. With respect to the decisions made by the Attorney, again, I will take that on notice and see whether the Attorney can add anything regarding reasons for the decisions made, and if there was any decision made which was contrary to any advice given. But it is only the Attorney who can answer that, and I will take it on notice.

Mr Cornall—The Attorney in his press release yesterday did respond to some of the issues raised by the shadow Attorney-General as to the location of the family relationship centres. In the press release, the Attorney pointed out that more than 47 per cent of FRCs are located in towns or suburbs covered by non-government electorates, and that 44 per cent of FRCs will be located in towns or suburbs covered by Labor electorates. He also pointed out that there are FRCs in seats held by a number of members of the opposition frontbench. So those matters have been covered by the Attorney.

Senator LUDWIG—I heard some of that being expressed. That is why I am asking for the primary documents. If there is nothing to hide, if a fair assessment has been done, if it has been done according to the indicia provided, then make the primary data available and we will all see the truth of it. We will see whether or not he is putting a spin on it—the best possible spin he could—or whether the data actually bears out what the department has recommended, what the position is and that it is based on need. It is very important, I would have thought, to get the FRCs right—to get their locations right, to make sure there is no suspicion that their locations are being decided on a party-political basis. I thought we would have wanted FRCs to have bipartisan support if they are going to work. A significant amount of money is going to be spent on them. You have also sought to include one range of additional services, and we will see how that goes. They are going to play an important role. So I don’t understand why that data cannot be provided.

Senator Ellison—I think it is up to the Attorney-General to answer that question. In order to assist Senator Ludwig and the committee further, I table that press release put out by the Attorney-General because it does add some clarification and explanation. There are some other aspects, though, which Senator Ludwig has raised. As I said, I will take them on notice and we will answer those questions.

Senator LUDWIG—For the sake of completeness, can we also deal with areas like western Melbourne, where Maribyrnong and Melton are directed to Sunshine. Then there is Brookvale and North Ryde—there is a question of whether they needed an FRC when those areas are ranked on the FaCSIA list as having some of the lowest rates of child support customers and single parent families. In other words, they are ranked a long way down the list. I know you cannot make it available, and there might have been other reasons for the decision, but it seems that, if you just look at sheer need, this is where the FRCs should have been put. I refer to some of those that I have already mentioned, such as Brookvale, North Ryde, Sunshine and Strathpine, and ask why you would not have put one in, say, Caboolture in Queensland. I am at a loss, but hopefully the minister will be able to shed some light on it.

CHAIR—Thank you, Senator Ludwig.

Mr Arnaudo—I have a slight clarification of the answer I gave about funding for the community education campaign. I might have said it was over four years, but the funding actually commences from the financial year 2007 and goes on through 2008 and 2009. So it is actually over three years rather than four years.

Senator LUDWIG—Did I mislead you? Did I say four?

Mr Arnaudo—No, I think it might have been me who said four at one stage.

CHAIR—He did agree that it should be three.

Mr Arnaudo—It should be three.

CHAIR—Senator Ludwig, are you going to give me an indication of where in the program—

Senator LUDWIG—That is always a stab in the dark. I think we can go to family courts—federal judiciary more generally.

CHAIR—Still in 1.1. We are moving at a breathtaking pace.

Senator LUDWIG—These things have a way of being like a worm: you go slowly and then the tail catches up.

CHAIR—I will bear that in mind.

Senator KIRK—I have some questions relating to the Family Court. I understand that two judges of the Family Court have recently retired. Is that correct?

Ms Leigh—Yes, that is correct.

Senator KIRK—Where were those two judges based?

Ms Leigh—One was based in Melbourne and one was based in Sydney.

Senator KIRK—Is it proposed to replace those two judges?

Ms Leigh—The Attorney has that under consideration.

Senator KIRK—How many judges are there currently in the Family Court?

Ms Leigh—Currently there are 41.

Senator KIRK—How many in Melbourne and Sydney respectively?

Ms Leigh—In the Family Court in Melbourne there are 10 judges, and in the Family Court in the Sydney registry—and I am referring only to Sydney CBD; because there is a separate registry at Parramatta—there are nine judges.

Senator KIRK—Just talking about New South Wales, has there been any progress in appointing a permanent resident judge to the Newcastle Family Court registry?

Ms Leigh—I do not believe that there is anything I can add on that, Senator.

Senator KIRK—So currently there is no resident judge at the Newcastle registry, I take it. You said there is one in Parramatta and nine in Sydney CBD.

Ms Leigh—There are, of course, federal magistrates in Newcastle, and there is one judge, Justice Mullane.

Senator KIRK—So there is one permanent judge in Newcastle.

Ms Leigh—That is correct. And there are two federal magistrates.

Senator KIRK—Is it proposed to provide a new Family Court registry in Newcastle?

Ms Leigh—The Family Court is working on a different building for the Newcastle registry.

Senator KIRK—How far has that progressed?

Ms Leigh—It would be better to raise that with the Family Court when they appear tomorrow, because they are responsible for their building.

Senator KIRK—I am trying to understand what is going on. You mentioned that the Attorney is giving consideration to whether or not the two judges will be replaced. This really goes to my next set of questions about the Federal Magistrates Court, but is the proposal to appoint further federal magistrates to pick up the jurisdiction, rather than replacing the Family Court judges? Is that what is going on here?

Ms Leigh—Since the establishment of the Federal Magistrates Court, each time a member of the Family Court, or indeed the Federal Court, retires the question arises as to whether, first of all, they need to be replaced at all, because judges are tenured. Just because 20 years previously a judge was appointed in that particular location does not mean that is still the community's need today. Then, if it is determined that the resource needs replacing, it needs to be determined where in Australia it should be replaced because, again, our needs may have shifted. Having looked at that, it needs to be determined whether the needs in that particular location are better met by appointing a member of the Family Court or a member of the Federal Magistrates Court.

Senator KIRK—The members of the Federal Magistrates Court are tenured as well, are they not?

Ms Leigh—That is correct.

Senator KIRK—So, in terms of cost, there is probably not a great deal of difference between appointing a new Federal Court or Family Court member. Is that fair to say?

Ms Leigh—The total cost of a federal magistrate is less than the total cost of a Family Court judge.

Senator KIRK—Why is that?

Ms Leigh—Their remuneration is less. Family Court judges also have a pension and federal magistrates have superannuation.

Senator KIRK—Do you have any rough figures for the total cost of appointing a judge as opposed to a federal magistrate on a yearly basis?

Ms Leigh—When a decision is made by the government that a magistrate should be appointed in place of a judge, discussions are held between the Family Court and the Federal Magistrates Court about the appropriate amount of money to be transferred between them. That decision is taken each time. I am sure those courts would be able to give you further information on how they go about that when they appear tomorrow.

Senator KIRK—So your department does not work on the basis that a judge costs X and a federal magistrate costs Y?

Ms Leigh—Each time additional resources are provided to the court, costings are done as to what amount of money should be provided. Those costings are put forward by the relevant court. Of course, we are involved in giving advice on that, but it is done each time. To give you an example, if a new jurisdiction is established, there might be greater interpretation needs in that jurisdiction than in other jurisdictions, so it is costed each time.

Senator KIRK—Is there any conception of what would be the optimal size for the Family Court or does that depend on needs at any given time?

Ms Leigh—When the Federal Magistrates Court was established, it was established with much of its jurisdiction in the family law area being concurrent with part of the Family Court's jurisdiction. The intention was that it would take on the less complex work and that, therefore, over time the size of the Family Court would diminish. It is a matter of assessing that progress. And you see, of course, that the Federal Magistrates Court has grown enormously since it was first established. It is a matter of then assessing as we go along the content of the jurisdiction and where the appropriate balance lies.

Senator KIRK—You said that currently there are 41 members of the Family Court.

Ms Leigh—That is correct. That is with those two positions you mentioned having been vacated recently.

Senator KIRK—So that would make 43.

Ms Leigh—Yes.

Senator KIRK—Are you able to give us figures on the reduction in the size of the Family Court since the Federal Magistrates Court came on board—which I think was in 1999 or 2000?

Ms Leigh—It was 2000. There were 48 judges. We have come to the number 43. The other five have been replaced by federal magistrates. Of course, there are a large number of additional federal magistrates exercising family law jurisdiction in addition to those five.

Senator KIRK—I have some questions about the Family Court registry in Newcastle, but you have suggested it might be better to speak to them about the allocation of courts and costs.

Ms Leigh—I will be available again tomorrow to assist as well if there is an overlap.

Senator KIRK—Sure, thank you. Moving to the Federal Court, last time we had additional estimates there were some questions raised about the blow-out in expenditure per matter in the Federal Court. I understand that it had increased from about \$11,000 to \$16,000 in one year. As I recall, you said that this is something that you might raise with the Federal Court when you had the opportunity. I wondered whether or not that had been done.

Ms Leigh—Yes, there was discussion of that matter at the following court CEOs' forum in March. I think, again, the Federal Court would be happy to elaborate on that tomorrow.

Senator KIRK—But you or your officers were present?

Ms Leigh—That is right. I was at that meeting.

Senator KIRK—What was the outcome of the discussion, if it was discussed? Was there any plan to change things in future or to do anything about it?

Ms Leigh—One of the points that was made by the Federal Court was that there are difficult issues of comparing like with like and that they were identifying those issues.

Senator KIRK—And it was left at that?

Ms Leigh—I recall that they were identifying those issues and raising them with the Productivity Commission as to how these comparisons might be done.

Senator KIRK—So there were not any suggestions of plans that they might put into place in order to reduce the costs, or were they simply maintaining that, if you are comparing like with like, there has not in fact been a blow-out? What was their position on that?

Ms Leigh—I understand that the Court Administration Working Group, which is a group that assists the Productivity Commission in this work, has agreed to audit all the financial statements to improve the expenditure comparisons so that they can be more meaningful in the future.

Senator KIRK—After you had your discussion in March, was there any follow-up from that from your officers or from your point of view?

Ms Leigh—That was the information that was provided to us, and we are still awaiting the outcome of that audit.

Senator KIRK—So you were satisfied in the knowledge that there was going to be an audit of this matter?

Ms Leigh—That seems to be the next sensible step, yes.

Senator KIRK—On the Federal Magistrates Court, I understand that there was funding allocated for six additional magistrates in 2005-06 in the additional estimates.

Ms Leigh—That is correct.

Senator KIRK—Have they been appointed?

Ms Leigh—No.

Senator KIRK—None of them?

Ms Leigh—No. That process is under way. There were advertisements and interviews conducted, and the selection and decision by the Attorney is well advanced.

Senator KIRK—Sorry, can you say that again?

Ms Leigh—The selection, as I have outlined, is well advanced and the decision will be taken by the Attorney.

Senator KIRK—Is there a date set for the start-up of these six magistrates?

Ms Leigh—No.

Senator KIRK—From what you are saying, the matter is with the Attorney at the end of the selection process.

Ms Leigh—The positions were advertised, interviews have been held and further consideration is being given to those appointments.

Senator KIRK—When were they advertised?

Ms Leigh—I could give you a copy of the advertisement, if you would like.

Mr Cornall—When was it advertised, though?

Ms Leigh—I know I have the dates. I will hand up the ad.

Senator KIRK—I am just interested in the date, really. I am just trying to work out how long it has taken.

Ms Leigh—It was in November.

Senator KIRK—November of last year?

Ms Leigh—That is correct.

Senator KIRK—When did the interviews take place?

Ms Leigh—There have been a number of interviews, but mainly in April.

Senator KIRK—Minister, is there any idea as to when there is going to be a decision made as to whether or not these six magistrates are going to be appointed?

Senator Ellison—That is with the Attorney. I will take that on notice and see if I can get back to you with anything on that, hopefully during the course of these estimates hearings.

Senator KIRK—Thank you. I am just thinking, given that it is now nearly June, we are nearly at the end of the financial year, and the interviews took place in April. Has any thought been given as to where those magistrates will be based, if and when they are appointed?

Ms Leigh—That is a matter for the Attorney.

Senator KIRK—Is there any intention as to the jurisdiction that these magistrates will be dealing with? Will they be generalist magistrates or will they be focusing on one particular area?

Ms Leigh—Those six magistrates were for workplace relations jurisdictions.

Senator KIRK—What was the thinking behind appointing six new magistrates to deal with IR issues?

Ms Leigh—New jurisdiction has been given to the Federal Magistrates Court in relation to workplace relations. That was the assessment of the appropriate resourcing for that new jurisdiction.

Senator KIRK—Given that the IR legislation came into effect at the end of March or so and we do not have the six magistrates on board, what is happening? Who is going to be dealing with any issues that might arise?

Ms Leigh—All the magistrates have the power to handle the matters that come before the Federal Magistrates Court.

Senator KIRK—This is probably a question for the court itself, but has there been an increase in litigation in this area since the commencement of the new IR laws?

Ms Leigh—You might refer that to the court but, as you say, the legislation only commenced at the end of March.

Senator KIRK—You said that the advertisements for these six additional magistrates occurred in November 2005. Have there been any new magistrates appointed in this financial year—that is, since July last year?

Ms Leigh—Yes. Since July last year a federal magistrate was appointed on 12 September in Brisbane and on 30 January this year in Melbourne.

Senator KIRK—So there have been two.

Ms Leigh—That is correct.

Senator KIRK—This may be a question for the minister. I am interested in the process when it comes to the appointment of federal magistrates, whether or not there is any consultation undertaken and, if so, with whom.

Ms Leigh—May I add that an additional magistrate was appointed in Sydney in January this year.

Senator KIRK—And the process for appointment?

Senator Ellison—There is the formal process for High Court judges. For Federal Court magistrates, there are advertisements of course and interviews are conducted. As to whether there is any formal process in place, I would have to take that on notice, unless the department can advise us.

Mr Cornall—In respect of Federal Court and Family Court proposals, the Attorney conducts quite wide ranging but informal consultation as to appropriate nominees. He then makes the decision on the name of the nominee to be put forward to cabinet for endorsement

by the Executive Council, and that is very much the traditional process for appointing judges, both in the Commonwealth and in the states and territories.

Senator KIRK—That is for the federal and family court judges, you said—

Mr Cornall—Yes.

Senator KIRK—whereas for the federal magistrates there is a more open process, in the sense that it is advertised.

Mr Cornall—It is advertised and there is an interview process by departmental officers and so forth, yes.

Senator KIRK—But it is the Attorney who makes the final decision as to the selection of those persons.

Mr Cornall—They go to cabinet, and they are appointed through the Executive Council process. But the Attorney takes them to cabinet, yes.

Senator KIRK—On the recommendation of the selection panel?

Mr Cornall—The Attorney makes his own decisions on the information put before him by the selection panel.

Ms Leigh—I would add that while, as a generalisation, federal magistrate appointments have been advertised, there is no rule that says that they must be. The Attorney can make his decision. It is a matter of the best way of getting the appropriate information in each case.

Senator KIRK—Moving to this year's budget, there is a proposal there for seven new magistrates in this coming year. Again, I understand that two are going to be funded by transfer from the Family Court and five funded from an increase in court fees. With those two that are being funded by a transfer from the Family Court, does that have any connection with the two vacancies currently in the Family Court?

Ms Leigh—My understanding is that that is the balance of the money that was transferred in the last financial year when three judges were replaced by three federal magistrates. That was done on a part-year basis so the balance of the ongoing full-year funding is being transferred in this financial year.

Proceedings suspended from 1.00 pm to 2.01 pm

Mr Cornall—The Attorney has asked me to add some further information to the information we provided to Senator Kirk about the appointments of magistrates to fill the IR positions. The Attorney has approved two persons to be taken forward to cabinet for consideration for appointment, and that process is now going forward. The Attorney has also approved a candidate to fill the vacancy created by former federal magistrate Victoria Bennett's appointment to the Family Court, and the department is processing that at the present time. Three appointments are well under way. Of course, they will not be announced until after they have been endorsed by the cabinet and the executive council.

CHAIR—Before you start, Senator Kirk, I want to clarify what process the committee members are planning to go through this afternoon. We are still at 2.02 pm in 1.1, having completed 1.2. Can I get some idea of how much longer you expect to spend on 1.1?

Senator KIRK—I would say probably another half an hour or so.

CHAIR—And then you intend to go to 1.3, I assume.

Senator KIRK—Correct. Going back to the magistrates, and I appreciate you letting me know that there are three persons who should shortly be joining the court, are there any plans to put a magistrate into Cairns?

Ms Leigh—There has been no decision announced on that issue.

Senator KIRK—What is the process for determining the location of the new magistrates?

Ms Leigh—The department looks at the needs around Australia. If we were looking, for example, at adding to the capacity of the Federal Magistrates Court in the family law area then we would look at the filings around Australia in family law matters. We leave out the divorce filings because they are not indicative of a significant workload in terms of the work required in relation to each matter. We would then compare those with the judicial resources available in each area and look at where the greatest need was. Then, having looked at that, we would look at the pressure on the Family Court registry or judges in that location compared with the pressure on the magistrates in that location.

We do that by comparing the workload per judge in that registry with the workload of judges in other registries and then the workload of the magistrates in that registry with the workload of magistrates in other registries, to give us a sense of comparative need. We would then look at other things. Because we are talking about long-term appointments, we would look at whether there might be any significant population trends in areas. We would look at issues around whether other registries support the particular registries. For example, as well as looking at them individually, we would always look at Newcastle, Parramatta and Sydney as a cluster because the judges are available to support each other.

We look at the impact an appointment would have on the particular location. For example, if there are already 10 judicial resources in a particular location, adding one more makes a small percentage difference to the workload. If there is only one judicial resource in a location, adding one more halves the workload, so the outcome, in terms of the effect on the workload, needs to be looked at as well. Then we need to look at other issues that the courts might provide us with about particular needs for a particular area.

Senator KIRK—Has the kind of work that you have just described been undertaken in relation to the three people who will soon be appointed to the Federal Magistrates Court?

Ms Leigh—As Mr Cornall outlined, two of those relate to the workplace relations jurisdiction. I have just been outlining the process for looking at increasing the family law capacity. The other replacement was the replacement of a magistrate. Victoria Bennett was appointed to the Family Court, so there was already a recently established need in an area. That was a very useful starting point in terms of looking at the needs around Australia.

Senator KIRK—Has any work been done on whether or not there is a need in Cairns such as you have just described?

Ms Leigh—Each time we look at these issues we look at all the registries around Australia. Cairns is part of the Townsville figures, but we are mindful that the judiciary sit in both Townsville and Cairns.

Senator KIRK—How many federal magistrates are there currently in that Townsville registry?

Ms Leigh—In Townsville there is one judge of the Family Court and one magistrate.

Senator KIRK—I will move now to a story that appeared in the *Australian* last Friday, which you would probably be aware of. It drew attention to the fact that the Magistrates Court appears to be near crisis point—that is the way that the journalist described it. Is it at crisis point?

Ms Leigh—No, I do not think that is a description that the government would apply to the Federal Magistrates Court at all.

Senator KIRK—What do you say in response? I am sure that you are aware of this article.

Ms Leigh—There were a number of points made in the article. Perhaps the first point to make is in relation to resourcing of the Federal Magistrates Court. In addition to the six magistrates that we have been discussing already in relation to workplace relations jurisdiction, in the recent budget the government announced an additional five magistrates to be allocated to the court. That is part of an ongoing allocation of additional resources to the Federal Magistrates Court.

Every time there is an increase in the jurisdiction of the court the government looks at whether additional resources should be allocated. The government is constantly monitoring the workload of the court as well. It has just announced those five additional magistrates. Prior to that there were the six workplace relations magistrates in response to that additional workplace relations jurisdiction. Prior to that, in 2005-06, there were two additional magistrates allocated on the basis of increased workload. Prior to that there were eight magistrates allocated to deal with the migration jurisdiction that was given to the Federal Magistrates Court.

There were more before that. There were five transferred from the Family Court in recognition that there is now concurrent jurisdiction and it is appropriate to have a certain number of lower level magistrates to deal with the family work. The original allocation of judicial resources to the Federal Magistrates Court was 16, including the Chief Federal Magistrate. If you add all of the positions that are currently funded, there are 42 federal magistrates; and, once the money comes on board for the five additional magistrates that have just been announced, there will be 47. That is a significant increase in resources from the 16 originally announced.

Senator KIRK—Sure, but this article is looking at the here and now. As we heard from you today, six federal magistrates were funded in the last financial year, yet only two of those have been appointed—or have not even yet been appointed. We have also seen that it takes a very long time for this appointment process—from November last year, when the advertisements first went out, until now, when still only two are going to be appointed. You mentioned the five that are due to be appointed in this financial year, but one would have to think that it will be at least another year until that happens. I am wondering what you have to say, for example, about the report in the *Australian* that the Federal Magistrates Court is ‘a sausage factory. Your case just gets shut down.’

Ms Leigh—First of all, with respect to your comment that it would be another year before those five magistrates are appointed, I cannot tell you when they will be appointed, but I do not think one should assume that it will take a year to appoint them.

Senator KIRK—It is clearly under pressure though, isn't it? There are some 80,000 cases, and yet this process for appointment seems very slow.

Ms Leigh—The 80,000 figure includes a large number of matters that are handled by registrars. It is not a simple matter of looking at a total number as though all of those filings are equal in terms of the workload involved.

Mr Cornall—In addition to those unsourced remarks by unidentified commentators, there are a number of other factors that you can take into account about the standard of the work and the capability of the court to deal with it. For example, the Federal Magistrates Court annual report for 2004-05 includes the results of a survey of legal practitioners which was conducted during that year. It reports that 87 per cent of respondents overall rated the service by the court as either good or excellent. The New South Wales Bar Association publication *Bar News* also published an article in the summer 2005-06 edition which also considered that the court was one of the most efficient jurisdictions in Australia.

In an interview on ABC Radio National *Law Report* earlier this month, Rob Davis, the President of the Queensland Law Society, commented that the court is held in very high regard by the profession generally. It is recognised as being perhaps the most hardworking jurisdiction in the country. In a very short period of time they have developed a very sound reputation for diligence and competence. Those are all comments on the record, backed up with some authority, rather than unsourced comments by a barrister in a newspaper article.

Senator KIRK—Thank you. I will have the chance to speak to the Magistrates Court themselves to find out just how much pressure it is under; but in view of the time, I should keep moving through.

If you look at the Productivity Commission figures, there seems to be quite a serious imbalance in terms of the amount of money that the government spends on various courts. Commonwealth spending in the Federal Court is, per matter, \$16,767; it is only \$384 in the Magistrates Court. That seems like a huge discrepancy. Some 40 times more money is spent per matter in the Federal Court. Why is there such a huge imbalance?

Ms Leigh—First of all, the Magistrates Court is set up to deal with less complex matters. But it should also be noted, as I was saying before, that those 80,000 filings are not all equal. About two-thirds of the court's cases are processing divorces and bankruptcies, and those are very simple processes and are handled by registrars. So that clearly affects the cost per finalisation, if you just take the total number and divide it.

Senator KIRK—Are there any figures done comparing, say, the more complex matters, putting to one side the matters that are dealt with by the registrars that you have described? Is there any comparison that can be done with the more complex matters that the FMC deals with vis-a-vis the Federal Court?

Ms Leigh—The nature of the jurisdiction of the Federal Magistrates Court is to be less complex than the Federal Court and the Family Court. By and large, all of the jurisdiction of

the Federal Magistrates Court is also vested in the Family Court or the Federal Court, and the distinction is that the FMC was set up to do the less complex ones falling within that area and the family and federal courts to do the more complex ones. So one would not be comparing like with like. It would not be possible to identify the complex cases of the FMC that equated to the cases of the Family Court and the Federal Court.

Senator KIRK—So there has not been any attempt by the government to try to compare like with like. At the end of the scale there must be some cases which are more complex than those which are very simple, which could be handled by either the Federal Court or the FMC.

Ms Leigh—A judgment has to be made in relation to each case as to whether it is filed and, indeed, as to whether it is transferred, because the FMC can transfer matters up and the family and federal courts can transfer matters down when they are in the wrong court. So there is a line where a judgment is made, but the whole point of the jurisdiction is to be less complex, so one would not be trying to find the group that was the same. If we found that, we would have some concerns.

Senator KIRK—I also had a question about fees. Have there been any increases in the fees for court users in the last financial year in both the Federal Court and the Federal Magistrates Court?

Ms Leigh—In the 2005-06 financial year there was an increase in fees to fund the two additional magistrates that I mentioned earlier.

Senator KIRK—So the fees were used to fund the additional magistrates?

Ms Leigh—Those two that I mentioned earlier, yes.

Senator KIRK—The two who are about to be appointed?

Ms Leigh—No, when I was listing all of the additions to the FMC's complement I mentioned that in 2005-06 there were two additional magistrates appointed. That was in the Sydney CBD, mainly to handle family law work. They were funded by an increase in fees. Your question related to the 2005-06 financial year—is that correct?

Senator KIRK—Yes. Is that how you fund the appointment of further magistrates—by increasing fees on users?

Ms Leigh—In each case the government has to decide whether they are going to fund magistrates by taxes or fees, and it is a decision that has been taken twice now, looking at the fee structure, that it could appropriately be increased and that would offset the cost of additional magistrates.

Senator KIRK—Is there any protection in the system for low-income earners?

Ms Leigh—Yes. Each court has provisions for exemptions from fees and for waivers.

Senator KIRK—How are those exemptions determined—on the basis of a certain income? How does that work?

Ms Leigh—Each court has its own exact provision—and the courts could tell you tomorrow the details of their provision—but there is a hardship equivalent, as I understand it, in each court.

Mr Cornall—On the question of fees, fees will go up in the coming year to offset the cost of the new magistrates that will be appointed next year.

Senator KIRK—What sort of a percentage increase are we talking about?

Ms Leigh—It is roughly 15 per cent.

Senator KIRK—Finally, on the performance of the FMC, how is performance monitored or measured? Is it done on the basis of whether or not targets are met? How is it monitored?

Ms Leigh—The Chief Federal Magistrate has set standards for the court in terms of how quickly judgments are handed down, for example. The protocol set by the court is that they are to be handed down within three months.

Senator KIRK—Are the targets that you have referred to being met?

Ms Leigh—The Chief Federal Magistrate has reported that, in the vast majority of cases, they are met. He issued a statement recently to that effect.

Senator KIRK—Would you be able to provide us with a schedule of that? Is that available to you or is something I should ask them for?

Ms Leigh—It was a public statement that the Chief Federal Magistrate issued, so, yes, we could provide that.

Senator LUDWIG—Do you have the schedule of fees available?

Ms Leigh—I would have to take that on notice.

Senator KIRK—I move now to community legal services. In the budget there appears to be no new money allocated for community legal centres. Is that a correct reading of it?

Mr Cornall—Yes, that is correct. The community legal centres will get a small adjustment or small increase in their funding in accordance with the normal formulas for increasing budgets that are not the subject of new policy proposals or new money, but otherwise they are basically on their current level of funding.

Senator LUDWIG—So they are the only ones that missed out in this budget?

CHAIR—Was that a comment, Senator Ludwig?

Senator LUDWIG—Yes, it must have been.

Senator KIRK—What about to reflect CPI increases?

Mr Cornall—As I understand it, the same formula is used for government departments.

Senator KIRK—Which is?

Dr Popple—The community legal centres will be paid two per cent more in the coming financial year than they are currently paid. The effect of the indexation is that they all get two per cent more.

Senator KIRK—Is that the indexation figure that is used for all increases in this manner? Or is it less—or more?

Dr Popple—I might have to defer to my colleagues in the Financial Management Branch for that, but certainly it is consistent with previous indexations in the community legal service area.

Senator CARR—Which formula is it? Is it one of the WCIs? Which one is it?

Mr Kennedy—It is a wage cost index.

Senator CARR—Which one?

Mr Kennedy—No. 1.

Senator CARR—Are all the programs in the department indexed on that same formula?

Mr Kennedy—They are broadly wage cost index No. 1, yes.

Senator KIRK—Has the department given any advice to the Attorney-General that there ought to be an expansion of the community legal centres?

CHAIR—Could I clarify something, Mr Cornall? My reading of the program indicates that this is actually in 1.7—is that correct?

Mr Cornall—Yes, but we can deal with it now.

CHAIR—It is 1.7, Senator Kirk. Have you finished in 1.1?

Senator KIRK—I have, other than this area.

CHAIR—Then let us indicate that 1.1 is finished.

Senator Ellison—It would be nice to wrap up 1.1 before we move to another area.

CHAIR—We have; it is now finished.

[2.23 pm]

CHAIR—We are now discussing output 1.7.

Mr Cornall—Senator Kirk, the answer to your question is that there have been a number of reviews of CLCs over the last few years. That has been undertaken by the Commonwealth in conjunction with different jurisdictions. Those reviews have come up with some proposals about where CLCs should be located. As a result of that, the Commonwealth has tendered out the creation of some new CLCs. We can give you the history of all that but I cannot recite it all right now.

Senator KIRK—So there is a tendering process?

Dr Popple—Not at the moment.

Mr Cornall—No, but there has been over the last few years in relation to specific areas.

Senator KIRK—So there are no current ones to create future CLCs.

Mr Cornall—No.

Senator KIRK—When was the most recent review?

Dr Popple—There is a review currently being undertaken in relation to New South Wales. I think the one before that was Western Australia.

Senator KIRK—Do I understand that each state is reviewed independently on a sort of rolling basis to determine need?

Dr Popple—It has been. As the secretary indicated, we engage in a process which involves the relevant stakeholders within that state, from the community legal services and from the state government. That has happened in several states in the last few years.

Senator KIRK—When is the New South Wales review due to be completed?

Dr Popple—Very soon. I think it is in its final stages. It will then be presented to the Attorney and also the New South Wales Attorney.

Senator KIRK—How do you monitor demand for CLC services? Is that done through the process of review you have described?

Dr Popple—That was one of the objectives of the review, to determine where the areas of need were and whether the CLCs were in fact appropriately located to meet that need.

Senator KIRK—When is the New South Wales one due? You said soon—in the next month or so?

Dr Popple—It is out of our hands in the sense that we are represented on the committee but we do not control it in any way. We think it will be soon but we do not have a date for it.

Senator KIRK—Once the review is completed, are there recommendations that then go to the Attorney as to whether or not there ought to be further CLCs created?

Dr Popple—That is certainly something that is open to the committee to recommend, in relation to New South Wales.

Senator KIRK—Finally, on interpreting services, I see there is \$1.8 million allocated over four years being transferred from DIMA to the Attorney-General's Department to fund interpreting services.

Dr Popple—That is correct.

Senator KIRK—What effect is this going to have on the CLCs?

Dr Popple—We think it will have no effect on the CLCs. This is really a movement of an amount of money from one department to another to provide the same service. Currently that service is provided through the telephone translation service, which is run by DIMA. We have determined the amount of currently free services provided to CLCs and that is the amount of money which has been transferred across to us. The same CLCs will be able to access that same service; it will just be funded through a different appropriation.

Senator KIRK—So then there will not really be any improvement in the availability of translating services?

Dr Popple—That money has been indexed. It is a large amount of money. But, no, there is no change to the availability of interpreter services for the CLCs.

Senator KIRK—Are you aware that there are some problems in Western Australia in relation to obtaining interpreting services, which I assume are phone services?

Dr Popple—I am not aware of that in the CLC sector. I did read some comment about that in relation to the state Indigenous sector—that is, the state services provided to Indigenous legal services. But I am not aware of that in the CLC sector.

Senator MOORE—I have some questions on a range of specific programs which I believe are in 1.7 but, as this is my first exercise in this particular area, you might have to yell at me and say that it is somewhere else.

CHAIR—You are very welcome, Senator Moore.

Senator MOORE—My first question is to do with the family violence prevention legal services. Are they yours?

Dr Popple—They are ours.

Senator MOORE—That is a good start. I heard questions asked earlier about the location of some services but I am interested to know on what basis were the decisions made on the locations of where the new family violence prevention legal services will be located. What was the model for that?

Dr Popple—You are talking about the five new ones in the current budget process?

Senator MOORE—Yes.

Dr Popple—As part of an earlier expansion process, we conducted some research—that is, we contracted the crime prevention centre, which is part of the University of Western Australia, to conduct some research for us on the areas of greatest need. As part of that expansion, which was an extra 13 centres, some research was conducted. We have used that same research to determine where the extra five centres should go. So, in other words, we had a list. We have gone down that list 13 places and we are now going an extra five places down that list.

Senator MOORE—What was the date of that research? It has been used now for two orders of merit, really, hasn't it?

Dr Popple—It has. I think it was 2004. We can find the precise date if you wish, but I think it was late 2004.

Senator MOORE—Am I stretching the friendship to ask whether that is public information?

Dr Popple—It was advice we gave to the Attorney. We could take it on notice and ask the Attorney if he would be happy for us to give you that.

Senator MOORE—I would appreciate that, in terms of the basis on which the decision was made. Is the delegate for the final decision with the minister?

Dr Popple—Yes, the minister made that decision. I should have mentioned, in the context of that research, that we also conducted some consultation with stakeholders—for example, existing service providers—about where the most needy areas were. It was a combination of that research and some other consultations we conducted at that time.

Senator MOORE—Was that through a process of workshops, or was it just one-on-one research?

Mr Boersig—It was a combination. We received 270 responses in relation to inquiries. This was from a range of stakeholders at state government level and NGO level. Workshops were held with the existing Family Violence Prevention Legal Services as well.

Senator MOORE—And what about the Indigenous communities?

Mr Boersig—We spoke with a number of Indigenous organisations. They were invited to make submissions.

Senator MOORE—So this was in terms of inviting people that you already believed had an interest in this field. Was that the methodology?

Mr Boersig—It was very broad ranging.

Senator MOORE—Is it possible to get a list of those?

Mr Boersig—Yes.

Senator MOORE—And this was in 2003-04?

Mr Boersig—No, it was conducted in 2004, as I recall.

Senator MOORE—When was the first announcement made for the original round of 13?

Mr Boersig—It was part of the 2004-05 budget, so it was announced as part of that process.

Senator MOORE—And we have just had the five new ones, is that right?

Dr Popple—The original 13 were part of the 2004-05 budget; the five new ones are part of the current budget. But the announcements about the placement of those additional units were staged announcements, if you like, starting on 25 February 2005.

Senator MOORE—Does the order of merit continue beyond the current five? Is it still, as we used to say, an operational order?

Mr Boersig—Yes.

Senator MOORE—So there are more locations below the five you have announced, and at this point in time that is still current?

Mr Boersig—That is correct.

Senator CHRIS EVANS—Could I just clarify: when did the first 13 come into operation?

Mr Boersig—The first 13 were established since 1998. Over that period there were 13 established, and then an additional 13 were established in 2005. And we have got five more.

Senator CHRIS EVANS—They were funded in the 2004-05 budget. How quickly do you get these up and running?

Mr Boersig—The additional 13, to make it a total of 26.

Senator CHRIS EVANS—How quickly do you get them up and running? Often you provide the funding, but you are setting up a new legal service and I presume it does not start the following day.

Dr Popple—All the extra ones are up and running now, but obviously some of those took longer than others.

Senator CHRIS EVANS—Some of them only recently got up and running?

Dr Popple—Yes.

Senator CHRIS EVANS—So they were not all operational in the 2004-05 year?

Mr Boersig—They were all open during that year. The services provided are broad ranging, including legal and other types of services—for example, sexual assault counselling. It would depend on when you got those professionals involved. With some of the lawyers it took a little bit more time to get involved.

Senator CHRIS EVANS—Can you describe a normal service for me?

Mr Boersig—Certainly. It is, as I said, broad ranging. It is operating in a rural area. There will generally be a coordinator, a counsellor and a lawyer. They will conduct advice sessions and go out and see clients. They assist men, women and children—primarily women and children, I should add. They would go on outreach programs; for example, from Alice Springs they go out to Yuendumu to meet their clients.

Senator CHRIS EVANS—They have got three full-time staff?

Mr Boersig—Generally three, sometimes four, depending on the actual funding level. There are some differences in the funding levels that allow for more staff if necessary.

Senator CHRIS EVANS—Are any of them working in coordination with state or territory operations, or are they all stand-alone?

Mr Boersig—There are a number of services that are co-located. One that comes to mind is the Top End Women's Legal Service. That is co-located with a community legal centre. Generally they are stand-alone, although they may be auspiced by another organisation—for example, an Aboriginal medical service.

Senator CHRIS EVANS—Thirteen were established in 1998 and you had another 13 in 2004-05. Did any close during that period?

Mr Boersig—None have closed.

Senator CHRIS EVANS—In response to Senator Moore you described the extra five. I do not know, Senator Moore, whether you asked this. How do you determine where they go, Mr Boersig?

Mr Boersig—That was part of the study that was undertaken. It included research by both the Crime Prevention Unit and the University of Western Australia. It was a relative needs study and included stakeholder feedback.

Senator CHRIS EVANS—So it is not necessarily on the basis of the population or the size of the state.

Mr Boersig—There was a variety of factors taken into account that included population, where Indigenous communities were located, the particular needs in rural and remote areas and whether there would be duplication in services—a whole range of issues.

Senator CHRIS EVANS—Are you able to table a complete list for us of the existing centres?

Mr Boersig—Yes.

Senator CHRIS EVANS—Great. Thanks very much.

Senator MOORE—Mr Boersig, you said in the answer to Senator Evans that generally there were lawyers. Does that mean that there are some that do not have lawyers on tap?

Mr Boersig—From time to time there is turnover in lawyers. One of the major issues in rural and remote Australia is keeping, retaining, professional staff. We have been looking at that and ways to assist those organisations in keeping those staff. Yes, from time to time there are not the lawyers there. On the other hand, some outsourcing arrangements have been put in place, for example, and they still maintain their core services, which are effectively paralegal work and counselling.

Senator MOORE—And that is a decision made location by location dependent on the availability of personnel.

