



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates Supplementary Hearings)

MONDAY, 3 NOVEMBER 2003

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Monday, 3 November 2003

Members: Senator Payne (*Chair*), Senator Bolkus (*Deputy Chair*), Senators Greig, Ludwig, Mason and Scullion

Senators in attendance: Senator Payne (*Chair*), Senator Bolkus (*Deputy Chair*), Senators Bishop, Ellison, Harradine, Kirk, Ludwig, Scullion and Vanstone

Committee met at 9.01 a.m.

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Ellison, Minister for Justice and Customs

Attorney-General's Department

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

Mr Robert Cornall, Secretary

Mr Ian Carnell, Deputy Secretary, Criminal Justice & Security

Mr Ian Govey, Deputy Secretary, Civil Justice & Legal Services

Mr Andrew Henderson, A/g Executive Adviser

Mr Richard Oliver, General Manager, Corporate Services

Mr Trevor Kennedy, Chief Finance Officer

Mr Peter LeRoy, General Manager, Information and Knowledge Services

Output 1.1 Legal services and policy advice on courts and tribunals, alternative dispute resolution, administrative law, human rights, evidence and procedure.

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Output 1.2 Support for the Attorney-General as First Law Officer, advice on constitutional policy, and promotion of Australian legal services internationally.

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

Mr Paul Griffiths, Assistant Secretary, Legal Services Coordination

Mr James Faulkner, Assistant Secretary, Constitutional Policy

Output 1.3 Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services.

Ms Philippa Lynch, First Assistant Secretary, Family Law and Legal Assistance

Mr Kym Duggan, Assistant Secretary, Family Law Branch

Output 1.4 Legal services and policy advice on international law.

Ms Renée Leon, First Assistant Secretary, Office of International Law

Mr Bill Campbell, General Counsel (International Law)

Output 1.5—Drafting of legislative and other instruments, publication of legislative materials and provision of related legal services

Mr Robert Cornall, Secretary

Mr Ian Govey, Deputy Secretary

Mr Peter Ford, Acting Deputy Secretary

Mr James Graham, Principal Legislative Council

Output 1.6 Legal services and policy advice on information law.

Mr Peter Ford First Assistant Secretary, Information and Security Law Division

Output 1.7 Legal services and policy advice on native title.

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

Ms Kathryn Shugg, Assistant Secretary, Native Title

Mr Geoffrey McDougall, Assistant Secretary, Native Title

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

Output 2.1 Policy advice on, and program administration and regulatory activities associated with, the Commonwealth's domestic and international responsibilities for criminal justice and crime prevention, and meeting Australia's obligations in relation to extradition and mutual assistance.

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Ms Maggie Jackson, Special Adviser Criminal Justice

Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch

Mr Craig Harris, Assistant Secretary, Law Enforcement Branch

Mr Chris Meaney, Assistant Secretary, Strategic Law Enforcement Branch

Ms Robin Warner, Assistant Secretary, International Crime Branch

Ms Robyn Frost, Director, International Crime Branch

Ms Dianne Heriot, Assistant Secretary, Criminal Prevention Branch

Mr Richard Fairbrother, International Crime Branch

Ms Belinda Barry, International Crime Branch

Output 2.2 Legal services and policy advice on security law.

Mr Keith Holland, Assistant Secretary, Security Law and Justice Branch

Output 2.3 Provide national leadership in the development on emergency management measures to reduce risk to communities and manage the consequences of disasters.

Mr David Templeman, Director General, Emergency Management Australia

Output 2.4 Development and promotion of protective security policy, advice and common standards and practices, and the coordination of protective security services, including counter-terrorism and dignitary protection.

Mr Ed Tyrie, Executive Director, Protective Security Coordination Centre

Output 2.5 Management and coordination of the deliver of security and guarding services to meet diplomatic, consular and other Commonwealth responsibilities.

Mr Ed Tyrie, Executive Director, Protective Security Coordination Centre

Australian Federal Police

Mr Mick Keelty APM, Commissioner

Mr John Davies, Deputy Commissioner

Ms Audrey Fagan, Executive Director Protection

Mr Trevor Van Dam, Chief Operating Officer

Mr John Lawler, General Manager Executive Services

Ms Dianne Carlos, Chief Finance Officer

Australian Security Intelligence Organisation (ASIO)

Mr Dennis Richardson, Director General

Australian Customs Service

Mr Lionel Woodward, Chief Executive Officer

Mr John Jeffery, Deputy Chief Executive Officer

Rear Admiral Max Hancock, Director-General Coastwatch

Ms Marion Grant, National Director Border Compliance and Enforcement

Mr Phil Burns, National Director Cargo and Trade

Ms Gail Batman, National Director Border Intelligence and Passengers

Ms Jenny Peachey, National Director Office of Business Systems

Mr Murray Harrison, Chief Information Officer

Ms Sue Pitman, National Manager Trade Measures

Mr Stephen Goggs, National Manager CMR Transition

Ms Christine Marsden-Smedley, National Manager Planning and International

Administrative Appeals Tribunal

Mr Doug Humphreys, Registrar

Office of the Federal Privacy Commissioner

Mr Timothy Pilgrim, Deputy Privacy Commissioner

Mr Paul Armstrong, Director Policy

Robyn Ephgrave, Finance Manager

Human Rights and Equal Opportunity Commission (HREOC)

Ms Pru Goward, Sex Discrimination Commissioner

Dr William Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner

Dr Sev Ozdowski, Human Rights Commissioner

Ms Diana Temby, Executive Director

Mr Stephen Duffield, Director, Human Rights Unit

Mr Darren Dick, Director, Social Justice Unit

Ms Rocky Clifford, Director, Complaint Handling

Mr Craig Lenahan, Director, Legal Services

Ms Robyn Ephgrave, Manager, Finance and Services

Office of Film and Literature Classification

Mr Des Clark, Director

Mr Paul Hunt, Deputy Director

Australian Transaction Reports and Analysis Centre (AUSTRAC)

Mr Neil Jensen, Director

Mr Alf Mazzitelli, Senior Manager, Corporate Resources

Australian Crime Commission

Mr Alastair Milroy, Chief Executive Officer

Mr Andrew Phelan, Director, Corporate Services

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive

Mr Philip Kellow, Deputy Registrar

Ms Anne Hicking, Chief Financial Officer

Federal Magistrates Service

Mr Peter May, Chief Executive Officer

Family Court of Australia

Mr Richard Foster, Chief Executive Officer

Ms Jennifer Cooke, General Manager, Client Services

Mr Bruce Hunter, Chief Finance Officer

High Court of Australia

Mr Christopher Doogan, Chief Executive and Principal Registrar

Mr Lex Howard, Marshal

Insolvency and Trustee Service Australia

Mr Terry Gallagher, Chief Executive

Mr Peter Lowe, Executive Director

Mr David Bergman, Legal/Policy Advisor

CHAIR—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. This is the supplementary round of estimates for the Attorney-General's and the Immigration and Multicultural and Indigenous Affairs portfolios. The committee will consider the portfolios in the order in which they appear on the circulated agenda. I draw your attention to the fact that there are two changes to the agenda that was circulated at the end of last week—that is, that CrimTrac and the AGS are longer being called. Proceedings will commence today with the interstate agencies and several of the local agencies for the Attorney-General's portfolio, followed by the department itself, then the committee will hear from the remaining agencies. 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, 12 December 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 where possible.

I welcome Senator Ellison, the Minister for Justice and Customs and Minister representing the Attorney-General; Mr Robert Cornall, Secretary to 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 a 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, 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 witnesses' attention to resolution 1(16), which states that:

An officer of a department of the Commonwealth or of a state shall not be asked to give opinion 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 the evidence given to the committee is protected by parliamentary privilege. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I note that there are still two outstanding answers to questions on notice from the budget estimates round. The committee thanks the minister and officers of the department for their response to all other questions. Minister, do you or Mr Cornall wish to make an opening statement?

Senator Ellison—No, I do not have an opening statement, Madam Chair, and I do not think the secretary has either.

CHAIR—Thank you very much.

Mr Cornall—I think there is only one question outstanding, Madam Chair.

CHAIR—Thank you for clarifying that.

[9.04 a.m.]

Administrative Appeals Tribunal

CHAIR—We will begin with agencies as they appear in the agenda, starting with the Administrative Appeals Tribunal. If there are no opening statements, I invite Mr Humphreys to come to the table. I believe this is your first appearance at the estimates committee in this capacity. Welcome.

Mr Humphreys—Thank you.

Senator LUDWIG—Was the annual report delivered on Friday?

Mr Humphreys—It was.

Senator LUDWIG—Good. When was it delivered to the minister?

Mr Humphreys—It was delivered to the minister some weeks beforehand. I cannot tell you the precise date.

Senator LUDWIG—Do you know how long ago? Perhaps you could take that on notice and get back to us with the precise date.

Mr Humphreys—I will take it on notice.

Senator LUDWIG—Was it two or three weeks ago or do you think it was longer?

Mr Humphreys—I think it might have been longer.

Senator LUDWIG—Minister, can you explain the delay causing the document to be tabled only this Friday when obviously estimates meets today and it would have been helpful to have the annual report available even a day earlier than Friday? I think that was one day past the cut-off.

Senator Ellison—It has been lodged in time. As we all know, there has been a change in the Attorney recently. I will find out the precise date it was received in the Attorney's office and advise the committee.

CHAIR—Thank you, Minister.

Senator LUDWIG—If you recall on the last occasion we were talking about what we could perhaps call budget cuts—that is, the \$0.5 million cut to the tribunal's funding made in

the recent budget. Are you now able to identify where the savings are going to come from? As I understand it, you are not going to get any more money. How are you going to develop a savings plan?

Mr Humphreys—There are a number of areas that the AAT are looking at. Firstly, we anticipate that amendments which will be introduced into parliament will, if passed, substantially increase efficiencies within the tribunal through a number of procedural mechanisms that will allow us to deal with matters in a more expeditious manner. They are the main things we are looking at. In addition, we are participating with other tribunals in a tribunals efficiency working group. That working group is looking at a range of measures, particularly in relation to such areas as shared corporate services, training and development and other matters, which will assist the tribunal in making savings across the board.

Senator LUDWIG—Do you envisage that there will be any cuts to services to customers from the AAT?

Mr Humphreys—Not at this stage, but one needs to understand that the tribunal have a function of making decisions in accordance with appeals that are lodged with us. One of the few areas where we have a discretionary budget relates to the use of part-time members. If we use fewer part-time members, the result could be an increase in the delay in the finalisation of matters. If we make more decisions and have more hearings, we spend more money; if we have fewer hearings then there is more delay but we do not spend as much money.

Senator LUDWIG—What is the delay at the moment?

Mr Humphreys—It varies across jurisdictions. There has been a slight increase in the delay in each area over the last 12 months. We are going to work very hard over the next 12 months to try and decrease that. We have been successful in the taxation area in resolving a very large number of matters. There has been a percentage decrease across all areas in finalisations within the time spans the tribunal set.

Senator LUDWIG—You may want to take this on notice, but it would be helpful for the committee to understand the indicative time delays in a particular area within the AAT—either now or at least in the figures that you might be able to pull together. You indicated in your answer earlier that if the savings come from some areas there may be a knock-on effect—that is, a delay in other areas. Where would you envisage that to come from and how long would it be? In other words, how much longer would you see the delays as then being?

Mr Humphreys—At the moment the tribunal is running at a slight surplus on budget, so I do not think there will be an impact on delay. We are only one-quarter into the budgetary process and we are looking at what we can turn round and do. I am quite confident that we can manage on what we have at the moment. I am not going to say there will be; I am simply saying that there is a possibility in the future.

Senator LUDWIG—You mentioned earlier the amendments to the AAT Act itself. Has an exposure draft been released or have you been consulted about that?