Mr Boersig—That is right. Again, for example, in the Top End Women's Legal Service the lawyers are based in Darwin but they service remote communities. In each of those remote communities they may have an Indigenous woman who is employed on a part-time basis as their eyes and ears in that community, effectively.

Senator MOORE—You said that there is that standard model of a three-person service. One is a lawyer, one is a counsellor and one is an administrator. They will always have variations.

Mr Boersig—They will.

Senator MOORE—Is it difficult to get hold of trained counsellors as well? Have you had that as an issue?

Mr Boersig—Particularly in relation to sexual assault counselling, and there has been some particular work done in that area to assist.

Senator MOORE—Have there been some creative ways of looking at that, the same way that you outsource lawyers? Have there been other ways of handling the counselling role?

Mr Boersig—I would have to take that on notice in terms of the creative ways.

Senator MOORE—I would appreciate that.

Mr Boersig—Those are particular skills and I would have to take that on notice.

Senator CHRIS EVANS—Joining in there, the budget announcement talked about the additional legal services but it also talked about implementing violence prevention strategies. Could you explain to me what that means?

Mr Boersig—Those are strategies that focus on the front end—that is, prevention. We will be looking at opportunities, for example, in community legal education in relation to abuse issues. There is more money being set aside for prevention and education.

Senator CHRIS EVANS—Is this an existing program or strategy?

Mr Boersig—No, there is some work already done in that area by each of the family violence prevention legal services. We want to be able to enhance that.

Senator CHRIS EVANS—Can you explain to me how the \$23.6 million is broken up—what goes to the centres and what goes to the strategies, as it were?

Dr Popple—In 2006-07, for example, we anticipate that about \$800,000 of the new money will go to the front-end violence prevention strategies that Mr Boersig has discussed.

Senator VANSTONE—What about the out years?

Dr Popple—We think that will increase to about \$1.2 million during the out years. There is a phasing in.

Senator CHRIS EVANS—Is \$1.2 million the final year figure?

Dr Popple—No, it is \$1.2 million in 2007-08 and then about the same for the following out years. It is really a phasing in, if you like. Some of these centres will require some time to implement those new services.

Senator CHRIS EVANS—So it is \$800,000 this financial year and \$1.2 million thereafter.

Dr Popple—Yes.

Senator CHRIS EVANS—Basically this is education programs, is it?

Mr Boersig—We will be looking at innovative and creative ways. We will be calling for—

Senator CHRIS EVANS—I know what innovative and creative ways means, but what does it mean they actually do?

Mr Boersig—We will be asking them what they think needs to be done in the local area.

Senator CHRIS EVANS—Who will you be asking?

Mr Boersig—The Family Violence Prevention Legal Services. We propose to ask them, say, in Alice Springs: ‘How do you think you should proceed? What would be the best way that you could use this type of money, this front-end money? What are the key issues for you in your area and how might they be addressed?’ We would work with them on that basis, and then we would tie that to what would effectively be a contract to provide that particular kind of service.

Senator CHRIS EVANS—The \$800,000 is going to spread around the 38 centres but based on their bidding to you about what they might do with the money—is that right?

Mr Boersig—It is 26 centres.

Dr Popple—It is currently 26 and there will be five more. There will be 31 by the end of this coming financial year.

Senator CHRIS EVANS—That is why they do not put me in charge of the accounts.

Senator MOORE—They might get more centres that way.

Senator CHRIS EVANS—Yes, I just got you another seven centres, but I did not get you the funding. What is the total funding for these programs? Where is that represented in the PBS? This is on top of the earlier announcements, so where is the bottom line for the whole program?

Dr Popple—You will find that in the PBS on page 36, fourth item down from the top.

CHAIR—We aren’t in the PBS, are we?

Senator CHRIS EVANS—It is the yellow document, Chair.

CHAIR—I am not the one with the colour problem. Some of your colleagues might have, on the other hand.

Dr Popple—The number you see on the right column is \$12.642 million. That is the appropriation for this program for 2006-07.

Senator CHRIS EVANS—Is that for both the legal centres and the front-end program?

Dr Popple—Yes, that is the entire Family Violence Prevention Legal Service program, including the expansions we have been talking about.

Senator CHRIS EVANS—The extra \$23 million over the four years represents \$6 million a year. Is that \$23 million evenly spread over the four years?

Dr Popple—It is actually ramped up. It is more towards the later years than the first year, for the reasons we discussed about difficulties with time frames for establishment of these things.

Senator CHRIS EVANS—Will \$12 million be your lowest total spend?

Dr Popple—That is right. For example, in the subsequent years, we anticipate \$17.7 million, \$17.9 million and then \$18 million, being the total out years.

Senator CHRIS EVANS—Is that the total for the Family Violence Prevention Legal Services program?

Dr Popple—Yes.

Senator CHRIS EVANS—But the front-end education has been rolled in as part of that program?

Dr Popple—Yes.

Senator CHRIS EVANS—Will it still be handled as a discrete budget within that program?

Mr Cornall—Yes.

Senator CHRIS EVANS—Can you tell me about the history of where this came from? I have been having difficulty following programs. With the changed arrangements with ATSIIC et cetera, these programs are often difficult to follow. Has this always been solely in A-Gs?

Mr Boersig—No, it is a program that moved from ATSIIC/ATSIIS to the Attorney-General's Department.

Senator CHRIS EVANS—Could we do the chronology? From 1998, did it go straight to ATSIIS?

Mr Boersig—No. In 1998, it was in ATSIIC.

Dr Popple—The short answer is that it has always been part of ATSIIC/ATSIIS, until it was transferred to the Attorney-General's Department, which happened on 1 July 2004.

Senator CHRIS EVANS—You picked it up when the new arrangement came into being in terms of ATSIIC's abolition.

Dr Popple—Yes.

Senator CHRIS EVANS—Did the budget or any of the arrangements change or did it continue on in much the same way?

Dr Popple—It continued the same, except of course there has been an increase in funding, as we discussed, for the extra 13 centres, but no other change.

Senator CHRIS EVANS—The documents OIPC provided about the new arrangement talked about the existing family violence prevention program to be split with the Attorney-General's Department.

Dr Popple—There is also a program that the Department of Families, Community Services and Indigenous Affairs administers. That is a family violence program but not a family violence prevention legal service program.

Senator CHRIS EVANS—I know about their program. That is what I am trying to work out. This describes it as a family violence prevention program.

Mr Boersig—That program was split in two. It had two components. One was the overall program that went to FaCS, as it was at that time, and the other was the legal services that went to the Attorney-General's Department.

Senator CHRIS EVANS—What you are saying to me is that prior to July 2004 there was one program.

Mr Boersig—That was relatively recent, though, in ATSI. The year before, the legal services had been with the national law and justice program manager's role in ATSI but had been moved to a different part of ATSI. So they joined and created a new combined unit that had the overall planning for family violence and some funding, with the help of the states, and included in that the legal services.

Senator CHRIS EVANS—Mr Boersig, I know you are being very helpful but I find that a bit confusing. It is not any criticism of a lack of effort on your part. A flow chart would be helpful.

Mr Boersig—There has been some significant movement in where that program was managed. It was initially managed in the law and justice area of ATSI. It then moved to a different area of ATSI for one year.

Senator CHRIS EVANS—What was that called?

Mr Boersig—It dealt with a number of other issues that related to family violence, domestic violence and women's issues. I cannot think of the title of that particular program output at the moment.

Senator CHRIS EVANS—Can you take that on notice, please. But it was into a broader family violence program, was it?

Mr Boersig—It was.

Senator CHRIS EVANS—When did that occur?

Mr Boersig—That would have been around early 2003.

Senator CHRIS EVANS—Was that before or after the Prime Minister’s summit? The Prime Minister had a summit cum meeting on Indigenous family violence in 2003. I am trying to understand whether this was one of the outcomes of that.

Mr Boersig—I would have to take that on notice.

Senator CHRIS EVANS—If you wouldn’t mind. I think that summit was in about June 2003, but it sounds as though this might have happened earlier. Anyway, it went into a broader program inside ATSIC.

Mr Boersig—It did, for 12 months.

Senator CHRIS EVANS—Then, in July 2004—

Mr Boersig—With the new arrangement, the legal services moved with the Indigenous legal aid services, which were also administered at that stage by ATSSIS, to the Attorney-General’s Department.

Senator CHRIS EVANS—So at some stage it went from ATSIC to ATSSIS.

Mr Boersig—That is right.

Senator CHRIS EVANS—Was that in about March 2004 and it was only ATSSIS for a few months, or was it earlier than that?

Mr Boersig—July 2003.

Senator CHRIS EVANS—So it was amalgamated into one unit early in 2003, then it got sent off to ATSSIS. Then in July 2004 the unit was split and the legal services area came to A-G’s and with it came the Indigenous legal services.

Mr Boersig—Yes, the Aboriginal Legal Service.

Senator CHRIS EVANS—And was that the only other bit that came to you?

Mr Boersig—No, there were a number of other programs that came: the prevention, diversion and rehabilitation programs moved to the Attorney-General’s Department, and law and justice advocacy.

Senator CHRIS EVANS—Did they all come out of ATSIC?

Mr Boersig—They did, or ATSSIS.

Senator CHRIS EVANS—So basically you picked up all the legal services that were in ATSSIS and they were put over to you, but that included splitting the family violence program, the broader name of which we are not absolutely sure. Are you able to get that for me today?

Mr Boersig—Yes, I would be able to find that by this evening.

Senator CHRIS EVANS—It just says in the OIPC title ‘family violence prevention’. I am not sure whether that is the name of the program or just a general description, which is where I found out that there had been one program but it had been split, because it indicated that it had been split between you and FaCS. What about—

Dr Popple—Senator, before the moment passes can I mention that, even though it may have been a program administered as one program, we believe there was a separate

appropriation for the legal services component of it, which might assist you in trying to identify that.

Mr Boersig—It was put into a cluster of services.

Senator CHRIS EVANS—But it was an existing program that basically continued on; it is just that its parentage changed.

Mr Boersig—Effectively.

Senator CHRIS EVANS—What about the violence prevention unit? What is that?

Dr Popple—I am not sure what that means.

Senator CHRIS EVANS—OIPC tell me that you got it, so I was just trying to find out what it wants.

Dr Popple—They might have thought you meant the Family Violence Prevention Legal Service, because—

Senator CHRIS EVANS—This lists you as getting ‘legal and preventative’, ‘family violence prevention’ and ‘violence prevention unit’.

Dr Popple—There were certainly two appropriations that were transferred to AGD. As you said, the first one actually contains three of the programs Mr Boersig mentioned: Indigenous Legal Aid; Prevention, Diversion and Rehabilitation and Restorative Justice—we call it PDRR, if that assists; and Law and Justice Advocacy. Those are three subprograms, if you like, which are encompassed in the ‘legal and preventative’ that you heard about from OIPC. The second name, which is ‘family violence prevention’, is the appropriation that we have been talking about—the one that came across for these units. That has remained a single appropriation here.

Senator CHRIS EVANS—The only thing under family violence prevention formally is the legal service program.

Dr Popple—Sorry?

Senator CHRIS EVANS—The only component under the family violence prevention heading is the legal service program.

Dr Popple—Correct.

Senator CHRIS EVANS—The other three are grouped under ‘legal and preventative’.

Dr Popple—They were then; they are no longer. As you will see from our PBS, we have split them out. We show them as four separate programs in this department.

Senator CHRIS EVANS—Not just to confuse senators at estimates?

Dr Popple—We had hoped it was actually to increase the understanding!

Senator CHRIS EVANS—It is not working, but perhaps that is me. It is quite a detective job to follow this.

Senator MOORE—Specifically on the Family Violence Protection Legal Service, what is the report-back process for that? My understanding is that the reporting that is required of these units is quite set out. Can you just run through that, please?

Mr Boersig—Reporting is both qualitative and quantitative. We are aiming to find out who they acted for, who they assisted, in a range of data such as age, type of offence and so forth. We also ask for a qualitative indicator of how they feel they are proceeding in terms of delivering on the object of the program—that is, how they feel they are assisting in the prevention of violence.

Senator MOORE—Is there a standard format for that?

Mr Boersig—That has changed. We have recently settled again on a format. It was one that was agreed at a workshop with all the providers.

Senator MOORE—Is that data then public?

Mr Boersig—It has not been, but we are collating it.

Senator MOORE—Can I ask whether we can get that?

Dr Popple—We can take that on notice.

Senator MOORE—If not, why not? It is just a standard question about public data. The qualitative stuff should be quite straightforward in terms of process. Qualitative will determine the process that you use.

Mr Boersig—Certainly the quantitative data has been published in annual reports, so that has been available.

Senator MOORE—In terms of the role that this particular area plays in the whole-of-government approach, there was much discussion when ATSIC was divided amongst all the agencies about this whole-of-government approach which was now going to be the model for service delivery across the public sector, in particular with Indigenous affairs. For the record, can we have some indication about what role A-G's play in terms of your accountability and responsibility under whole-of-government Indigenous service delivery?

Dr Popple—We do that at a number of levels. At the top level, we are represented on the Ministerial Taskforce on Indigenous Affairs by both the minister and the Attorney-General. You would be aware that there is also the Secretaries' Group on Indigenous Affairs. Our secretary attends that. At the program management level, we engage on a regular basis with our colleagues, particularly at OIPC and other related departments. We are engaged in the development of SRAs, or shared responsibility agreements.

Senator MOORE—I have some questions on those later. Is that your key responsibility? Are you the lead agency on those?

Dr Popple—No. The OIPC coordinates shared responsibility agreements. We engage in those to the extent that we have program responsibility that can assist in relation to a particular agreement that is being prepared.

Mr Boersig—We also have staff in each state whose key role is as solution brokers. We have state coordinators or regional coordinators. They are assisted by a solution broker. Their job is to work in the whole-of-government fashion with other departments to identify the needs of the community and try to match those needs with available sources of funding.

Senator MOORE—Where are the solution brokers located?

Mr Boersig—All our solution brokers are located in ICC offices.

Senator MOORE—They are part of the ICC format. Are they physically there? Some of the people are not quite in the ICC yet. But are your people?

Mr Boersig—We have officers in each capital city, in Alice Springs and in Cairns and we have representation in Broome.

Senator MOORE—What about Mount Isa?

Mr Boersig—Those areas are covered by our staff from those regional offices.

Senator CHRIS EVANS—You do not have a staff member at each ICC?

Mr Boersig—No, not at each.

Senator MOORE—Where there are ICCs that are not mentioned, you have given that responsibility to one of the others depending on geographic location.

Mr Boersig—Correct.

Senator MOORE—So Mount Isa is handled from Cairns?

Mr Boersig—Generally from Cairns.

Senator MOORE—Sometimes from Darwin?

Mr Boersig—No, sometimes from Brisbane.

Senator CHRIS EVANS—What is a solution broker?

Senator MOORE—I knew you were going to ask that. That had to happen.

Senator CHRIS EVANS—I have had two or three people tell me this. I just want to match your story up with theirs.

Mr Boersig—A solution broker works within the community to identify the needs of the community and to work with government itself to identify the best way in which those needs can be met through appropriate departmental programs through a flexible process and the encouragement of cooperation and by trying to minimise red tape and so forth.

Senator CHRIS EVANS—I think we deal with ICC assessments later on in another portfolio. Are they meant to engage with all programs, or just these Indigenous-specific programs?

Mr Boersig—Their job is to engage with all programs.

Senator CHRIS EVANS—While there would be a bit of focus on some of these programs you are funding—and they are fairly limited in that sense of the scope of Attorney-General's Department in the wider community—they are responsible for engaging and connecting all A-G's programs?

Mr Boersig—That is correct and, where appropriate, connecting with other governments at both the state and the federal level.

Senator CHRIS EVANS—Can you tell me while we are on this tack what the impact was of the COAG National Framework on Indigenous Family Violence and Child Protection agreed to in June 2004 on the way A-G's operated or on its program delivery?

Dr Popple—As we have explained, we already had the Family Violence Prevention Legal Services program operational at that time. One of the responses of government to that COAG process was the expansion that we have talked about and now the further expansion, so it is a recognition, if you like, of the importance of combating family violence issues in Indigenous communities.

Senator CHRIS EVANS—So are you telling me that the 2004 framework in June was reflected in the earlier budget decision in May?

Dr Popple—The timing may be coincidental but certainly the expression of our part of the increased focus on family violence issues was that expansion.

Senator CHRIS EVANS—I am sure it is not coincidental; I am not saying they cannot be part of the same process. But we had the May budget and then we had the formal development of this framework. Is it fair to say that that expansion was one of the results of the working group that formed out of the 2003 summit meeting?

Mr Boersig—I think it is fair to say that the issue of family violence was one that had been considered intensely over the previous four or five years. In fact, when you go back to the mid-nineties, those issues were very relevant when the initial family violence prevention legal services were first mooted. Part of that context was looking at the overall provision of legal aid to Indigenous people. That is where the government looked at both the main legal service providers—that is, the Aboriginal Legal Services at that time. That led to a reform process in relation to Aboriginal Legal Services, of which the current tender is the conclusion. It also looked at the role that state governments played in terms of their responsibility for Indigenous Australians. It was quite wide ranging. It certainly provided an overall context in just the way Dr Popple is suggesting.

Senator CHRIS EVANS—Yes, but I understood from reading other documents produced by the government that there were two initiatives that arose out of the 2003 meeting. I think that one was a meeting, not a summit—meeting, summit; I am not trying to be funny with the words, the national consultation the Prime Minister had with Indigenous leaders. As I understand it there were two government initiatives that arose out of that. One was what is now the FaCS family violence prevention program and the other was the family violence prevention legal services. Is that right? Obviously it was not an initiative; it was expansion of the program. Is it fair to say they arose out of that process?

Dr Popple—We have to be a little careful answering that because it was very much before our time. I think that is probably right, but our colleagues at OIPC would be able to give you a definitive answer.

Senator CHRIS EVANS—They would say it was before their time.

Dr Popple—Only in the sense that OIPC did not exist at that time. Certainly ATSIC and ATSI did, and they became OIPC. AGD had no responsibility for these programs until 1 July 2004.

Senator CHRIS EVANS—Don't worry; I am not trying to catch you, I am just trying to follow it, with all that administrative rearrangement. Some of the names have been changed to protect the innocent as well. The programs have morphed over the years and the names have

slightly changed, so it is kind of hard to follow. This seems to be clear. At least we know this is to fund the legal services and that it has been running since 1998. So that is the history of that program. What about the Indigenous women's legal services? How do they fit into this picture?

Dr Popple—There are a number of Indigenous women's legal services that are funded under the community legal centre program.

Senator CHRIS EVANS—So they are a subset of the community legal centre program.

Dr Popple—That is right. We have had responsibility for that for longer than that. It did not come from ATSISS; it was something that AGD was administering before.

Senator CHRIS EVANS—Did it originate with you?

Dr Popple—That program has been with us for decades.

Senator CHRIS EVANS—How many of these centres have you got?

Dr Popple—I have a list. I could go through and count the Indigenous ones from it, but it is three or four pages long. Perhaps I can hand it up.

Senator MOORE—Is it the whole CLC list?

Dr Popple—Yes. I can give you the entire list.

Senator CHRIS EVANS—That is great. If you table the list then I can work that out. Are we talking half a dozen, 20?

Dr Popple—I think it is about half a dozen or so, perhaps four or five.

Senator CHRIS EVANS—That was my understanding. I will not hold you to the half a dozen. We can have a look at the list. Do you fund them out of the community legal service budget?

Dr Popple—Yes.

Senator CHRIS EVANS—What sort of funding do they get?

Dr Popple—Again, the document I have handed up to you actually shows the funding for every service we fund under that program. It will be a matter of summing those ones—

Senator CHRIS EVANS—Do you want to find the top one for me and tell me how much you give them a year? The first one on the list will do.

Dr Popple—I am sorry; I thought this showed it. There is not a column on this which indicates what sort of service they are or alternatively which subprogram they are being funded under. So, unfortunately, I cannot easily tell you which of these are funded under the Indigenous women's subprogram of the CLC but I can take that on notice and follow that through.

Senator CHRIS EVANS—Just as well I caught you before you fooled me with the list, isn't it? Are you telling me that they are funded differently to the other community legal centres?

Dr Popple—No, they are funded the same way as the other committee legal centres. But some of those provide services specifically for Indigenous women. My recollection is that it is

of the order of \$1 million out of the whole program that goes to centres under the Indigenous women's subprogram. Again, I would prefer that you did not hold me to that but it is about \$1 million. We can get you the precise figure.

Senator CHRIS EVANS—I had just over \$1 million in my mind. But that is between the five, six or however many centres there are.

Dr Popple—Yes.

Senator CHRIS EVANS—So it is a fairly small program.

Dr Popple—Yes, it is a small part of that program.

Senator CHRIS EVANS—You talked about the family violence prevention legal services. They had male, female and child clients. Is there are breakdown of who they actually provide services to in a broad sense?

Mr Boersig—In a broad sense, we should be able to break that down with our data. But I do not have that here.

Senator MOORE—The data should show that, shouldn't it, if it is going to link how many people they see? Does it go by gender?

Dr Popple—It should, yes.

Mr Boersig—The number of males will be very small, I expect. Generally a family violence prevention legal service will see somewhere in the vicinity of between 500 and 700 people annually.

Senator CHRIS EVANS—Each centre?

Mr Boersig—Yes, depending on where it is. The proportion of men would be small. The greatest portion, of course, will be women.

Senator CHRIS EVANS—One of the criticisms of the ALSs has been that, traditionally, they ended up providing legal services to men charged with crimes. I am not as critical as some people are of that because these are people who need representation. They are often going up on serious charges, so that is a service that should be legitimately provided. But is the intention of these services in fact to help redress that balance?

Mr Boersig—The provision of legal aid services comes across a whole landscape. Both state and Commonwealth have different responsibilities. In that sense, there is an emphasis being placed on the ability of a family violence prevention legal service to provide the appropriate service to a particular group of people. The Indigenous legal aid service providers that come through the tender process have been asked to enhance their services in relation to women and children also, so that a better service, for exactly the issues you raised before, is provided to a broader cross-section of Indigenous Australians.

Senator CHRIS EVANS—That is what I trying to get clear. You have three services now potentially offering services to Aboriginal families or members of the Aboriginal community. They are the Aboriginal legal service, the family violence prevention legal service and the Indigenous women's legal service. Have you a matrix of what function each of them are supposed to provide?

Mr Boersig—Indeed, we have a map of where all these services are.

Senator CHRIS EVANS—I will come to the geographical. I am thinking more in terms of the functions.

Mr Boersig—One of the main provisions in the tender for Indigenous legal aid was putting to the government their capacity to work with other service providers. We are trying to encourage, in fact, a matrix where each service adds value so that the greatest number of people in need can receive that assistance. In the way you are putting it, you should also include state funded legal aid commission services, because they are also part of the overall delivery of legal aid services to both Indigenous and non-Indigenous people.

Senator CHRIS EVANS—Do you mean the state legal aid services?

Mr Boersig—Yes.

Senator CHRIS EVANS—I accept that. I would be interested in the figures of how many Indigenous people access those or whether they access the specialist services. I suspect the specialist services are the first port of call for Indigenous people, if they are in the locale. They have been quite successful at attracting customers, haven't they? They have been very successful at meeting the need. Do you encourage co-location?

Mr Boersig—There are a number of co-located services. In fact, in Alice Springs, for example, the Family Violence Prevention Legal Service is auspiced by the local Aboriginal legal service but has a different entrance to the premises so that those issues are dealt with discreetly.

Senator CHRIS EVANS—It seemed to me that that was part of your problem—that the alleged perpetrator would turn up at the same time as the alleged victim, both seeking legal advice. If they are co-located, they can walk in the door together, which does not sound very sensible.

Mr Boersig—It is certainly not the case that they come in through the same door, but those two services operate efficiently together. In other areas, as I indicated before, it might be auspiced by an Aboriginal medical service.

Senator MOORE—I have some questions about petrol sniffing. We know there has been an allocation in the budget, but we want to confirm that the petrol sniffing allocation is for the Prevention, Diversion, Rehabilitation and Restorative Justice Program. Is that where it fits?

Dr Popple—That is right, yes.

Senator MOORE—Is petrol sniffing new in that program, or has it been identified as a separate element in the past?

Dr Popple—It is not new to that program, in the sense that some of the other activities being funded through the program would be addressing some of the issues that petrol sniffing raises, but what is new in this proposal is a large-scale coordinated whole-of-government approach to the issue of petrol sniffing, of which we are one part.

Senator MOORE—In the budget allocation, they are spelt out and it has the other partner agencies listed. What exactly is Attorney-General's responsibility amongst the whole new

program, about which there has been much media comment? What is your job in the petrol sniffing thing?

Mr Boersig—That responsibility will be addressed in a number of ways both here in Canberra, from a program management and delegation of funds point of view, and also on the ground. We have appointed a solution broker in Alice Springs, who will have a key role in negotiating, or being part of the negotiations, in relation to the distribution of these funds.

Senator MOORE—Only the one in Alice Springs? Is that because of the location, or are there other solution brokers in other parts? My understanding is that petrol sniffing is across at least three states.

Mr Boersig—It is, and the solution brokers in the other states, both in Western Australia and in South Australia, will obviously take that into account, but we see that position in Alice Springs as being key to that.

Senator MOORE—They are your person in the whole-of-community approach up there?

Mr Boersig—Yes.

Dr Popple—Also, you have may have seen in the budget papers that the initial focus of this petrol sniffing initiative across the whole of government will be in Central Australia, and some other areas will be identified later.

Senator MOORE—It fascinated me that there is one particular allocation for office fit-out. What office is being fitted out? What is happening?

Dr Popple—I am not sure what you are talking about there.

Senator MOORE—In the little advisory note on budget paper No. 2, it says:

Additional funding will also be provided for the Prevention, Diversion, Rehabilitation and Restorative Justice Programme, including \$37,000 in capital funding in 2006-07 for office fit-out.

That is it; that is the explanation.

Dr Popple—I am going to call on Mr Kennedy to deal with that one.

Senator MOORE—It is interesting that it has that special focus in the papers. I have responded: what is it?

Mr Kennedy—With our costing model for all our new policy proposals and measures, we provide a component for fit-out where there is staffing included in a new measure. That \$37,000 is part of the formula, given that there are a number of staff that will administer that particular program. We need to locate them in a building and we need to ensure that they have got adequate furniture and other bits of equipment and so on. That is what that funding is for.

Senator MOORE—So really the way it has been allocated there is for admin. In the whole allocation, about \$37,000 is going for staff to set up offices and so on. Is that right?

Mr Kennedy—It is going to provide that infrastructure. That is correct, yes.

Senator MOORE—And that is the model you are using.

Mr Kennedy—Yes.

Senator MOORE—Where are the staff going to be that are part of this process? If we have allocated 37 grand for them to be fitted out, we must know where they are going to go.

Mr Boersig—Both in Alice Springs and in Canberra.

Senator MOORE—How many?

Mr Boersig—The staff person in Alice Springs is at an EL1 level, which is upgraded. At this stage we are looking at least another additional person.

Senator MOORE—In Alice?

Mr Boersig—No, in Canberra.

Senator MOORE—So at this stage we are looking at an allocation of two staff under this program to work with the existing staff in the program that are already solution brokers. Is that right?

Mr Boersig—That would be correct.

Senator MOORE—In your departmental role in the petrol sniffing initiative, what initiatives, what jobs, will you be doing?

Mr Boersig—The overall role will be shared amongst key staff. Ultimately, as branch manager, I will have responsibility to attend a number of particular meetings—

Senator MOORE—As part of this program initiative.

Mr Boersig—Yes. There is a program manager who is involved who runs the Prevention, Diversion, Rehabilitation and Restorative Justice Program. There are officers underneath that officer as well who have activity responsibility in relation to the Northern Territory, South Australia and WA.

Dr Popple—In response to the question: our intention, our involvement, will be to target earlier stages of intervention than have previously been targeted and to provide identified pathways to those who have been exposed to the criminal justice system. The aim of that program—the PDRR program—is to reduce the adverse exposure of Indigenous people to the criminal justice system. That is really where we are focusing our part in it.

Senator MOORE—So the focus is on trying to get people out of the system?

Dr Popple—Yes, to prevent—

Senator MOORE—And it is part of the initiative that was announced, the key priorities that were going to happen to address petrol sniffing. So A-G's picks up that legal component. What about working with state legal systems? One of the major initiatives has been the increased police presence and the role of the general crime prevention process. Do you have any particular role with that linkage with correctional services and police?

Dr Popple—Our only linkage with correctional services is that we fund some prisoner support units. We do not have linkage in the sense of the law enforcement administration. That is not us.

Mr Boersig—We may foster restorative justice initiatives as well.

Senator MOORE—They are the pre-existing restorative justice ones. We are just adding petrol sniffing to that. Is that right?

Mr Boersig—It depends on how the problem is to be solved. It may be that capacity building within a community is the key issue, so we would look to support that. One way of doing that might be to assist the community in resolving their own conflicts. So you might use a restorative program activity for that purpose.

Senator MOORE—Have you identified performance assessment measures for this project?

Dr Popple—Yes. The PDRR program does have those. There are performance measures.

Senator MOORE—The current scheme, PDRR, already has those, so you are just going to enhance that with petrol sniffing?

Mr Boersig—That is right.

Senator MOORE—Have we got copies—

Dr Popple—I can hand one up to you. I have one here.

Senator MOORE—That would be lovely. How will the data be collected and published, in terms of the qualitative and, I would imagine, quantitative data you will use in this program?

Mr Boersig—The data will be collected in the same way we collect all our data for that particular activity.

Senator MOORE—Is that systemised—do people just key it in?

Mr Boersig—It depends on the organisation. Some of the organisations we fund under that program are very small—for example, night patrols.

Senator MOORE—I have questions on that too. You are relying on people keeping their own data sets. Based on what you ask them collect, they give them to the department and the department puts them into a format. Is that right?

Mr Boersig—Then we have a process of effectiveness reviews on occasion. We will ask our systems to see whether they are picking up the appropriate data.

Senator MOORE—What is your reporting cycle?

Mr Boersig—It depends on whether it is financial or other data. It will be quarterly, sometimes monthly, depending on the nature of the organisation, and it can be six monthly or annually.

Senator MOORE—Is that then published?

Mr Boersig—The collated information has been published in the annual reports before.

Senator CHRIS EVANS—Is this going to become part of your Prevention, Diversion, Rehabilitation and Restorative Justice Program?

Dr Popple—Yes.

Senator CHRIS EVANS—Are you going to have five elements to that now?

Mr Boersig—Not five elements, in that sense. There are key subprogram guidelines, which we apply flexibly. Whether it is a restorative justice activity or a youth activity, for example, we would look at the value it is providing in terms of substance abuse and find under which subprogram that would best fit. It is likely, for example, that if you were trying to address youthful petrol sniffers, there will be some program that would fit comfortably within our guidelines in relation to youth.

Senator CHRIS EVANS—Maybe I should go back to first principles. Are your various subprograms under this program purely grant driven?

Mr Boersig—They are grant activities.

Senator CHRIS EVANS—Is there a national program per se? Is it that you give a grant to a local initiative under this program?

Mr Boersig—There is a submission process run annually through the Office of Indigenous Policy Coordination of which we are a part and our program relates to that. We have moneys set aside in relation to the development of shared responsibility agreements, which, again, are outside that particular process.

Senator CHRIS EVANS—Is the SRA money separate or out of these programs?

Mr Boersig—Within that bucket of money there is money set aside to direct towards SRA development and activity. At this stage, it is just under \$1 million of that. Then, of course, in relation to the particular appropriation for petrol sniffing, we have been asked to direct our activities and attention to the Central Australia area, and we will be developing appropriate guidelines in consultation with the other departments involved about how and where that should be expended.

Senator CHRIS EVANS—Can you give me a brief breakdown of how that works in practice or where the money goes? You have grants for local initiatives and they might include a program that is directed at incarcerated youth.

Mr Boersig—If, for example, one department thinks a safe house needs to be funded, then we would work with that department to see how we could assist in the development of that objective. We might be able to provide a youth worker to assist in that or we may be able to provide some capital funding towards vehicles and so forth.

Senator CHRIS EVANS—If you could provide a youth worker, for instance, would that be for one year or three years?

Mr Boersig—All the current grants under that program are for 12 months. They are annual.

Senator CHRIS EVANS—One of the complaints about these sorts of things is that you fund a program for one year and then it drops off and somebody else bobs up in the same community with another program and then a year later that drops off. Is that a concern you have about the way this works?

Mr Boersig—Certainly, and continuity will be a major issue and there are mechanisms which we can seek to extend those grants, either by varying end dates or by seeking the reg 10 approvals from the department of finance.

Senator CHRIS EVANS—What is the total bucket of money this year for this program?

Dr Popple—For 2005-06, it is \$6.688 million. Next year, with the increase, it will be \$9.522 million.

Senator CHRIS EVANS—Does that increase in the out years or that about the standard?

Dr Popple—The out years are \$9.6 million, \$9.7 million and \$9.7 million. They are about the same.

Senator CHRIS EVANS—And that is up from \$6-odd million this year?

Dr Popple—Yes.

Senator CHRIS EVANS—Does that include the petrol sniffing money?

Dr Popple—It has been added for next year, which is why it has gone from \$6.7 million to \$9.5 million.

Senator CHRIS EVANS—So the funding base for the basic program is the same but you have thrown the petrol sniffing money into this program. Is that a fair representation?

Dr Popple—Yes.

Senator CHRIS EVANS—How do you work out the balance regarding whether we put all the program funds into incarcerated youth or into diversion programs? How do you work it out in the grant process? Is there a set of priorities? Is there an agreed mix?

Mr Boersig—Generally it is part of the submission process that goes in. An applicant will apply through a local ICC—say, in Alice Springs. There is a process of assessment of that application, which includes both its merits and the financial viability of the organisation. Risk assessment is done at that local level and in consultation with our Canberra office. We then rank and prioritise on a national basis all those applications.

Senator CHRIS EVANS—Are all those programs listed in your annual report?

Mr Boersig—Not to whom we grant.

Senator CHRIS EVANS—What do you show in your annual report?

Mr Boersig—We show the amount of funds that we allocate for the program but we do not indicate who we have given it to in that sense.

Senator CHRIS EVANS—Or what the programs are?

Mr Boersig—Or what the programs are.

Dr Popple—We show the total for each of the programs but not the individual funded organisations.

Senator MOORE—Do you show that anywhere?

Dr Popple—No.

Senator CHRIS EVANS—When you say ‘each of the programs’, do you mean prevention, diversion—

Dr Popple—Yes, that is right.

Senator CHRIS EVANS—You have a global figure for that but you don't actually break down, say, \$500,000 to—

Mr Boersig—To youth activities—

Senator CHRIS EVANS—Yes, Alice Springs, youth activities centre.

Mr Boersig—We are able to do that.

Senator CHRIS EVANS—Can you provide that to the committee?

Mr Boersig—For the past year?

Senator CHRIS EVANS—Yes. Have you announced the grants for next year?

Mr Boersig—No, we have not.

Senator CHRIS EVANS—We are talking about 2005-06?

Mr Boersig—Yes.

Senator CHRIS EVANS—Can you give us a list of the organisations and maybe a description of the money? I don't want you to create new documents. If you have something like the other list you sent over, that would be ideal. How do you determine the balance?

Mr Boersig—In terms of SRAs?

Senator CHRIS EVANS—No, between the various competing requests.

Mr Boersig—A lot of the funds are based on the historical need that has been identified. Quite a proportion of our funding is based on organisations we have funded previously. It relates to that issue of continuity that you referred to before.

Senator CHRIS EVANS—So you might just be funding the same program they ran the year before?

Mr Boersig—Many of the programs we fund are recurrent.

Senator CHRIS EVANS—Is there any requirement that they become self-sufficient or find other sources? Some government programs say, 'We'll give you three or four years help and then you're—

Mr Boersig—No.

Senator CHRIS EVANS—So you may well have been funding these programs for years?

Mr Boersig—I think many of the programs have been funded for many, many years.

Senator CHRIS EVANS—I am not critical of that. If they are working, they should be funded. So you do assessments of them?

Mr Boersig—Each year a risk assessment is done. We go through the same process.

Senator CHRIS EVANS—Risk assessment?

Mr Boersig—We do a risk assessment of the organisation—how financially viable it is and its performance.

Senator CHRIS EVANS—More importantly, whether they are doing some good.

Mr Boersig—Yes.

Senator CHRIS EVANS—Do you do that internally?

Mr Boersig—We do.

Senator CHRIS EVANS—Departmental officers?

Mr Boersig—The risk assessments are done, as I said, in the ICC. So all the government departments are involved in that process.

Senator CHRIS EVANS—With respect to the million bucks you have got for SRA priorities, is that \$1 million out of the \$6 million you had the previous year, but you have just decided to allocate that to SRAs?

Mr Boersig—That is correct.

Senator CHRIS EVANS—So it is not new money?

Mr Boersig—No.

Senator CHRIS EVANS—I think the budget papers make it clear that it was not new money. How does that work? You have got \$1 million less for the grant process than you had last year?

Mr Boersig—There is \$1 million that we set aside for SRAs, that is correct.

Senator CHRIS EVANS—But last year, rounding off the figures, you awarded \$6 million in grants; this year you will award \$5 million?

Mr Boersig—No, the way it has come in is about the same.

Senator CHRIS EVANS—Explain that to me.

Mr Boersig—In terms of the applications we are receiving, it looks like it will be a core of about \$5 million that we need to continue in relation to recurrent organisations and some other new programs, and we will still have available some moneys. That is because a number of organisations have not continued with their funding applications.

Senator CHRIS EVANS—What I am asking is: you had a bucket of money last year to allocate the grants; did you allocate it all?