Mr Humphreys—We were consulted extensively in the drafting of those amendments, and the feedback that we have received is that the suggestions we put forward have been taken on board. We are very confident that the amendments will enable us to make substantial savings

and will increase the efficiency of the tribunal as well as the time that is needed to determine matters.

Senator LUDWIG—We might get this in order then: when were you asked to comment on the amendments to the AAT Act? Was that given to you as a broad request for areas in which you might be able to see improvements in efficiency or was it given to you in the form of amendments that might be proposed to the AAT?

Mr Humphreys—As I understand it, it has been a continual process. There has been continual consultation between AAT and the department in the drafting process. We have been asked to comment on various positions that have been put forward. We have had the opportunity of adding suggestions as the process has gone forward. The president has commented on the draft bill in its latest iteration.

Senator LUDWIG—So there is an exposure draft?

Mr Humphreys—No, there is no exposure draft. There is a confidential draft that was provided to the AAT for comment.

Senator LUDWIG—Is that available to the committee?

Ms Leigh—No, that is being developed within government. Of course, the government finds it very helpful to have the views of the AAT, and it has been provided to the president for that purpose.

Senator LUDWIG—When will it be available?

Ms Leigh—At this stage, I cannot give you a date as to when that will be introduced.

Senator LUDWIG—Will it be before the end of this year? I am looking at the Senate program as well.

Ms Leigh—It will very much depend on the parliamentary program.

Senator LUDWIG—When were you asked to comment on the amendments and the ongoing process? Was a letter or anything sent to you?

Mr Humphreys—A copy of the bill together with a letter were provided to the president some weeks ago.

Senator LUDWIG—Do you recall what date that was?

Mr Humphreys—It would have been around 15 or 16 October—the final draft that we saw.

Senator LUDWIG—How long was given to you in the letter to comment on it and return your comments to the Attorney-General's Department?

Mr Humphreys—My recollection is that it was some days—as I said, it went to the president not to me.

Senator LUDWIG—Although you may not be able to provide a copy of the draft, a copy of the letter might be helpful to understand the nature of the request and how long you were given. You said the president was given only a couple of days to have a look at the amendments and then provide comment to Attorney-General's. Is that what you are saying? I may have misunderstood what you said.

Mr Humphreys—I did not see the letter, so I am not in a position to comment.

Senator LUDWIG—How many people in the AAT were the amendments circulated to? Who took care of that process?

Mr Humphreys—The president took care of that.

Senator LUDWIG—Who prepared the reply to go back to the AAT?

Mr Humphreys—The president.

Senator LUDWIG—Do you know when that was?

Mr Humphreys—No, I do not.

Senator LUDWIG—Perhaps you could take that on notice, find out for us and provide a copy of the reply if possible. Last time we were here we asked about female representation in the AAT. Can you provide an update on those figures?

Mr Humphreys—Certainly. As at 1 October there were 73 members, excluding eight presidential members who are members of other courts. But that figure does include the president. Of those 73, 17 are female, which is 23.2 per cent. You then need to break that down into part-time members and full-time members. We have one full-time deputy president, and that position is one of five, or 20 per cent. We do not have any part-time deputy presidents who are women. Three of seven full-time senior members, or 42.8 per cent, are female. Two of four, or 50 per cent, are part-time senior members. Two of five, or 40 per cent, are full-time members. Nine of 38, or 23.6 per cent, are part-time members. In some areas it is very difficult to obtain suitably qualified members. For example, in the veterans area we use a number of retired senior military officers; regrettably, not many retired senior female military officers are available, so that tends to skew our figures somewhat.

Senator LUDWIG—The figures seem to reflect a decline since about mid-1998, as I understand them. Do you agree with that?

Mr Humphreys—I am not in a position to comment because I have not gone back and looked at the figures since 1998.

Senator LUDWIG—Perhaps you would then. They seem to reflect a decline, from the records that I have. It was an answer to question on notice No. 92 that indicated that there has been a significant decline in the female membership of the tribunal in the past five years. Does the Attorney-General have anything to say about that?

Ms Leigh—I can comment that of course the government is always mindful of the percentage of female members; indeed, that information is kept and provided each time an appointment is being made. But, ultimately, the decision is based on merit.

Senator LUDWIG—So you are not concerned about promoting gender diversity in the AAT.

Ms Leigh—As I said, Senator, the government is always concerned about the proportion of women on the tribunal, as with any other government position. Ultimately, it makes that decision based on the quality of the candidates available.

Senator LUDWIG—Does the Office of the Status of Women receive these figures? Do they inquire about gender diversity within the AAT or in any other area of the Attorney-General's Department?

Ms Leigh—The Office of the Status of Women makes general inquiries to the department about female representation in relation to all appointments from time to time.

Senator LUDWIG—When was the last one; do you recall?

Ms Leigh—I recall that, at the last hearing in May when you asked that question, we provided the information to that date. I am not aware of any inquiries since that May hearing, but I can confirm that for you.

Senator LUDWIG—Yes, thank you. I was inquiring as to whether that may have prompted them to write, but it appears not. Minister, is the decline in gender diversity, particularly in the AAT but also more generally, and the seeming lack of interest by the Office of the Status of Women in this area of concern to the government?

Senator Ellison—I would not accept, as a premise to your question, that the Office of the Status of Women has exhibited a disinterest. But, certainly, it is a question of merit and who applies. Of course, you cannot go out and force people who have the necessary talents to apply. The process is one based on merit. The government does have a policy to seek a balance in appointments by gender, but it is always based on merit.

Senator LUDWIG—Thank you, Minister. Mr Humphreys, I understand that a migration review has been commenced by the Attorney-General's Department. I think it was announced on 27 October. Has Attorney-General's written to you about the migration review?

Mr Humphreys—No.

Senator LUDWIG—You deal with migration review cases, though, as I understand it.

Mr Humphreys—In most cases we do not, because the vast majority of matters are dealt with in the Migration Review Tribunal or the Refugee Review Tribunal. So yes we do, but the vast majority are dealt with in those other bodies to finality.

Senator LUDWIG—Would you explain what role you do play in the migration review area?

Mr Humphreys—There are a number of areas where we do have jurisdiction, and they include things such as business visas and, in some cases, security related areas. But, as I said, the vast majority are dealt with to finality in the Migration Review Tribunal or the Refugee Review Tribunal.

Senator LUDWIG—You also deal with criminal deportation decisions of the minister. How many cases would be migration related? I have only now just got this.

Mr Humphreys—In 2002-03 there were 507 matters lodged. They covered such areas as Australian citizenship, business visa cancellation, criminal deportation and expedited visa applications. It is there on page 107 of the annual report.

Senator LUDWIG—They represent seven per cent of those lodged and about four per cent finalised.

Mr Humphreys—That is right.

Senator LUDWIG—The AAT acts as a review of the Migration Review Tribunal?

Mr Humphreys—In many cases, no. As I understand it, we have the original jurisdiction in relation to some of the matters. They do not necessarily go through the MRT and the RRT.

Senator LUDWIG—If they do?

Mr Humphreys—They can then come to us or they can go direct to the Federal Court.

Senator LUDWIG—Are you represented in the review?

Mr Humphreys—No, we are not at the moment.

Senator LUDWIG—Have you requested to be represented in the review?

Mr Humphreys—No.

Senator LUDWIG—You do not see a role for the AAT in the review process?

Mr Humphreys—At the moment, if the government seeks our views we are happy to reply to them. We do not actively go out and seek to be represented in every government review that may touch on the vast jurisdiction of the AAT.

Senator LUDWIG—In your view, is there a problem in respect of a measure of migration cases going before the AAT?

Mr Humphreys—I do not understand your question.

Senator LUDWIG—Do you have a problem with migration cases generally? Are complaints made to the AAT about them? Do you perceive a problem with migration cases within the operation of the AAT?

Mr Humphreys—Not that I am aware of.

Senator LUDWIG—So nothing has come before you as the registrar to put up a red flag up that migration cases are a problem?

Mr Humphreys—Not in the last nine weeks.

Senator LUDWIG—Was there anything on file from your predecessor?

Mr Humphreys—There was nothing on file to indicate that there were any difficulties in that area. They are dealt with along with all the other cases.

Senator LUDWIG—We might leave it at that. Is the list of migration cases that come before you, on page 107, an exhaustive list?

Mr Humphreys—They are the various categories that we record. I imagine it would cover the list, although there may be some that have been put under those headings so as to categorise them.

Senator LUDWIG—Within those headings, business visa cancellation would relate to the various business visas that are available. So there could be a range?

Mr Humphreys—Indeed.

Senator LUDWIG—Under ‘Criminal deportations’ there are 3. I suspect there is only one category in that sense.

Mr Humphreys—I understand that is the case.

Senator LUDWIG—Do you recall who they were or who they were related to?

Mr Humphreys—No, I do not.

Senator LUDWIG—I am happy to take that on notice. It would be helpful.

CHAIR—Do you have any further questions, Senator Ludwig?

Senator LUDWIG—No, thank you.

CHAIR—There being no further questions for the AAT, thank you very much, Mr Humphreys, for your assistance this morning. That concludes the questions for the Administrative Appeals Tribunal.

[9.24 a.m.]

Office of the Privacy Commissioner

CHAIR—I understand we have an apology from Mr Crompton, who was unable to attend estimates today.

Mr Pilgrim—That is correct, Senator. The commissioner sends his apologies. Due to some timing issues, he is on leave overseas as we speak. He has sent a letter to the committee as well.

CHAIR—And the dates were changed, so we understand the difficulty. Thank you.

Senator KIRK—Could you advise the committee when your annual report was forwarded to the minister?

Mr Pilgrim—I am advised that our annual report was sent to the departmental tabling officer on 10 October 2003.

Senator KIRK—Does that mean that it has been forwarded to the minister?

Mr Pilgrim—I believe it was forwarded to the minister as well around that time.

Senator KIRK—Perhaps the minister can confirm that it has been received.

Senator Ellison—I will have to take that on notice. I will get back to the committee on that.

CHAIR—Thank you, Minister.

Senator KIRK—In the 2003-04 portfolio budget statements, page 367, it is stated that you incurred an operating loss last year and that this would have to be recovered by reducing staff and other operating costs. Is that correct?

Mr Pilgrim—Yes, we did incur an operating loss for that financial year and we undertook processes within the office to reallocate our resources. One part of the process to ensure that we operated within the existing budget was to reduce the number of staff we had in the office. I point out that the staff that we let go at that stage were contract staff who were on short-term or mid-term length contracts.

Senator KIRK—How many staff were let go?

Mr Pilgrim—Approximately four staff went during that year.

Senator KIRK—Were they full-time staff or part-time staff? You said they were on contracts.

Mr Pilgrim—They were on contracts for full-time work, as in the standard hours.

Senator KIRK—What areas were those staff working in?

Mr Pilgrim—Those staff were working in our policy section, which is the area that does interpretation of the act and provides advice and the development of guidelines and information sheets.

Senator KIRK—What kinds of savings came about as a consequence of letting those staff depart?

Mr Pilgrim—We were able, naturally, to save salary dollars towards the budget and through those actions—I understand you will not have the benefit of our current annual report—we have managed to get the office back into surplus.

Senator KIRK—I am just trying to work out how much you did save from those staff leaving. What sort of figure are you talking about for salary savings?

Mr Pilgrim—I would have to take the exact figure on notice.

Senator KIRK—It was only in the policy area that those staff were involved?

Mr Pilgrim—That is correct, only the policy area. We have been trying to maintain a fixed number of staff in the compliance area, given the number of complaints that the office is dealing with at the moment.

Senator KIRK—That was my next question, as to whether or not staff involved in complaint handling had been reduced. But you say not.

Mr Pilgrim—No, we have not reduced the number of staff in the compliance area.

Senator KIRK—As you say, we have not had the benefit of seeing the annual report. Could you inform the committee of the extent of the surplus?