Dr Popple—You are correct. We will be setting aside less as part of the grant process than we have previously, in order to spend the remaining money through a different process—the SRA process. It will still be on the objectives of the program, and at the end of the year it is an expense under that same program—to the same ends, if you like.

Senator CHRIS EVANS—I am just trying to understand. We have got a bucket of money—\$6 million—and last year we spent \$6 million on the broader program. This year there is \$5 million on that and \$1 million on SRAs, which are supposed to meet the similar or same objectives. What are your priorities for SRAs? What are you supposed to be doing with them?

Mr Boersig—They will be within the context of the program guidelines. That is the parameter within which we are able to expend that money. But they will be dealt with in a flexible way, depending on how the needs of the community are particularly developed. In one community, say Yuendumu—

Senator CHRIS EVANS—You are going to focus on the Northern Territory at the moment. I wonder why that is.

Mr Boersig—Let us say Roma in Queensland.

Senator CHRIS EVANS—Oh, you do operate outside the Northern Territory! I thought the minister from Western Australia might be getting a bit anxious.

Mr Boersig—We have not forgotten the Kimberleys. A number of government departments will be working with local communities about what their needs are. Out of that solution-broking discussion, certain activities will be identified, and we will look at those activities in terms of whether we are able to fund them. If we are not able to fund them, we will see who else can fund them, if that is possible.

Senator CHRIS EVANS—All right. That is the sort of language we are using now, but you have got \$1 million dollars for SRAs. Are you going to go out and negotiate the SRAs or are you going to kick in dollars out of your \$1 million bucket to SRAs initiated and negotiated by other people?

Mr Boersig—There will be a variety of processes. In some cases, our officers will take the lead. In others, we will be part of a group of officials negotiating with the community. In some cases we have had SRAs identified to us by, say, an ICC regional manager who has been able to indicate that there is a particular need in a certain area, and we have followed that up.

Senator CHRIS EVANS—How many Aboriginal communities are there in Australia, Mr Boersig?

Mr Boersig—Many.

Senator CHRIS EVANS—That is what I thought. Clearly, with your \$1 million dollars you cannot kick into all of them from a prevention, diversion, rehabilitation and restorative justice program. I am not at all critical about that. But my question goes to priorities. How the hell do you decide how you spend \$1 million when the need is so great and the number of projects, communities, et cetera is so large?

Mr Boersig—We rely on the network of Indigenous coordination centres to identify those areas most in need, because they work in the communities.

Senator CHRIS EVANS—But if I was in an ICC, I would tell you that mine was the most needy. And I suspect you have got eight or nine officers yourself; you have got another 20 ICCs who all would like a bit of the A-G's money, because they have all got worthwhile projects that need funding. I am just trying to work out how you split your \$1 million and where you direct it.

Dr Popple—It is the same way that we have to make decisions about all our funding. Wherever there are more applications than there is money to fund them, we have to make those decisions, and we make them on the basis that Mr Boersig has explained. We analyse the organisation, the organisation's runs on the boards and our opinion of its capacity to deliver what it proposes to deliver.

Senator CHRIS EVANS—But that is not the SRA model. You have not caught up with the new language. You are 'engaging with individuals and communities.'

Dr Popple—My point was: that was my answer to your question about how we decide between two competing calls upon funding—

Senator CHRIS EVANS—You are not supposed to be doing deals with organisations. You are supposed to be engaging directly with communities in a conversation.

Dr Popple—And that is how the proposal comes to us, or that is how it gets developed. A community organisation will come up with an idea. It might require funding from three or four departments. The part of it that comes to us, we will be able to assess its capacity to deliver, the same way we would assess it if it came through the other submission process. If there is more demand on our funds than we have funds, that is how we have to make that decision—the same way we would make it in any other part of this program or any other program.

Senator CHRIS EVANS—Whose capacity to deliver are you assessing?

Dr Popple—If we are providing funding to a particular organisation to provide a service, we want to make sure that that service can be provided.

Senator CHRIS EVANS—But aren't you, through an SRA, providing it to a community, not to an organisation?

Dr Popple—A community or a community organisation. It will depend on who is proposing to provide that particular service. For example, we might be providing a night patrol service within an SRA construct. The people who are going to provide that particular service as part of that SRA—that is the organisation we want to be satisfied about.

Senator CHRIS EVANS—You say a night patrol. You fund night patrols under the PDR now, don't you?

Dr Popple—Yes.

Senator CHRIS EVANS—So you are telling me that under the new regime you will fund a night patrol out of the grants system in Alice, and you will fund one in Wadeye out of the SRA that is negotiated there.

Dr Popple—It is possible, if there is more flexibility. It would depend entirely upon what was required as part of the SRA.

Senator CHRIS EVANS—I am playing devil's advocate. I will pose the question in this way, Madam Chair—

CHAIR—That would be very good, Senator.

Senator CHRIS EVANS—in a friendly, cooperative manner to assist the committee under your firm direction. We have got 700 communities that need and want a night patrol. You are in a possible position to fund that. You have got the grants process that says you have got to meet all these needs: restorative justice, deal with incarcerated youth—all these things. I presume someone in your department makes a decision out of the \$6 million that you are probably going to put roughly \$1 million towards night patrols as a broad thing before they start the applications, but maybe I am wrong. Then you fund those that you can, based on what you think are the needs, given that the application is sound and you think it is going to

be spent appropriately. Then you are also now going to be asked to fund them by way of applications for funding from SRAs. It does not seem particularly orderly or priority driven.

Mr Cornall—What we have done is to set aside money so that we have some funding to participate in a broader cross-government SRA development process. We want it to be in a position where, if Peter Shergold and other secretaries came to us and said, ‘We have got an overall proposal for this community and some element falls within your funding area of responsibility, will you come and do that with us?’ And we will say, ‘Yes we will.’ Part of it is to respond to broader cross-government proposals that might come up in the next 12 months.

Senator CHRIS EVANS—Who determined that the \$1 million of the \$6 million would be set aside for that?

Mr Cornall—We did.

Senator CHRIS EVANS—As part of your budget application?

Mr Cornall—As part of our assessment of our available funds to meet the various competing demands.

Senator CHRIS EVANS—So it was post-budget.

Mr Cornall—No, we decided that in the course of the last few months.

Dr Popple—It is fairly flexible, Senator. That is our rule of thumb about how we are going to use that money—

Senator CHRIS EVANS—I am just trying to understand: did you have to, in your budget submission, provide a proportion for SRAs? Or did you apply for \$6 million and then you made the decision about how much of that ought to be kept aside for SRAs?

Mr Cornall—This is existing funding levels.

Dr Popple—We are just deciding how we are going to use our existing funds.

Senator CHRIS EVANS—So inside the department you took a decision about how you allocated those funds.

Dr Popple—That is correct.

Senator CHRIS EVANS—But there was obviously a requirement on you to participate in the SRAs.

Mr Cornall—Certainly. There is an expectation that all departments will participate in SRAs as the opportunities arise.

Senator CHRIS EVANS—Is this your only budget allocation for SRAs?

Mr Cornall—Yes, it is. Although a lot of the things that we are already funding would be consistent with some of the objectives of a lot of the SRAs. But in terms of saying, ‘We will put \$100,000 into this SRA,’ yes, this is the money we have earmarked for that purpose.

Senator CHRIS EVANS—Is it possible that other programs you run might be wrapped into an SRA package?

Mr Cornall—It is possible.

Senator CHRIS EVANS—But there would not be separate funding. That would come out of the normal budgeted work, as it were.

Senator Ellison—In addition to this, we do have the Indigenous stream of crime prevention and we have funded a night patrol. I am going back to the night patrol issue, which Senator Evans raised. Night patrols are a very useful program, if you like, or measure. We have not had many applications asking for funding for night patrols, but we have funded them, and I can get the figures to the committee of how many applications and how many grants there have been dealing with night patrols. We do have an Indigenous stream for crime prevention, and it may be that we have to ramp up further an awareness program of that, because there is funding there which can be applied to it.

Senator CHRIS EVANS—I appreciate your contribution, Minister; I am just trying to be clear. Are you saying that in another program area called crime prevention you have a budget allocation for Indigenous crime prevention, and included within that is the opportunity for night patrol funding?

Senator Ellison—Yes.

Senator CHRIS EVANS—But it is not a separate night patrol funding budget?

Senator Ellison—No.

Senator CHRIS EVANS—But you have funded night patrols out of that budget?

Senator Ellison—Yes. Tangentyere council is one that I remember and I think there may be another one. They are also under the broader crime prevention grants to Indigenous groups. They are not just confined to that particular stream, but that is quite separate and apart. The total funding we had for that crime prevention was about \$58 million to \$60 million, from memory, but I am open to correction on that. We have added to it—

Senator CHRIS EVANS—That is for the crime prevention program?

Senator Ellison—Yes.

Senator CHRIS EVANS—How much of that has gone into Indigenous—

Senator Ellison—We will take that on notice. Later in this estimates hearing we can have those figures for you.

Senator CHRIS EVANS—Thank you.

Senator LUDWIG—While you are doing that and we are on that point, there was the Northern Territory agreement as well, but that concluded in June 2005. Was there additional money in the budget allocated to continue that agreement? It dealt with issues of reducing the number of juveniles entering the criminal justice system and alleviating the language barriers faced by Aboriginal persons.

Senator Ellison—Was that the interpretation service in the Northern Territory?

Senator LUDWIG—No, it was the original Northern Territory agreement. I am sure Mr Cornall recalls it.

Mr Cornall—I do. The original agreement was the four-year agreement, which expired a couple of years ago. It had two components: one was the interpreter service and one was the

juvenile diversion program. The juvenile diversion program has been accepted as a Northern Territory responsibility and is now conducted, as I understand it, by the Northern Territory. The Commonwealth has continued to accept a role in contributing to the continuation of the Northern Territory Indigenous interpreter service.

Senator LUDWIG—The original funding concluded and there was no new money allowed in this budget. The \$3.9 million in the 2004-05 budget was allocated for a contract to conclude in June 2005 and you then decided, as a whole-of-government initiative, not to refund that initiative.

Mr Cornall—Not the juvenile diversion program, no.

Dr Popple—That is all correct, except that there was a rephrasing, as I think we might have discussed at a previous estimates, into 2004-05 of \$770,000 from that program.

Senator SCULLION—My colleague Senator Evans made the quite clear assertion that there were some 700 communities that had indicated they would like to have a night patrol. Obviously, you are quite experienced in this area of night patrols. I understand they also have day patrols.

Mr Boersig—They do.

Senator SCULLION—In your experience, could you tell me a little about the sorts of demographics of the communities that require night patrols? Do we have any in Queanbeyan?

Mr Boersig—No, none in Queanbeyan.

Senator SCULLION—What about Bathurst?

Mr Boersig—None in Bathurst.

Senator MOORE—Have they asked for any?

Mr Boersig—I do not recall any applications from Queanbeyan or Bathurst. Generally, night patrols are in rural and remote areas.

Senator SCULLION—Why is it, do you think, that these communities would want to have a day and a night patrol particularly? While some of the answers may seem self-evident, for the benefit of the committee I would like to hear from your experience why you think it is that they require night patrols in places like Lajamanu and other places of that sort.

Mr Boersig—It relates to the dysfunction in the community, sadly. We are looking at a structured approach to dealing with young people, usually, and those who are substance abusers. That is generally a later night issue, although in some communities they have specialist patrols—for example, a youth patrol initiative. In some communities there is also a day patrol because of the nature of the problem.

Senator SCULLION—Are they provided in some communities because there is a particular need for a sort of enforcement wing in the community? Are they the protection team in the community?

Mr Boersig—The night patrol sometimes plays a role in enforcement in the sense of helping people off the streets who are not behaving properly. In that role they are in fact assisting in the proper functioning of the community.

Senator SCULLION—I understand in Katherine, the Kalano have both a day patrol and a night patrol. I am going to the question of whether, generally, their activities include compliance with the law. Do they stop people from unlawful behaviour? Obviously we are talking about antisocial behaviour. The vast majority of it is in fact unlawful.

Mr Boersig—They are very careful about those differentiations. Obviously they are not acting in a police role at all and would rely on the cooperation of the people involved.

Senator SCULLION—Are there any places where they have a night patrol when in fact there is no available police force on the ground?

Mr Boersig—The short answer to that is yes. Again, I can get a list of where those are.

Senator SCULLION—When we are talking about shared responsibility agreements, clearly, the provision of the rule of law is the responsibilities of the states and territories. Is there consideration of shared responsibility agreements if we are to provide, I think quite rightly, an extra level of protection and rule of law for Indigenous people on the basis that there is someone to back them, which is a police officer who has that backing behind him? Have you gone to the extent of providing these services with the full knowledge that they have the backing of the law because the law is in fact available in those communities?

Mr Boersig—Certainly the issue of the role one might expect or take in negotiations of SRAs would be to clarify the role of different agencies both at state and federal level.

Senator SCULLION—To clarify that, my question again goes to whether we would still be happy to provide the service knowing that we will be providing an interdiction at times when they are going to need the assistance of the police force to ensure that their activities are lawful and to ensure that they can provide that level of protection.

Mr Boersig—Certainly that would be very problematic. That is not their role.

Senator SCULLION—So if there is no police force or available police role in the area, will that have an impact on whether or not you are able to provide that sort of service?

Mr Boersig—That would be a factor we would negotiate with the possible service provider and would go to issues in relation to safety and so forth.

Senator SCULLION—Indeed. I hope I speak for the committee when I say that I hope that is taken into consideration when you are providing that very important service.

Senator CHRIS EVANS—I do not want to have a wide debate about this but I do want to ask, given the debate about customary law and some of the statements that have been made about it, what the Commonwealth's involvement is. I know that various state law reform commissions and state attorneys-general have been involved and that it largely relates to state laws. I know that you have engagements with the states on various law reform and other matters. I am just trying to get a sense of what the Commonwealth engagement—not in the political debate but in the policy debate—with states is regarding questions of customary law and legal systems.

Senator Ellison—You are right: it is a state and territory responsibility, although I think it is fair to say that, with Indigenous affairs, both at the Standing Committee of Attorneys-General and the Australasian Police Ministers Council, it has been a standing item which has

been discussed by ministers, certainly at every one of those meetings that I have attended. If we can just go back a bit: there was a case in the Northern Territory which involved the sexual assault of a young girl, and the sentence that was given to the perpetrator was a very short period of imprisonment. That was appealed by the DPP in the Northern Territory, and the Commonwealth made it very clear that it thought the judge had placed undue emphasis on customary law. I made comments at the time myself, saying that we welcomed the appeal and that, in a wider sense, customary law was not an excuse for carrying out an assault on someone, particularly in this case, in which it was, I think, raised that the young girl had been promised to the older man under customary law.

Senator CHRIS EVANS—Did you formally intervene in the appeal, Minister?

Senator Ellison—No, we did not. We looked at it but we did not intervene. That was entirely in the Northern Territory jurisdiction. But I wrote to the minister concerned, the Attorney-General in the Northern Territory. Subsequent to that, we have had, as you know, in the press and in the community, a development of this issue, with a number of instances being cited and one prosecutor in the Northern Territory raising a number of cases where she had concerns. And, of course, the Acting Prime Minister has now written to premiers and chief ministers to ask that they send representatives to a summit to discuss this very issue sometime towards the end of June. The issue of customary law and sentencing is something that the Attorney-General and I will be making a contribution on in the discussions that will be taking place. The make-up of that summit is yet to be determined, but certainly there have been some responses from some jurisdictions to say that they will be participating. Others, I think, have yet to reply. We are looking at having Minister Brough, the Attorney-General and me involved in that.

From time to time, this has formed part of the discussion on sentencing generally and the high rate of imprisonment of Indigenous people in this country. There is an overrepresentation of Indigenous prisoners across Australia. One can look at the question of sentencing in the city as opposed to remote Australia. You may well be acquainted with the Kimberley and some of the initiatives that have been embarked upon there and in other states—the Koori Court and the like and magistrates visiting community areas to hear matters. It certainly has been an ongoing piece of work, but it is primarily the responsibility of the states and territories. Now it has got to a level where the Commonwealth government believes that this has to be addressed nationally, that we have to deal with it as an issue which is not a minor one—it is a very serious one—and that we have to have, as much as possible, a uniform approach to this across Australia, because really—

Senator CHRIS EVANS—By ‘this’ what do you mean, Minister? You were talking there about initiatives for being more in tune with Indigenous culture, like the initiatives in the Kimberley and the Koori Court—

Senator Ellison—And I think the Commonwealth has supported the access to justice in that way—

Senator CHRIS EVANS—That is what I thought. I thought you were quite supportive of those initiatives.

Senator Ellison—But what we are saying is that customary law does not pose a defence to a criminal action.

Senator CHRIS EVANS—I agree with you that—

Senator Ellison—When you go back to that Northern Territory case, Chief Justice Martin said he was wrong, and he is reported as saying that.

Senator CHRIS EVANS—I am aware of all of that debate. You usefully said that you have had items on the meetings on the attorney-generals and police committees for some time. I was going to bring you back to that as to what the nature of those were. Then you referred to the initiatives, which have been about trying to connect better with Indigenous culture and make the justice system work better to deal with what you rightly point out is a terrible Australian record of Indigenous incarceration. But then you said you wanted to get the focus onto uniform approaches. I presume you are going back to the question of customary law?

Senator Ellison—That is right. When we look at criminal law per se, we have been working on a model criminal code, and the Commonwealth comes squarely from the position that all Australians should be subject as much as possible to the same criminal justice system—that is, it is undesirable for one person to be guilty of an offence in New South Wales but not guilty when they cross the border into Victoria. We have had similar arguments on double jeopardy and on a whole range of issues in relation to criminal justice in this country. That is why 10 years ago we set up a model criminal code committee of officials from around the country to try as much as possible to get uniformity.

I appreciate fully and I have been the one who has said that, where you have Indigenous communities—and you have been talking about how many there are—many of the problems and solutions to fix the challenges they face rest with the community, and they can have quite diverse and particular aspects to them. I myself have seen that in the north of Western Australia and I am sure you have too. We cannot cherry-pick the application of criminal justice. It has to apply as one law for all Australians. How you deal with people in the regional and remote areas depends on the way that the criminal justice system is administered. In the city, a magistrate's court may well sit quite differently to one which sits in remote Australia, but the same law and how you have access to justice applies. We have funded the Aboriginal Interpreter Service in the Northern Territory. That has been very important, because we have taken into account the languages that apply there. That is all about the application of your criminal justice system and its administration. As to the law itself, that must be one law for all Australians and must be universal as much as possible in relation to the criminal justice area.

Senator CHRIS EVANS—And where do you say that is currently not the case? In which state is that not the case?

Senator Ellison—We saw in the Northern Territory the case I mentioned.

Senator CHRIS EVANS—That was a question of interpretation. You make the point, which I think Mr Brough has been making, that in some sense the criminal law needs to be applied formally or apply the same to everyone. I have no difficulty with that at all. I have said the same thing myself. You rightly point to different cultural responses and how magistrates sit et cetera in terms of the administration of the law, and I think there is a

distinction. The debate at the moment in the public arena is about the same law not applying. I want to know where it is that the same law does not apply.

Senator Ellison—If you say that it was interpreted differently in the Northern Territory, the question should then be asked should the law then be changed to assist judges in the way they interpret it. The Chief Justice there certainly saw it open to interpretation. He now reportedly says he was wrong.

Senator CHRIS EVANS—But he was also beaten on appeal, wasn't he?

Senator Ellison—He was, but the fact remains that he was the Chief Justice and he made that decision and it had to be taken on appeal. It is undesirable that that occurred in the first case anyway.

Senator CHRIS EVANS—Sure, but you do not get much better than (1) a Chief Justice being overturned on appeal and (2) him saying he was wrong. It is a rare event.

Senator Ellison—The thing is, one would think it would be so clear that you necessarily would not have that. Often we have appeals and when we look at them we say, 'What can we learn from it?' In Western Australia, the Attorney-General is introducing a range of options in relation to customary law and its application. I do not pretend to be across the detail of that, but that is an instance where one state is going down a path, I think, that is quite different from the path of other states. I am not across that sufficiently to comment.

Senator CHRIS EVANS—That arose out of the Law Reform Commission report. There is a lot of work going on about that, isn't there?

Senator Ellison—There was a lot of work that went into it, and the question is how it is going to be applied: is it in that application that I mentioned, or will it apply to the substantial aspect or substantial criminal law?

Senator CHRIS EVANS—So what are you proposing that the states change? Your argument is that the same law does not apply currently to Indigenous and non-Indigenous Australians. Is that the argument?

Senator Ellison—There were cases raised by a prosecutor in the Northern Territory—

Senator CHRIS EVANS—I saw the interview, yes.

Senator Ellison—He was very experienced counsel who raised concerns about the application of customary law in these criminal matters.

Senator CHRIS EVANS—Didn't those go to questions of mitigation?

Senator Ellison—Mitigation can also have relevance. Where you have mitigation to the extent that there is no penalty, as in the Northern Territory case, that is also of relevance. You can talk about guilt or innocence, but then you might say, 'That's the only thing you need to look at.' But sentencing is also extremely important. I mentioned that that is what the Attorney-General and I are looking at. If someone is found guilty of a very serious offence, people say, 'That's fine; the law was applied.' But, if they are then allowed to walk out of the courtroom door and do not face any term of imprisonment, which normally would be a certainty, then that too is an issue, not just the question of guilt or innocence.

Senator CHRIS EVANS—I accept that, Minister, and I understand that mitigation is an issue in sentencing, and all sorts of factors—such as previous domestic violence—can be introduced in arguments for mitigation. You are a lawyer and much better placed to know all the circumstances than I am, but that is an argument about the penalty, as I understand it. You said the principle you are trying to attack is that the same law applies. I am asking: in which state do you say the same law does not apply to Indigenous Australians as it does to other Australians?

Senator Ellison—We can take on notice the question of different regimes in the states, including the recent proposals introduced in Western Australia—

Senator CHRIS EVANS—They are proposals; they are not—

Senator Ellison—They are relevant, because—

Senator CHRIS EVANS—No, they are relevant, but the argument seems to be that we have to change the law because the same law does not apply. I am asking: is that your position—do you think that the same law does not apply in any state and could you identify it for me? Or is it really a debate about mitigation?

Senator Ellison—I think that it needs to be discussed with the states and territories across the board in relation to both guilt or innocence and sentencing. That is the substance of criminal law. What this summit is about is to see what we can do as a collective whole to address this issue, and I think Minister Brough has said to go even further and look at how we can remedy the situation. It is just not a tight legal argument.

Senator CHRIS EVANS—What I am asking you, and I am not trying to be combative, is: remedy what situation? What law does not apply to Indigenous people but does apply to the rest of us, and in which state is that the case? What is it we are tackling, allegedly?

Senator Ellison—You can look at a complaint that I received. When I was up in Halls Creek a while ago, I had a number of people from surrounding communities meet with me who complained about there being no application of the law as such, in that people were committing offences but not being brought to justice for them.

Senator CHRIS EVANS—But that is a different matter, isn't it? That is about enforcement of policing, which I agree has to be pursued.

Senator Ellison—I think that is all part and parcel of the administration of criminal justice. It is part of the discussion that we will have at the summit. I would envisage the summit to be squarely encompassing that. You may have different methods of policing in different states, where they say: 'It's an Indigenous community. We adopt a different approach for that.'

Senator CHRIS EVANS—But that is not about the law, is it? That is about administration methods and whether there is effective administration.

Senator Ellison—It certainly is about the law and its application.

Senator CHRIS EVANS—It is about its application.

Senator Ellison—That, too, is relevant.

Senator CHRIS EVANS—The question I am asking you is: where is the law that does not apply equally to all Australians? I want the example so I know how to get my head around it. I

have been following this debate all week and I have not been able to get my head around it. Which law is causing the problem?

Senator Ellison—The most stark example I can give to you is the Northern Territory case where there was an interpretation by the Chief Justice, which he thought was open on the law applicable and which on appeal was overturned. However, you have to remember that in the first instance he thought it was open so that the law was sufficiently ambiguous to allow that to occur.

Senator CHRIS EVANS—I accept that, Minister, and I was as shocked as everyone with that and deeply unhappy with the decision—to be frank, I am not sure that I am all that happy with the result of the sentencing following the appeal. Quite frankly, what I say does not really matter but, as Joe Citizen, it still seemed a little unsatisfactory.

Senator Ellison—I might point out to you that the Northern Territory parliament, I am advised, formalised the process for making sentencing submissions based on customary law through amendments to the Northern Territory Sentencing Act—that was assented to in January 2005. These amendments mandate that any information regarding customary law matters provided to the court must be given by way of sworn evidence and notice must be given to other parties to the proceedings to call such evidence. It is quite fair that you give notice but what is of more importance is that it formally provides for sworn evidence to be given in this regard, such is the weight attached to it.

Senator CHRIS EVANS—That is in relation to the sentencing, is it?

Senator Ellison—Sentencing is as much a part of this as anything else. What is the point of finding someone guilty if there is no sanction attached?

Senator CHRIS EVANS—I have been trying to deal with the concept. I know what happens in these debates. The concept gets taken down to a simple one-line sentence, and I am interested in the debate about mitigation, about sentencing. I am interested in Senator Scullion's point about policing, resources, which is all part of how one tackles these problems. I am also interested in tackling some of the causes like housing and the poverty that breeds this sort of dysfunction, but we cannot get much focus on that at the moment. I want to be clear about whether the law applied or whether it was about sentencing and mitigation issues. It seems it is more about the latter than the former.

Senator Ellison—The president of the Law Council this morning was talking about the question of mens rea, which is the necessary mental intent and the relevance of customary law there and culture having an influence on that. One would have to look at the application of the law in that regard. I am not saying at this point that there is a necessarily a deficiency but I am saying that it does merit a discussion across the board. When you look at the Western Australian law reform commission, which you mentioned, that made 93 far-ranging proposals for substantive procedural and policy reform. I have not got those here, but I stress that it was a far-reaching review. I am not saying that it should have occurred but I am saying that it does make far-reaching recommendations, some of which relate to substance.

Senator CHRIS EVANS—For your information, I heard Jim McGinty, the state Attorney-General, on the radio the other day encouraging public comment and submissions on those

proposals. So I am sure he will welcome a submission from you, Senator Ellison, on behalf of the Commonwealth.

Senator Ellison—The Commonwealth will certainly be doing that. We are not jumping the gun to say that at this stage there is any particular aspect. We think that it is of sufficient importance to have this summit and that to have a uniform approach as much as possible in criminal justice is desirable. Madam Chair, there is a national security committee meeting that I need to go to, which I am 10 minutes late for. I would be grateful if we were done.

Senator CHRIS EVANS—We would not want to put the security of the nation at risk.

Senator Ellison—Estimates is very important.

Senator CHRIS EVANS—I know it is.

CHAIR—We will continue with questions in this area.

Senator CHRIS EVANS—I had one last one for the minister, but I think I can ask it of the officials. It goes to the minister's point about matters that have been on agendas for meetings of the attorneys-general and, I think, the police commissioners. He referred to Indigenous justice issues being on those agendas. Have questions of the application of the law and the concerns raised today been some of those issues or were those issues more focused on initiatives for dealing with Indigenous legal administration like the Koori courts?

Mr Cornall—They have been on those agendas over many years in different forms. But I think it would be necessary to go back and review the agendas for the various meetings and give you a list of the topics that have been covered.

Senator CHRIS EVANS—I will leave it at that. That is fine. Thank you.

CHAIR—In terms of the record, Senator Evans, I think you said police commissioners' meetings. Were they meetings of police commissioners or police minister?

Mr Cornall—The Australasian Police Ministers Council.

CHAIR—That is what I thought.

Senator McLUCAS—I want to ask some questions about the operations of the Townsville Aboriginal and Torres Strait Islander Legal Service. This goes back prior to the retendering of the service for North Queensland. Do you have with you the annual funds that were allocated to Njiku Jowan and Tharpuntoo and to the former Townsville Aboriginal and Torres Strait Islander Legal Service in the year prior to retendering?

Dr Popple—We have the totals for each of the states, but we do not have the breakdown for each service within each state.

Senator McLUCAS—Would it be possible for that to be provided?

Dr Popple—We can certainly take it on notice, yes.

Senator McLUCAS—Do you have the current annual allocation to the Townsville Aboriginal and Torres Strait Islander Legal Service after the retendering?

Mr Boersig—Yes.

Senator McLUCAS—How much was that?

Dr Popple—For 2005-06, it is \$6.027 million. In 2006-07, it will be \$5.873 million. In 2007-08, it will be \$5.672 million.

Senator McLUCAS—It is decreasing over time. That is hopeful. Why is it decreasing over time?

Mr Boersig—That relates to the funding allocation formula that was adopted last year. Previously, the Aboriginal and Torres Strait Islander legal services had been funded on a historical basis. There was no model or method, in that sense. A model was developed and that has a number of drivers: to distribute the funds on a needs basis and on an equitable basis nationally. One of the results of that was that some funds came out of Queensland and went into other states.

Senator McLUCAS—I know you are getting me the figures on notice from the three services that were previously funded, but do you have in your head a notion that there was some equity between the addition of the three sums with the \$6.027 million?

Mr Boersig—The issue of equity is dealt with in the funding allocation model because of the nature of the drivers in that model. That is intended to disburse the money according to that need. The fact that there were pre-existing funds to Njiku Jowan or Tharpuntoo was not a criterion for allocation of funds.

Senator McLUCAS—Does the model include an allocation or a recognition of the travelling needs for those services?

Mr Boersig—The model has four major drivers: demography; dispersion—that is, where people are living, particularly in rural and remote areas; removal from family; and prison location. Those are the key factors used to work the formula. So, yes, there is a weighting given to the fact that they provide services in rural areas.

Senator McLUCAS—You may not have this figure with you. Could you then, out of that 2005-06 figure of \$6.027 million, work out what the amount allocated to travel to be able to service clients in remote areas would be? Would that be something that the formula would let you disaggregate?

Mr Boersig—I do not think so, but I will certainly have a look at that and see whether it can be done.

Senator McLUCAS—You do not think so?

Mr Boersig—I do not think so, but can I take that on notice? We will look to see whether that can be disaggregated. Travel is not a specific component; what is taken into account is regional dispersion. That is where the communities live and where the communities reside. It takes into account that there are people in Hoptown, for example, or Yeppoon.

Senator MOORE—What does it take into account if it does not take into account the distance? I understand the idea of dispersion. If you have the service located in a certain spot and you are servicing communities that are all around the place, that is certainly an element of your cost. But I would have thought that the major component of that costing would be the travel for getting around. Is there some other element that is brought into that assessment?

Dr Popple—It is really a matter for the service provider to decide how to provide that service to, amongst other places, those dispersed regions. In other words, as Mr Boersig has explained, the model takes into account dispersion but it does not map to a particular amount for travel. The service might decide to do it in a different way. They may have liaison officers closer to the particular community. There might be different ways of achieving that. So, in the tender process, it was up to each tenderer to explain to us how they proposed to provide that service, given the dispersion of the target population, but it was not linked to a particular travel budget per se. Clearly there will be a larger travel budget in such organisations, but it does not map to dollars.

Senator MOORE—So communication costs would come under that. If people chose to use mobile phones or lots of telephone servicing, that would come under that heading as well.

Dr Popple—For the same reason, we would take that into account when deciding to allocate the money but not exactly how it should be spent.

Senator McLUCAS—Mr Boersig, I understand that there is a model that says that people are dispersed over a geographical area. Do you then say that it is 2,000 kilometres from Townsville to Napranum, say, so that factors in? Is that how the model works?

Mr Boersig—The reason I am hesitant is that the model is an arithmetical model that a consultant puts together. I am not familiar enough with the mechanics of using that model to be able to give you an accurate answer. So I am just being very careful about that. If it can be answered, I will do that.

Senator McLUCAS—On notice, then, could you provide me with a layperson's explanation of how the arithmetic turns into the final allocation?

Dr Popple—I have here a copy that I can hand up of the funding allocation model. For your information, it was previously handed up to the Joint Committee of Public Accounts and Audit when they were looking at this program. That was back in March 2005. It is the same document.

Senator McLUCAS—If it is not in layperson's terms, can I ask—

Dr Popple—Certainly, we can do that as well.

Senator MOORE—We need an interpreter, Dr Popple!

Senator McLUCAS—Are you aware that Magistrate Tina Previtera was quoted in the *Cairns Post* in August last year expressing concern that the court had been told that people would not qualify for legal aid if they pleaded not guilty to minor offences? These are clients of the Townsville Aboriginal and Torres Strait Islander legal service. Is it the view of your department that that is an appropriate way to deliver support to their clients?

Mr Boersig—Certainly that would not be accurate. There is a means test applied. I have not heard that particular quote before, I should say. But certainly the means test is applied in a fashion so that eligibility is given to those most in need.

Senator McLUCAS—This is not a means test. The test is that, if they plead not guilty, they will not get support.

Mr Boersig—The means test does not include any merit criteria like that.

Senator McLUCAS—How do you monitor the delivery of service by contracted tenderers?

Mr Boersig—It is through a variety of mechanisms. We have regular reports in terms of both financial reports and data from the service providers. The contract itself sets up a regime of reporting, in that sense. It also sets up targets for service delivery in key areas—for example, family law, civil law, criminal law, duty work, advice and minor assistance. So we monitor their performance through that. In addition, we are able to conduct effectiveness reviews, so we can send an independent consultant in there to test the accuracy of the reporting to us.

Senator McLUCAS—Do you look at their operating procedures? I am sure that is not the right term. I mean the rules of practice within the service.

Mr Boersig—The award of the tender is based on four essential factors—primarily, the provision of a professional and culturally appropriate service. There is also the delivery of those services according to Commonwealth priorities and, in addition, in a cooperative environment with other service providers. That provides the background for any approach we take in terms of assessing the qualitative and quantitative aspects of the provision of service on the ground. That is what this contract is clearly geared to.

Senator McLUCAS—Are you also aware that, in October last year, Judge Wall in Townsville refused to list ATSILS matters for trial because he did not believe clients were being interviewed?

Mr Boersig—I am certainly aware of complaints made by that judge. I can indicate that, in relation to that transition period, we certainly acted upon the issues that arose. We have been working with the organisation to ensure that they have better service delivery and fewer complaints. Certainly there were transitional issues that were brought to our attention.

Senator McLUCAS—And you assisted in that period?

Mr Boersig—The process has been one of going back to the organisation and working with the organisation. A consultant went into the organisation to have a look at what was actually happening in the nature of these types of concern. We have spoken with the legal aid commission and we have spoken with the chief magistrate about their concerns. We have also recently met with Queensland Department of Justice and Attorney-General officials. In fact, I will be going up there in a week or so to speak at the magistrates conference and to see whether there are any contemporary concerns.

Senator McLUCAS—There are, and I will give you another quote in a moment. What did the consultant do?

Mr Boersig—The consultant, in the way I described previously in terms of what we were looking for, went into the organisation to make an assessment about some of the issues that had arisen, particularly in relation to governance and management, because they seemed to be at the heart of some of the issues that were arising during the transition.

Senator McLUCAS—Did the consultant make any assessment of the appropriateness or not of the level of funding?

Mr Boersig—There were some recommendations made to us, and we have gone back to their board with those recommendations. They have given us an initial response and we have gone back again. But no, there were none in relation to funding.

Senator McLUCAS—Were they asked to or not?

Mr Boersig—No, there were not.

Senator McLUCAS—In March of this year, the Cairns judge Sarah Bradley expressed concern that the Townsville Aboriginal legal service allowed a client to stay in remand in prison for more than 500 days. That now extends much further back than the time of the transition. Are you aware of that?

Mr Boersig—No, I am not aware of that.

Dr Popple—We were aware of an earlier suggestion that there had been a client on remand for a very long period, although not as long as that. We made some investigations, and so did the service, and we have been unable to determine the details of that. The other point to make is that obviously it is important that the legal service provide legal service, but also the fact that the Queensland justice system may allow someone to stay in remand for such a long period raises issues as well.

Senator McLUCAS—I think it also goes back to Judge Wall's comments about not being able to be represented, admittedly in a different court.

Dr Popple—As I said, Senator, we have had a number of anecdotes along those lines, and we have not yet been able to verify any of those.

Senator McLUCAS—Another recent report said that prisoners at Stuart correctional centre were waiting up to five months to see a legal field officer. Is that the issue—

Dr Popple—That might be the one I was referring to.

Senator McLUCAS—You have investigated that?

Dr Popple—It sounds like the one that we investigated, yes. We were unable to find any examples of that. We took the matter up when we discussed this with the Queensland department of justice officials, as Mr Boersig mentioned, just a few weeks ago. They were not able to provide us with the details of that. They had heard similar stories but they did not have the details of it. So we have been following it up, and we will continue to do so because we take it very seriously. But we are also concerned that every time these reports have been raised we have not yet been able to find the specific example to which it is meant to refer.

Senator McLUCAS—Does the department understand the way that the court system on Cape York Peninsula operates?

Mr Boersig—In terms of circuits?

Senator McLUCAS—The circuits, and the need to have a solicitor present at each event?

Mr Boersig—The provision of legal aid in terms of representation is certainly a factor that we considered in the assessment of all the tenders.

Senator McLUCAS—Around the question of disbursement, although not travel costs?

Mr Boersig—Yes.

Senator McLUCAS—On what basis was the decision made to let the tender to one entity? I am not trying to be critical of the Aboriginal and Torres Strait Islander Legal Service as an entity, but I am making the point that we have replaced three separate legal services now with one. On what basis was that decision made?

Mr Boersig—The position of the government when the national tendering determination was made was that the preference was for a single service provider in each state. In two states, the Northern Territory and Queensland, a determination was made that it would be appropriate to have two zones. In Queensland they have two legal services now, in a northern and southern zone, that have replaced 11 services.

Senator McLUCAS—So that was a government decision; it was a political decision?

Dr Pople—The Attorney made the decision.

CHAIR—There being no further questions on 1.7, thank you very much, Dr Pople and Mr Boersig.

Ms Leigh—Chair, now that we have finished 1.7, could I table some information that I undertook to provide earlier.

CHAIR—What was that in relation to?

Ms Leigh—A list of the judges in the various federal courts who will retire in the next three years. I am now able to table that list.

CHAIR—Thanks, Ms Leigh. Senator Ludwig, I was thinking of going to 1.3.

Senator LUDWIG—I could put my questions in that area on notice, unless someone else has questions on 1.3.

CHAIR—I always have questions on human rights, Senator, but I usually defer to my colleagues in terms of time.

Senator LUDWIG—I can deal with those questions when HREOC appear before us.

CHAIR—So you have nothing to put to the officers in relation to 1.3?

Senator LUDWIG—The department is usually here with HREOC as well, so I might combine those.

[4.29 pm]

CHAIR—We will move to output 1.4, Legal services and policy advice on international law.

Mr Cornall—While officers are coming to the table, in response to a question about the assessment of magistrates' applications, I talked about departmental officers being on the interview committee. I might have left the committee with the impression that they were the only people on the committee. That is not the case. There would be an officer from the Attorney's office and there may well be an officer from the court as well. If I had left the impression that it was strictly officers of the department, I wanted to correct that.

CHAIR—Thank you very much.

Senator LUDWIG—I will put a couple of questions on notice, but I want to deal with one that goes to what we can broadly call the new migration bill. Has the international law branch had any involvement in the drafting of that bill or any liaison or consultation with the UN bodies regarding that bill?

Mr Campbell—In the course of drafting a bill such as that, the Office of International Law would normally be consulted on those matters.

Senator LUDWIG—You say they would normally be consulted, but were they consulted on international law obligations for that migration bill?

Mr Campbell—We were consulted.

Senator LUDWIG—What was your advice? Are you able to say?

Mr Campbell—We do not normally provide the advice which we give to the government on those issues.

Senator LUDWIG—Have you consulted with any of the United Nations bodies regarding the applicability of international law to the migration bill?

Mr Campbell—The Office of International Law has not consulted any UN bodies, but normally we would come to our own conclusions about whether or not a bill is consistent with international law.

Senator LUDWIG—Have you come to that conclusion or not about the migration bill?

Mr Campbell—Yes.

Senator LUDWIG—What is that?

Mr Campbell—That it is consistent with our international obligations.

Senator LUDWIG—You have obviously seen the number of statements around in the press indicating that there is some doubt about that position. Have you had an opportunity to contact any of those organisations or United Nations international bodies to see whether there is an alternative view?

Mr Campbell—I am aware that views have been expressed about the bill and its consistency with international obligations, but the answer to your question is no. I have not consulted UN organisations on it, but I have seen their views. I would not be aware of whether any other government department might have consulted those international organisations.

Senator LUDWIG—I accept that, and I was trying to make sure that I did not go any broader than that. There is an opportunity on Friday to deal with some of these matters, so I might leave those until then. There is one small matter in AG's output 1.4 which is that last year there was a reported underspend of \$3.636 million compared with the budgeted \$4.919 million. This was apparently a restructure, which is simply the recalculation of the output. I think we went through that with Mr Kennedy last time. I note that there has been an underspend in output 1.4 again—\$4.588 million in the actual estimate compared with \$5.035 million in last year's budget estimate. What is the explanation for that? Mr Kennedy is no longer with us, is he?

CHAIR—He will not have gone very far.

Mr Cornall—Those figures do not sound correct to me. I am not sure where you are getting them from.

CHAIR—I am sure we can find a page in the PBS.

Senator LUDWIG—Has there been an underspend in 1.4?

Ms Bickford—Can you refer me to the page?

Senator LUDWIG—It is output 1.4. I am not going off the page, particularly. It is your output, not mine. I am asking you whether or not there is an underspend compared to last year.

Ms Bickford—We are forecasting an underspend of about half a million dollars on that output.

Senator LUDWIG—So I am right about that. That is comforting to know. Why is that?

Mr Campbell—Perhaps I can partly answer that question. It partly relates to the NPP funding, quite a deal of which dealt with some overseas travel relating to the negotiation of bilateral agreements dealing with offshore maritime security. It is not that the travel will not have to be undertaken eventually, but it will not be undertaken this year.

Senator LUDWIG—How much was set aside for that?

Ms Bickford—We are talking about 200-and-something thousand, I think, in relation to that particular activity, which we will be looking at spending in the following year, as I understand it.

Senator LUDWIG—So there is still \$250,000 around.

Ms Bickford—Some of it will be related to staffing, I think.

Mr Campbell—Some of it relates to staffing.

Senator LUDWIG—I am happy for you to take it on notice.

Mr Campbell—The balance relates to staffing expenses.

Senator LUDWIG—You can come back with an answer that provides what has happened to the underspend and whether it will be restructured or rephased and what it was not spent on.

Mr Campbell—We will take that on notice.

Senator LUDWIG—I can put the remainder of my questions for 1.4 on notice.

[4.38 pm]

CHAIR—I am advised that questions in 1.5 will be put on notice. Senator Webber is going to ask some questions in 1.6.

Senator WEBBER—You will have to bear with me; I am pretending to be Senator Moore, so some of this may not make sense to all of you. Ah, she is joining us now. Perhaps we can kick off with a general question: when is it anticipated that the government will announce their native title reform package?

Mr Anderson—The reforms are still being considered by the government. The intention is still to release an exposure draft of technical amendments in the first half of the year. It is not possible at this stage to say when that is going to be. Obviously we are getting closer and closer to—

Senator WEBBER—I was going to say: do you mean the first half of this year?

Mr Anderson—The first half of this year. That is still what we are working towards.

Senator WEBBER—Within the next four weeks?

Mr Anderson—That is the intention.

Senator MOORE—So it is the exposure draft which we have been hearing about, because we have the discussion papers.

Mr Anderson—Yes.

Senator MOORE—So it is the intention to have an exposure draft. Is there any kind of plan for how long will be open for discussion of the exposure draft, to send it around again for people to be involved?

Mr Anderson—No, there is no plan other than that it will need to be a sufficient time for people to be able to properly consider it and produce any further comments. The intention of the exposure draft is to seek to flush out any further suggestions for technical amendments.

Senator MOORE—How many submissions did you receive or comments did you record as a result of the discussion paper?

Mr Anderson—We received 19 written submissions, and there were also a number of both bilateral and multilateral meetings at which the discussion paper and possible technical amendments were discussed. In addition, there were a number of other suggestions for technical amendments that came out of the other reform processes, such as the claims resolution review in particular.

Senator MOORE—And is the department aware of any time frame for the next steps? You are still working towards the exposure draft; you have nothing beyond that to share within us?

Mr Anderson—We are working towards the exposure draft. It is possible that the Attorney might be in a position to release the claims resolution review within that same period—that is the review of the Federal Court and tribunal processes. In terms of the native title rep body reforms, that matter is with FACSIA, OIPC and Minister Brough. Under output 1.7, the Indigenous Justice and Legal Assistance Division is continuing work on the respondent funding guidelines reform. In terms of the transparency reform, there is going to be a native title ministers meeting on 11 August, so we are working towards that. On PBC reform, the steering committee—which is this department, OIPC and ORAC, the Office of the Registrar of Aboriginal Corporations—have concluded their deliberations and they are preparing a report to government as well. So that could also be announced shortly. But the most likely outcome is that the claims resolution review would be announced and the exposure draft would be released before 30 June.

Senator MOORE—You have just jumped through two pages of my questions there, Mr Anderson! I will have to go back and just double check I have all the answers I need. You mentioned a number of other reviews; is there any reason you think they should be announced simultaneously? Do they feed off each other? I know similar people are looking at them and they are looking at similar areas, but was there any expectation that they would come out at the same time or was it always the idea that they would have different time lines?

Mr Anderson—The intention would be that they all ultimately find their way into the actual bill that gets introduced into parliament, but there will be some measures that go beyond being technical amendments. So the intention was always that, to the extent that they generate technical amendments, they would be part of an exposure draft process and then they will all again funnel into the final bill that actually gets introduced into parliament.

Senator MOORE—And the other range of publications would stimulate bringing the bill to parliament?

Mr Anderson—Yes.

Senator MOORE—Okay. Just for my own tick and flick process, I will go through those things you mentioned before. With the claims resolution review, which was a specific aspect of the tribunal that you referred to, can you tell me how many of the 19 submissions you received referred specifically to that?

Mr Anderson—There were 19 submissions on the technical amendments reform.

Senator MOORE—Generally? Right.

Mr Anderson—They specifically addressed the technical amendments. There were 35 written submissions to the claims resolution review. And again there was a process of having meetings on that around Australia that the consultants carried out.

Senator MOORE—Can you provide us with a list of the hearings and consultations, because they were quite structured, weren't they?

Mr Anderson—Yes, there was a very detailed list that was actually provided in response to a question on notice in October 2005.

Senator MOORE—To this committee, Mr Anderson?

Mr Anderson—To this committee. We could provide an updated version of that.

Senator MOORE—That would be lovely, just in case.

Mr Anderson—There are only one or two additional consultations.

Senator WEBBER—That would be good.

Senator MOORE—In terms of the technical review, has the panel submitted its report to the Attorney-General?

Mr Anderson—No, it has not. It is not actually a panel carrying that out; it is simply work that is being done in the department.

Senator MOORE—Is it expected that the report to the Attorney-General will be made public?

Mr Anderson—What will be made public will be the exposure draft itself.

Senator MOORE—The exposure draft, right. You mentioned the native title representative bodies, NTRBs, and the fact that they work with Minister Brough. Are the recommendations of this report being considered by the Attorney-General in his review of NTRBs?

Mr Anderson—The Attorney is not doing the review of NTRBs. It is Minister Brough who is looking at NTRB aspects.

Senator MOORE—Does the Attorney have any role in that? Is that a joint aspect, or is the element of NTRBs peculiar to Minister Brough's department?

Mr Anderson—Minister Brough looks after both NTRBs and the PBCs, the prescribed bodies corporate. But, obviously, he talks to the Attorney and we work closely with the OIPC, because they are all different aspects of the native title system and if you did not have a connected approach to the different elements of the system there would be a risk that a reform in one area would potentially undermine or derail a reform in another area.

Senator MOORE—Was the information gathering process used in the overall review the tool for getting information on the NTRBs as well or was there a separate process of consultation?

Mr Anderson—There was a separate process for that. There has been information about all of them that has been jointly available through a departmental web site and linkages to that web site from all the different press releases, no matter which minister.

Senator MOORE—And you can go in through a number of different ways to that process, can't you?

Mr Anderson—That is right, but the NTRB process was being conducted by the Office of Indigenous Policy Coordination working particularly closely with the rep bodies.

Senator MOORE—In that area, AGs is a participant rather than a coordinator.

Mr Anderson—Yes, we are an interested party. We have a policy responsibility for the system but we do not have any direct policy role in terms of the NTRBs.

Senator MOORE—A similar situation with the prescribed body corporates.

Mr Anderson—The Attorney's have a stronger role in that we have been chairing the steering committee that is looking at the PBC reforms, but strictly the PBCs are administrated by Minister Brough and the exec division.

Senator MOORE—And any announcements on that would be Minister Brough?

Mr Anderson—There would probably be a joint announcement.

Senator MOORE—The overall review will be the Attorney's responsibility to announce; the NTRB will be Minister Brough; and the prescribed body would probably be joint.

Mr Anderson—There is no overall review as such. There are six different elements of reform that are being coordinated—

Senator MOORE—Within the same element leading to the one piece of legislation.

Mr Anderson—One piece of legislation, yes. The minister has had joint announcements at the outset to announce the different reforms, and there will be joint announcements at the end.

Senator MOORE—Who is moving the legislation?

Mr Anderson—I suspect it would be the Attorney because he administers most of the Native Title Act.

Senator MOORE—That is what I thought. The consultation with states and territories was an integral part of those whole process. We had the communique on 16 September 2005, and there was lots of coverage of that. What has happened since then?

Mr Anderson—There have been mainly bilateral discussions between us and the different states and territories. There is an officers' meeting that will be held prior to the ministers' meeting to work through issues in preparation for the ministers' meeting. There has also been discussion in the margins of other multilateral meetings that we have. We coordinate a particular stakeholders' forum that all the states and territories attend, for example, so we have been having discussions there as well about the reforms.

Senator MOORE—Is there such a body called the Native Title Consultative Forum?

Mr Anderson—That is the forum I was just referring to.

Senator MOORE—That is what that is called. My understanding was the expectation was that it was going to be convened three times a year with specific focus around this process—is that right?

Mr Anderson—It is convened three times a year. The first half of each meeting is taken up with reports from each of the members who are rep bodies, industry peak bodies, the Social Justice Commissioner, all states and territories, us, the Indigenous Justice and Legal Assistance Division, OIPC. First of all, there is a process of updating everyone on what different people's perceptions—

Senator MOORE—Like a state of the nation report, so everyone gives their view about what is happening.

Mr Anderson—That is right.

Senator MOORE—Then they have lunch and then what happens?

Mr Anderson—We spend the afternoon working through a particular area of the native title system. Sometimes we have taken that opportunity to talk about the reforms; at other times, we have talked about particular issues such as overlapping claims and how they might be addressed or ILUA processes and the best way forward, and what learning there might be from different jurisdictions and that sort of thing. They are not specifically targeted on the reforms, but that is one opportunity where we always generate some debate on the reforms.

Senator MOORE—Was there any expectation that that body was going to have a role in the reform process in a kind of updating of how it was going and ensuring that different expectations had been met? Was that proposed at any time?

Mr Anderson—No, not that it would have a specific role but it does have the role that it brings a lot of different parties together so they can hear about what is going on. They can put things to us, and we can feed those things back into our policy processes, but also those

people can go back to their own organisations, peak bodies, whatever, and use that to feed information back. We used the Native Title Consultative Forum meeting in December, for example, to provide a lot of information about the reforms and to encourage, warmly, people to put in submissions for the different reforms.

Senator MOORE—In terms of the minutes of those things—because that is a lot of information—are they public?

Mr Anderson—They are provided just to the members.

Senator MOORE—So they are not on a website or anything like that.

Mr Anderson—No, they are not.

Senator MOORE—Do you have the dates of the next meetings of those? Are they strictly quarterly?

Mr Anderson—We have adjusted the date of the next meeting so that it would come after the ministers' meeting, because we thought that there would be coming out of that to share with all the members and to discuss with the members. It was going to be late July; it is now going to be in late August. I do not have the specific date.

Senator MOORE—When was the last one?

Mr Anderson—The was one on 2 December last year. There was one more recently—I think it was March. I could get the precise date if you like.

Senator MOORE—That would be good. If we could just get an idea, on the basis that there was an expectation from that communicate that it was going to meet three times a year—just to get a sense that that has been occurring.

Mr Anderson—I think it was late March, but I will get the precise date.

Senator MOORE—That would be fine. The last few questions relate to the Native Title Respondents' Financial Assistance Scheme. Is that your area as well, Mr Anderson?

Mr Anderson—No, that falls within output 1.7.

CHAIR—Which, happily, we have finished.

Senator MOORE—Mr Popple has rushed back to the table, Chair, which I think is particularly cooperative.

CHAIR—What about the 'leave the room' edict? What part of that was not in English?

[4.52 pm]

Senator MOORE—There are only three questions on 1.7. Dr Popple, I deeply appreciate your availability.

Dr Popple—It is a pleasure to be back, Senator.

Senator MOORE—Within the assistance program there is a provision that the assistance can be varied. Can you explain how that works?

Dr Popple—Within that program we make a grant of assistance following an application. During the course of that grant, things may change for the respondent, because the matter may not run as anticipated when the grant was made. We could vary the grant in a number of ways.

We might say, for example, ‘There is no need for you to attend these particular hearings, because they are not happening. Now you have got to do something different.’ And we would vary the terms of the grant so that they could do those different things. That might require less money and it might require more. That could be a variation.

Senator MOORE—Is that a common clause? The way it has been presented is that the department may vary assistance at any time.

Dr Popple—It is common in the sense that we would reserve the right to do that in relation to all grants. If things changed so that the funded respondent did not need the committed money for a particular purpose, then of course we would not provide that money. It is not so much a clause of any particular grant; it is part of the guidelines of the entire scheme.

Senator MOORE—Is there a show cause explanation process for that? If the grant is given and mutual obligation is exchanged about what that grant will be for and what people are expected to do, and a decision is made by the department to vary, what is the process for doing that?

Dr Popple—The process would be that the applicant might come back to us and say, ‘Things have changed. We need to do something different.’ And they would propose to us how they would do that and how much it would cost. We would assess that, decide if it was consistent with the guidelines, and, if it was, make the variation and change the terms of the grant.

Senator MOORE—That is applicant stimulated. What would lead the department to do it?

Dr Popple—If it came to our knowledge, as part of the respondent’s reporting to us, that a particular part of the grant was no longer part of a particular matter, then we would say, ‘This no longer needs to happen,’ and obviously that part of the grant could be varied.

Senator MOORE—The guidelines you mentioned: does that explain that process of varying assistance that can happen at any time?

Dr Popple—The short answer is: if it is not in the guidelines, it is certainly in the letters that we send to our various respondents confirming the grant. So there is no doubt that it would be clear to the respondent that that is the case. Even if we did not vary the grant, these grants are quite specific about what the money can be spent on. So even without variation, the respondent could not incur costs outside the grant and expect to be reimbursed for them. Even without a variation, we would not be paying on something that did not happen.

Senator MOORE—This is a very specialised area, and the objectives of the reform were to give that confidence to people who were getting the assistance. Our interest is, when you do have the availability to vary at any time, to retain the confidence that that would not be done in a way that would be punitive or prejudice people’s confidence.

Dr Popple—I do not believe that has ever been an issue from our respondents. I do not think we have ever been accused of being punitive in our variations; it is simply a practical change to the grant so that everyone understands what we have committed to fund, given a change in a particular matter.

Senator MOORE—Because of time constraints, could we get from you where the guidelines are actually spelt out, so that people who are entering into a contract with the

department in terms of assistance would understand the way this variation process operates. That is what we are trying to find out. So if you could find the guidelines or the letter that spells that out, that would be good.

Dr Popple—Certainly, the terms of the grant are made quite clear. We can take that on notice and expand on it.

Senator MOORE—Thank you.

Mr Anderson—Madam Chair, can I make one correction. I said there have been 35 submissions received in relation to the claims resolution review. It should have been 36.

Senator MOORE—And still 19 relating to the technical aspects?

Mr Anderson—Yes.

[4.56 pm]

CHAIR—We will now move to outcome 2, Coordinated federal criminal justice, security and emergency management activity, for a safer Australia.

Senator LUDWIG—By way of background, it may have been in the media of late that there are a range of issues regarding India's request for assistance in 2001 in respect of the AWB matter more generally. When the Indian Central Bureau of Investigations was investigating allegations of corruption regarding the wheat trade with AWB, it seems apparent from the AWB documents filed with the Cole inquiry that AWB in October 2001 had material that it believed may have implicated it in the corruption scandal. My question is about mutual assistance matters more broadly, but when did the Attorney-General receive the letter rogatory from India? There would have been, as I understand it, a request for mutual assistance from India at some point, but articles in the Indian press seem to suggest it dates back to around September 2001.

Senator Ellison—Madam Chair, as we are on outcome 2 and it is likely that there will be questions which might touch on the Cole commission inquiry, can I say that the government, as you know, has taken a stand on the Cole inquiry. We said at the last estimates and at this one that we will not answer questions which go to matters that are before the Cole inquiry. Matters as to process are not matters that are before the Cole inquiry, such as the setting up of the royal commission, counsel used and other things that are attendant on that. In relation to the matter that Senator Ludwig has raised, documents have been provided to the Cole inquiry on a confidential basis. I do not think we can go any further on that.

Mutual assistance requests are made and received in confidence on a government-to-government basis. We are reticent to divulge those details unless the other party is happy to do so and they are not going to affect any operational aspect. In the past we have refused to comment on mutual assistance matters and in the past there has been comment on them because the other country has confirmed that there has been a mutual assistance request. So we have a number of issues here and I ask the committee to bear that in mind. Senator Ludwig has raised a couple of issues here. One is whether there has been a mutual assistance request made, as I understand it.

Senator LUDWIG—Yes, and I can help you with that. On page 8 of a report of the Department Related Parliamentary Standing Committee on Commerce presented to the Rajya

Sabha of the Parliament of India on 14 March 2005—which I am happy to make available—it says:

An RC was registered by CBI in this case against senior officers of the Government of India and ex-CMD of STC. Department of Food & Public Distribution, which is a nodal Department for import of wheat, had informed that the Letter Rogatory (LR) issued in the case by the CBI was pending with office of Attorney General Department, Australia.

The Committee was further informed that the case was closed for lack of evidence, particularly on account of non-cooperation from concerned Australian authorities to whom a Letter Rogatory was sent during the investigation. A closure report was filed in the court of Special Judge, Delhi on 3.1.2004. The closure report filed by CBI was accepted by the court.

So that puts to bed at least one issue, that they have not recognised that there was a mutual assistance request. Clearly it is a matter that is in the Indian upper house. The committee has recognised that there was a request made so it is not a case of—

Senator Ellison—I think it is a parliamentary debate as such—or a website that relates to that. It is the Indian government we are dealing with. I think we can take that on notice and have a look at it and see what the situation is. We have to ascertain the position.

CHAIR—I understand. Of course, Senator Ludwig, you understand that when one side of the table has a copy of documents that the other side of the table does not have it makes life extremely difficult.

Senator LUDWIG—I am happy for the secretariat to take the front page and then those relevant pages to copy. There are really only two pages that need to be copied. I think the other relevant point to make is that it is in relation to the oil for food program in Iraq, not the Cole commission. There is a separation there, because this is also a matter about allegations of foreign bribery, in India.

Senator Ellison—If there is any aspect which is operational that is quite independent of the Cole inquiry and we would not go into that at estimates anyway.

Senator LUDWIG—If it is a closed file, a matter that has been concluded or a matter that you have not seen at all you might.

Senator Ellison—Mutual assistance is normally used for inquiries which are ongoing. I think that is the difficulty we have in an operational matter. But I understand that the documents are before the Cole inquiry, which places it squarely before that inquiry. But, even if they were not, it would be an operational issue anyway.

Senator LUDWIG—So the shorthand is that you are not prepared to comment.

Senator Ellison—I have taken that one aspect on notice, which is about the status of mutual assistance, if any, and that is what we will take on notice.

Senator LUDWIG—The additional matter of course would be what exactly did the Attorney-General's office do when it received the request from India. Will you take that on notice or are you in a position to answer it?

Senator Ellison—We will do the same with that.

Senator LUDWIG—Did you forward the request to any relevant authorities and, if so, which authorities? And what instructions, if any, did you provide with it? Was it referred to the Australian Federal Police or any other law enforcement agency?

Senator Ellison—In relation to mutual assistance generally, as I have said, these other questions—the Cole inquiry quite apart; in fact it is irrelevant, in a way, to this question because mutual assistance is something that we do not go into detail of where it requires ongoing inquiries. It is much like an inquiry in Australia—we do not go into that where there is an inquiry ongoing, because of prejudicing any operation or investigation. So, to that extent, I think that we certainly cannot answer those questions which would reveal that. Senator Ludwig, you have said, ‘Has there been a request?’ Then you have gone further and said, ‘If there has been a request, what have you done in relation to it?’ Notwithstanding the Cole inquiry, we could not answer that on any mutual assistance request because of the fact that that would go to an operational matter, an investigation which is pending and we are assisting with it. You are drilling down at the weeds of the mutual assistance. To say whether we have received a mutual assistance request or not is quite a different question, but we cannot, with mutual assistance, go into that detail. We never have before, either.

CHAIR—I appreciate that, Minister. It is an issue which we have dealt with slightly before.

Senator LUDWIG—I know. The question is, more broadly: was the AWB advised of any of this? On a broader level, if there was a letter rogatory—and it appears there was; there was a request, but you have not confirmed that—would you normally communicate that information if it related to an external body such as the AWB?

Senator Ellison—‘If there was’ is a hypothetical. It immediately invites that hypothesis, which we cannot answer.

Senator LUDWIG—Let us go to another matter. Did A-G’s provide documents to the Cole inquiry in relation to the Indian investigation? There is also the issue of foreign bribery involved.

Senator Ellison—I understand that the department has provided all documents which have been requested of it to the Cole inquiry.

Senator LUDWIG—The Indian inquiry has closed, so I am not sure why you say, ‘if there is a current operation or operational matters’. It is no longer on foot.

Senator Ellison—The situation with a mutual assistance request, where you make that from one country to another, is that it is on the premise that you have got an ongoing inquiry. That is why you have the mutual assistance. The status of the Indian side of things is something which I do not necessarily accept at this stage is a *fait accompli*. Whether or not a mutual assistance request has been made is something we will take on notice. As to subsequent actions in relation to that, we cannot answer because that is an operational matter. In relation to documents provided by the Attorney-General’s Department to the Cole inquiry, I have already answered that question.

Senator LUDWIG—To say that you are not going to answer those questions.

Senator Ellison—I just said: all documents requested of the Attorney-General's Department by the Cole inquiry have been provided to it. Obviously if the next question is 'What are those documents?' we cannot answer that question. You will recall that previously we had that issue with an MOU with AUSTRAC, and the Cole commission indicated that it did not agree with the tabling of that. That was not a government decision; that was a Cole commission decision.

Senator LUDWIG—Let us go to the substance of the accusations that were made. An article on ABC Finance News on May 2006 said:

The federal Attorney-General, Philip Ruddock, has rejected accusations the Australian Government failed to cooperate with India over a controversial wheat deal involving AWB.

... ..

At the time of the payment, AWB was owned by the Federal Government.

An Indian investigation into the deal resulted in three of India's senior bureaucrats being accused of corruption.

But India says Australia stymied the inquiry by failing to assist its investigators.

Mr Ruddock says that is not the case. "Information was provided and there was no lack of information provided," he said.

He then threw the ball back into India's court. What do you know about those corruption allegations and did the Attorney-General's Department provide the relevant documents?

Senator Ellison—The answer the Attorney-General gave dealt with the issue at the time, and it does now. I have nothing further to add to the Attorney-General's answer.

Senator LUDWIG—Were documents provided or not? Was the issues of foreign bribery that had been raised in relation to the Indian matter, if we can call it that, referred to the Australian Federal Police?

Senator Ellison—With regard to the Indian matter, we had best make sure that we understand that we are on the same song sheet here. What exactly is the Indian matter?

Senator LUDWIG—The article says:

Australia's wheat exporter has been implicated in another scandal in light of revelations it paid a \$3.8 million commission to a Cayman Islands bank account in 1998, as part of a wheat deal with India.

That is what it is about, and I am sure you know about it or at least know about the article.

Senator Ellison—I understand that is what Senator Ludwig is referring to. My previous answer stands as it is, unless Senator Ludwig has something else which is quite different. We could then entertain those questions.

Senator LUDWIG—So you are refusing to answer whether or not there is a foreign bribery issue and whether it was under active investigation by the Australian Federal Police back then or at all or whether it was ignored.

CHAIR—Senator Ludwig, I think the minister is indicating that the information he has been able to place on the record to this point is the limit of the information he is able to put on the public record. That is my understanding of what the minister has said.

Senator Ellison—You are asking about Federal Police now. Perhaps any questions in relation to the Australian Federal Police should be left to when they appear before the committee for a start. I think that is the appropriate way to deal with any questions dealing with the Federal Police.

Senator LUDWIG—It is not unusual to at least indicate whether those matters were referred to the Federal Police by the Australian government. That is a pretty ordinary question to ask and normally we would get an answer.

CHAIR—It depends on the context and the situation.

Senator Ellison—Normally you would ask that when they are here.

Senator LUDWIG—Not necessarily.

CHAIR—It always depends on context and situation.

Senator LUDWIG—We are not asking you whether you have found anything; we are just asking you whether it was referred. It is a simple question.

Senator Ellison—I will take that on notice, because I am not the only means by which a matter can be referred to the Australian Federal Police. If you want a whole-of-government answer to that, I will have to take that on notice.

Senator LUDWIG—Is the national identity security strategy in output 2.1?

Ms Blackburn—It is.

Senator LUDWIG—Minister, in May 2005 you announced a \$5.9 million plan to develop a national identity security strategy which included the document verification service and so on. I understand that you are on the second year of working through a national identity security framework document. I think it was Mr Jordana who took questions on this, but he is not here. The transcript from last time we were here shows that he gave me a five-point plan for identity security which drove the original budget announcement of 2005. Have those funds been expended in 2005?

Ms Blackburn—The allocation in 2005 was \$5.425 million. We have expended to date \$3.905 million of that amount of money. That is to date. Our expectation is that we will fully expend that funding by 30 June 2006.

Senator LUDWIG—How much is remaining? Perhaps we can do it the other way. How much has been expended to date and how much is remaining?

Ms Blackburn—The update that I have available to me is that we have spent \$3.905 million to date. We are expecting invoicing from a number of agencies which were participating in that pilot project and which have largely completed the work. We are expecting invoices to come in and be processed before 30 June, so that that funding will be fully expended.

Senator LUDWIG—With regard to the five-point plan that Mr Jordana outlined in 2005, was there a document that underpinned that five-point plan or from which that five-point plan was drawn? In other words, was there a key document from which those initiatives were derived?

Ms Evans—The national identity security strategy was jointly announced by the minister for justice and the Attorney-General in April 2005, and I believe the press release highlights those five points.

Senator LUDWIG—Yes, I know, and, as Mr Jordana correctly pointed out, it is a proof of identity framework relating to what documents should be used for the enhancement of document security features—for example: biometrics on passports or serial numbers on marriage certificates; document verification in the form of the document verification service; integrative information on government databases; and authentication processes whereby somebody comes up to use the identification and can be checked. I know Mr Jordana reasonably well through the committee process, and I am sure he drew it from the press release as well, but I am sure there is also a document or other substantive body of work which underpins those, or are you saying they just came out of the media department of the minister?

Ms Blackburn—The press release and the material that we use publicly in relation to the national identity security strategy, which encompasses a number of objectives, were the statement of the key components of the national identity security strategy. Clearly they were developed through a body of work involving a range of agencies, but that public statement and the further reiteration of those objectives remain the basis of the public statements on the national identity security strategy. If you are asking whether there is a review report or something, there is not. There was obviously a policy development process undertaken within government that produced that outcome which was then published.

Senator LUDWIG—There is no primary public document available other than what you have referred to now?

Ms Blackburn—No. The strategy itself was the articulation of the outcome of a body of work which was undertaken within government.

Ms Evans—That was endorsed by COAG in September 2005.

Senator LUDWIG—If we then refer more broadly to the plan or the genesis of the plan, where did it spark from? Was it a strategy that was thought up at COAG, at A-G's?

Ms Evans—Within the portfolio, the issue of identity fraud, identity theft, was increasingly recognised as an issue and some scoping work was commenced as early as 2001. There is a document called 'scoping identity fraud', which was produced by the department at that time. The other work, the public work, was undertaken by AUSTRAC on the cost of identity fraud within Australia, and that document is also publicly available. It has gone from originally being a criminal threat to now being a terrorism concern, so identity security has gained more prominence in the last four to five years. But the genesis of that work was in 2001.

Senator LUDWIG—Is a national identity card part of the national identity security strategy in its original form or part of the considerations of the national identity security framework?

Ms Blackburn—The stated objectives for the national identity security strategy are: agreement on a common set of prime identifying documents of integrity called a proof of identity framework; the investigation of advanced security features for inclusion in such

documents; secure electronic mechanisms to enable participating organisations to verify data on key proof of identity documents; improving the accuracy and security of personal identity information held on organisations' databases; enabling post-registration contacts between individuals and organisations to occur with the confidence that each party is accurately authenticated; and provision of appropriate legislative support for those activities. They are the stated objectives for the national identity security strategy.

Senator LUDWIG—In relation to the identity security steering committee, couldn't that be brought in through integrity of government databases? In other words, is there a need to develop a separate strategy rather than using existing databases?

Ms Blackburn—I am sorry, Senator, I did not understand your question.

Senator LUDWIG—Just moving on then: in relation to the identity security steering committee, what documents has the committee produced regarding identity security frameworks? Are you able to tell me that?

Ms Evans—Following the COAG commitment to advance the national identity security strategy, a national steering committee has been formed which comprises both Commonwealth and senior representatives from all states and territories. That has met a couple of times and in that context, as reflected in the COAG communique, the national identity strategy is being articulated through an intergovernmental agreement, which is in a draft form at the moment and is out for consultation with the states.

Senator LUDWIG—Will that eventually be a public document or is that an internal working document?

Ms Evans—No decision has been made yet.

Senator LUDWIG—Where does it reside at the moment? It is out for draft consultation?

Ms Evans—With state governments.

Senator LUDWIG—As part of COAG?

Ms Evans—No. The national identity security group chaired by the Attorney-General's Department is taking forward the agenda. We expect comments to come back to the Attorney-General's Department.

Senator LUDWIG—What is the time frame for that?

Ms Evans—Mr Jordana has asked the states and territories to provide comments this week.

Senator LUDWIG—I am sorry, when?

Ms Evans—They have been requested to provide written comments by 25 May to allow us to continue to progress the drafting of the IGA.

Senator LUDWIG—Is there a time line that you are seeking to meet at the moment?

Ms Evans—No.

Senator LUDWIG—You mentioned the 25th and then you mentioned drafting. Is that drafting of the final document?

Ms Evans—It might depend on the issues that are raised by the states as to how many iterations will be required.

Senator LUDWIG—What is the next step after that?

Ms Evans—We would review the comments and, if possible, do another version of the draft and seek to have another meeting of the steering committee.

Senator LUDWIG—What about the final result? In other words, if it is a steering committee, where is it heading? Are there some due dates on which it has to meet or will it continually meet?

Ms Evans—There are no set dates at this time.

Ms Blackburn—Given that the national identity security strategy is at the moment viewed as a project which encompasses quite a range of activities and it would be expected that the strategy would take some time to implement, we would expect the steering group and the coordination arrangements to continue during that process. You are referring to the drafting of an intergovernmental agreement. Intergovernmental agreements between Commonwealth, states and territories are usually processes which take several iterations to achieve agreement, particularly where they concern matters involving both state and Commonwealth responsibilities.

Senator LUDWIG—No decision has been made on whether any of those documents are publicly available?

Ms Blackburn—Ms Evans mentioned that no decision had been made. With intergovernmental agreements, some are public and some are not. That would in the end be determined by whether there are any contents of that agreement which the Commonwealth and the states and territories agree should not be disclosed. As Ms Evans has said, until such time as the content of the agreement is in fact settled, I do not think it is possible to say whether the agreement will or will not be published.

Senator LUDWIG—Who is on the security steering committee?

Ms Blackburn—I do not have the names of the individuals on that group with me—not that I am aware of. However, as we said, it is chaired by the Attorney-General's Department. It has senior state and territory representatives as well as representatives from the office of the Privacy Commissioner, Austroads and the registries of births, deaths and marriages.

Senator LUDWIG—I am happy for you to take that on notice. Does that include the Commonwealth reference group on identity security? Is that the same or a separate group again?

Ms Blackburn—That is a separate group. Not surprisingly, as you would expect, there would be some overlap. But the Commonwealth reference group involves Commonwealth agencies.

Senator LUDWIG—Who are members on the Commonwealth reference group on identity security?

Ms Blackburn—The Commonwealth reference group, last time I checked, had something like 31 members on it. I am happy to take on notice providing you with further details of that

membership. Similarly, if you wish me to provide further details on the members of the coordination group, I can take that on notice.

Senator LUDWIG—Yes, please.

Ms Blackburn—I do have here—we work in pictures sometimes—a very simple diagram which may be of interest to the committee, which does try to set out the relationship regarding the variety of groups which are currently involved in that process, if that would assist the committee.

Senator LUDWIG—That would be helpful. That will include any published documents that might also be available?

Ms Blackburn—Published documents?

Senator LUDWIG—Yes, or other documents that they are working on that can be made available to the committee.

Ms Blackburn—You are talking about the ones that Ms Evans was mentioning earlier as existing public documents?

Senator LUDWIG—No, particularly the Commonwealth reference group on identity security—whether they are working on or have provided any documents, more broadly those dealing with security that (a) have been published or (b) that can be provided to the committee in terms of their work.

Ms Blackburn—I will certainly take that on notice.

Senator LUDWIG—They must be doing something.

Ms Blackburn—They are working very hard, Senator.

Senator LUDWIG—Yes, and I want to know what they are working on and what they are dealing with.

Ms Blackburn—We will take those questions on notice—

Senator LUDWIG—And I am happy for you to help me with that.

Ms Blackburn—and provide as much detail as we are able to for you.

Senator LUDWIG—Thank you. The five-point framework that was outlined by Mr Jordana last year: did that document originate from the Commonwealth reference group on identity security?

Ms Blackburn—I will have to take that on notice.

Senator LUDWIG—With respect to proof of identity and document verification, what is the status of work on point 1 of the framework—proof of identity?

Ms Evans—There is a working group that is developing a standard framework for proof of identity. That working group sits under the steering group. It includes representatives from Commonwealth and state agencies. That group currently has developed a draft gold standard proof of identity enrolment process for potential use by government agencies and that is currently out for comment and input from agencies as well.

Senator LUDWIG—What is a gold standard—I am sorry, I missed the last part of what you said.

Ms Evans—I think Mr Jordana has previously mentioned that we are looking to develop a high-level standard with all of these activities.

Senator LUDWIG—Yes, so you are picking up his phrase. I thought there might have been another document the committee could ask for.

Ms Evans—No, but there is a document that is in draft form that once again is out with the states and territories for comment and input. That is the work of that group and it is progressing quite nicely.