Mr Pilgrim—Yes, I can. The surplus is \$74,120.

Senator KIRK—And that compares with last year's loss of—can you remind me of the figure?

Mr Pilgrim—The figure was a deficit of \$740,201.

Senator KIRK—So that improvement in the bottom line has really come about as a consequence of the staff reductions. Is that fair to say?

Mr Pilgrim—It is in part. There is also the reduction of staff liabilities. We had some turnover of permanent staff leaving who had large accumulated leave amounts and that would reduce the overall liability. There was some reduction there.

Senator KIRK—There have not been any savings in any other areas of the Privacy Commission?

Mr Pilgrim—Not savings as such in other areas. It is predominantly through lowering the overall staff numbers.

Senator KIRK—I would like to ask you a few questions about the complaints handling section of the Privacy Commission. On other occasions when you have visited us here we have discussed some of the difficulties that the office has been having in dealing with the increased level of complaints since the act was extended to the private sector. Has there been any change in the level of complaints?

Mr Pilgrim—The number of complaints has plateaued out. We are receiving into the office approximately 90 complaints a month. For the year to date from 1 July we have received 408 complaints. If we extrapolate that out over the year using those figures, we can expect to receive around 1,221 complaints for the current financial year.

Senator KIRK—How does that compare with last year?

Mr Pilgrim—Last year the office received a total of 1,090 complaints.

Senator KIRK—So around about the same number?

Mr Pilgrim—Yes.

Senator KIRK—How is that number you mentioned, 408, broken up between public and private sector complaints?

Mr Pilgrim—Approximately 65 per cent of the complaints represent those from the private sector—that is, around 266 complaints fall under the National Privacy Principles.

Senator KIRK—It seems that at least half of the complaints—or 65 per cent, as you say—come from the private sector. I guess the issue is why there is this increase. I suppose you cannot answer that. How is it impacting upon the office if you are suddenly getting so many complaints from the private sector, which you in the past have not had to deal with? How is this being dealt with within the office?

Mr Pilgrim—As I think we may have mentioned at previous hearings, we have taken a process of reallocating resources over the last 12 to 18 months. We have moved some resources from the policy and advising area into the compliance area to meet the need as best we can. We had to make decisions as to what level to cut off that transfer of staff because we cannot completely denude the other section, as it has statutory functions we have to perform as well. We have done some reallocation of resources to try and best address the complaint-handling processes.

Senator KIRK—What sorts of numbers are we talking about here? You say that staff have been reallocated from the policy and audit areas into complaints handling. What sorts of numbers have been shifted interdepartmentally, so to speak?

Mr Pilgrim—It was not huge numbers by other agency standards. It was around the three to four mark over the last 18 months to two years.

Senator KIRK—In percentage terms, what does that represent?

Mr Pilgrim—That would represent just over 10 per cent.

Senator KIRK—Is it possible to say what the average time taken to deal with a complaint from the time a complaint is received until it is resolved is? Do you keep those sorts of figures?

Mr Pilgrim—Yes. At the moment, we are taking approximately 82 days to resolve a complaint. That is an averaged-out figure.

Senator KIRK—Has that average figure of 82 days increased from last year?

Mr Pilgrim—From the previous financial year it has slightly decreased from around the 90 to 92 mark.

Senator KIRK—What about the year before that?

Mr Pilgrim—It was around 120 days.

Senator KIRK—That suggests that the complaints are being dealt with more efficiently.

Mr Pilgrim—To a degree, yes. I should point out that, with respect to that period of time and the numbers I have mentioned, we have to take into account that it covers the period in which the legislation was still fairly new. A number of complaints that came into the organisation were complaints that we could decline fairly quickly on the basis that they were not actually covered by the Privacy Act. Therefore, that would slightly skew the numbers and give us that sort of higher reading. Also, the numbers were higher in the initial start-off period of the act.

Senator KIRK—What percentage of complaints are dismissed quite quickly shortly after being received due to having no substance?

Mr Pilgrim—At the moment, those figures are running at 45 to 50 per cent. However, I should mention that a number of those complaints would be ones where the complainant has not first gone to the respondent. Our practice is, and it is a requirement of the act, that we seek to ensure that the complainant has tried to resolve the matter with the respondent first prior to our commencing investigation. So part of that 45 to 50 per cent would include some of those sorts of complaints.

Senator KIRK—So those complaints would perhaps then be dealt with by the respondent and returned to the Privacy Commissioner if they are not resolved?

Mr Pilgrim—That is potentially the case. If the complainant is not satisfied with the way the respondent has dealt with the complaint, then we can investigate it.

Senator KIRK—Could you advise the committee how many ongoing and non-ongoing staff you currently have allocated to complaint handling?

Mr Pilgrim—At the moment, we have approximately 10.8 ongoing staff for handling complaints and no non-ongoing staff.

Senator KIRK—How do those figures compare with last year?

Mr Pilgrim—Last year the figure was pretty close to that. I would say it was around 10.3.

Senator KIRK—Was it 10.3 or would you like to take that on notice?

Mr Pilgrim—I think 10.3 is fairly safe.

Senator KIRK—There has been a slight increase in the number?

Mr Pilgrim—There has been a slight increase.

Senator KIRK—What are the broadband classifications of each of those staff?

Mr Pilgrim—For the purposes of complaint handling, we have staff at the APS5 level who do an initial assessment of some of the complaints. They would deal with the complaints on the slightly easier side—for example, if they are obviously a decline and produce letters to say that the complaints will be declined. The majority of the staff who are undertaking investigations are at the APS6 level. To give you a break-up, approximately 6.5 of the 10.8 we are dealing with at the moment are APS6 staff. We have two staff at the APS5 level and we have 1.5 staff at the EO1 level. Of course, we have a director at the EL2 level.

Senator KIRK—On previous occasions we have discussed with you the significant reduction in the number of audits that the commissioner has been able to carry out. For the record, could you remind the committee of the range of organisations that you audit?