Senator LUDWIG—Whereabouts is it up to at the moment? It is a draft?

Ms Evans—There is a draft.

Senator LUDWIG—Is that available to the committee?

Ms Evans—No.

Senator LUDWIG—What about the current status on point 2 of the framework—enhancement of security features?

Ms Evans—Similarly, that work is being led by the Department of Foreign Affairs and Trade. However, they are also looking to produce a document which will set a high standard for the integrity of POI documents. I have not yet seen that. I understand work is developing on that but it is not expected to be circulated for comment for a few more weeks.

Senator LUDWIG—So there are five working groups—standard framework of proof of identity, security standards for POI documents, document verification service and integrity of identity data and authentication standards. Do they have due dates for reporting back and finalising their work? If they are working groups then they are working on something—presumably what their headings indicate.

Ms Evans—No, there are no explicit dates.

Senator LUDWIG—They are not going to work for the next 20 years on this, are they?

Ms Evans—Hopefully not. But, as Ms Blackburn said, it is a developmental process that involves states and territories and 31 Commonwealth agencies.

Senator LUDWIG—Yes, I know, but your job is coordination, I suspect, as well.

Ms Blackburn—I think what we are exposing to you through that picture, and quite appropriately, is simply the internal arrangements which are being applied to taking forward the development of the specific elements of the strategy. You would fully expect that the specific elements of that strategy will inevitably lead to specific proposals. We are simply not at the point in the development of the specific elements of the strategy to be in the position of having reports or proposals for consideration either by government or by disclosure to the public.

Senator LUDWIG—And the status of point 3—document verification?

Ms Evans—The document verification service working group has primarily been involved with the development of the DVS prototype, which is one of the two projects that were funded in last year's budget as part of that \$5.9 million allocation.

Senator LUDWIG—So there is no due date for it to report or come back?

Ms Evans—I think you were previously advised that the prototype will run until 30 June, whereupon an evaluation will occur in the next financial year. But that prototype has been up and running since 6 February and transactions are going through. We will evaluate that project.

Senator LUDWIG—That is with the immigration department?

Ms Evans—That is with DFAT and Immigration, checking passports and citizenship papers.

Senator LUDWIG—And the status of the project at point 4—that is, the integrity of information on government databases? Whereabouts is that up to?

Ms Evans—Similarly, that is one of the other pilots that was funded in last year's budget. Work is progressing on that. It is a fairly technical project and I understand the technical components of that will be run some time in June.

Senator LUDWIG—You might have to explain to me what 'the technical components will be run some time in June' means.

Ms Evans—Sorry. As I understand it, it is taking a number of records of the tax office and it will then seek to confirm whether those records exist on the files of other agencies.

Senator LUDWIG—That will be interesting. That is going to be a trial?

Ms Evans—No, it is a one-off pilot.

Senator LUDWIG—Who is doing that?

Ms Evans—Attorney-General's is leading it.

Senator LUDWIG—Who is trialling it? I take it there would have to be another agency for it to be trialled.

Ms Evans—The tax office.

Senator LUDWIG—So it is between A-G's and the tax office.

Ms Evans—Yes.

Senator LUDWIG—Is it any particular section in A-G's?

Ms Evans—It is the identity security area.

Senator LUDWIG—What part of Tax does it relate to?

Ms Evans—I am not too sure.

Senator LUDWIG—Can you take that on notice? Is it tax file numbers? That would be more problematic, I would assume.

Ms Evans—It is not tax file numbers. It will be date of birth and name checking. There certainly will not be any transfer of tax file numbers.

Senator LUDWIG—And in regard to point 5 of the strategy, will that be part of the document verification service or will this be independent of that facility? That is the authentication standard.

Ms Evans—It is independent of that and certainly links into the other work of AGIMO.

Senator LUDWIG—In what way will it be independent of that?

Ms Evans—Independent of the DVS?

Senator LUDWIG—Yes. It will be the authentication standards, won't it?

Ms Evans—Yes.

Senator LUDWIG—But DVS will then be seeking to use those standards.

Ms Evans—No, the DVS is simply a—

Senator LUDWIG—A document verification service.

Ms Evans—Yes, verifying that the information on the document presented as part of a proof of identity process is the same information that is held in the originating agency.

Senator LUDWIG—So the authentication standard is separate from the DVS.

Ms Evans—Yes.

Senator LUDWIG—Where will it be used, or how will it be used?

Ms Blackburn—Can we take that on notice? I could make general comments about authentication as a general process, but I think we would prefer to take that on notice so that we can provide you with specific information about what the product of that will be and what its use will be.

Senator LUDWIG—I am happy for that. More broadly, is the smartcard any one of those programs? Does that fit in those?

Ms Evans—No, the smartcard will be administered by the Department of Human Services.

Senator LUDWIG—So it has nothing to do with any of these working groups that are currently under way?

Ms Evans—Only in that government policy is that documents of integrity issued by the government should start to adopt the principles of the national identity security strategy. From an AGD point of view we would expect there to be a high-level enrolment process before the cards are issued. The cards themselves would presumably have the security standards as determined by the strategy, and documents presented as part of that enrolment process may well be checked through the national DVS.

Senator LUDWIG—I am just missing the point here. How can you develop a smartcard independently of an ID security process or strategy?

Mr Cornall—We are not. The department has been very closely involved in view of our overall policy responsibility for identity security with the Department of Human Services in the development of its specific application and development of a smartcard to replace the 17 identity processes that are presently being used with clients of that group of services.

Senator LUDWIG—Will the smartcard rely on any of these working groups finalising the work, reporting and then setting standards dealing with integrity underpinned by a document verification service or security standards for POI documents? Will it need any of these?

Mr Cornall—We are working with them in all of these areas in a very cooperative way to produce an outcome that will provide a very secure and very high standard identity card for the purposes of health services access. The answer is that this work is all being done together to fit together to meet the introduction of the health access card.

Senator LUDWIG—So you have not finalised the standards yet but you have approved the smartcard proposal—is that right?

Mr Cornall—In the sense of approving the principles that they are seeking to achieve, yes.

Senator LUDWIG—Let us hope we get the standards in place before the smartcard.

Mr Cornall—I am confident that we will.

Senator LUDWIG—It does look like a policy on the run when you are developing a smartcard without standards in place, though, doesn't it?

Mr Cornall—Identity security is a very complex area, and it spreads in a number of different ways. It affects a large number of government departments in terms of the different ways in which they deal with members of the public, so we are doing these things together. I recently spoke with Minister Hockey, and he has been very pleased with the cooperation and support that exists between our two departments.

Senator LUDWIG—So a smartcard cannot be finalised until you finish your work?

Mr Cornall—The work is proceeding at the same time.

Senator LUDWIG—I will rephrase that question again. Will you need to finish the working group and the standards before a smartcard can be rolled out?

Mr Cornall—I am not completely sure of the exact time frame of the work being done. I think we should take that on notice and let Mr Jordana answer that accurately. I anticipate that the answer to your question is yes and that the work will be done in a timely fashion.

Senator LUDWIG—I am happy for you to take this on notice. Effectively, the smartcard cannot proceed until, in my words, the framework is finalised. That is what you are going to take on notice.

Mr Cornall—We will take that on notice, but we are working together on this project.

Senator LUDWIG—Is there going to be community debate on this issue?

Mr Cornall—About what?

Senator LUDWIG—On the standards, the integrity of the data, the DVS and those sorts of things that people might like to have a community debate about? They might want to debate the smartcard, but they might want to debate some of these underpinning issues as well.

Mr Cornall—I do not quite see why there would need to be public debate on it. What we are seeking to do is to improve the quality of the way in which Commonwealth agencies use identity and to ensure that we are using accurate identity material and we are actually dealing

with the people we think we are dealing with and that, in doing so, protecting the identity of other citizens.

CHAIR—If you are asking a policy question, Senator Ludwig, then it should be directed to the minister.

Senator LUDWIG—Minister, when are we going to have a policy debate on what underpins the smartcard, what is actually working in unison with it? One relies on the other.

Senator Ellison—There has been a good deal of public discussion on ID security for some time. It has been before the police ministers' council or whatever since I can remember. The states and territories have been working with us since way before a smartcard was thought of and way before the London bombing came along. It has been a work in progress across the country. No state or territory government that I am aware of has gone out to people to say, 'Let's have a debate about whether we should enhance the integrity of your drivers licence or the integrity of your birth certificate.' People expect those documents to be of a robust nature. It is much like the currency we rely on: we expect our currency to be robust and not capable of being counterfeited and we expect our documents to be equally robust.

We have a lot of work going on at the same time, because you have to do it concurrently; you cannot do it cumulatively—if you did, you would be waiting forever. There is work on the e-chip situation with our passports, we have smartcard and we have states and territories looking at drivers licences. Victoria is one case in point. They are doing work on their drivers licence. They are also working on areas like birth certificates and such.

Along with this, we are also working to allow verification of documents between governments, so that agencies, irrespective of jurisdiction, can check documents that are presented. That is, as I see it, somewhat of a Holy Grail in all of this: that we can use the wallet test. Documents and cards which any average Australian would have on them—whether they are state, territory or Commonwealth issued documents or cards—should be able to be presented to substantiate ID and able to be cross-referenced. If you are at a Commonwealth department, you should be able to present a range of cards and they should be able to check on the state ones and vice versa for state departments. I see all this work as moving together as one. We have to keep on that whole-of-governments approach. As to whether there should be any policy debate on it, there has been general discussion. I do not see the need for a policy debate on whether to make people's identities more secure.

Senator LUDWIG—Perhaps I am old-fashioned, but I would have thought that we would agree on a standard first and then look at assessing the smartcard proposal to see that it is actually going to have the outcome that people would expect it to have before we spend \$1 billion on it. We should do that rather than develop a smartcard and then have a framework of standards and hope it matches up at the end and the two roads meet at the fork. That is an aside, I guess.

Senator Ellison—It is fair to say that all governments have been working on this. The required standard is a work in progress. Certainly, I do not see any problem with the smartcard being developed alongside this. The smartcard is not due out until 2008 anyway. We would have to keep on working in the interim on our document verification. Maybe I am missing the point, but I do not see that there is a problem there.

Senator LUDWIG—As I said, maybe I am old-fashioned. If you are going to spend \$1 billion on a smartcard and you were then going to have an informed debate, you might want to assess it against the standard to see that it in fact meets that standard. Without the standard, it is difficult to have that informed debate. Maybe I narrowly look at these things and ask, ‘What are the standards?’

Senator Ellison—The standard is much like security in that it evolves and does not stand still. Anybody who says you have a standard and stops there is mad.

Senator LUDWIG—We do not have one yet, though. We do not have one. Shouldn’t we have one first before we start amending it?

Senator Ellison—In the modern environment we face, you have to have a look at how flexible your standard can be.

Senator LUDWIG—Clearly very, if we do not have one.

Senator Ellison—Maybe not having one is not a bad idea. The fact is that you have to keep up with evolving technology and, if you rule a line in the sand with security, the odds are that something will come along and show that that line is in the wrong place. You do not ever rule off in security the work as being completed; it is a work in progress.

Senator LUDWIG—We are not talking about ruling off on that; we are talking about ruling off on a smartcard. We are talking about assessing a smartcard against a framework that we do not have yet.

Senator Ellison—And it will have to change too. Whatever we agree to now will not last forever. It will not last that long in this day and age—

Senator LUDWIG—But let us agree on something first. Wouldn’t that be more sensible? Let us agree on a framework of standards, have it developed, assess it against the smartcard and see that it provides the outcomes that are expected, especially if we as a country are going to spend \$1 billion on it.

CHAIR—Here we have both views on the table. Are there any questions, Senator Ludwig?

Senator LUDWIG—Is there any indication of whether there is going to be a pilot program for the smartcard, or is that something I should ask Human Services?

Senator Ellison—Ask Human Services.

Senator LUDWIG—AG’s is not involved in any piloting of the smartcard?

Mr Cornall—I keep saying that we are very closely involved with the development of the smartcard to ensure that it fits in with the work we are doing on the national strategy. The work is proceeding at the same time and I am sure it will proceed in a consistent way, and the issues that you are concerned about will not be issues in the fulfilment of that program. But the issues about the development of the smartcard really should be addressed to the Department of Human Services.

There is only one other point I would like to add with respect to any concerns that the public might have. The Privacy Commissioner has been involved in the development of these strategies and so on from a very early stage and continues to be very actively involved to ensure that compliance with the Privacy Act is met at all times.

Senator LUDWIG—In the working group that is developing this, if you say the Attorney-General's Department is intimately involved, is the federal Office of the Privacy Commissioner involved as well?

Ms Evans—In which working group?

Senator LUDWIG—Let us start with the Commonwealth Reference Group on Identity Security and look at the—

Ms Evans—The Privacy Commissioner herself is on the national identity security coordination group, and the Office of the Privacy Commissioner participates in the Commonwealth reference group and other working groups.

CHAIR—The OPC is, of course, attending tomorrow.

Senator LUDWIG—I might come back to them. Are you going to wait for the evaluation of the document verification service before you proceed, or has a decision been made about whether that will be rolled out?

Mr Cornall—There is funding in the coming year's budget to roll that program out.

Senator LUDWIG—Yes, I know that. Are you going to wait for an evaluation or have you already started to roll it out.

Ms Blackburn—The budget includes \$28.3 million over four years for the development and implementation of the DVS. We expect to begin the development work on that and we expect the outcomes from the evaluation of the pilot DVS to feed directly into the development of the DVS that has now been funded over that period.

CHAIR—Will the development of the DVS require legislation?

Ms Evans—We do not believe so at this stage.

Senator LUDWIG—Is there a due date for the roll-out?

Ms Blackburn—As I said, the funding has been provided over four years.

Senator LUDWIG—Yes, I know what you said, but is there a due date for the roll-out?

Ms Blackburn—No, there is not a due date. I was very impressed with some earlier questioning where people were able to say with complete conviction that it will happen on a date specified. The funding has been provided over four years for its development and implementation. Beyond saying that, four years is the time span within which we expect to complete the work. I cannot go any further than that.

Senator LUDWIG—I can always come back to it. The minister sometimes sets dates. I think 14 October was one of them, in Customs.

Senator Ellison—I always like to give people certainty!

Senator LUDWIG—There is a pilot and evaluation for the DVS. I should not ask you about the smartcard—about whether or not there will be a pilot. Are Human Services the right people to ask?

Mr Cornall—Yes, Senator.

Senator LUDWIG—They won't refer me back to you?

Mr Cornall—No, it is their project. If they do, put your questions on notice and we will deal with them then.

Senator LUDWIG—You are not aware of whether they are going to run a pilot program?

Mr Cornall—I think all the questions about the health access card should be directed to the Department of Human Services.

Senator LUDWIG—Do you have a costing of the national identity security strategy, including the document verification service, in total? How much has been spent and how much is it intended be spent?

Mr Cornall—We will take that on notice and try to give you as accurate figures as we can.

Senator LUDWIG—I should ask Human Services for costings for the smartcard?

Mr Cornall—Yes, Senator.

Senator LUDWIG—But that part which belongs to you—in other words, the working groups, the underpinning of that—is discrete money that you will have set aside in the budget and you will be able to tell me how much has been—

Mr Cornall—We will see if we can put a figure on that. Basically, it is work by existing officers but we will see what we can do.

Ms Blackburn—Can I confirm Mr Cornall's comment. The work on the strategy as a policy development and coordination activity is carried out by officers of the department, funded in the normal way in which core departmental activities are funded. We have discussed the \$5.4 million which was provided last year specifically for the pilot, and we have mentioned the \$28.3 million which is being provided specifically for the funding and implementation of the DVS.

Senator LUDWIG—What about the completion of the deliverables?

Ms Blackburn—I am not sure what you mean by the deliverables. There are articulated objectives for a strategy. There is a consultation and coordination framework in place, and then there are specific activities under that. We have mentioned the two pilot projects which were funded last year. Also, specifically there is the DVS for next year. A number of the other products of the process will be, as you mentioned earlier, the agreement of standards, enrolment processes, communication protocols and an IGA. They are the ordinary products of our work. They are not products which we necessarily cost separately. Hence coming in on the point that Mr Cornall was making—that, in terms of costing the strategy, that is really just costing a part of the core policy and coordination role of the department.

Senator LUDWIG—Is coordination the role that A-G's is going to play?

Ms Blackburn—The Attorney-General's Department is the coordinating agency for the national identity security strategy.

Senator LUDWIG—You can then say, in terms of the whole of government, how much is going to be spent on that?

Ms Blackburn—No, I cannot. It is clearly an activity that could be undertaken, but the coordinating role for us is essentially a strategic policy development role. It also involves the

coordination of activities which are being conducted across a wide range of portfolios, to ensure that those activities are being developed and implemented consistent with the national strategy. That is a very familiar role for this portfolio. We have had conversations in this committee before about the whole-of-government people-trafficking strategy, which again is a strategy that the Attorney-General's Department coordinates. However, we do not hold the funding for the separate elements of it and we do not participate in the expenditure of the separate elements of the project, but we see a quite distinct role in coordination and policy development. The National Identity Security Strategy is also, clearly, a particular policy responsibility of the Attorney-General's Department, falling within its responsibilities for crime, criminal justice and national security issues.

Senator LUDWIG—So who can tell me how much is going to be spent on a whole-of-government level? For example, the government put a figure on people smuggling, saying \$20 million, if I recall correctly, and we then unpacked what was AG's share of the \$20 million. How much is going to be spent? Has anyone put a figure on this? You put a figure of \$1 billion on the smartcard.

Ms Blackburn—For the people-trafficking package, the \$20 million figure was a package of \$20 million which was directed to the specific activities that made up the package. That \$20 million is not a costing of all of the work that is done across the relevant government agencies on people trafficking. That is not a costing of the government's investment in dealing with people trafficking as an issue. That does cover the responsibilities of a number of agencies. There is simply a particular package of measures costed at \$20 million. I think the difficulty that I am having with this conversation is that the strategy is a policy strategy with objectives. It will have, under that, both existing and future projects, some of which have probably not yet even been identified.

Senator LUDWIG—All right. What about the DVS, though? It is a bit more concrete. Do we have a costing for it?

Ms Blackburn—As I mentioned earlier, the government has provided \$28.3 million over four years—

Senator LUDWIG—As you have said.

Ms Blackburn—for use by a range of agencies for the purpose of developing and implementing the DVS.

Senator LUDWIG—So we do not know the time line, other than within the four-year period. Are there any key dates? You are not prepared to go towards—

Mr Cornall—Senator, we will take that on notice and see if we can give you a more precise answer to your question about dates and forward plans.

Ms Blackburn—Could we also just mention that the \$28.3 million is funding that becomes available on 1 July this year.

CHAIR—Thank you.

Senator LUDWIG—This is a fishing expedition question. I have asked you about the DVS and the smartcard. Are there any other authentication or identity pilot programs in place or envisaged in this funding round?

Ms Blackburn—Not within the Attorney-General's Department.

Senator LUDWIG—Sorry, within the Attorney-General's Department. I should rephrase that. You did indicate there was a policy framework for other matters that of course may not have been developed yet. So it leads to the question: is there something else on the drawing board that I am not asking about yet?

Mr Cornall—Senator, the difficulty we have with some of these questions is the complexity of the topic of identity security. For example, there has been discussion over a number of years about agencies who deal with clients electronically: how do they know that the person they are dealing with is actually the person that they think they are dealing with? So there has been a huge amount of discussion over a long time about how agencies do verify the identity of the people that they are dealing with, and there has been lots of work done on that by different agencies because it is part of their core business to do that—and that will continue.

Senator LUDWIG—I guess we could spend all day on it, but unfortunately we do not have the time. There have been a number of articles recently regarding the growing prevalence of phishing and other cybercrime activities, and it is an issue I think I have raised here before. The *Age*, I think, had an article about cybercrime landing the bigger phish, so we all seem to get into the vernacular of tying fishing and phishing together. Is the Attorney-General's Department or the minister aware of the recent report, backed by eBay, which cited Australia's lack of a coordinated approach to phishing and other cybercrime issues?

Ms Blackburn—I cannot immediately identify the particular report you are referring to.

Senator LUDWIG—It was the *Australian Financial Review* of Thursday, 20 April 2006:

A report backed by online auction giant eBay has identified a key weakness in Australia's response to online identity theft and called on the Australian Communications and Media Authority to intervene.

The paper's authors have recommended the introduction of regulations to govern and co-ordinate responses to phishing, an escalating form of cybercrime in which individuals are tricked into handing—we know what it means—

over personal details and financial information to fake websites

... ..

Australia has already set a precedent with cybercrime laws, including the Spam Act 2003, but the country lacks a co-ordinated policy for responding to phishing that spans police and government departments ...

It goes on:

The report, sponsored by eBay and prepared by cybercrime experts Sascha Walkley and Peter Grabosky, a professor at the Australian National University, argues Australia needs a minimum set of standards to report phishing incidents ...

Are you familiar with any of that? It is your key area.

Ms Blackburn—I am aware of the media report, but I cannot provide you with any detail today on what activities are under way in any specific response to that article, so I will take that on notice.

Senator Ellison—The High-Tech Crime Centre in the AFP may well have something to do with that. You might want to ask that question tomorrow when the AFP are before the committee.

Senator LUDWIG—I had that down as well, Minister, but I was interested in finding out whether the department had a response in this output area about cybercrime and what action it was taking. In this article, an ACMA spokesman was not available for comment, but I will certainly be chasing them up for their response to it. I take, like we all do, cybercrime, particularly seriously. You are not aware of any action that the AG's department is taking in response to the report.

Ms Blackburn—On the range of issues that you read out, you mentioned that Australia does have some quite extensive federal criminal laws in place to deal with those issues, and they are the direct responsibility of the Attorney-General's Department. Beyond that, I am not aware of any specific action that this department or my division is involved in response to those issues.

Senator LUDWIG—Are you doing any coordinated work?

Ms Blackburn—Not on that particular issue but, as I have said, I think I would be more comfortable taking that question on notice so that I can ensure that you get a complete answer to it.

Senator LUDWIG—Have you contacted the Australian Communications and Media Authority about a coordinated approach at all?

Ms Blackburn—I did not personally. I am not aware that anyone in my division did but, again, I will include that in the answer to the question on notice.

Senator LUDWIG—Can you include in that answer whether you are looking at any new offences or criminal justice issues in this area from the AG's perspective? If you can answer that now, I would only be too happy to hear from you.

Ms Blackburn—I will include that in the answer to the question on notice.

Senator LUDWIG—So you do not know of any at the moment.

Ms Blackburn—I am not aware of any.

Senator LUDWIG—Is there any money in the budget, Minister—or Mr Cornall—set aside for cybercrime issues?

Mr Cornall—I should reiterate that the Commonwealth has paid particular attention to ensure that its criminal offences were covering the potential range of offences that can be committed with computers or on computers. I think the Commonwealth has set quite a good lead for the rest of Australia in that. We would also need to look at the article and the report that you referred to to ensure that we can cover off the issues that they have raised. I did not quite get the date—you said it was the *Financial Review* of 28—

Senator LUDWIG—I am happy for the committee to make it available to you.

Mr Cornall—Thanks.

Senator LUDWIG—Is there any money in the budget for cybercrime set aside specifically to tackle it?

Mr Cornall—Not particularly.

Senator LUDWIG—I could not see any but I am happy for you to tell me there is.

Senator Ellison—No. The only thing we had was identity crime.

Senator LUDWIG—Is there any additional money set aside in the budget for the High-Tech Crime Centre?

Senator Ellison—Not specifically. I will check on that. There may be some spin-off from the identity crime money.

Senator LUDWIG—I am surprised. It is an emerging issue. There are reports on it and we have been talking about it here for a while. It certainly is increasing in prevalence. I am sure your emails are full of phish.

Senator Ellison—We have tripled funding for the AFP in real terms.

Senator LUDWIG—I will deal with that when the AFP turns up too, Minister, but I am particularly talking about cybercrime and the High-Tech Crime Centre.

Senator Ellison—That is for the AFP.

Senator LUDWIG—But have you specifically marked or tagged for that issue? The answer is no.

Senator Ellison—No, not in this budget.

Senator LUDWIG—Just to make sure that we have not missed all of the articles, there was another article, ‘Cyber-crime confuses many frontline cops’. Although I do not like that particular expression, it was an article which I will read some of and will make available to you:

The study ... more education was needed and that frontline police were sometimes confused by the intricacies of computer crime.

The article went on to say:

... the internet was changing the nature of crime ... to the gathering of large amounts of identity information that is then sold on the internet.

Do you agree with those comments, in particular, about the growing importance of identity-related crime?

Senator Ellison—We have set in place credit card skimming offences. We have put in place the DVS, which has been mentioned. I have set up an advisory group which advises government on ID and cybercrime issues. It is an industry advisory group. As a result of that, the banks have had people seconded to the High-Tech Crime Centre. We have seen work in relation to ghost bank websites, phishing exercises, ID crime and enhanced credit card measures. Across the board, this government has done a great deal to ramp up law enforcement in relation to ID security and legislation. That is ongoing work. I fully agree that it is important and, as I said earlier, you do not just draw a line in the sand and say, ‘That is enough,’ because, for every measure you take, somebody will come along, think of something

else and try and exploit the system. There is a range of work. On notice, we can give the committee a more comprehensive outline, but there is certainly a great deal being done by this government in relation to identity crime and cybercrime.

Senator LUDWIG—The comments in the article I just quoted were by Kevin Zuccato from the High-Tech Crime Centre. It seems to me that you concur with those comments, Minister, from what you have just said. Are they involved, as far as you are aware, in the \$1.1 billion smartcard project? Have they been brought in to ensure that—

Senator Ellison—Human Services are going to run that. I will have to check on what liaison they have had with the AFP. I will take that on notice. AFP can answer that tomorrow when they are here.

Senator LUDWIG—The High-Tech Crime Centre and the Australian Institute of Criminology have perhaps been particularly interested in this field as well.

Senator Ellison—Yes, they have.

Senator LUDWIG—Do you know whether any other agencies have been brought in?

Senator Ellison—I am not aware of any other agencies, but those two are within my ministerial responsibility and I will take it on notice.

Senator LUDWIG—It would be helpful if you could indicate whether or not they have been involved. You are not personally aware of whether they have or have not at this point?

Senator Ellison—Not at this point.

Senator LUDWIG—Maybe I can ask the AFP tomorrow as well.

Senator Ellison—They could well have been approached without my knowledge.

Senator LUDWIG—It would seem to make sense if they were involved, given their expertise in this area, to ensure that these matters were dealt with in a proper way.

Senator Ellison—Yes, I think it would be sensible for them to be involved. Human Services might not require their input just yet and may look for it further down the track. I will take it on notice and we can sort it out tomorrow when the AFP appears.

Senator LUDWIG—A matter I mentioned last time related to the proceeds of crime and more particularly to Hillson. At that time there was a grant to the Hillson organisation of slightly over \$400,000 under the Community Crime Prevention Program. I think we went through part of that last time, didn't we?

Senator Ellison—Yes, that is right.

Senator LUDWIG—I think that grant was approved originally by you, Minister?

Mr Cornall—The grant was offered and it was not taken up and then it was withdrawn. So one way or another, there was no money paid to Hillson.

Senator LUDWIG—It was withdrawn in mid-February or thereabouts?

Ms Evans—1 February.

Senator LUDWIG—Are you able to indicate why the grant was withdrawn?

Mr Cornall—I think we went through this last time at some length. There was some issue about whether they had a partner in the matter and whether they were going to be able to deliver the service that had been asked for.

CHAIR—All of that is on the record from the previous discussion.

Senator LUDWIG—I was just checking to see whether anything had changed.

Mr Cornall—No.

Senator Ellison—Our answers remain the same.

Senator LUDWIG—In terms of proceeds of crime more broadly, the committee usually asks about the types of moneys that have been received or receipted for proceeds of crime—what has been frozen, what has subsequently been forfeited to the department.

Ms Blackburn—Your question relates to the amount of money which is in the confiscated assets account?

Senator LUDWIG—Yes, unless there is money elsewhere under proceeds of crime that has been forfeited.

Ms Evans—The details regarding your previous question on notice I understand were tabled on 12 May—question No. 40. That gives you updated figures as at 31 March. We do not have later figures at this stage.

Senator LUDWIG—That is the point I was trying to come to—sometimes we ask these questions and it takes a while for an answer to come back, so it is worthwhile asking whether there has been an update. So they are the latest available figures?

Ms Evans—Yes.

Senator LUDWIG—Does it show the list of agencies that have contributed to the proceeds of crime fund and the amount each agency has contributed to the fund? In other words, is it broken up into those agencies from which it originated and which have sought to recover the money—whether it was Customs, AFP, ACC?

CHAIR—If you don't have that level of detail, Ms Blackburn, take it on notice.

Ms Blackburn—I will take it on notice because I thought we had dealt with it in dealing with a previous answer. But I will take on notice whether we can identify that and, if so, what the breakdown is.

Ms Evans—There was a breakdown provided to you following the estimates in October 2005.

Senator LUDWIG—Can you update that?

Ms Evans—Yes, Senator.

Senator LUDWIG—Since the beginning of 2006, have there been any changes to the process of selecting recipients of the proceeds of crime fund? Have there been any changes to accessing the grants?

Ms Blackburn—Information on all of the expenditure from the Confiscated Assets Account to date has been publicly released and is available. You are raising questions about the access of non-government organisations to that funding?

Senator LUDWIG—Yes.

Senator Ellison—It has remained the same for government agencies, but for non-government agencies a procedure is being developed. Under the act, it says that money can go to crime prevention and drug rehabilitation treatment. We have put guidelines in place for that, and we will be working with the Australian National Council on Drugs, ANCD—which Dr John Herron chairs—in relation to the selection of appropriate bodies to receive grants. I think there will be some advertising of the availability of funding for that. We have taken a different approach to non-government organisations because obviously we were dealing with government agencies. Those government agencies can put in a bid to the minister, it comes via the Attorney-General's Department, the Attorney-General's Department gives advice to the minister as to whether this is appropriate and in accordance with the act, and then a decision is made as to whether or not it is a worth while. So that is what is done in relation to government departments and agencies. In relation to non-government bodies, we have a different regime.

Senator LUDWIG—I might leave that. Could you walk me through how the agencies end up contributing to the fund? If we step back and use Customs, the AFP or the ACC as an example—perhaps you could take it on notice—is there a time line, diagram or even a description of how the money is restrained—

Senator Ellison—Who was responsible for it?

Senator LUDWIG—yes—seized or forfeited, as the case may be, and what is the process by which it ends up in the fund? It does not just appear there.

Senator Ellison—We can take it on notice. We can outline that.

Senator LUDWIG—It would be helpful.

Senator Ellison—It may well be that you will see some joint operations, where AFP and Customs, for instance, work together on a job and there is a seizure of assets. At the end of the day, though, it is the DPP, I understand, who does the court work which results in the forfeiture.

Senator LUDWIG—ITSA does some.

Ms Blackburn—All of the requirements for getting money into the Confiscated Assets Account are set out in legislation.

Senator LUDWIG—Yes, that is under the proceeds of crime legislation.

Ms Blackburn—And other legislation as well. So we can pull together a description of the various restraining and confiscation methods that are available that lead to the money going into, and being available for expenditure from, the Confiscated Assets Account.

Senator LUDWIG—And then there is the role that ITSA or the DPP plays in the civil forfeiture regime.

Ms Blackburn—Yes, we can provide a description of the process.

Mr Cornall—ITSA holds the funds or the assets, and the DPP conducts the legal proceedings.

Senator LUDWIG—That was how I understood it. The short version is that it is restrained under the proceeds of crime legislation and then, through the DPP, it ends up in ITSA, and then from ITSA it ends up in the fund.

Ms Blackburn—There is in fact a person here today who could do the half-hour, the one-hour, the three-hour or the full-day seminar on this for you!

Senator LUDWIG—No, I really want them to do the wordsmithing. I will move on.

Ms Blackburn—Okay. If you would prefer it in written form, we will do the written version for you.

Senator Ellison—We will take it on notice.

Senator FIERRAVANTI-WELLS—I thought that interested Senator Ludwig, going to a training session!

Senator LUDWIG—A training session is always helpful.

Ms Evans—I think some of the issues you have raised were covered off in question on notice No. 40 as well, so the breakdown across agencies is there.

Senator LUDWIG—It seems that I have asked in the last committees—to explain myself, if I must—for bits of it and then I have asked for more bits, and it just seems that the threads are unravelling, so I was going to draw them together to make it a little more coherent.

Ms Blackburn—I am quite confident that we can provide you with the information pack from which you will be able to clearly understand how this process works.

Senator Ellison—And see how we share with the states too, who do not share with us in return.

Senator LUDWIG—I was not going to go there, Minister. Also, if it is available under the acts and the legislation—I am not sure how you would actually specify it—a breakdown in that way may also be helpful to understand how it is working. Thank you. Just turning to the statutory office holders—that is, the ACLEI commissioner and deputy commissioner—have they been determined yet for appointment?

Senator Ellison—No.

Senator LUDWIG—Are we seeking passage of the legislation in this sitting, before July? Have you seen the legislative program, Minister? I have not quite seen it all, but I assume you have seen some of it.

Senator Ellison—It depends how cooperative the opposition is!

Senator LUDWIG—After you took away my Friday spill-over days, I am not so sure!

Senator Ellison—This is really an issue for the management of the Senate—

CHAIR—As opposed to budget estimates, Minister.

Senator Ellison—but a very important question nonetheless. I think that really we are getting together our legislative program for the next sitting fortnight, and the question of

sitting hours will be relevant to that as well. I think to hazard a guess at this stage would be dangerous. I can give you a better idea when we are closer to that fortnight.

Senator LUDWIG—We will come back to that. But, in terms of the commissioners and deputy commissioners, they have not been determined for appointment?

Senator Ellison—No.

Senator LUDWIG—Will they need to be appointed before the legislation comes into operation?

Ms Blackburn—Bearing in mind that the legislation is not yet passed but nonetheless a desire to enable the commissioner to operate as soon as possible after the legislation is passed, if it is passed, the department has in place a number of administrative processes to establish the body, which include considering the method by which you might seek to identify a person for appointment to the key positions—not just the commissioner but the other positions that will be required to be staffed—as well as looking at the available accommodation and the normal accoutrements that go with establishing a body: it will need premises to operate and staff to operate. So, within the department, we have people working on the ways and means by which we could do that. To the extent that you can do that, we will do so, but there comes a point obviously where we cannot go any further until the legislation is in fact passed.

Senator LUDWIG—Just on the proceeds of crime too, so that we cover that off—we have been talking about criminal matters, but I wanted to know about terrorist matters and whether there has been any seizure of assets of terrorists. Is that under the ASIO legislation?

Ms Evans—It is actually under DFAT legislation, under the Charter of the UN Act.

Senator LUDWIG—Does that come back through you into proceeds of crime as well?

Ms Blackburn—No.

Ms Evans—No.

Senator Ellison—No.

Senator LUDWIG—They have got their own pot?

Senator Ellison—I do not think they can dispose of it in quite the manner we can; I am not so sure. Anyway, we will take that on notice.

CHAIR—Mr Gray looks keen to help. Mr Gray?

Mr Gray—The legislation you are referring to is a freezing regime. There is no forfeiture and confiscation regime. If the money is going to be confiscated, forfeited, it has to be done under the Proceeds of Crime Act.

Senator LUDWIG—If it is under the Criminal Code for the freezing of terrorist assets, it will end up under the proceeds of crime.

Mr Gray—It will be frozen, so it cannot be dealt with, and it will sit there until some action is taken in relation to it. One of the options for action, the only one that is really available to law enforcement, is proceeds of crime.

Senator LUDWIG—So you would be able to break that down. Has any money been frozen?

Mr Gray—The DPP would have those statistics.

CHAIR—Happily, they are also available to ask and, equally happily, it is half past six. We will suspend proceedings until half past seven and resume in this area of output 2.1?

Senator LUDWIG—Yes. I will follow up on ACLEI a little more.

Proceedings suspended from 6.30 pm to 7.32 pm

CHAIR—The committee will reconvene. Mr Cornall, you have some information for the committee.

Mr Cornall—We have here the details about the family relationship centres that Ms Pidgeon undertook to provide. It shows that six centres have signed agreements as at today and it also gives some particulars about premises for the others as well. I can table that information.

CHAIR—Thank you.

Mr Cornall—The other matter I want to raise at the commencement is that, within outcome 2.1 we are proposing, with the committee's agreement, to deal with any questions relating to AusCheck. I am just reminding the committee that, if they would like to ask questions about AusCheck, that would be a convenient place for us to deal with that, if that suited you.

CHAIR—Thank you, Mr Cornall; that is helpful. We are now discussing 2.1.

Senator LUDWIG—I think I had left with ACLEI. I understand you have to wait for the legislation. Just to understand how that is going to work, can you confirm that what you will do is wait for the legislation to pass before you set up a timetable for determining the appointment of a commissioner and deputy commissioner, the premises, how they are going to be secured, where they are going to be secured, how they going to be outfitted, the tender for supply of the fit-out and finish and the advertisement for the non-statutory staff? None of that is in train yet until the legislation in fact passes—is that a correct assessment to date?

Ms Blackburn—We in fact expect to run advertisements for the commissioner and the staff of the commission in the next couple of weeks. As I mentioned before the break, we are obviously trying to set as much in place as we can, cognisant of the fact that the legislation has not yet been passed.

Senator LUDWIG—What about the other work? Has any of that been undertaken to date?

Ms Blackburn—The other work in terms of securing premises? Yes, we have identified premises which might be suitable. We are also engaged in conversations within the portfolio on appropriate ways in which this agency can secure the normal corporate services that an organisation needs.

Senator LUDWIG—Have you looked at fit-out and finish yet? Who will do that?

Ms Blackburn—We will be looking at those issues, yes.

Senator LUDWIG—Have any tenders being let?

Ms Blackburn—No.

Senator LUDWIG—What about the tenders for securing the premises? Or are you securing those without a tender process?

Ms Blackburn—Our expectation at this stage is that security arrangements for the premises would be done through direct supply. It is an agency which will require some significant levels of security. There is a restricted range of people who can undertake that work.

Senator LUDWIG—Has that contract been finalised?

Ms Blackburn—No, there has been no contract entered into for these matters yet.

Senator LUDWIG—Are we in contract negotiations stage at this time?

Ms Blackburn—No, we are still at the stage of identifying requirements. We are conscious, as you said, of the fact that the legislation has not been passed, so there is obviously some hesitation in entering into binding legal commitments that might cause us to have to expend money for something which may not be required in the end. We are also conscious of the fact that, as a small agency, there would obviously be benefit in being able to have the staff of the agency involved in some of the decision making about how the agency will be run. Trying to bring those two things together while the legislation is still in the parliament requires some finessing of timing of issues.

Senator LUDWIG—Unlike the family relationship centres!

CHAIR—I assume that is a comment that you are making, not expecting a response.

Senator LUDWIG—I believe Ms Blackburn and I agree on that.

CHAIR—I do not believe that Ms Blackburn indicated any agreement or any acknowledgement of that, because you made a comment; you did not ask a question.

Senator LUDWIG—Sorry; I just thought it was interesting. In terms of the security vetting of the employees and the like, will that also be done by direct supply or will that be done by another agency if there is any to be done?

Ms Blackburn—Almost certainly the staff of the agency will require security vetting, because of the nature of the work that they would undertake. I do not believe that we have at this stage made any firm decisions on behalf of this yet to be agency as to how that process would be done. My expectation is that it would follow processes that are used by other law enforcement agencies.

Senator LUDWIG—When do we expect to see advertisements for the non-statutory staff?

Ms Blackburn—I expect the advertisements to appear in the next two or three weeks.

Senator LUDWIG—In terms of the agency being up and running and actively investigating, is there a date by which you expect to be operational? Is there a date you are working towards?

Ms Blackburn—We are working on the basis that, if the legislation is passed in the current sitting of the parliament, we would be working to have the organisation operational as close to 1 July as possible. That is our target. I cannot say that it will definitely be operational by that stage.

Senator LUDWIG—The family relationship centres picked 3 July because it is a Monday.

Ms Blackburn—I have not picked a date. Our time line is that the work we are doing now ahead of the passage of the legislation is to enable us to have the organisation operating as soon as possible after the legislation is passed and assented to and comes into operation.

Senator LUDWIG—There was some media interest in a US-Australia signed antiterrorism pact. Is that through your branch?

Ms Blackburn—No, Senator, that would be more likely to be program 2.2 or, alternatively, one of the agencies.

Senator LUDWIG—Mr Cornall, is it 2.2?

Mr Cornall—What pact are you referring to?

Senator LUDWIG—I think there is only one that got media attention lately, unless there are others. This says, ‘US, Australia sign anti-terrorism pact,’ and seems to have been run online on the ABC. It says:

The United States and Australia have signed an agreement for greater information sharing and cooperation in research to combat terrorism.

Mr Cornall—What date are you talking about, Senator?

Senator LUDWIG—This was 18 May, 2006. It goes on:

The pact is similar to those already in place between the United States and Britain, Canada, Israel and Singapore.

A Pentagon report says it will focus on areas such as “identifying and detecting terrorists and terrorist groups ...

Mr Cornall—Mr Rothery is able to deal with that when we get to 2.2.

Senator LUDWIG—The area of illegal fishing might come up here, in ‘Criminal matters’. Is it possible at the moment to apprehend, detain and imprison a foreign fisher caught in Commonwealth waters and convict them of illegal fishing in Commonwealth waters as opposed to just detaining them? I was wondering what charges are in fact preferred.

Senator Ellison—So you mean detaining them as an illegal fisher as opposed to just detaining them as an illegal entrant?

Senator LUDWIG—What law do you use at the beginning to detain? Is it the law in the sense that there is the suspicion of a crime, such as illegal fishing, or are they detained because of their illegal entry into Australian waters?

Ms Blackburn—My colleague Mr Gray can address this matter for you.

Mr Gray—The issue is criminal offences. I am pretty sure they are in the Fisheries Management Act. It is not something I have hugely detailed knowledge of. But it is about criminal offences. They are arrested for illegal fishing and brought to Australia. At the moment, the penalties that can be imposed on foreign fishermen are limited to monetary penalties. They cannot be imprisoned, because of the provisions of the United Nations convention.

Senator LUDWIG—I think that is the point.

Mr Cornall—A lot of this falls into the international law area. In addition to Mr Gray's involvement, Mr Campbell would have a lot of this information at his fingertips, but he is not here at present.

Senator LUDWIG—Which area?

Mr Cornall—International law, output 1.4.

CHAIR—I think we have been there, as it were.

Senator Ellison—Customs could answer this in full tomorrow.

Senator LUDWIG—I thought it was 2.1, in criminal matters.

Mr Gray—These are criminal offences so, in that sense, that is right.

Ms Blackburn—Mr Gray has answered the question in relation to Commonwealth offences. There are also state offences which can be used and which are used.

Senator Ellison—That is when they are within three nautical miles of a state, because they have more limited jurisdiction, of course, than the Commonwealth in area.

Senator LUDWIG—So, at the moment, are illegal fishers detained or are they apprehended and prosecuted?

Senator Ellison—They are detained. As I recall it, Customs uses the Customs Act and Navy uses the fisheries act. We can confirm that tomorrow with Customs. The fishers are detained, conveyed to port and processed on land and detained at Darwin or Willie Creek, in Broome, or even flown down to Baxter in South Australia. They are given a health check. While that is being done, a brief for prosecution is made up. It is then determined what charges, if any, will be laid. If charges are not laid then they are returned to Indonesia. But in that process they have to establish identity as well, which is always an issue, and the age of the person, because if they are a juvenile then they are treated differently, to the extent that they are accommodated separately and of course they are in a different court. But, if charges are laid, they appear before a magistrate and then the normal court process takes its course. It depends on whether they plead guilty or not guilty as to how they are dealt with. Of course, the penalty is then given.

The charges which have been laid range from state charges, as mentioned by Ms Blackburn, to Commonwealth offences under the fisheries act. In a few instances, we have had encounters where there has been violent behaviour and there have been charges under the Criminal Code, which I think the DPP prosecuted in Darwin. I am open to correction on this, but I think that was after a vessel was apprehended and the boarding was resisted. There were burning poles, and it was alleged that there were weapons.

Senator LUDWIG—I think one of the officers suffered an injury during that.

Senator Ellison—That is right. That was a Criminal Code offence, and one of the offenders got nine months jail for that. That is another aspect—if there is any violent behaviour. That is a rough outline of the situation as I understand it.

Senator LUDWIG—But the main offences that are committed or they are apprehended or detained over are in the fisheries legislation.

Senator Ellison—Fisheries, yes.

Senator LUDWIG—And that carries penalties, but no imprisonment is able to be—

Senator Ellison—At this stage, there is no imprisonment; only fines. But they end up cutting out the fines serving time. We are bringing in offences. Senator Abetz, the minister for fisheries, announced that we are bringing in custodial sentences.

Senator LUDWIG—That is what I was going to go to next. Is Senator Abetz doing that under the FMA or is it being worked on from here through the Attorney-General's Department?

Senator Ellison—He is doing it under fisheries legislation, as I understand it.

Senator LUDWIG—So there is no legislation being worked on in the Attorney-General's Department for these types of offences?

Senator Ellison—Not that I am aware of.

Ms Blackburn—No.

Senator LUDWIG—I should go over there and ask as well.

Senator Ellison—It comes from us. I can take it on notice if you want to know what the penalties will be.

Senator LUDWIG—Can you take on notice the type of legislation, when we expect to see it, the range of offences that will be under the fisheries management legislation and the types of penalties that can be provided for, and its consistency with international law?

Senator Ellison—It is a question that should be directed to Senator Abetz, although I have to give approval to the penalties and I have done that.

Senator LUDWIG—Why do you have to do that?

Senator Ellison—Under my responsibility as minister for justice, any legislation which carries a penalty of a fine or imprisonment—criminal sanction, basically—comes to me for approval.

Senator LUDWIG—Does your department check whether it is in accordance with international treaties and Commonwealth guidelines?

Senator Ellison—Yes.

Senator LUDWIG—Has that come to you yet?

Senator Ellison—I have approved it. It has been to me and I have approved it.

Senator LUDWIG—Has there been any report prepared about it meeting United Nations or treaty legislation standards? There was some talk—

Senator Ellison—I do not think it was an issue.

Senator LUDWIG—as I understand it, that this was an issue and that it might have been against international treaties to have criminal sanctions for fisheries management issues. That was my recollection, but it was something in the media so I am happy to be corrected.

Senator Ellison—I will take that on notice. To the extent that I am answering these questions on behalf of—

Senator LUDWIG—I do not want you to answer them on the run, because—

Senator Ellison—It is just that I am straying into Senator Abetz's area. Let me put it this way: your question is a reasonable one. It is best directed to Senator Abetz. If you have any issue getting that answer, then I will assist.

Senator LUDWIG—Thank you very much. I would ask whether the drafting has been undertaken in your department yet, but that will come up in 2—

CHAIR—We have been past drafting; we are way past drafting. You said 'nothing for drafting'; you said that you would put it on notice.

Senator LUDWIG—I can put it on notice.

Mr Cornall—Drafting what?

Senator LUDWIG—The legislation.

Mr Cornall—The legislation is drafted by the Office of Parliamentary Counsel. Our people draft regulations and legislative instruments.

CHAIR—Do you want to talk about regulations? I told him he could not talk about drafting anymore, you see.

Senator LUDWIG—So it is the Office of Parliamentary Counsel. They will be tomorrow, will they?

Mr Cornall—If you have called them, yes.

Senator LUDWIG—Probably not. I will put it on notice.

CHAIR—I do not think you did call them. I told you that you could not talk about drafting—you just do not listen to me. Oh, no! I have just been caught out—damned by my own words. Mr Quiggin will be joining us tomorrow afternoon.

Senator LUDWIG—Terrific. You can tell me whether it is a 'T' or not, and we'll go through that one again! There is an extradition review currently under way and a number of documents have been provided on the website about the discussion paper. In relation to the flow chart for a possible new extradition system, there are four models ostensibly—two models with two variations within them. Are you open to other models, or is that simply a discussion point where you provided models and, in the submissions you might receive, there might be other models that the Attorney-General will consider, or is it a discussion point about the models and the efficacy of those models?

Ms Blackburn—The discussion paper, which was published in December 2005, includes a number of models. The discussion paper was published explicitly for the purpose of inviting public discussion on both the models that are in there as well as other comments and submissions on how you might seek to reform the current extradition system. So, from the position of being the department undertaking this review process, we published the paper for the purpose of inviting comment and discussion on those proposed models and any other

comments or models that people might have. We have received 33 submissions in response to the paper. They contain a wealth of diverse views on these issues.

Senator LUDWIG—Are those submissions available to the committee?

Ms Blackburn—We expect to actually put all of those submissions onto the website. If there is any significant delay in that, we are happy to provide them directly to the committee ahead of them going on the website.

CHAIR—Thank you.

Senator LUDWIG—Except for those where they may have requested confidentiality.

Ms Blackburn—Certainly.

Senator LUDWIG—You could not give them to this committee without them being compromised as a consequence.

Ms Blackburn—I would have had to send you a pack of submissions with a covering note indicating those that had not been provided for that reason.

Senator LUDWIG—That would be helpful, thank you. The intended date—I know you are not keen to tell me dates, but do you have a date for when you might release the final discussion paper on mutual assistance?

Ms Blackburn—Our current timetable is working to June. My colleague Ms Hawkins, who is personally managing the development of the discussion paper, I think is indicating to me that June might be slightly optimistic for the mutual assistance discussion paper. I can however assure you that it is presently in production and we do expect to release that discussion paper some time in the second half of 2006.

Senator LUDWIG—So we are still holding true to form on no dates! Thank you. It is getting narrower, anyway—rather than four years.

Ms Blackburn—The two reviews are being conducted as a process where we are trying to get a piece of work out for comment. While that is out for comment, we are then able to work on the next piece of work. So they are actually fitting in quite nicely together.

Senator LUDWIG—When might you finalise a discussion paper based on the submissions that you have received to the extradition review? In other words, I am trying to figure out the process from here. Once you received the submissions, you obviously had an opportunity to digest them. At the next juncture you will provide another draft piece of legislation, another draft or consultative paper, or alternatively you will take it away and come back with legislation. I know the minister has gone, so I can wait until he comes back, but has there been a final decision about the next step?

Ms Blackburn—At this stage of the process that we are managing within the department we would look, on the basis of the submissions we have received, to then prepare for government consideration of proposals arising from that process for modification of or change to the extradition system. The next steps, after government consideration of that, would be to put policy proposals or an exposure draft out for consultation or to simply go to the introduction of legislation. In my view, all of those three options remain on the table and I think the decision on those depends on the nature, complexity and of course sensitivity of the

policy recommendations which are ultimately put forward to government and then accepted by government.

Senator LUDWIG—I accept that, thank you. Is there a time line for when that decision might have to be made? There are a couple of choices in there, obviously. Is there a time line for when the minister might want to consider which option he might choose?

Ms Blackburn—The reviews are not driven by any external deadlines or requirements. The review was initiated by the Australian government. I think, like everybody, we would like to have these reviews done efficiently. Our expectation is that we would be seeking to have decisions made by the government on the direction to go and, indeed, further consultation processes in the second half of 2006.

Senator LUDWIG—Is the international prisoner exchange issue part of that process, or is that a separate issue?

Ms Blackburn—No. The reviews we have been discussing are only of the Extradition Act and the Mutual Assistance in Criminal Matters Act.

Senator LUDWIG—Just a minor point really with regard to the Extradition Act: how does regulation without a treaty affect the operation of the act, given there is a qualifier? You can read in section 11 that the act may apply, under (1)(a), to regulations necessary to give effect to a bilateral extradition treaty and, under (1)(b), to give effect to a multilateral extradition treaty. It comes to mind that, where there is not a treaty in place, you do a regulation. I guess that would be a Henry VIII clause, in effect, where the act gives permission for regulation, and you create a regulation to deal with an issue, but there is no treaty in place.

Ms Blackburn—There are two different activities there. You are right; the clause has what is commonly described as a Henry VIII operation where the regulations in fact incorporate the text of a bilateral or multilateral treaty into the operation of the Extradition Act. My recollection of the operation is that if there is anything in the treaties which is inconsistent with the act then the treaty requirements prevail. So to that extent, yes, it has a Henry VIII operation. The other circumstance in which we make regulations is when we declare a country to be an extradition country. Where we do that in the absence of any multilateral or bilateral treaty then those regulations do no more than meet the requirement in the act that an extradition country is a country declared to be so by the regulations. They do not otherwise modify the operation of the act.

Senator LUDWIG—Is the power to declare a country an extradition country derived from external affairs? You can understand that the regulation would be then underpinned by a treaty in the normal course of events and therefore it would be quite clear. But what about declaring a country to be a treaty country when there is no treaty in place?

Ms Blackburn—The external affairs power, as I am sure you would appreciate, is broader than simply the existence of treaties. In the absence of our constitutional law advisers, my starting point would be that the act of extradition, which involves the movement of people between countries, would itself be a matter which would be encompassed within the external affairs power without a treaty.

Senator LUDWIG—I think I agree with you on that as well. It seems to be that it would be broad enough to include it, unless any constitutional—

Ms Blackburn—Perhaps we are both constitutional law experts after all!

Senator LUDWIG—No, I am not. I can assure you of that. There is a constitutional law expert at the end of the table, I think, isn't there, who might be able to shed some light on that?

Ms Blackburn—I am waiting to see whether he has a comment.

Senator LUDWIG—He might. Perhaps I could ask him, if he wanted to volunteer.

Mr Cornall—You need to ask Mr Faulkner, I think.

Ms Blackburn—I think our constitutional law expert is absent.

CHAIR—I think the answer is no. Moving right along.

Senator LUDWIG—In the discussion pack a number of issues were raised about how Australia could make and receive requests to and from any country without the need for any treaty or regulations on a non-reciprocal basis—in other words, without reciprocity. I guess that really is a constitutional issue. But that would then be underpinned by the external affairs power, would it?

Ms Blackburn—That is my understanding, yes.

Senator LUDWIG—But is it enough to sustain extradition on its own? I guess we are starting to stray into legal advice, but these are matters that might have been raised. I have not had the opportunity to look at the submissions that have been made, but I am sure that some of them probably also touch on this topic.

Ms Blackburn—The point to be made is that that is what we do now. We currently undertake extradition with countries under the existing legislation where there is no treaty in place. That has not previously been called into question as not having sufficient Commonwealth power underpinning it.

Senator LUDWIG—So, where there is no treaty in place, you can make a regulation declaring it a treaty country?

Ms Blackburn—No. The making of regulations declaring a country to be an extradition country is an ordinary part of regulation making. The Extradition Act says that we can do business with an extradition country and then declares an extradition country to be a country that is declared to be an extradition country by a regulation.

Senator LUDWIG—Yes.

Ms Blackburn—That flows directly from that definition of an extradition country in the act itself. There are two things. We do have this absolutely wonderful pack of information, which was prepared in the last couple of months, which attempts to explain extradition and mutual assistance in considerable depth. We have produced it for the purpose of educating the wide variety of members of the community and the public who are interested in this.

Senator LUDWIG—Politicians too, thank you!

Ms Blackburn—I did not say that! It is a public information pack which I would be very happy to provide to the committee. Similarly, our website does include a full list of all countries with whom Australia has extradition relationships, either through a treaty—inherited treaty—or through the declaration of them as extradition countries, and that list is also included in this information pack.

Senator LUDWIG—That would be helpful, thank you. The committee would be happy to receive it. Where a person is facing a charge overseas and is, I guess, a fugitive from justice in that country, can deportation be used to effect or become a de facto extradition or extradited process?

Ms Blackburn—I cannot answer that question for other countries. But, if a person was in Australia and it was known to Australian authorities that the person was a fugitive and that they were sought by a foreign country for prosecution, we would process that under extradition provisions. An extradition request would be made and we would process it.

Senator LUDWIG—If the person were in Australia, facing a charge overseas, then they would still be prosecuted? They would not be deported if they were a foreigner facing a charge overseas? It would be under the extradition process.

Mr Cornall—They could be. If a person is here illegally, the person can be deported. Whether they are facing a charge overseas is not a necessary consideration. If they are deported to their home country then arrested and charged and prosecuted, that is a consequence of returning to their home country.

Senator LUDWIG—Yes, and that would also apply to a situation where a person had entered Australia legally but were facing an overseas charge. In that instance, if there were nothing wrong with the process upon entering, it would be an extradition process.

Mr Cornall—That is correct.

Senator LUDWIG—But if there were something wrong with the process of entering Australia—for instance, if they had falsified immigration documents or not divulged a criminal history or records—

Mr Cornall—They would not have some legal right to remain.

Senator LUDWIG—Yes. You could then deport them under the immigration law. That would be right. So there would be two processes.

Ms Blackburn—They operate as two separate processes which do not necessarily intersect.

Senator LUDWIG—No, but they can overlap in some respects. You could choose either to deport them or to have them extradited. There might be a request from a country for an extradition process to be effected, but you might then find you can deport them because of some immigration irregularity.

Ms Blackburn—That situation may arise. But, if Australia had received an extradition request, the extradition request would be actioned. The normal process would be that the person would be arrested on the strength of the extradition request and the normal decision-making processes under the extradition act would be followed. It would only be at the

conclusion of the extradition proceedings—if, for example, a decision was made not to extradite the person—that the person would be released back into the Australian community, and then it is perfectly appropriate for the immigration authorities to deal with that person in accordance with the rules relating to the right of a person to remain lawfully in Australia.

Senator LUDWIG—So you could lose under both or win under the first and lose under the second.

Ms Blackburn—It is not really a question of winning and losing. If we have an extradition request, we deal with it.

Senator LUDWIG—It may be for the person concerned. We can call it what we want, I guess. In terms of the discussion paper, the department-identified arrangement whereby dual criminality must apply is perhaps a problem. Is that still regarded as a problem—my words—because it may allow people to escape justice simply because Australia does not have a similar criminal offence? Have circumstances or questions arisen in the past that have put a focus on this?

Ms Blackburn—No. We sought in the discussion paper to raise the full range of issues that ought to be considered. Dual criminality is not of itself a major issue in the operation of the Australian extradition system. It is in fact a condition which exists in extradition systems all over the world. In putting it into the discussion paper, the only circumstance that we, just in our internal conversations, had identified was a case where an extradition request might be made for a person for an offence for which Australia had not passed legislation yet but was nonetheless of the view that the conduct ought properly to be criminalised—but we had not managed to get the legislation into place. The other situation in which that could arise obviously is where the offence can only be criminalised by state or territory legislation. Those are the circumstances in which we thought the issue might arise. The discussion paper simply raises the question to elucidate the arguments for and against the need for dual criminality. I think it is fair to say from the submissions that have come in that dual criminality is a standard condition throughout extradition systems in the world.

Senator LUDWIG—I am not so sure about that. Have you looked at the UK model?

Ms Blackburn—We have looked at the UK model in developing the discussion paper.

Senator LUDWIG—They do not have reciprocity either. You do not have to have a treaty with them.

Ms Blackburn—I am sorry: reciprocity? We were discussing dual criminality.

CHAIR—Senator Ludwig, at least a question and an answer and a question and an answer, as opposed to overlapping, I think, would be much easier.

Senator LUDWIG—I am dealing with the two issues. We were talking previously about reciprocity. They do not have it. But, on this issue of dual criminality, it seems that they do it by allowing it as a matter that can be taken into consideration, so it is not a matter that will rule it out in the first instance.

Ms Blackburn—That is precisely the question in terms of dual criminality that we have asked: should it be a mandatory bar; should it be a discretionary consideration?

Senator LUDWIG—Yes, and they have in fact put the onus on the person to raise it as an issue, which would help the person to defend themselves against being extradited. But in any event—

Ms Blackburn—Could I just clarify there though: the issue of reciprocity is reciprocity in terms of ‘if we extradite, will you extradite’. Reciprocity is not the dual criminality issue.

Senator LUDWIG—No, I understand that.

Ms Blackburn—Sorry, my apologies.

Senator LUDWIG—But I will have a look at your new material. It builds on some of the matters, going back some time now, that the treaties committee originally looked—this issue and the US model. I will be pleased to see where we end up. The minister is not here so I will not ask him that one. In terms of a number of ongoing extradition matters, the headline of an article in the *Australian* on 11 April 2006 was ‘Bandido suspect in minister’s hands’. Are you able to give us an update on this matter?

Ms Blackburn—I cannot identify, from the information you have given me, the case to which you might be referring.

Senator LUDWIG—I am happy for the article to be tabled. Everybody calls them something different, I suspect.

Ms Blackburn—I have now identified what you are referring to. It is an article which refers to Hew Raymond Griffiths. Could I ask you to repeat the question, please.

Senator LUDWIG—Could you provide an update of where the matter is? Is the person still being detained, or has the matter been resolved? Have they been extradited?

Ms Blackburn—Mr Griffiths remains in extradition detention under the provisions of the Extradition Act.

Senator LUDWIG—Has the US government formally requested the extradition as yet? Have they made a formal request?

Ms Blackburn—The Federal Court has found Mr Griffiths eligible for extradition. That decision has been upheld by the Full Federal Court. Mr Griffiths’s application to the High Court for special leave to appeal was unsuccessful. So he has been determined to be an extraditable person. The matter now returns to the minister, in accordance with the provisions of the Extradition Act, for the minister to determine whether Mr Griffiths will be surrendered to the United States.

Senator LUDWIG—From what date would the minister have been able to exercise that decision? In other words, when was it put in his ‘in’ basket to deal with? That would be from the date of the High Court determination.

Ms Blackburn—The decision of the High Court was on 2 September 2005.

Senator LUDWIG—So the minister has not made a decision to date?

Ms Blackburn—The minister has not made a decision.

Senator LUDWIG—It seems to be dragging on, though.

Ms Blackburn—From 2 September decision, the process that then takes place is the preparation by the department of a submission for the minister in accordance with section 22 of the act. That submission is required to consider both the mandatory and discretionary grounds for refusal under both the act and the treaty. The minister also has a general discretion. The requirements of natural justice point us to inviting submissions from the person who is to be extradited, which then have to be considered by the minister. So the process involves further engagement with the person if they wish to make submissions and further inquiry by the department to enable us to prepare a submission on the basis of which the minister can make a lawful decision to surrender or not surrender the person.

Senator LUDWIG—Has the submission been made—in other words, finalised—by your department and placed in the minister’s ‘in’ box?

Ms Blackburn—The department has not presented the submission to the minister.

Senator LUDWIG—What is holding that up?

Ms Blackburn—The process which I have just described to you.

Senator LUDWIG—So where is the problem; where is the blockage? It would not normally take you that long, would it?

Ms Blackburn—There are two questions there. First, there is no problem. Preparing the submission is for us a perfectly ordinary process. The length of time presently taken to prepare this in my experience is not extensive. Persons are invited to make representations. They quite often do. They quite often make those representations more than once. Representations can also be made by their family, by their lawyers and by other persons who may have an interest in the process. All submissions that are made by the person who is the subject of the request then have to be analysed. If the person makes particular claims of fact in those submissions, the department must undertake a range of inquiries so that we are able to advise the minister on whether that is a fact which he should take into account in making his decision. From our perspective, it is a process that sometimes goes as long as the person keeps making submissions and keeps raising issues, which we must address in order for the minister to make a decision which will be upheld if it is challenged as a lawful decision.

Senator LUDWIG—Have you received any information from the individual about representations? In other words, have you received representations from the individual to date?

Ms Blackburn—It is not appropriate for me to comment on the specifics of any particular case. I am quite happy to say that it is very common in extradition cases to receive submissions. Indeed, the department as a matter of practice invites the person to make submissions if they wish to do so. Many persons subject to an extradition request take that opportunity and make many submissions.

Senator LUDWIG—I hate to go here again, but is there a time line you are working on to finalise—at least from the information you have received to date—a submission to the minister?

Ms Blackburn—No, there is no deadline that is set for any particular case because the view that I take on this work is that, in the end, we have to take as long as is necessary to

prepare a submission which will form the basis of a lawful decision by the minister. In some ways that question is as long as a piece of string. What I can say about this particular case is that, from our perspective, it is being progressed in the normal way in which we progress all extradition cases.

Senator LUDWIG—So is there a usual length of time or an average time that this takes?

Ms Blackburn—No, there is not. It is impacted in the first instance by the challenges that the person makes to the various decisions along the way. In cases such as this where the judicial applications have now been finalised, the period of time from that point until the time the minister makes a decision simply depends upon the nature of the representations that the person is making, the extent of the issues that are being raised and the extent to which the department has to confirm factual information from other sources. There is also a process of having to sometimes go back to the requesting government, particularly if the person's submissions make comments about activities in another country; we have to seek that information. It is just a time-consuming process to ensure that you have all of the correct information so that you can do a submission that gives the minister the facts, the evidence upon which he can rely and the reasons upon which he can properly form the decision to surrender or not to surrender.

Senator LUDWIG—And all the while the person remains in detention.

Ms Blackburn—That is correct.

Mr Cornall—Senator, perhaps I could just add that the length and complexity of this process is one of the reasons for the review of the extradition process.

Senator LUDWIG—I can understand that.

Mr Cornall—It can take a long while, often at the instigation of the person who is the subject of the application. But it is a very time-consuming process, and it really is not efficient or very effective to take that long to make a decision.

Senator LUDWIG—Another article in the *Australian* on Monday, 10 April 2006 headed 'Evidence no bar to war crimes investigation' states:

The Hungarian Government is continuing its investigation into a Melbourne pensioner it suspects of war crimes, despite uncovering ...

The article goes on. Is that matter still current or is it being actioned by the department? I am happy to make that article available to you.

Ms Blackburn—Thank you. We will just confirm that we are speaking about the same person that you are asking about.

Senator LUDWIG—Yes, I understand the need to confirm we are talking about the same person.

Ms Blackburn—We have seen this report; we are aware of it. As I am sure you are aware, we do not disclose whether we have received an extradition request. Receipt of an extradition request becomes public either at the time of the arrest of a person or when the subsequent extradition proceedings are brought before a magistrate. We are, as you know, able to

extradite persons to countries that are extradition countries. Hungary is an extradition country under the Extradition Act.

Senator LUDWIG—What process are we at now? Are we waiting for a request?

Ms Blackburn—I cannot answer any more questions along that line. As I said, we disclose whether or not a request has been received only when it becomes public because a person has been arrested or a person has been brought before a magistrate in accordance with the act.

Senator LUDWIG—I will reverse it then: is there anything more you can tell me about that case? Or are we stymied at that point?

Ms Blackburn—I cannot make any further comment—

Senator LUDWIG—All right.

Ms Blackburn—on any case, this one or any other case, which is not presently in the public arena because the person has been arrested or has been brought before the Magistrates Court.

Senator LUDWIG—There is no point in me asking you questions about it then, is there?

Ms Blackburn—There is no point in asking me questions about any newspaper reports about whether or not a person might or might not be extradited unless the person has been arrested or the matter has come before the Magistrates Court.

Senator LUDWIG—Thank you. I know it is tedious, but I needed to rule that out.

CHAIR—I think we will consider it ruled out, shall we, Senator.

Senator LUDWIG—Thank you, Chair. Unless you want to ask the question?

CHAIR—No, I actually took Ms Blackburn at her first assurance that she was not going to say anything else, at about five past eight.

Senator LUDWIG—It was not that long! There was also an extradition plea for drug suspects mentioned in the *Age* on 17 April 2006.

CHAIR—Do you have that document, Senator?

Senator LUDWIG—I am just looking for it. I think you will recall it if I go into it a little bit. There were four individuals residing in Australia who had an arrest order issued against them by Italian authorities. It was subject to significant media attention at the time. However, by the time of publication of the article in mid-April 2006 they had still not—in the words of the article—been extradited from Australia to Italy, and Italy's anti-mafia commission chief had urged Australia to help bring them to justice. I am not sure if people watch the same television that I watch but I recall the commission chief making that plea. Is there anything you can tell me about that particular case?

Mr Cornall—It is the same answer.

Senator LUDWIG—I guess this can be regarded as a different matter. Has Efraim Zuroff of the Wiesenthal centre provided information to the Attorney-General about particular war criminals in the last 12 months or so? If so, are you able to indicate what information the centre has provided and whether any of it has been actioned?

Ms Blackburn—Can we take that question on notice?

Senator LUDWIG—Yes. I did not want to go to specific names, because it seems to me that they get bandied about a lot and I think it is unfair to a lot of individuals concerned. But it seems that there have been at least allegations that evidence of some type has been presented to the Attorney-General's Department. Really, what I wanted to know was what action had been taken in respect of those matters.

Ms Blackburn—I will say two things. I will take the question on notice. I am unaware of any such material. Of course, the Attorney-General's Department is not an investigating agency and would not be involved in the receipt or investigation of any such material. However, I will take your initial question of whether any such information has been provided on notice.

Senator LUDWIG—And what action has been taken—whether it has been referred to relevant authorities, such as the Australian Federal Police or another body, for investigation or whether it has not been actioned, as the case may be.

Ms Blackburn—Certainly.

Senator LUDWIG—Are you able to provide any information—this was other matter that seems to have been getting a bit of publicity—on Mr Dragan Vasiljkovic? Are you able to update that matter?

Ms Blackburn—Perhaps you could be a little more specific.

Senator LUDWIG—I guess what I am trying to ascertain is where the matter is at. Has the person been extradited or are they still in detention? What stage have they reached in the proceedings?

Ms Blackburn—Thank you. The minister issued the section 16 notice for Mr Vasiljkovic on 18 March. Mr Vasiljkovic was provisionally arrested on 19 January. The matter will come before the Magistrates Court in accordance with section 19 of the act. My understanding is that that matter will return to the New South Wales Magistrates Court on 14 June.

Senator LUDWIG—It is returning for what purpose?

Ms Blackburn—For the setting of a date for the hearing under section 19 of the Extradition Act. The section 16 notice enables the matter to come before the magistrate. The section 19 hearing is the provision, obviously in section 19 of the act, which sets out the issues which the magistrate must determine.

Senator LUDWIG—So it is at the point in the proceedings where it will next return for a section 19 determination by the magistrate.

Ms Blackburn—That is the stage it is up to in extradition. As I said, the next date that we expect that matter to be considered will be 14 June. On that date they will set a date some time after that for the section 19 hearing.

Senator LUDWIG—Are you able to say what government has sought the extradition?

Ms Blackburn—The extradition request was received from Croatia.

Senator LUDWIG—In this instance, is there only one country involved?

Ms Blackburn—The extradition request which is currently being acted on by the Australian government in relation to Mr Vasiljkovic is from Croatia.

Senator LUDWIG—How many people are currently pending extradition? In other words, how many are being detained?

Ms Blackburn—I will take that question on notice.

Senator LUDWIG—What information can you provide about them? Can you provide their names, their countries, which countries are seeking their extradition and the offences or the nature of the offences?

Ms Blackburn—Yes, because by that stage the person has been arrested and the extradition process has commenced. So I am sure we can provide that information. I do not have it with me. Can I just clarify that your request was intended to encompass all persons who are presently held in custody in Australia in reliance upon the extradition detention?

Senator LUDWIG—Yes, only to that extent. Is there another group I have missed?

Ms Blackburn—I was hoping that it might have been the smaller group who remain in detention because the magistrate has determined that they are extraditable.

Senator LUDWIG—No, and now that you have alerted me to that, perhaps you can identify those as a separate group so that I can understand where they are up to. It is terrible volunteering information, isn't it!

Ms Blackburn—I should say at this point that there is not a huge number.

Senator LUDWIG—I accept that. On another matter, there has been a bit of media attention about difficulties with cruise ships. In particular, when they are not in Australian waters, which law would be applicable? There was a very tragic case that was reported recently. Which law would apply in those instances?

Ms Blackburn—We have moved outside of my area of expertise in the application of the law.

CHAIR—You haven't leapt outputs again, have you, Senator Ludwig?

Senator LUDWIG—No, it is a criminal matter.

Ms Blackburn—It is a question of criminal jurisdiction.

Senator LUDWIG—Mr Gray is at the end of the table. Mr Gray would probably know.

CHAIR—He is not volunteering.

Ms Blackburn—Mr Gray is offering to provide some short comments.

Mr Gray—I am offering some short comments, which can be a very difficult situation. There is a piece of legislation called the Crimes at Sea Act, which is Commonwealth law that applies Australian law to various ships. It turns on where the boat is, where it is going, where it is coming from and what flag it is flying. Mr Campbell probably has more.

Senator LUDWIG—There is also a broadening of the passenger screening for drugs near that of schoolies week now. We are seeing how the law would apply to deal with some of these tragic circumstances that can arise on cruise ships.

Mr Campbell—In terms of criminal offences?

Senator LUDWIG—Yes. They range, of course, because the offences can range from quite minor offences to the more serious cases to which I refer, such as attempts at murder and drug related instances.

Mr Campbell—The Crimes at Sea Act is fairly extensive. It implements a cooperative scheme with the states. It applies a body of criminal law to cruise ships operating from Australia. It also applies to a geographic area going out to the edge of the continental shelf. It will apply by reason of that geographic area as well. It applies a body of state criminal law to each of those ships.

Senator LUDWIG—Is that of the port of return or the port of departure?

Mr Campbell—I cannot quite recall that detail. I can take that on notice. But the other aspect of that is that, as well as applying to Australian ships, it applies to foreign flagged vessels and it also applies to foreign flagged vessels coming to Australia. In those circumstances, my recollection is that a prosecution cannot take place without the consent of the Attorney-General, who will take into account whether there is some sort of dual jurisdiction over the ship, in the sense that the country that is the flag state of the ship might also be asserting jurisdiction over the particular crime.

Senator LUDWIG—So it is not that something like the law of Jervis Bay would apply.

Mr Campbell—No, it is not.

Senator LUDWIG—In international waters, the Crimes at Sea Act would apply.

Mr Campbell—Some of it is coming back to me, Senator. The way it is structured in the Crimes at Sea Act is that it picks up on areas very similar to adjacent areas under the Petroleum (Submerged Lands) Act, which divides the continental shelf up between areas adjacent to each state. The law that applies to a crime that is committed in that quite extensive area is the law of the adjacent state.

Senator LUDWIG—Then you could have a foreign flag ship asserting their law if the crime were effectively committed in international waters.

Mr Campbell—In international waters—or, even if the crime takes place 150 nautical miles off the Australian coastline, it may well be that the foreign state asserts criminal jurisdiction over that ship by reason of its flag status. That is why the provision that says that in relation to certain offences the permission of the Attorney-General, I think, must be gained is in the act. It is so that the question of dual jurisdiction can be resolved. It may be that, in some circumstances, it is more appropriate for the flag state of the vessel to take jurisdiction over it. In that case, the prosecution would not proceed here.

Senator LUDWIG—In terms of liquor licensing of those, is that done as if they were an Australian flagged ship?

Mr Campbell—In terms of application of liquor licensing, I would have to take that on notice.

Senator LUDWIG—It is a difficult area, but it seems that there is a rise in the number of cruise ships that are starting to come to Australia. These issues are going to challenge us,

because unfortunately we have already seen a number of circumstances that warrant attention. Hopefully we will be able to address it and resolve it. I might ask the AFP about this as well. They cannot exercise authority on those ships while in international waters either, can they? So does the captain of the boat take the role?

Mr Campbell—That is of course a question you would have to ask of the AFP, but their act has a certain degree of extraterritorial application.