Mr Pilgrim—The types of organisations that the office can audit under its statutory functions are Commonwealth government agencies for information privacy principle audits. We can also audit ACT government agencies under the act as well. We can undertake audits of credit providers and credit reporting agencies under the credit provisions of the act.

Senator KIRK—How many audits did you perform in the last financial year?

Mr Pilgrim—I will just check the figures, but I believe that we commenced seven audits.

Senator KIRK—What type of agency did those audits relate to?

Mr Pilgrim—Of those audits, four were of government agencies under the information privacy principles.

Senator KIRK—Is that Commonwealth government agencies?

Mr Pilgrim—Two Commonwealth government agencies and two ACT government agencies. The remaining three audits were undertaken of credit providers.

Senator KIRK—How do the audits of credit providers come about? Are they done on request? Who directs you to undertake those audits?

Mr Pilgrim—The commissioner has the power to commence audits of his own volition. Our standard procedure is that we would go through a risk assessment process, looking at complaints coming into the organisation, phone inquiries and written inquiries to determine whether there are any systemic patterns forming around the types of organisations that are leading to inquiries. Then through that process we would look at determining where there was a suitable amount of risk and whether we should look at undertaking an audit. On doing that, we would of course notify the organisation that we were intending to audit and give it approximately six weeks advance notice prior to commencing an audit.

Senator KIRK—You said you commenced seven audits in the last financial year. How does that compare with the number done in previous financial years?

Mr Pilgrim—I will just check those figures for you. In the 2001-02 financial year, we commenced 14 audits. In the 2000-01 financial year, we commenced 24 audits.

Senator KIRK—The numbers are significantly decreasing?

Mr Pilgrim—They are.

Senator KIRK—Is that as a consequence of staff reductions and transfer of staff from audit to other areas?

Mr Pilgrim—As I was saying earlier, to meet the demand on the increasing complaints, we made a decision—again, based on a risk assessment process—to put more staff into dealing with the complaints process after the commencement of the privacy legislation. So we moved resources from the audit area into the general complaints/compliance area.

Senator KIRK—Is there no prospect of recruiting additional members for the audit work?

Mr Pilgrim—At this point in time, no.

Senator KIRK—In view of the budgetary situation?

Mr Pilgrim—To be able to exist within the existing budget that we do have, we have assessed that it is best to place the resources into the compliance area—particularly complaints rather than the audit function.

Senator KIRK—Have you made any assessment as to the number of audits you will be able to conduct in the next financial year?

Mr Pilgrim—Yes, we have. We will be undertaking three audits in the next financial year, and those audits will be undertaken in accordance with some memorandums of understanding we have with a couple of agencies to specifically undertake audits. They will be the only audits we will undertake.

Senator KIRK—So there will not be any audits of credit providers or other commercial operators at this stage.

Mr Pilgrim—At this stage, no, we do not foresee any audits of credit providers.

Senator KIRK—So you are going to be down to three. When is it going to be the case that you will not be able to conduct any audits at all? Clearly, the numbers are decreasing very quickly.

Mr Pilgrim—The audits we are undertaking in the next financial year we are undertaking because we are provided with specific external funding from the ACT government to undertake two audits of their public sector. We are provided with specific money through an MOU with Customs to undertake an audit in regard to the some of the work they are doing. So we are specifically funded for those ones.

Senator KIRK—So there is no general funding as such for the audit department at all.

Mr Pilgrim—As I have said, we have made a reallocation of our resources to meet the demand, as best we can, of the complaints area.

Senator KIRK—You are almost in the situation where the department is just not funded for audits at all—that is, the commission is not funded for audits, unless it receives money from an outside source.

Mr Pilgrim—At this point in time, looking at the broader needs of the community we have decided, the complaints having grown to the extent they have, where there is the greater need to reallocate the resources, and so we have done that—moving it away from the audit area.

Senator KIRK—What is your view about the fact that the Privacy Commission has been put in a situation where it is not really funded to conduct audits; it is only really funded to handle complaints?

CHAIR—Senator Kirk, I think you will find that you are asking Mr Pilgrim for an opinion on a matter of policy which, as I explained quite clearly at the beginning, is not within his purview. I am sorry, I did not hear that.

Senator KIRK—Minister, could you perhaps comment on the situation whereby the Privacy Commissioner is now just reduced to a complaints-handling role?

Senator Ellison—The Privacy Commission is given a budget, and it is up to the Privacy Commissioner how that is allocated. He sets his priorities, and that is a matter for him. It is not a matter for government beyond that.

Senator KIRK—Yes, except to the extent that if the number of complaints are increasing, particularly in the private sector, then naturally the first port of call of the Privacy Commission is going to be to deal with those complaints and, consequently, it is not going to be able to allocate as many resources to such things as audits. One would have thought that it is also in the interests of the public to have that role well funded.

Senator Ellison—The government gave an increase in funding to the Privacy Commission in the 1999-2000 budget of \$1.4 million per annum. That was in anticipation of the new regime, which would include the private sector. Of course, I cannot comment on the budgetary process that is coming up, but the government has funded the Privacy Commission and has increased that funding for the new role that it has taken on. How that funding is allocated is really a question for the Privacy Commissioner.

Senator KIRK—I think we are just concerned about the situation where there could well be a number of operators out there who are not being audited and who perhaps ought to be audited in the public interest and that, due to a lack funding, the Privacy Commissioner is unable to fulfil this role. We have figures which show that only two or three years ago 24 audits were being conducted; we are now down to only three. The question is whether there should be some consideration given to a greater allocation of resources to the Privacy Commissioner.

Senator Ellison—That is a budget question. As you know, we have the budgetary process coming up, and I cannot comment on that. But we have advertised for a new Privacy Commissioner because Mr Crompton has announced that he will not be seeking to be appointed again. An advertisement has already been placed in the press. The incoming Privacy Commissioner no doubt will determine his or her priorities.

Senator KIRK—Just on the question of employee records: as I recall, on 29 November 2000—almost three years ago—the Attorney-General promised to review the application of the Privacy Act to employee records. At the time he said that the review would:

... be completed in time to assist the Privacy Commissioner when he conducts the more general review of the legislation two years after it commences operation.

I wondered whether the office was involved in the review that the Attorney-General referred to.

Mr Pilgrim—Are you referring specifically to the employee exemption review?

Senator KIRK—The application of it to employee records, yes.

Mr Pilgrim—That is an issue that is being handled by the department, and I think they might be best placed to answer that question.

Mr Ford—The review is still under way. It is being undertaken jointly by the Attorney-General's Department and the Department of Employment and Workplace Relations. An issues paper is being prepared, but it is still under consideration.

Senator KIRK—When did the review commence?

Mr Ford—It commenced some time ago. I could take that on notice. I just do not have the exact date with me.

Senator KIRK—What is the date of the issues paper then?

Mr Ford—It has not been released, but the departments finished work on it in October.

Senator KIRK—October of this year?

Mr Ford—This year, yes.

Senator KIRK—When is that report going to be released?

Mr Ford—It has to be agreed between departments and between ministers for release, so I cannot give you a date at the moment.

Senator KIRK—Whereabouts is it now? Who is it with?

Mr Ford—It is with the Department of Employment and Workplace Relations.

Senator KIRK—Do you have any target date as to its release—by the end of the year?

Mr Ford—I would hope by the end of the year, yes.

Senator KIRK—Where does it have to go once it has been with the Department of Employment and Workplace Relations?

Mr Ford—Subject to approval of ministers, it will go to stakeholders, and there will be a consultation process before report to the government.

Senator KIRK—You say that it is going to go to stakeholders. That is once it is released?

Mr Ford—Yes.

Senator KIRK—What sort of time frame do you envisage for the stakeholders to consider the paper?

Mr Ford—We have not determined the time frame, but it would be the normal one to allow adequate consultation—I think, off the top of my head, a few months.

Senator KIRK—So by mid next year?

Mr Ford—I would hope early next year.

Senator KIRK—Has the Office of the Federal Privacy Commissioner been involved in the terms of reference in the life of this review?

Mr Ford—Not in this review, no. This is something that the two departments were asked to do by ministers.

Senator KIRK—So once the issues paper is released the Privacy Commissioner will be involved?

Mr Ford—Yes.

Senator KIRK—As one of the stakeholders?

Mr Ford—Yes.

Senator KIRK—And given an opportunity to comment on the paper?

Mr Ford—That is correct.

Senator KIRK—Do you have any time frame for the completion of the review?

Mr Ford—I am reluctant to put a time forward because, as I said before, it is subject to approval by ministers and also to the agreement of the other department that is involved.

Senator Ellison—The Attorney-General's Department and the Attorney-General have completed their part. It is on to Workplace Relations. So those questions now, Madam Chair, are best directed to Workplace Relations.

CHAIR—Thank you, Minister, for that clarification.

Senator KIRK—The reason for my questions is that the statement the Attorney-General made in November 2000 said the review of employee records would be completed in time to assist the Privacy Commissioner when he conducts the more general review of the legislation two years after it commences operation. So the next question is: has the general review of the Privacy Act commenced or is it waiting for this earlier review to be completed first?

Mr Ford—No, it has not yet commenced. The two years expires on 21 December this year.

Senator KIRK—So when is it anticipated that the general review of the Privacy Act will commence?

Mr Ford—That is a matter for the Attorney-General. It is under consideration at the present time.

Senator KIRK—What involvement will the office of the Privacy Commissioner have in the general review?

Mr Ford—The previous Attorney said that the review would be conducted by the Privacy Commissioner.

Senator KIRK—Is there any indication yet as to what the terms of reference of this general review will be?

Mr Ford—Yes. There were some terms of reference issued by the previous Attorney to the Privacy Commissioner, but they have not yet been finalised because the Privacy Commissioner had some concerns about them and has raised them with us and we have reported to the Attorney-General.

Senator KIRK—So the Privacy Commissioner made a number of comments on the terms of reference?

Mr Ford—That is correct.

Senator KIRK—Were they criticisms?

Mr Ford—I would characterise them as concerns, issues, that he has raised.

Senator KIRK—So they went back to the Attorney-General for his consideration?

Mr Ford—The current Attorney-General, yes.

Senator KIRK—So there is no time frame as to when this review is likely to be completed?

Mr Ford—It is an issue the Attorney has under consideration at the moment.

Senator KIRK—Is there any indication yet as to how the review that the Privacy Commissioner is going to have to conduct will impact on the other work of the office?

Mr Ford—There is no separate funding for the review, so it would need to be accommodated within the existing budget.

Senator KIRK—How is that going to occur? Is this likely to impact upon complaints handling and the audit work that is done by the commissioner? Mr Pilgrim might be able to indicate.

Mr Pilgrim—It is a difficult question to answer without actually seeing the final terms of reference and their scope. We, naturally, would have to look at the size and impact of the review and determine where we would be able to find resources to undertake the review with the minimum impact on the compliance functions of the office.

Senator KIRK—From what you have been saying today, it seems that most likely it will be the audit work that will have to be reduced if resources were having to be allocated to the review work?

Mr Pilgrim—No. The three audits we will be undertaking in the current financial year we have an obligation to undertake through a memorandum of understanding with other agencies, so they will not be impacted on by whatever form the review takes. We would be looking at possibly utilising our policy area and our corporate and public affairs area to undertake some of that work, again depending on the size and the scope of the review.

Senator LUDWIG—Is there correspondence from the Privacy Commissioner to the Attorney-General that details those concerns on the terms of reference and, if so, is it available to the committee?

Mr Pilgrim—I will have to take that on notice because I am not a hundred per cent sure whether there is correspondence in the formal sense of written correspondence on that, and I would have to take advice as to whether we could provide that sort of information, given the lack of completion around the terms of reference at this time.

Mr Ford—I think I can answer that. There was no written expression of concern about this. The issues were raised at a regular liaison meeting that the department has with the Privacy Commissioner and his office and, on that basis, we prepared a submission to the Attorney.