Senator LUDWIG—I think it might have been expanded recently for oil rigs and the like, so I wonder if it would also take into consideration cruise ships. I will ask them that. I want to turn to another matter, more broadly: fraud control. When you have an auditor or a governing body of an audited entity who has failed to report fraud or noncompliance or some other serious crime uncovered by the audit to an appropriate law enforcement or regulator required by the legislation or other standards, would the A-G's Department, if they became aware of it, refer that to the relevant authorities for investigation and report? The Attorney-General's Department, as you know, plays a significant role in fraud control in the Commonwealth. But what about in terms of this area, although it is external to the department? Or is that a matter that ASIC or APRA would look after?

Ms Blackburn—I am sorry, Senator. I missed the critical point about which hypothetical organisation was doing it.

Senator LUDWIG—Say it was a wheat export authority—so it is a statutory body—and an auditor or the governing body of the audited entity has failed to report any fraud. That would be the circumstance.

CHAIR—I am not sure that you can expect the officers to engage in hypotheticals, Senator Ludwig.

Senator LUDWIG—I do not know whether it is that hypothetical, Chair.

Ms Blackburn—The two comments I can make are that the Attorney-General's Department is responsible for the Commonwealth Fraud Control Guidelines, as you are aware, and that they require agencies to provide reports on fraud in their agencies. I believe we have answered extensive questions on notice from you about the extent of fraud against the Commonwealth. The circumstance that you are describing seems to me to relate more to the relationship between the organisation itself and its auditor. There is in the Treasury portfolio a range of legislation that relates to the obligations of auditors. Those obligations also, I suspect, exist under legislation governing Commonwealth statutory bodies, either the initiating legislation itself or the Commonwealth authorities corporations act. Those are not matters on which I can provide any further comment.

Senator LUDWIG—Do the fraud control guidelines within the department deal with Commonwealth departments and agencies?

Ms Blackburn—That is correct.

Senator LUDWIG—Have there been any significant reports in the last 12 months of breaches of the fraud control policy? Do you provide an annual report?

Ms Blackburn—All Commonwealth agencies are required to provide a report annually in accordance with the details set out in the guidelines. For the 2004-05 fraud annual report, 140 agencies have supplied their returns. However, that report has not yet been compiled.

Senator LUDWIG—When is that normally compiled?

Ms Blackburn—The timing for the preparation of that annual report varies. It is not subject to the annual reporting guidelines since it is a report which, as you are aware, is compiled and presented to the minister for justice.

Senator LUDWIG—Is there a timeline for when it is likely to be finalised and presented?

Ms Blackburn—No, there is not. It is one of those pieces of work which are done within the division as resources and priorities permit.

Senator LUDWIG—It is provided every two years. Is that correct?

Ms Blackburn—No. The report is required to be prepared annually.

Senator LUDWIG—Does it cover all agencies and departments?

Ms Blackburn—Yes. My understanding is that there are some 160 agencies which are currently required to provide reports in accordance with the guidelines.

Senator LUDWIG—Have any reports in the last 12 months required action to be referred to the Australian Federal Police?

Ms Blackburn—That information would not come to the Attorney-General's Department in relation to a specific instance. In accordance with the fraud guidelines, individual agencies would deal with those matters either in accordance with their internal guidelines or by reference to the Australian Federal Police.

Senator LUDWIG—That report will have to be done by 30 September, will it not?

Ms Blackburn—There is no statutory requirement for the presentation of the report. There are no statutory deadlines which apply to the preparation of the fraud annual report. It is prepared under the Commonwealth guidelines.

Senator LUDWIG—It is almost not annual then, is it?

Ms Blackburn—There is a report prepared that covers a financial year. To that extent, it is an annual report.

Senator LUDWIG—I will wait with a worm on my tongue for that one. Another matter about the cruise ship has just struck me. If it was in international waters, would that not equal Jervis Bay in terms of the applicable law?

Mr Campbell—I am not sure of the answer to that question.

Senator LUDWIG—Would you take it on notice?

Mr Campbell—I will take it on notice. If I could add, I think it would probably depend on whether it is an Australian flagged vessel or a foreign flagged vessel.

Senator LUDWIG—And if it was an Australian flagged vessel?

Mr Campbell—I think it is more likely to be the law of Jervis Bay, but I would still have to take it on notice.

Senator LUDWIG—Thank you. The policy in terms of fraud control is yours but the implementation is what, through the Treasury, through ASIC and APRA?

Ms Blackburn—No. The Attorney-General's Department is responsible for the Commonwealth Fraud Control Guidelines. They were issued by the minister, and last issued in 2002. They are issued under the Financial Management Accountability Regulations. They are guidelines that require all agencies to have in place certain practices, and to put in place, essentially, fraud control systems within their own agencies.

Senator LUDWIG—And the payments of bribes in foreign countries though is certainly an area of the A-G's, isn't it?

Ms Blackburn—Yes. The Attorney-General's Department and my division are responsible for the obligations that Australia has under the OECD Convention.

Senator LUDWIG—Coming back to the first then, the fraud control: if an agency fails to provide a report or is patently not doing the job it is supposed to do, do you take remedial action or do you just simply put it in the report?

Ms Blackburn—It is not the responsibility of the Attorney-General's Department to enforce the controlled guidelines. The guidelines are guidelines to be implemented by the CEO's of departments and agencies in accordance with their responsibilities under either the FMA Act or the CAC Act.

Senator LUDWIG—So it is a bit like the legal services directions?

Mr Cornall—It is like a whole range of financial regulations, and everything else. The CEO has the responsibility to ensure that an agency is run in accordance with the applicable rules and regulations.

Senator LUDWIG—We do hear that a lot. Then coming back, in the public area, as distinct from the private area, who looks after it? If it is ASIC and APRA for the public area, if there is fraud within the Commonwealth then, an agency, or a department, or a statutory authority, those guidelines, the auditors, the auditor reporting, where do they go—does that come within your responsibility?

Ms Blackburn—If it is for a Commonwealth department or agency, the obligations you appear to be referring to are the responsibility of the CEO of the department or the agency.

Mr Cornall—The guidelines are designed to have a consistent approach across all Commonwealth agencies to minimise fraud against the Commonwealth. Agencies are therefore required to take a number of protective measures and to undertake certain functions to make reports about their compliance with those requirements. But the purpose of the guidelines is to protect the Commonwealth against fraud, not to pursue fraud by other companies or by anybody else.

Senator LUDWIG—Let us look at the other side of the coin then. You have fraud control guidelines. You have got the CEO that implements them. In the private sector you have got APRA and ASIC. What have you got in the Commonwealth sector then to look after your interests to make sure that you are adhering to the guidelines?

Mr Cornall—If a fraud occurs then the matter would be referred to the AFP as a criminal investigation and possible prosecution.

Senator LUDWIG—So that is the only rout that can be taken?

Mr Cornall—That would be the most obvious thing to do, yes.

Senator LUDWIG—Do you get notified when that happens, as part of fraud control?

Ms Blackburn—In individual cases, no. The fraud annual report reporting requirement is to report on the statistics of matters which have been identified within the agency, and action taken in respect of those matters, whether they have been dealt with in accordance with internal disciplinary guidelines, whether they have been referred to the AFP and whether they have been then referred for prosecution. So it is essentially a statistical report.

Senator LUDWIG—Would the ANAO have a role if there was fraud?

Ms Blackburn—The ANAO has developed a better practice guide for fraud control. But in terms of what particular role the ANAO plays with respect to individual agencies, that would be a question best directed to them.

Senator LUDWIG—In terms of then coming back to the foreign bribery issue, that is a Commonwealth crime, and it is Commonwealth legislation. Do auditors have a legal requirement to report such offences where they have come across it?

Ms Blackburn—That would be a matter you have to direct to the people who are responsible for making the laws that control auditors.

Senator LUDWIG—So there is an auditing standard which is an ASA 250. It refers to the limitation of audits undertaken to the determination of non-compliance with the law or regulation. Where they came across a foreign bribery allegation, there is no Commonwealth requirement or onus upon them to notify your department or an LEA, as far as you are aware, that is the AFP or other law enforcement agency.

Ms Blackburn—I simply cannot answer the question. I do not know the rules that apply to auditors, nor the laws that govern them.

Senator LUDWIG—A recently released report dealing with illicit drugs, entitled the *Illicit drug data report 2004-05*, was produced by the Australian Crimes Commission. Are you familiar with the recent *UN World drug report*, and that one?

Ms Blackburn—Just take me one more step, which one?

Senator LUDWIG—There is this one, which is the *Illicit drug data report 2004-05* released by the Australian Crimes Commission. There is also a *UN World drug report* as well. There is also in fact another one in there as well: the *International Narcotics Control Board Annual Report*. Are you familiar with those reports?

Ms Blackburn—I am aware of their existence.

Senator LUDWIG—What they show in part is that Australia has the highest use of ecstasy in the world, and the second highest usage of amphetamines. Do you have any other data that suggests otherwise, or are you broadly in agreement with the data sets that have been provided which highlight that outcome?

Ms Blackburn—I do not think it is a matter for me to agree, or disagree. There are the three published reports that you have mentioned, and a variety of other published information on the extent of the use of various illicit substances in Australia, and in other countries.

Senator LUDWIG—In terms of programs then, is there new money in this budget to deal with illicit drugs?

Ms Blackburn—I suspect there is funding for NIDS, the National Illicit Drug Strategy. My recollection is that there is. My recollection is that that is in the health portfolio.

Senator LUDWIG—But I am talking about this department, A-G's.

Mr Cornall—Not in this department.

Ms Blackburn—I am not aware of any new funding to this department, specific to drugs or illicit drug programs.

Senator LUDWIG—So there is no new programs, no new money in the budget targeted specifically addressing the problems of high levels of ecstasy and amphetamine use, is that right?

CHAIR—I think Ms Blackburn and Mr Cornall have both answered the question twice, Senator.

Senator LUDWIG—I find that quite extraordinary, given that it is not new. Some data has been available for some time that suggests this is becoming a problem. It is certainly not new. It now demonstrates that there is a significant problem with a rise in ecstasy and amphetamine use, which is centred in Australia when you look at some of the datasets that are put out by the Australian Crime Commission. It indicates that it is a serious problem, and I am disappointed that—

Ms Blackburn—The department is responsible for the National Strategy to Prevent the Diversion of Precursor Chemicals into Illicit Drug Manufacture. My recollection is that that strategy was funded over a period of four years. It has been ongoing for the past two years. It is directly targeted to addressing the issues associated with the control and management of the precursor chemicals which are used for the production of amphetamine type substances and ecstasy. It has been focused specifically on the diversion of pseudoephedrine into illicit drug manufacture and has had a range of project and policy activities under way over two years addressing that issue.

Senator LUDWIG—Are they current programs?

Ms Blackburn—Yes. The National Strategy to Prevent the Diversion of Precursor Chemicals into Illicit Drug Manufacture—for which I have not yet found an acronym that works—is an ongoing program. We are now just completing the second year of that program, which is a five-year program.

Senator LUDWIG—How much is set aside for that?

Ms Blackburn—There was a total of \$5.4 million committed over the period. The program runs until the 2007-08 financial year.

Senator LUDWIG—But that is not going to tackle importations of ecstasy; it is only going to tackle the use of precursors if there are people cooking them up in Australia, isn't it?

Ms Blackburn—This is a very targeted strategy to deal with the diversion of precursor chemicals into illicit manufacture. I am a little handicapped because there are a range of other activities funded for portfolio agencies, particularly Customs and the AFP—

Senator LUDWIG—I will ask those separately.

Ms Blackburn—which are specific to activities such as border control and broad-ranging activities by the AFP in that area. The Attorney-General's Department's specific activity is the precursor diversion strategy.

Senator LUDWIG—So you are not aware of whether there are any budget initiatives that deal with the issue of the high rate of ecstasy consumption? I think the police prefer us to use the MDMA nomenclature rather than the word itself to address these issues.

Ms Blackburn—I can only answer that question from the perspective of program 2.1 of the Attorney-General's Department. That program has not received new funding for that purpose. We have ongoing funding for the precursor strategy. We are two years into a five-year program.

Senator LUDWIG—The International Narcotics Control Board annual report of 1 March 2006 noted that the smuggling of drugs by mail is on the rise. Is this an area that you are familiar with? There was a recent ACC illicit drug data report which noted a high number of detections of ecstasy, or MDMA, and amphetamines—a wide variety of those drugs and others—by parcel post at the Australian border.

Ms Blackburn—That question would be best directed to the Australian Customs Service and the Australian Federal Police.

Mr Cornall—And the Crime Commission as well. I assume they will all be here tomorrow.

CHAIR—They will indeed; we can do that tomorrow.

Senator LUDWIG—So there is no whole-of-government approach? I am trying to eliminate some double handling. Is there a whole-of-government approach that is being coordinated out of your output section?

Mr Cornall—No.

Ms Blackburn—Not coordinated from the Attorney-General's Department. There is the National Illicit Drug Strategy, under which there are a range of other strategies for specific sectors, covering both the health sector and the law enforcement sector. And there are a range of health and law enforcement agencies who contribute to the delivery of the outcomes under the National Illicit Drug Strategy. The strategy is in fact part of the work of the ministerial council on the drug strategy, which is attended by Commonwealth, state and territory health and law enforcement ministers.

Senator LUDWIG—I might come back to some of that when we have the AFP, the ACC and Customs. Someone might be able to shed a little bit more light on some of those issues. We might be able to spend a little bit more time with Customs and the AFP on some of those issues.

Senator Ellison—It has come to my attention that Senator Abetz put out a press release today on tougher penalties for illegal foreign fishers. It goes into quite some detail about what Senator Ludwig was asking earlier. I will hand that to the committee for information.

Senator LUDWIG—I have missed the news cycle. Thank you.

Senator Ellison—So have I. I am just catching up.

Mr Cornall—Before we go on, in relation to the situation that exists if an agency uncovers a fraud, particularly a fraud within its own agency, if it is not a very significant fraud one response may be, as Ms Blackburn suggested, to undertake disciplinary processes under the Public Service Act and to put in place corrective procedures to stop it occurring again. It does not automatically have to go to the AFP. That depends on the significance of the matter. If it is a very minor matter, the AFP would probably not be able to fit it into its work program because of its other procedures.

Senator LUDWIG—They would case manage it, prioritise it and it would probably not make it if it was a minor matter. I am aware of that. We have asked those more general questions before, but it is helpful to clarify it for the record so it does not appear that all matters would of necessity be referred to the AFP. What was troubling me more in that area was that this, while not going to the substance of it, surrounds the AWB matter and highlights some of the difficulties that have now been thrown up by shining a light on the AWB and on the course of actions that have occurred. The Wheat Export Authority have been drawn in; there have been allegations of foreign bribery across a range of entities, both Commonwealth and private.

The private organisations would be dealt with by the criminal justice system. There are also a number of oversighting bodies that will deal with them, such as APRA and ASIC. You will then have follow-up work by the AFP if there was a criminal offence. Tax usually has an interest if there is a tax issue involved in foreign bribery. But then you come back to Commonwealth statutory authorities or Commonwealth agencies. In the private arena, an auditor would have auditing responsibilities to notify that this has occurred and they would then have to demonstrate that they are properly dealing with their auditing functions and notifying the relevant authorities. If they are not and if their green pen was anywhere near it and they should have known or had constructive knowledge of it, they would then subsequently suffer the consequences when that is found.

In the Commonwealth area, I am not that familiar with what happens. You have auditors; you have a range of people who would by necessity trawl through this and who might become aware of foreign bribery issues more specifically. But there does not seem to be a whole-of-government or other way of coordinating it so that people who have an interest in knowing it is occurring find out about it and are able to deal with it and refer it to the relevant authorities—for example, if it meets the necessary threshold for the AFP having an interest in it.

That is the thing that has been exercising my mind. You can see I have struggled with it but, unfortunately, it still has not gone away. That is the problem that I now perceive. I think you have answered it in part, but I am not convinced I have been provided with a more complete answer of what does happen. I suspect it is not your fault. Maybe the answer is that

it does fall between the cracks. That is what I am trying to eliminate. If you can convince me that it does not, I will feel a bit more confident about it but, at this point in time, I feel that, if it is a Commonwealth agency, there is the potential for it to fall between the cracks. If it is a private auditing company dealing with a government entity or a statutory authority, it also seems to be an issue which could fall between the cracks. I know that was a long point.

Mr Cornall—I am not quite sure what the question is.

Senator LUDWIG—No. That is the point, I think.

CHAIR—Perhaps we could all just examine the *Hansard* later.

Senator LUDWIG—I am sure there was a question there.

CHAIR—No, I do not think there was. I was listening carefully.

Senator LUDWIG—Perhaps if I raise the inflection at the end. That sometimes convinces people that there is a question.

CHAIR—It will not make sound and vision put in a question mark though.

Senator LUDWIG—The question coming from that is: what do you have in place to ensure that instances of foreign bribery within the Commonwealth agencies and statutory authorities are able to be detected, investigated and referred to the relevant authorities, other than convincing me that it is the CEO's responsibility? Quite frankly, we have done that with legal services, and you have been changing that as we have been here for the last couple of years because I think that was inadequate. That is my word for it. You can correct me if you want.

Ms Blackburn—Perhaps you could draw the issues together. Certainly, from the perspective of this portfolio, there are the fraud control guidelines and the head of agency responsibilities. There is also the APS code of conduct, which governs the activities of all public servants, who are obviously obliged, if they uncover in the course of performing their duties activities which are in contravention of either the code or the law, to take appropriate measures to report those at least within their own organisation. On the foreign bribery side of things, there is a range of activity that has been undertaken for the purpose of increasing awareness, particularly within staff in relevant departments, of their requirements of the foreign bribery offences. There has also been awareness-raising activity undertaken in the corporate sector to raise awareness of the existence of those offences and the responses that might be made to them.

Mr Cornall—There is also internal audit, which I do not think we have mentioned yet.

Senator LUDWIG—The internal audit and ANAO would also deal with it but, as you would appreciate, they deal with it more on a greater scale. We are talking about how it can start with low-level foreign bribery and, if it is committed in overseas jurisdictions, it is harder to detect. It may not even be matters that the ANAO necessarily traverses. It is no fault of theirs. Sometimes it is an issue where it is about facilitation, as we now know, for payments overseas.

Mr Cornall—I was thinking about internal audit. The sort of work they do in our department is quite detailed and at an operational level and can produce some very specific

reports about the way in which certain activities are undertaken, suggestions for improvement and so on.

Senator LUDWIG—Is money laundering within your area?

Ms Blackburn—Yes.

Senator LUDWIG—There is a lot within your area, isn't there?

Ms Blackburn—There is indeed.

Senator Ellison—It is a very busy area. Very hardworking.

Senator LUDWIG—It is. I am trying to get across it as much as I can. There was an article—we get a lot of these articles—

Ms Blackburn—Perhaps we could restrict your newspaper suppliers.

CHAIR—I think we should make it a rule that you cannot ask questions about newspaper articles at estimates and see how brief that became.

Senator LUDWIG—I would go back to the PBS.

CHAIR—We would finish at four o'clock every day.

Senator LUDWIG—No, we would not; we would go back to the PBS. Let me tell you: it is a dry place there.

CHAIR—I regard them as quite enlightening, really. Anyway, go on. Which article now? Has Ms Blackburn got the article?

Senator LUDWIG—I hope she does.

CHAIR—She does.

Senator LUDWIG—It was 30 April 2006. It says, 'Cave-in on crime cash laws.' The difficulty is that it is a complex area, as you can appreciate. Are the cash dealer services intended to be cut from the money-laundering regime? A range of allegations have been made in that article; I know some of them have a long bow to them but others seem a little sharper.

Ms Blackburn—I must confess the particular article you refer to causes some confusion because it seems to be referring to the security clearance of staff carrying out background checks on clients. To the extent that the article claims what will be the outcome of the current reconsideration of the AML exposure draft bill and the rules which underpin it, it is speculation. As you know, the exposure draft bill was put out for comment. The public comment period has closed. The exposure draft is being reviewed in light of the very extensive comments that were received. Similarly, the AML rules, which will also be part of the package, are still under construction.

Senator LUDWIG—The last time we visited this—I think Mr Gray was there—we were formed in another process. It was a committee and there were some parties seeking an extension of the reporting date. I think I saw a report suggesting that had been extended. What is the new date for the final submissions or information on the exposure draft?

Ms Blackburn—My understanding is that the period for comment on the exposure draft bill has closed. It was extended in accordance with requests. My recollection is that the original date was somewhere around 13 April.

Senator LUDWIG—That was when it was extended.

Ms Blackburn—My recollection is that it was extended to the end of April.

Senator LUDWIG—I thought I had a May date.

Ms Blackburn—Let us do some clarifying. The exposure draft bill went out. We had a period for comments and consultation. We are presently reviewing the exposure draft bill in light of the in excess of 100 submissions which were received and, of course, the report presented by this committee. The proposal is that the bill will be revised. The AML rules will be prepared in draft form. They are currently being prepared in consultation with industry. The entire package will be released again for a further consultation period.

Senator LUDWIG—When was the extension? Are we sure on that date? Has it closed now?

Ms Blackburn—It has. The initial consultation period closed on 13 April.

Senator LUDWIG—Yes, but the extension for other submitters was to April-May, I thought. Has that now closed? It is the second closure, I guess we would call it—the closure of the extension?

Ms Blackburn—The first period for comments on the exposure draft bill has closed, but to say that it is closed and the matter is now being worked on exclusively in government would be a misconception. We have been involved in a continuing process of discussion with industry through both working groups and focus groups on the details of the rules. I am sorry; I am not stuck on the consultation period on the exposure draft bill having closed, because we have been and continue to be in ongoing consultation with industry on the details of these draft rules and on the provisions of the bill.

Senator LUDWIG—So we have the exposure draft at the moment. Are there rules and guidelines?

Ms Blackburn—No; we are preparing rules. Also, in response to the comments received in the first process, the exposure draft bill is being redrafted.

Senator LUDWIG—Do you have a date that you are working to to release the second exposure draft or the redrafted draft?

Ms Blackburn—We are working at the moment towards the release of a revised exposure draft bill and a full set of program rules in June 2006.

Senator LUDWIG—It is going to be a busy couple of weeks. My recollection is that there was significant criticism that parties did not have the rules under which to work. When you say a full set of rules, is that within all the relevant areas? Are you able to list those areas?

Ms Blackburn—That is our expectation. That is what we have been working on now for several weeks. We are, in fact, drafting the rules in committee with industry.

Senator LUDWIG—How many rule sets will there be?

Ms Blackburn—I will take that on notice. There are four or five that we are working on at the moment.

Mr Gray—There is some difficulty in being precise, because the program rules now incorporate some additional rules. The company identification rules that we are working on are part of the program rules. There are going to be, as I understand it now, program rules, correspondent banking rules and three or four others, so we are looking at five or six, but it is still, despite the late hour, very difficult to say how many precise sets of rules there will be. Industry's preference was to have a single document, a single set of rules, which covered everything, so we have put a fair bit of work into seeing whether that can be done. I do not think we can get everything into one document. It is fair to say that we are now in the position of looking at five or six sets of rules, but in between now and the finalisation of the package you might find that some of the other rules get absorbed back into the larger document. It is very much still an iterative process.

Senator LUDWIG—I think that is where we left you last time.

Mr Gray—That is the nature of the beast.

Ms Blackburn—It is a continuing and iterative engagement.

Senator Ellison—It is fair to say that industry has endorsed the course of action we have taken. The stakeholders have indicated that they think this is a suitable approach for getting an outcome that will work. We cannot have an outcome that will work without the cooperation of the private sector—the non-government sector.

Senator LUDWIG—Are there areas that are not going to be progressed? That article seemed to indicate that some of those areas may not be progressed.

Ms Blackburn—As you know, the—

Senator LUDWIG—It has been split into two tranches, so I know that there is a first and second tranche, but within the first tranche are there matters that were in the exposure draft which are now not going to be proceeded with?

Ms Blackburn—Not that I am aware of, no.

Senator Ellison—No.

Senator LUDWIG—Are trust accounting and trade credit going to be dealt with?

Ms Blackburn—Yes.

Senator LUDWIG—It is not going to be removed?

Ms Blackburn—Can we take that question on notice, because there have been long discussions about what trade credit exactly is, whether it was ever intended to be included and how it might be covered.

Senator LUDWIG—I know that. It was not a trick question; I was surprised by your quick answer.

Ms Blackburn—To the extent that your question relates to what the current provisions in the draft bill are on trade credits, I have to take that question on notice.

Senator Ellison—In relation to the original question about whether anything is being taken out of the first tranche to put into the second tranche, that is not being done.

Ms Blackburn—The issue of trade credits is a definitional one. It is about how you apply it within the structure of the bill, as it is presently constructed, to deal with designated services.

Senator LUDWIG—It can have the effect of doing just that. How it applies depends on the definition.

Ms Blackburn—It does. In drafting this bill we constantly have to revert to the FATF recommendations and the definitions that they have of the services and service providers which are expected to be covered. As senators are aware, the first tranche of the approach that is being taken concerns the financial sector. There is clearly an area of activity that has some definitional problems with whether it falls within the first tranche of financial services or whether it would better be dealt with in the second one.

Senator LUDWIG—That is the difficulty: depending on how you define it, it might fall into the second tranche.

Mr Gray—The other point that might be feeding articles like this is that a lot of the submissions that we have received and that have been taken into account are pointing out unintended consequences. A particular entity will say, 'You've caught us. Did you intend to?' When you look at it, you say, 'No,' so you have to redefine it. A lot of the redrafting and redefinition is that sort of work. So, yes, some people might look at the initial scope of the legislation and say, 'You have narrowed it down,' but for the most part our response to that will be: 'No, we've taken out things which were not mean to be captured.' It is very difficult to give a black-and-white answer to the sorts of questions that you are asking.

Senator LUDWIG—What about casinos? Will they be in the first or second tranche?

Mr Gray—The first tranche.

Senator LUDWIG—How will they be dealt with? Will they have to do 'know your customer' and due diligence?

Mr Gray—Yes. They will have the obligations that come under the bill in the first tranche. The reason they are caught by the first tranche, even though they are not, strictly speaking, the financial sector, is that they were covered by the Financial Transaction Reports Act, so they have always been regulated. It is not much of a leap to bring them under the new regime, as it is to go to entities which have not formally been regulated.

Senator LUDWIG—Will casinos then have to know every customer and have to perform due diligence on everyone who walks through the door?

Ms Blackburn—The precise application of the rules to any individual business will depend upon the final terms of both the bill and the rules which underpin it. They are still under construction.

Senator LUDWIG—What about racetracks, on-course betting and bookmakers and the like? Are they in the first tranche or the second tranche?

Mr Gray—They are in the first tranche.

Senator LUDWIG—Have they been consulted as well?

Mr Gray—Yes. Hopefully, everyone who is affected by the first tranche has been consulted. As I said, some entities who have not been consulted have come forward and, for the most part, it has been because of unintended consequences. Where entities have come forward who will be caught by the first tranche and have not previously been consulted they have been brought into the tent.

Senator LUDWIG—We think we have everybody by now?

Mr Gray—I would never make that prediction, but there is provision in the bill, as you are probably aware, to do two things. The first thing is that there is provision for exemption, so if there are unintended consequences then they can be dealt with by exempting the service. There will also be the ability in the redrafted provision to give greater flexibility to add in things. That is not to bring in totally new services, but if we find that somebody has been able to structure in a way which takes them out of the strict interpretation of an item there will be provision to amend the item without having to go back to parliament and go through the legislative process.

Senator LUDWIG—Will you do that by regulation?

Mr Gray—We will do it under the rules, which will be statutory instruments; they will have the same status. The mechanism that underpins the legislation is the rules made by AUSTRAC in consultation with industry.

Senator LUDWIG—Will they be disallowable instruments?

Mr Gray—Yes, certainly.

Senator LUDWIG—So they will be effectively delegated legislation.

Mr Gray—They will be legislative instruments.

Senator LUDWIG—Will they have to meet the delegated legislation requirements?

Ms Blackburn—They will have to comply with the Legislative Instruments Act. They will be legislative instruments.

Senator LUDWIG—But we will call them rules?

Ms Blackburn—No, the distinction is usually by reference to whether they are required to be made by the Governor-General or can be made by the minister or an agency.

Senator LUDWIG—And this will be the latter? They will be able to be made by the agency?

Ms Blackburn—It is in their current exposure draft bill, yes.

Mr Gray—That is right.

Senator LUDWIG—What other entities are there? There are casinos, bookies, on course betting and totalisator agencies. Is it also entities abroad?

Mr Gray—It does not define entities. The old approach in the Financial Transaction Reports Act was to list entities by type of entity. The approach here is to list by type of

transaction. So gambling services is listed. Any entity that provides gambling services within the definition is caught, however they describe themselves.

Senator LUDWIG—And the definition is currently in the exposure draft?

Mr Gray—Yes, in table 6. There is a schedule of tables in table 6. If you want to find if you are a reporting entity you go to the table and see if you are providing those sorts of services. If you are then you are a reporting entity unless there is an exemption.

Senator LUDWIG—Is that table 6 currently in the exposure draft?

Mr Gray—Yes.

Senator LUDWIG—Is it out there on the web?

Mr Gray—That is right. Actually, there is a table in section 6, to be strictly accurate. My apologies for that.

Senator LUDWIG—I have read them a couple of times but not in the last week or two. I was trying to wait for the extradition one and the mutual assistance one. There is an article I want to ask about. I know it will get me into trouble. It is one of those areas. It seems that we come up with some issues that are occasionally put out into the public arena. The question is really to do with concerns about the terrorism bill and the like, and the impact in some of these areas. It seems that articles like this—and I do not know the veracity of it—certainly raise issues that really require addressing. If these are what the views of people are then it really requires at least a response from the Attorney-General about whether there is any veracity or underlying truth in some of these articles.

Ms Blackburn—I am sorry, I have not understood the question that you are asking me.

Senator Ellison—Is this the article entitled, ‘No delay of terrorist financing law’?

Senator LUDWIG—Yes.

Senator Ellison—That was back in March. We extended the date, as I recall it.

Senator LUDWIG—Yes.

Senator Ellison—So what is the problem?

Senator LUDWIG—What date was it extended to?

Mr Gray—The 13 April date was not extended. There were a lot of representations for an extension of the exposure period. The decision was made by the minister that, rather than extend it and just go on, what we would do is call a halt to the consultation period. There will be a period of drafting, which we are now in, and then there will be a second consultation period on the redrafted document, which will be three weeks.

Senator LUDWIG—I see. I misunderstood—

Ms Blackburn—It was the same thing that we were explaining earlier.

Senator LUDWIG—I just wanted to try again because I misunderstood what you said, Ms Blackburn. My understanding was that there was a date.

Ms Blackburn—Yes, there was.

Senator LUDWIG—Mr Gray has now made it patently clear. It probably says a lot about me rather than you, Ms Blackburn.

Ms Blackburn—No, perhaps I will just let Mr Gray do estimates for me in the future!

Mr Gray—Thank you.

Senator LUDWIG—I now follow. In fact, you were referring to why we could not fixate on a date.

Ms Blackburn—Find a date, yes. Thank you.

Senator LUDWIG—You may have grasped by now that I tend to get fixated on a date. I need that information so that I can hold the minister to account, you see. So if you are resisting me finding a date then I usually try to find one eventually.

Ms Blackburn—We were trying to find one for you as well.

Senator LUDWIG—I know. And the minister does not mind dates sometimes, in terms of making sure that he has got one to turn it on. There is no indication of when the second tranche is going to be brought forward—or is that now changed? At the time of the exposure draft and I think the information that I have read, there was no indication from the Attorney-General's Department about when the second tranche is likely to be released for an exposure draft or in fact developed. Is that still the case?

Ms Blackburn—That is the case. There is no timetable for the second tranche.

Senator LUDWIG—Is there any indication of when a date is likely to be set?

Ms Blackburn—No. All of our energies at the moment are focused on the first tranche.

Senator LUDWIG—Minister, are you aiming for a particular date when the legislation—that is, the first tranche—is likely to be brought to parliament?

Senator Ellison—I have just indicated a desire to have it through by the end of the year.

Senator LUDWIG—Is there any analysis for after this exposure draft, plus existing laws, when the 40 plus nine still remain either partially incomplete or incomplete?

Ms Blackburn—When we finalise the bill for introduction, along with the rules, it would be possible at that point in time for Australia to make its own assessment of what changes, in its view, would be made to our FATF assessment in the light of that. That work has not been done at this point, simply because we have not finished preparing the legislation yet.

Senator LUDWIG—Should we come back at that point in time? It will most likely come back to this committee, or alternatively it will be in parliament.

Ms Blackburn—It is a document that we fully expected to have to prepare for the purposes of the introduction of and debate on the bill.

Senator LUDWIG—When is the next OECD report due in respect of the FATF 40 plus nine recommendations, as the country being assessed?

Ms Blackburn—A report about Australia?

Senator LUDWIG—Yes.

Ms Blackburn—Australia's third round mutual evaluation is complete. There are no further scheduled rounds of evaluation by the FATF. The FATF has a series of rules which it applies to follow up action for countries which have been subject to mutual evaluation. In accordance with those rules, Australia will be required to present a progress report on its response to the mutual evaluation in October 2006.

Senator LUDWIG—Will that be public, or will that be provided to FATF?

Ms Blackburn—No, it would be a confidential report to the FATF. Then it would be a decision for the FATF as to what is published. The FATF as an organisation divides its meetings very much into confidential items, which are open for participation by members only, and items which are open for a broader range of participation. It publishes a wide range of documents, as you know. The mutual evaluation report itself was published. At this stage, I would expect Australia's progress report to be published, if not in full, at least in part.

Senator LUDWIG—I will come back to it in October, then. That is probably best.

Ms Blackburn—I will look forward to that.

Senator LUDWIG—Are the submissions that were provided—I think either Mr Gray or you, Ms Blackburn, indicated there were 100—available to the committee or are they going to be put up on the website?

Mr Gray—Those that are not confidential are on the web page.

Senator LUDWIG—So they are all there?

Mr Gray—Yes.

Senator LUDWIG—You also mentioned that there were some entities that had come forward. Which entities were they?

Ms Blackburn—Sorry, come forward from where?

Senator LUDWIG—That have not been identified in the first round of the consultative processes. They have put their hands up, for argument's sake, and said, 'We don't know whether we were caught or not caught. We discovered that we are caught. We don't know anything about this. Can you tell us what we have to do?' They obviously brought forward a submission about their view. That is the type.

Ms Blackburn—We have been consulting with industry on the FATF recommendations and their implementation since at least 2001. That consultation has developed from developing lists of peak bodies, individual companies and other people and organisations that might have an interest. Several years down the track, we now have a fairly well developed list of contacts which are designed to put us in touch, if not with individual businesses directly, with all of the people who may be affected by it through their various industries and represented organisations. I am reluctant to take a question to go back and, through various stages of process, identify those who we made direct contact with and then identify those who, as a result of that activity, found us and came and consulted with us, even though we may not gone directly to them.

Senator LUDWIG—What about just since the closing date, 13 April?

Ms Blackburn—I can certainly take on notice the question of organisations which have made contact with us since 13 April.

Senator LUDWIG—Thank you, if you would not mind. There were other concerns that were raised in an article. I do not need the article to go to it. Is it correct to say that casinos will be exempt from background checks and the like, or will all entities be required to have background checks and security checks?

Mr Gray—Checks of the staff or of the entity itself?

Senator LUDWIG—Both.

Ms Blackburn—Background checking of staff would be a matter regulated by state based legislation that regulates the operations of casinos.

Senator LUDWIG—What about the entities themselves?

Mr Gray—Casinos are not in a unique position; there are other entities in a similar position. They have such a high level of regulation already and they have made representations saying, ‘We’ve got all of these obligations and requirements; surely we don’t have to do it again?’ The answer to that is, ‘No. This process of having AML programs and obligations should not supplant stuff which is already being done.’ A casino will be required to have employee screening programs, but that may simply be that they will implement their obligations under existing laws. The casinos are an example of several entities which have raised the point, ‘Look at the level of regulation; we are already doing everything you want us to do.’ The answer to that is, ‘Great. Go on doing it, but that does not mean that you are going to be exempted from the bill. You’ll still have obligations.’ That is the general approach which has been taken.

Senator LUDWIG—The bill will still require all those obligations to be met notwithstanding that they are met elsewhere in other legislation, be they state entities or other federal bodies.

Mr Gray—That is right. The ideal system, from the point of view of AML, is that an entity is doing everything that we want it to do as part of its normal management operations and does not have to do a single extra thing. I do not think too many entities would be in that ideal position. If an entity is in that ideal position then that is excellent, but that does not mean they get an exemption from the bill—that simply means they are complying with their obligations by doing that which they are already doing.

Senator LUDWIG—Has the government decided to run a public education program—that is, not one specifically designed at industry but at the public more broadly? And if so, is there money set aside in the budget for that?

Ms Blackburn—There are two parts to that question. There is funding in the 2006-07 budget of \$1 million for an information campaign to be run, looking specifically at targeted education and awareness campaigns for reporting indices and industry bodies, and public education programs for members of the public. The details of what might be in those campaigns and how they might be done have not yet been developed since, in part, they depend upon the content of the legislation and also its timing. The minister has indicated his preferred timing for the consideration of the bill by the parliament. There is also the issue of

when the legislation will be brought into effect. So the timing of education and awareness campaigns and public education programs is, at the moment, a little unclear, since you would be looking to do those when the legislation comes into operation, or around that time.

Senator LUDWIG—So I should wait to ask questions such as whether you have chosen an advertising agency, contracts, and all of those?

Ms Blackburn—The funding provided in the current budget is \$1 million for the 2006-07 financial year. That \$1 million is for the purpose, obviously, of exploring these issues, and taking them as far as you can with a million dollars.

Senator LUDWIG—Has any decision been made as to whether it will be directed at the public or at business? There are a number of target audiences.

Ms Blackburn—There are a number of target audiences. I commented earlier that our current thinking is that you will need both. In terms of working with reporting entities and industry bodies, obviously you would be looking for the regulator, AUSTRAC, to be participating in that activity. As I said, the need for, and the format of, any general public education program is under consideration.

Senator LUDWIG—Has any decision been made—and I suspect this might be a matter for you, Minister—on when business is required to be compliant with the first tranche of the legislation? I take it that the regulator will have a role in that, but there was some suggestion, I think, earlier that you were going to give them 12 months. Is that still the case?

Senator Ellison—Twelve months has been bandied around. There are sections of industry which have said three years. I have said, 'No, that's too long'. Twelve months is what we have been talking about. Industry has said, 'Let's see the whole package and then we'll have a better chance to assess a time frame more realistically.' That is where it is up to. But we have our eye on some other things first, before we finalise that.

Senator LUDWIG—I am concerned, Minister, that we do not get into a position and a CMR where we end up with an unrealistic timetable for a system that is not ready to be implemented. I know industry said three years and I know 12 months has been bandied about, but I am interested in getting to a position where industry can meet its obligations in a reasonable time and work with the regulator, AUSTRAC.

Senator Ellison—I think if we embark upon the program that we have mentioned in the way we have, and we keep on, when you look at the legislation going through the parliament by the end of the year, just the mere process of exposure bills and looking at the final bill, the time that we have been working on it, then I think it makes 12 months realistic. It may be that a little extra time has to be given beyond that, but I certainly cannot see it being three years. I am confident of that. The feedback from industry is that they think the way we are going is the right way. We have listened to industry and we will do so further.

Senator LUDWIG—Mr Gray, you might be able to remind me whether or not this has been resolved. ASIC had some concern about the counter-terrorism laws overriding some of their ability to be able to work in this area to ensure that ASIC receives the reports that are available. There was an article about it in the *Australian Financial Review*, but it was also a matter that was raised during the committee process. The concern is about whether the full

suite of proposed counter-terrorism financing and AML measures cut across the ability of ASIC to do its job in terms of reporting and obtaining relevant information—in other words, that there should be no restriction on suspicious matters being reported to ASIC once the bill on anti-money laundering is finalised.

Mr Gray—This is not something I recollect having heard in the context of ASIC—

Senator LUDWIG—It may not have been mooted yet.

Mr Gray—but it certainly is an issue which has been raised by other bodies. I can take that and I can make sure that it is covered in the discussions that we are having, because one of the things that we are looking at at the moment is the secrecy provisions—the tipping-off offence which is in the draft bill. The concern that has been raised in a number of areas within industry and from non-industry sectors is that that will prevent entities from doing that which they should normally do, which is to report suspicions. We certainly do not want, under this legislation, to prevent people doing the right thing when they come across an incident on which they should take action. I have not heard that raised in the context of ASIC, but it is something that I can raise with my people and we can pursue it to make sure that there is not an issue there.

Senator LUDWIG—The difficulty with the tipping-off offence is that it may in fact stymie or trouble ASIC, because they cannot then get reports on suspicious activities from various entities that might report to them so they can investigate company behaviour, because it would then be a tipping-off offence.

Mr Gray—I understand the issue, and I have not heard it raised in the context of ASIC. I really would not want to say too much more about it without looking at the bill and working through it. I give an assurance that I will raise it with the drafter. We are having another drafting meeting tomorrow at nine o'clock. I can certainly ask the drafter to go back and have a look at the tipping-off offence.

Senator LUDWIG—Did the Privacy Commissioner end up with the role of doing a privacy impact assessment of the legislation?

Mr Gray—I do not think we are looking at the Privacy Commissioner to do that. We have to do one and we will do one, and that commitment has been given. My understanding of the current thinking—and perhaps we need to discuss this with the Privacy Commissioner—is that we would do that through a consultant rather than through the Privacy Commissioner.

Senator LUDWIG—Is there a reason why you would use a consultant rather than the Privacy Commissioner?

Mr Gray—I was not aware that this was something that the Privacy Commissioner did. If the Privacy Commissioner wants to do it and is prepared and able to do it, I do not see any objection to that.

Senator LUDWIG—Yes, but it is something that can be—

Mr Gray—It can certainly be raised with the commissioner. What we have at the moment—

Senator LUDWIG—dealt with outside the Privacy Commissioner—in other words a privacy impact statement which the Privacy Commissioner might require to be done but which he or she may not want to do.

Mr Gray—My understanding is that the commissioner would not actually do it.

Senator Ellison—It is the commissioner's call.

Mr Gray—Yes.

Senator LUDWIG—It depends on how well you have funded them and their range of activities, I guess, at the time.

Senator Ellison—I think we would have to pay for it.

Senator LUDWIG—Yes. There were a couple of articles floating around. Is gun control in your area?

Ms Blackburn—Yes, it is.

Senator LUDWIG—There is no end, is there?

Ms Blackburn—It is not looking like it.

CHAIR—I promise you there is an end, and it comes in about one hour and 10 minutes.

Senator LUDWIG—There is always tomorrow. We can come back to it through the AFP. There were some reports—I will not go into them specifically; I am sure you are aware of them—about reopening the issue of gun control. Is any current work being conducted by the Attorney-General's Department or your section in relation to updating or changing the gun control legislation that is currently in place?

Ms Blackburn—That is quite a difficult question to answer. Firstly, the gun control legislation, to use that generic term, is state and territory legislation and there are a range of activities undertaken by states and territories in relation to their firearms control legislation. Similarly, there is the Firearms Policy Working Group, which has the specific task of continually reviewing firearms control legislation as particular issues arise, as new research comes to light or as new issues are identified. If your question is: 'Is the Commonwealth currently undertaking any specific activities in relation to the general system of regulation of firearms?' the answer is no. We have a range of work dealing with a range of different aspects of firearms control which the Commonwealth is participating in.

Senator LUDWIG—Are there any proposals currently before you that seek significant agreement among the states to make amendments to the present gun control legislation in Australia?

Ms Blackburn—Not in the form that I assume you are referring to, that is, arrangements such as the 1996 firearms buyback and the 2002 hand gun buyback. There are no current proposals that the Attorney-General's Department is working on of that nature—of significant and wholesale review of firearms laws.

Senator LUDWIG—If I wanted to understand this area a little more, is it better to ask for a separate brief, Minister? I would like to understand where we are up to with those working

groups and the like. Or are you able to put out an outline on who is currently working in what area? In other words, how the Firearms Policy Working Group is going.

Ms Blackburn—The Firearms Policy Working Group is a group which is established by the Australasian Police Ministers Council and which reports to the Police Ministers Council. We can certainly provide you with a brief on the range of particular issues that that working group is currently considering.

Senator LUDWIG—That would be helpful. What is the process from there? I assume that it makes recommendations to the Police Ministers Council.

Senator Ellison—That is right.

Ms Blackburn—The Firearms Policy Working Group will usually prepare recommendations that are then often considered by the senior officers group, which is the officials group supporting the Police Ministers Council. Particular specific recommendations go to the council for consideration. Implementation of most of the work that comes out of that work is a matter for state and territory laws.

Senator LUDWIG—It would be helpful if you could provide that brief.

Ms Blackburn—We can provide that.

Senator LUDWIG—Thank you. Is the OECD bribery report in your area, as well?

Ms Blackburn—Yes, it is.

Senator LUDWIG—We will get a no eventually and then we will move on to 2.1 before 11 o'clock—I hope. Can you confirm that no company or individual has yet been charged with the bribery of a foreign public official under section 70.2 of the Commonwealth Criminal Code as per section 25 of the OECD report?

Ms Blackburn—At the time the report was published that was an accurate statement.

Senator LUDWIG—Has that subsequently changed?

Ms Blackburn—I will take that on notice. I am not aware that it has changed, but it is not something I have checked on with the DPP in preparation for this hearing.

Senator LUDWIG—Is the Attorney-General's Department reviewing the legislation or preparing any new legislation or amendments to this section at the moment?

Ms Blackburn—As you might be aware, the OECD report contained a range of comments and recommendations in relation to Australia's compliance with the foreign bribery convention. Those recommendations are currently the subject of consideration within the department for the purposes of government consideration of what action it may take. You would of course be aware that the recommendations cover a range of responsibilities which span beyond the Attorney-General's Department and, indeed, beyond the Attorney-General's portfolio. If your specific question was whether the department is presently considering legislative amendments to the foreign bribery offences, the answer to that question at this point in time is no.

Senator LUDWIG—As you indicated, the recommendations from the OECD report are currently being looked at—my words. Is that by a working group within the department or

section or is that by an interdepartmental group? You indicated there are other agencies that have an interest.

Ms Blackburn—An interdepartmental committee was convened for the purposes of, first of all, providing the extensive information in response to the questionnaire that is required by the OECD, then participating in the on-site visit and then participating in the preparation and presentation of the phase 2 report. That IDC is a body that we will use to then take forward the consideration of responses and actions to be taken on the recommendations.

Senator LUDWIG—Does it have a name or acronym?

Ms Blackburn—I think it is called the IDC on corruption.

Senator LUDWIG—Will it report to you or the minister on its recommendations or outcome, and is there a timetable?

Ms Blackburn—The IDC is simply a method of convening in one place all of the officials from relevant agencies for the purposes of the consideration of the recommendations. I would not envisage the IDC itself producing any report as an IDC. What we need to get out of any of these processes are decisions as to whether any action will be taken and, if so, what action. At this stage, given the nature of the recommendations and the portfolios involved, that may well be something that, from the IDC, will be dealt with bilaterally by an agency with its own minister for consideration as to whether they will take it forward within that portfolio. The IDC will, however, be very useful for pulling together the progress report which Australia has to present on its response to this second mutual evaluation. That progress report is also due in October 2006.

Senator LUDWIG—I thought that, and that was my next question. So that will be finalised before October, I guess. Will that be publicly available?

Ms Blackburn—No. We are required under the rules of this particular convention and the working group on bribery, which is the responsible OECD body, to provide an oral progress report in October 2006. We are required to provide a written progress report in October 2007.

Senator LUDWIG—Will the report due in October 2007 be a public document?

Ms Blackburn—I would expect it to be, yes.

Senator LUDWIG—How do you do it orally? Do you fly over, do they come here or do you get on the phone?

Ms Blackburn—The OECD working group on bribery meets five times a year. On each occasion, it meets for two to three days in Paris. For the October 2006 meeting, the Attorney-General's Department will be attending that meeting for the purposes of presenting the oral progress report and also because we are one of the evaluating countries for the phase 2 review of New Zealand which is under way at the present.

Senator LUDWIG—Will there be transcripts of the oral presentation?

Ms Blackburn—No, there are no transcript records of the meetings of the working group. The working group produces papers. The working group produces a record of its meetings. They are not transcripts.

Senator LUDWIG—Item 33 in the OECD report said that the Attorney-General's Department is reviewing the guidance document. What is the status of that review and relaunch? That is the pamphlet.

Ms Blackburn—The guidance document on foreign bribery offences?

Senator LUDWIG—Yes.

Ms Blackburn—Was your question that we have said we would review it? Or is it the recommendation that we should?

Senator LUDWIG—In item 33 in the OECD report, the Attorney-General's Department says it is reviewing the guidance document. The way I read it was that it was under active review.

Ms Blackburn—My recollection is that we did review it because there were a couple of minor issues that needed to be addressed. My recollection is that review was completed.

Mr Gray—That was done while it was still with me. The pamphlet has been reissued with the amendments made. It was done fairly shortly after the review ended.

Senator LUDWIG—And the website was then updated with the revised document?

Ms Blackburn—I sincerely hope the document on the website is the current version. I will check that tomorrow morning.

Senator LUDWIG—I will not check it now; I will leave it with you. Is that an internal cost? In other words, the IDG, the review of the document, those matters: were they done internally?

Ms Blackburn—The review of the pamphlet?

Senator LUDWIG—Yes, and those sorts of things.

Ms Blackburn—That is all part of our core business work.

Senator LUDWIG—The OECD report, at item 38, mentions the Attorney-General's Department conducted an OECD foreign bribery public awareness campaign, which it followed up with a survey among the top 100 Australian companies to inquire on action taken within these corporations to raise awareness. Did you receive a response from the Australian Wheat Board? Were they one of the surveyed companies?

Ms Blackburn—We did not conduct that survey.

Senator LUDWIG—Who did? The OECD report, at item 38, mentions that the Attorney-General's Department conducted an OECD foreign bribery public awareness campaign. Have I read that wrong?

Ms Blackburn—Yes, you are right; we did do that. It was part of the work we were doing on public awareness. We will take your question as to whether or not we received a response to that survey from the Wheat Board on notice.

Senator LUDWIG—And if you did receive a response, can you provide it to the committee? I understand you will take that on notice as well.

Ms Blackburn—I will take on notice whether or not I can provide any response, if it was provided, to the committee.

Senator LUDWIG—Thank you. Does dual criminality apply to the foreign bribery offences as per item 140 of the OECD report? Is there a requirement for that?

Ms Blackburn—The dual criminality issue usually arises in the context of international legal cooperation.

Senator LUDWIG—Yes. I could not quite fathom that comment, which is why I thought I would ask.

Mr Gray—The issue relates to the offences in the Criminal Code. The Australian offences require dual criminality, and there is a defence if the conduct is not an offence in the relevant foreign country. That is in accordance with the convention. It is not the issue that they are getting to there. The issue they had was slightly more subtle. The way the Australian provisions work is it has to be an offence in the foreign country, and they have said that is wider than the convention because it should be enough if the conduct it is unlawful in the foreign country.

Senator LUDWIG—It is even subtler than I thought.

Mr Gray—It could be that the foreign country have said the conduct is unlawful but they have civil penalties or some other regime. We submitted to the evaluators that the Australian law had that effect anyway. But the easiest thing is to make the amendment. I think the point can be addressed and will be addressed, subject to decisions being made at an appropriate juncture.

Senator LUDWIG—That will go to the interdepartmental working group as one of the issues that may need to be looked at.

Mr Gray—That is right.

Ms Blackburn—It will, but, as I said, the recommendations fall into groups which are specific to agencies. So the Attorney-General's Department will, quite independently of any IDC process, look at what is possible on all proposed responses to the recommendations specific to our responsibilities.

Senator LUDWIG—In the OECD foreign bribery public awareness campaign there was a follow-up survey. How many corporations indicated that they had reported an incident of foreign bribery of public officials through one of its offices? Have you collated any of that information?

Ms Blackburn—I will take that question on notice.

Senator LUDWIG—If you have, could you make it available to the committee? You might be able to present that data in terms of the responses, the range of matters or incidents that they have indicated and which countries were involved? It depends on what the survey has got. The reason I am broadening it is so that I do not miss anything, as you would appreciate.

Ms Blackburn—We will take on notice your interest in the survey and provide the information we can about that.

Senator LUDWIG—Is trafficking in persons still within output 2.1?

Ms Blackburn—Yes.

Senator LUDWIG—To date, there has been a number of prosecutions, as I understand it, by the AFP, in joint operations between the AFP and the ACC. Have they been finalised? What I am trying to understand is how many prosecutions have been finalised. Is that a matter about which I should ask the DPP?

Ms Blackburn—I have some information on that here.

Senator Ellison—It is something that the AFP has a good brief on.

Ms Blackburn—The information that I have available is that there are currently five matters before the courts. The CDPP is prosecuting four matters involving 12 people for sexual servitude, sexual slavery and deceptive recruiting offences. The fifth matter involves two defendants and is an alleged slavery offence. Those matters are being conducted in Victoria, New South Wales and Queensland and are ongoing.

Senator LUDWIG—Have we signed the relevant UN protocol?

Ms Blackburn—Yes.

Senator LUDWIG—When was that signed and ratified?

Ms Blackburn—Sorry, I do not have those details with me. My recollection is that it was in 2003. I will take it on notice.

Senator LUDWIG—I thought there was a further part—an addition or a protocol—to it.

Ms Blackburn—There is a protocol relating to firearms which Australia has not signed, nor have we ratified it.

Senator LUDWIG—That might be the one I was thinking about. Was there any intention to sign or ratify that?

Ms Blackburn—Consideration of signing and ratification is still under way. That particular protocol relates to a range of issues which are covered by both Commonwealth and state laws. In the Firearms Policy Working Group, which I mentioned earlier, there has been some consideration of the terms of that protocol. Also, currently some work is being done by the Australian Institute of Criminology which will feed into our continuing assessment of our current compliance with that protocol. But with that one we are still at the stage of considering both our current compliance and what we would have to do to become compliant. Then there is the question: what is the value to Australia of participating in that protocol in light of our existing regime? There are two other protocols, as you are aware, on trafficking and smuggling, and Australia has signed and ratified both of those.

Senator LUDWIG—Will the AIC work be public? I ask that because the AIC sometimes lists documents on their website that I get interested in and occasionally I fall foul of the fact that it is private work they have been requested to do and therefore they are not public documents. Will this be a public report?

Ms Blackburn—I would expect that the work that the AIC is presently doing on firearms to be public. The ones that you are referring to are usually ones where the AIC has a specific

confidentiality arrangement with the organisation seeking the work. That has not been a feature of our commissioning of the AIC's work on firearms. In addition, the AIC has a core range of work that it does on firearms from its own funding.

Senator LUDWIG—That is very helpful for me to know that you will not do a confidentiality agreement with them.

Ms Blackburn—I did not say I will not do one; I said I do not presently have one with them.

Senator LUDWIG—All right. I will accept that.

Ms Blackburn—Fortunately, someone has found the details. The trafficking protocol came into force on 14 October 2005.

Senator LUDWIG—Thank you. Drink spiking: the Ministerial Council on Drug Strategy has released a discussion paper. Is that within your area?

Ms Blackburn—Yes.

Senator LUDWIG—I am having trouble with the link, or I was earlier this morning.

Ms Blackburn—The link to—

Senator LUDWIG—The link to the discussion paper—the Model Criminal Code drink-spiking discussion paper of May 2006. I was going to try it again shortly. I could not download it. I do not think it was my computer; I tried another computer and found the same problem. It could be my problem, and I was going to check that tonight. If I cannot, can you make a hard copy available to the committee, please?

Ms Blackburn—We will make a hard copy of the MCCOC report available to you. We will also arrange for the link to be checked in the morning.

Senator LUDWIG—Can you let me know if the link was down?

Ms Blackburn—No, I think I will just send you a copy of the report.

CHAIR—You should have asked me.

Senator LUDWIG—Is Mr Hicks within 2.1?

Mr Cornall—2.2.

Senator LUDWIG—Are criminal penalties within your area?

Ms Blackburn—Yes.

Senator LUDWIG—I will put that on notice. Is AusCERT or GovCERT in 2.2?

Mr Cornall—Yes, they are.

CHAIR—Do not forget AusCheck. That is in 2.1.

Senator LUDWIG—What is AusCheck?

Mr Cornall—AusCheck is the service that we are setting up following the Wheeler report to validate applications for aviation security identification cards and maritime security identification cards, and it is due to be operational by 1 July 2007.

Senator LUDWIG—The government has established a new agency, GovCERT, which seems to have cross-jurisdictional responsibility with AusCERT. Is there a problem with the two organisations covering the same work?

Mr Cornall—They do not cover exactly the same work, but Mr Rothery can explain that.

CHAIR—For officials are related to 2.1, we are done.

Ms Blackburn—I am reluctant to stay one minute longer in the chair, but I have to clarify one answer I gave about the firearms protocol. I said that we had neither signed nor ratified it; that is inaccurate. Australia signed the protocol on 21 December 2001. We have not, however, ratified it.

Senator LUDWIG—Is there an expectation of when you might ratify it?

Ms Blackburn—No. There is no timetable for that process.

Senator LUDWIG—Is there a point where it might close, if you do not ratify within a certain period of time?

Ms Blackburn—Closure applies to signing. We have signed it. Ratification is the process by which we bring it into operation in Australian domestic law. There is no time limit on Australia taking that action when it deems appropriate to do so.

Mr Rothery—If I can address the senator's question: GovCERT is a desk within my branch of the department. AusCERT is a not-for-profit body and part of the University of Queensland. It provides services on a cost-recovery basis to companies, educational institutions and government departments. In terms of national coverage or services to the community, its functions are limited to those that are funded by the Commonwealth through this department. Other roles are performed by GovCERT on a national basis, and its main role is to liaise with other governments on issues to do with computer emergency response teams, or CERTs, and to ensure national preparedness to deal with a major incident relating to our information infrastructure.

Senator LUDWIG—There is no crossover of functions? It seems that you are describing, in part, the same work. Have I got that wrong? AusCERT does a different function from GovCERT?

Mr Rothery—The main area of overlap is that AusCERT, to perform its function, has very strong relationships with other CERTs around the world. The vast majority of those CERTs are provided by government. So they are parts of government departments or they are substantially funded by national governments around the world. The Attorney-General's Department has a requirement to deal with our counterparts in other countries, which quite often means we are talking to CERTs, because they form part of the national government arrangements. For example, the CERT function in the UK is provided by the UK Security Service. In the US it is provided by the Department of Homeland Security. So we do have government-to-government dealings with them, as does AusCERT on a CERT to CERT basis. So there is an overlap in terms of the network of interactions with overseas players, but the key difference is that, whereas they are dealing with AusCERT on technical matters, they are dealing with GovCERT as representing the Australian government on matters of government policy, coordination, public messages and issues to do with national preparedness.

Senator LUDWIG—So is the difference between AusCERT and GovCERT confusing to the outside world?

Mr Rothery—The driving force behind the creation of GovCERT and that particular nomenclature was an attempt to clarify some confusion of other countries where they did not understand that AusCERT was not a government agency. There was an assumption by other national governments that AusCERT was part of the Australian government and was a government run CERT and they could be asked to deal with government issues or issues to do with government policy. The creation of GovCERT was to clarify, in particular for an overseas audience, the fact that there was a need to engage with a different organisation. If the party wanted to talk to the Australian government or wanted an entry point to talk about intelligence or law enforcement matters, it would not be appropriate to take to AusCERT.

Senator LUDWIG—Let's hope that has eliminated the confusion. How is the overseas entity going to know which is a government entity between AusCERT and GovCERT? Does it say on AusCERT's website that it is not a government enterprise and to contact GovCERT or does it say on your website that you are the government CERT?

Mr Rothery—Our main focus for clearing up this confusion was with the main Western economies who have very strong, active CERTs that are dealing not only in looking for cooperation on technical matters but also in law enforcement, intelligence and the coordination of public response. The main players are the UK, the US, Canada and New Zealand. There was a need to clarify that and that has been followed up with a personal dialogue with the agencies concerned and the establishment of contact arrangements. There has been the production of an international guide which is maintained by the UK government and made available to all governments that are interested in having contact details listed. Both the GovCERT and the AusCERT details have been included in that guide. We do not feel that there is any continuing confusion in the relationships that we have with our partner economies on these matters. It has been cleared up. GovCERT also has a limited profile in the Asia-Pacific region, which is obviously of immediate concern to Australia.

Senator LUDWIG—Has AusCERT raised the issue with GovCERT about the confusion or about whether or not you are encroaching upon what they see as their area. Have they made any complaints to you about that?

Mr Rothery—Concerns have been raised with us by AusCERT. I would not characterise them as AusCERT feeling that we were stealing their work, but there was a concern that the creation of GovCERT led to a possible confusion for AusCERT's domestic clients. They acknowledged that the creation of GovCERT was predominantly to provide a point of contact for other governments but, through its creation, there were some inquiries from AusCERT subscribers as to whether they should now be dealing with GovCERT. That led to the development of an MOU which has been signed between the Commonwealth and AusCERT to clarify those lines of responsibility and that has now been done to the satisfaction of both parties.

Senator LUDWIG—Is Mr Hicks in this area?

Mr Cornall—Yes, Senator.

Senator LUDWIG—Could we get an update of where that is up to please?

Mr Cornall—Mr Hicks is in detention in Guantanamo Bay. His military commission is still pending and it is awaiting the outcome of the US Supreme Court decision in the Hamden case, which is expected in June. Once the US Supreme Court rules on that case, which has similar issues to Mr Hicks's case, the future of the military commission will be determined and the matter will be able to be taken forward in accordance with the decision of the court or it will be otherwise dealt with depending on what the court finds.

Senator LUDWIG—How recently have you inquired of the US about his health or wellbeing or last visited him?

Mr Cornall—The last visit by Australian officials was on 16 March.

Senator LUDWIG—What was the purpose of that visit?

Mr Cornall—It was a consular visit, or a welfare visit. He has also been in contact, obviously, with his lawyers from time to time as well. I think the Australian officials are planning another visit to Mr Hicks in the near future.

Senator LUDWIG—You have heard some of the reports that have been coming out of Guantanamo Bay in relation to Mr Hicks and others. Have you made inquiries about the veracity of those reports or inquired about whether the Australian government has an interest in ensuring that Mr Hicks receives fair treatment in the US?

Mr Cornall—Which report are you referring to?

Senator LUDWIG—There were a couple of reports about him being in solitary confinement or—

Mr Cornall—He is not in solitary confinement; he is in a cell, which is a one-person cell, in Camp 5. But he is not in solitary confinement.

Senator LUDWIG—If he is in a single-occupancy cell, I assume that means he is in a cell on his own.

Mr Cornall—Correct.

Senator LUDWIG—What contact is he then allowed to have?

Mr Cornall—My understanding is that he has contact with other prisoners, but I am not sure about the exact arrangements for that. But the point to stress is that he is not in solitary confinement.

Senator LUDWIG—Is there a definition of solitary confinement?

Mr Cornall—Yes, I would imagine that it means being excluded from contact with other people, and that is not the case. He is simply in a cell by himself. It is probably what he would prefer, I would imagine.

Senator LUDWIG—It is a question of whether he is restricted or otherwise limited in contact. Mr McDonald, do you have something to add?

Mr McDonald—He is able to go into a general block area which has natural sunlight and the like, and he continues to have access to exercise and outdoor facilities in group areas. The US authorities advise that he can and does communicate freely with other detainees, so that

does not get anywhere near what you would call solitary confinement. I think comments about this have begun to be modified.

Senator LUDWIG—It is really a case of whether or not, having heard the comments, you have made inquiries. Have you made inquiries—

Mr McDonald—Yes, we have made inquiries and we—

Senator LUDWIG—as to the veracity of these allegations, to assure yourself that Mr Hicks is being treated—I will not say ‘well’, but perhaps not being treated badly?

Mr McDonald—That is why the consular visits occur on a regular basis. It is to verify that he is being treated appropriately.

Senator LUDWIG—I suppose it is difficult to tell what the process will be. We are waiting for the decision of the US Supreme Court, and everything will then hinge on that, I take it, as to whether it is proceeded with or whether it is estopped at that point. Have the A-G’s turned their minds to either of those two scenarios, as to the course of events that are likely to unfold? For argument’s sake, we could take the last one first: if it is estopped.

Mr Cornall—We have said on a number of occasions that if he is not going to be prosecuted he should be returned to Australia. If he is to be prosecuted, the government position is that he should be prosecuted as soon as possible. The government has expressed concern and disappointment on a number of occasions at the time that has been taken so far and on the length of time he has been held in detention without his matter being resolved.

Senator LUDWIG—I do not have any further questions in respect of this text. Output 2.3—

Senator Ellison—Is that all for output 2.2?

Senator LUDWIG—Yes, I will put the remainder on notice, given the time. There is one matter in 2.3 that I really want to deal with.

[10.29 pm]

CHAIR—Certainly. We will move to output 2.3.

Senator LUDWIG—My questions go to Cyclone Larry, in the broad.

CHAIR—Mr Clement, welcome.

Senator LUDWIG—It is really a case of just trying to understand whether or not Emergency Management Australia had a role in Cyclone Larry.

Mr Clement—The EMA’s role in the Australian government’s response to Cyclone Larry is one of coordinating the Australian government response. Perhaps I could step you through that role.

Senator LUDWIG—Yes, please.

Mr Clement—A number of days before, as Cyclone Larry was building, we sent two liaison officers forward to Queensland to engage in planning with the Queensland authority. As we had planning meetings in Canberra with relevant federal agencies to consider possible actions, the cyclone crossed the coast and then several hours later we received the first formal request for assistance from the Queensland government. We called a meeting of the Australian

government Counter Disaster Task Force at that stage and discussed the request. I phoned the Attorney, which is the procedure. We discussed the request there and possible ways of meeting that and the Attorney granted that request, which was the first. We proceeded to action that. That was the first of 37 separate requests for assistance. We had 16 separate meetings of the Australian government Counter Disaster Task Force over nearly a two-week period.

Senator LUDWIG—An overview of your actions would be helpful to understand—

Mr Clement—The type of assistance?

Senator LUDWIG—Yes.

Mr Clement—The requests varied, but the very first requests were for high-level reconnaissance to get an overview of the damage. We attempted to provide that. Coastwatch had an aircraft that was available and the Australian maritime search and rescue also had an aircraft in the area. So we diverted those to help us. We also sought some assistance from Australian Defence Force in a rotary wing capability, so it was low level. That assistance was provided on the Monday afternoon, just several hours after the cyclone had crossed the coast.

Senator LUDWIG—Were there any deployments on the ground?

Mr Clement—Yes. They were the first series of requests. Within I think 24 hours we had quite a large Australian Defence Force contingent in the response effort. In summary, over the nearly two weeks that ADF were engaged in the response, I believe there were seven Black Hawk helicopters, two Seahawk, three C130 aircraft, a Chinook helicopter and a landing craft. There was a 25 heavy vehicle convoy that went up from Townsville. I believe there were approximately 400 troops on the ground. ADF also provided a field kitchen, a hygiene unit, an airfield engineering unit, air traffic control unit, a water purification unit. Considerable Defence assets were put in the response to Larry in the first week and a half. Overall Defence assets on the ground were involved for nearly two weeks.

Senator LUDWIG—In terms of the deployment up to that point in time, was that in the time lines that you expected? In other words, have you also had an opportunity—I know you have been busy—to look at the operation to see how you deployed? Was the deployment in the expected time, if you call it that, and in the expected way to provide assistance on the ground—meet requests, I guess, is a better way of putting it.

Mr Clement—Our response was rapid and significant. I think they were the lessons that we took from Hurricane Katrina and the difficulties the US experienced. Our system is far more simple than the US's, which is quite a complex system, so we were able to respond very quickly and with considerable resources.

Senator LUDWIG—In terms of the resources that you have mentioned and the funding, are you able to say how much has been expended by EMA in terms of operations in Cyclone Larry?

Mr Clement—Certainly. The Emergency Management Australia cost to us in the respond to tropical Cyclone Larry is in the vicinity of \$240,000.

Senator LUDWIG—Was that within the initial estimate of what you might have to meet?

Mr Clement—We did not have an initial estimate. The government's response to a disaster is what is necessary. Tropical Cyclone Larry was the most severe cyclone to hit Australia for a long time. It was a category 5 and across the coast, and the damage up there was considerable.

Senator LUDWIG—In terms of current assistance, is your role now complete or are there still assets being deployed? Is there a role still for EMA?

Mr Clement—EMA's primary focus is in the response part of a disaster—that is, immediately following the disaster. There is not a clean line that separates response and recovery, so it is sort of a continuum. As we get past the initial response, as the state authorities and other federal agencies build their capacity to assist, our immediate role drops back and other agencies take over. So we do not have any ongoing involvement with Queensland in regard to the recovery aspects from tropical Cyclone Larry.

Senator LUDWIG—In terms of a formal review of your efforts, I suspect that after every operation you have a look to see how it worked—

Mr Clement—Yes, we do.

Senator LUDWIG—and what you can do differently.

Mr Clement—Yes, we have conducted a debrief at the federal level and we have participated in the Queensland government's debrief. We are in the process of producing a report on that, and we should have that completed by mid-June.

Senator LUDWIG—The committee would be pleased to receive that as well when it is finalised, thank you.

Mr Clement—Certainly.

Senator LUDWIG—As an aside really, as a Queensland senator, I want to thank EMA and its staff for deploying in pretty difficult and devastating circumstances. I thank you on behalf of me, as a Queensland senator, and on behalf of Queenslanders as well. We appreciate your early response and the work you have done.

Mr Clement—Thank you. I will pass that on to the staff.

Senator LUDWIG—Thank you very much. Also, in terms of the broader issue, you mentioned Katrina. Have you looked at how EMA might respond in metropolitan areas or densely populated areas if those sorts of situations arise?

Mr Clement—We have recently completed a study that looks at catastrophic disasters. It lifts the impact beyond what most people could really comprehend. Katrina was clearly a catastrophic disaster. Tropical Cyclone Larry may well have been catastrophic had it have been a little further north and come in on Cairns or further south and come in on Townsville. It was a significant storm. It just happened to come in between the two. We are in the process of looking at that and at just what is required to deal with a disaster of a catastrophic size. It is a body of work that is under way at the moment.

Senator LUDWIG—I do not have any other questions in this area.

CHAIR—Thank you, Mr Clement.

Mr Cornall—Just before we leave that point, Mr Clement made reference to a number of the services that were provided with the assistance of the ADF. However, he did not mention, I do not think, that the EMA organisation coordinated the delivery of food and water, tarpaulins, showers and sanitation facilities, generators, communications equipment and even milking machines. I think that just gives a broader picture of the sort of assistance that was provided through EMA.

Senator LUDWIG—I appreciate that, Mr Cornall. I was really seeking that type of information as well. My understanding is that they did a marvellous job on the ground, and it was certainly appreciated and it was certainly prompt. It is helpful to have that information provided to the committee.

CHAIR—Senator Ludwig placed his remarks on the record as a Queensland senator, but I am sure that would go for the entire committee—in fact, the entire parliament.

[10.40 pm]

CHAIR—We will now move to output 2.4.

Senator LUDWIG—Is the Australian Security Vetting Service within your area?

Mr Studdert—Yes, it is.

Senator LUDWIG—Will the AusCheck body that is going to be established have different functions to the Security Vetting Service?

Mr Studdert—It has a different function to the Australian Security Vetting Service.

Senator LUDWIG—So AusCheck will not do any of that vetting?

Mr Studdert—That is correct.

Senator LUDWIG—Is the national counter-terrorism plan within your area?

Mr Studdert—Yes.

Senator LUDWIG—Is that currently being updated?

Mr Studdert—No. There was a false report in the paper that the national counter-terrorism plan was being reviewed. That is not the case.

Senator LUDWIG—Then there is no required update to the *National counter-terrorism handbook* either.

Mr Studdert—The handbook is undergoing some updating.

Senator LUDWIG—Do you know the source of the story, or is it just a wild rumour that is floating around? That is what I had picked up as well.

Mr Studdert—I do not know who the source is, no.

CHAIR—It was a news item. You do not have the clip, Senator Ludwig?

Senator LUDWIG—I did not want to bring it out. I own up: I have it, but I did not want to show it.

CHAIR—So coy.

Mr Cornall—It is my understanding that at the recent security and government conference, Duncan Lewis made a passing remark about having the plan under review as a general policy of the NCTC. That was mistakenly taken to mean that there was some major review going on, when there is not.

CHAIR—It led 10 news bulletins for the next two days.

Mr Cornall—I think that is the origin of the misunderstanding.

Senator LUDWIG—That was what I meant, more than anything else. I know all the bulletins went out there, but I did not think I should bring a clipping. I knew you would know about it. So there is no review.

Mr Studdert—That is right.

Senator LUDWIG—Is the national security hotline within your area?

Mr Studdert—Yes.

Senator LUDWIG—We usually ask a couple of questions about the numbers—the number of false reports, the number of matters that have been referred. Rather than go through those lists, would you mind updating the information that we normally ask for—the number of calls that have been made, those that have been referred on, those that have been actioned in that sense, and those that are false reports or deemed to be phoney or hoax calls—for the time since we last asked that question.

Mr Studdert—We can certainly do that.

Mr Cornall—We have those figures here. We can give you the aggregate figures to 1 May 2006. There have been 77,700 logged calls, faxes, letters and email messages, of which 40,600 have related to suspicious activity, 31,500 to comments on the national security campaign, booklet requests, nuisance calls, and 5,600 calls seeking information and assurance about national security arrangements.

Senator LUDWIG—Is there an ongoing advertising campaign for the national security hotline, or is there new money being earmarked in the budget to continue the campaign?

Mr Cornall—There is a small amount of money for ongoing advertising in 2006-07.

Senator LUDWIG—Do you recall how much that is?

Mr Finlayson—In the next financial year there is \$1.2 million allocated to an awareness campaign for the hotline.

Senator LUDWIG—Is there a way that that is intended to be spent? Is it media buy for TV, radio and print? There is a not a lot of money for TV, I suspect. How is it to be expended?

Mr Finlayson—At this stage, we are going through a process of tendering for potential creative for the next phase of the campaign. Some of that money would be used for that purpose. Decisions about where the campaign will go from there have not yet been made.

Senator LUDWIG—I have only one last area in 2.4. I understood that there was some upgrading of the training centre or a change to the role. Am I wrong about that?

Mr Studdert—I do not think so.

Senator LUDWIG—The PSCC Training Centre.

Mr Studdert—No, there is nothing like that happening.

Senator LUDWIG—So it is business as usual.

Mr Studdert—Yes.

Senator LUDWIG—That was the only area I had an interest in under 2.4.

CHAIR—Thank you very much, Mr Studdert. Senator Ludwig, I heard a rumour that you thought there was a 2.5.

Senator LUDWIG—No. I was making it up. I thought I would just surprise you. I thought I would give you an early mark. As long as you do not hold 12 minutes against me.

CHAIR—It is only seven hours that I hold against people. Ladies and gentlemen, thank you very much. That concludes proceedings for this evening.

Committee adjourned at 10.47 pm