Senator LUDWIG—Where is that submission then?

Mr Ford—It is with the Attorney.

Senator LUDWIG—Is that available to the committee?

Mr Ford—It is an internal document prepared for the Attorney. It is advice to government.

Senator LUDWIG—It was worth a try, Minister. Can you itemise the concerns that were raised?

Mr Pilgrim—I would imagine they fall under the area of advice to government. Again, I would need to take advice as to whether they can be provided.

Senator LUDWIG—That is the trouble with learning. How long will this yoyo go on for? It is yoyo-ing at the moment. December is coming up and the Privacy Commissioner will be keen, I suspect, to get into the review. When will it stop? Do you have any idea?

Mr Ford—The commitment is to hold the review two years after the commencement of the act. That term is not yet up, so there is time to initiate that.

Senator LUDWIG—Will Mr Malcolm Crompton be back for the next estimates? When will his contract terminate?

Mr Ford—The commissioner's term expires on 20 April.

Mr Pilgrim—I certainly hope he will be here at the next estimates hearing.

Senator Ellison—When are the next estimates?

CHAIR—Next year, Minister. We are awaiting a sitting timetable, as you know, which will give us some idea of the time frame for that.

Senator LUDWIG—That may not reflect—

Senator Ellison—I do not think we can answer that question, in fairness.

Senator LUDWIG—Perhaps I have some insider knowledge. They are usually in February.

CHAIR—Please be my guest, Senator Ludwig—share as much as you like.

Senator LUDWIG—We are just sorting out the actual date. There is an argument about how long we should get.

CHAIR—We have been so generous on this occasion, Senator Ludwig.

Mr Pilgrim—When I answered that, I was working on the basis that there would be February estimates.

CHAIR—Just lucky, I guess!

Senator LUDWIG—We will see Mr Crompton then.

CHAIR—There being no further questions, thank you very much for your assistance this morning.

[9.58 a.m.]

Human Rights and Equal Opportunity Commission

CHAIR—Welcome. It looks like we can assist with your timetabling, Dr Ozdowski. That is useful both for the committee and for the Human Rights and Equal Opportunity Commission.

Senator KIRK—On page 139 of the annual report there is a progress report on the inquiry into children in immigration detention. Could you give us an update on that inquiry?

Dr Ozdowski—I regret that the inquiry is not with the parliament at this stage. We provided draft reports both to the Department of Immigration and Multicultural and Indigenous Affairs and to ACM. There are two instalments. The first instalment was provided on 7 April 2003 and the second on 14 May 2003. Since then both the department and ACM have commented on the draft report under section 27 of our act, and ACM requested, in addition, an opportunity to make an oral submission. The hearing for ACM was held on 19 September and we are working to incorporate into the report the evidence we have received and their comments. Recently, on 14 October, DIMIA requested a second opportunity to comment under section 27 and ACM asked for a similar opportunity. We are finalising the second draft of the report and will provide it for further comments from both ACM and DIMIA. We hope to receive those comments later this year.

Senator KIRK—When is it proposed that the final report will be released?

Dr Ozdowski—After the report is finalised we will need to give them one more opportunity to comment on the recommendations, then it will go to the Attorney-General. I think the Attorney-General has 15 or 16 days to table it in parliament. So, considering the procedural steps we need to take to ensure procedural fairness, it is likely to be some time next year—I would say in the first half of next year.

Senator KIRK—I am trying to get a picture here. There has obviously been some toing-and-froing between HREOC, DIMIA and ACM, seeking their comments and comments going back and forth. Has there generally been cooperation between DIMIA and ACM in relation to the preparation of this report?

Dr Ozdowski—Yes, it is a legislative requirement that we follow a due process and I am trying to adhere to that requirement as strictly as is feasible. The Department of Immigration and Multicultural and Indigenous Affairs was very cooperative with the provision of evidence and comments on the report. Sometimes there were negotiations relating to the deadlines and sometimes deadlines had to be extended, but they were cooperative. Concerning ACM, I am pleased that I received the full submission and additional evidence as a result of the draft report, because I received new points of view and new information and the report will be better because of it.

Senator KIRK—You mentioned that ACM provided an oral submission to the inquiry—is that correct?

Dr Ozdowski—That is correct. They requested a new opportunity to provide oral evidence and also written after they received the draft report, and they provided that evidence on 19 September.

Senator KIRK—Did DIMIA request the opportunity to make an oral submission as well or did they choose not to?

Dr Ozdowski—DIMIA reserved the right to comment in case they felt the need to comment on what ACM was saying, but they did not exercise that right.

Senator KIRK—Thank you.

Senator LUDWIG—In relation to the proposed UN convention on the rights of people with disabilities, has the commission participated in any discussions with either the Attorney-General's Department or the UN in respect of progressing that?

Dr Ozdowski—I and my deputy commissioner were involved with the disability convention. We were involved first—as part of an Australian government delegation—in a meeting in New York which was dealing with that convention. Then I attended a meeting in New Delhi, founded partly by the British Council and partly by the UN High Commissioner for Human Rights, of different human rights organisations. During that meeting we developed broad principles which should be taken into consideration when developing the convention. About two weeks ago I was in Bangkok where a number of governments, national institutions and NGOs were working on a draft convention and the draft convention was developed. My understanding is that the next meeting is proposed for governments in Beijing and that we are not proposing to take part in it, but certainly in the following meetings in the UN we will be involved and our expertise hopefully will be taken into account.

Senator LUDWIG—Have you had discussions with the government about the convention itself and what their view might be?

Dr Ozdowski—I have not had discussions with the government on that convention. There were relatively brief discussions about half way through the year just trying to assert the government's position.

Senator LUDWIG—Ms Leigh, what is the view of Attorney-General's in respect of the disability convention? What participation have you had in the development of that?

Ms Leigh—As Dr Ozdowski mentioned, the Australian government sent a delegation to the second meeting of the UN ad hoc committee that is looking at that, which was in June this year. That is the meeting that Dr Ozdowski mentioned. He was also a member of that delegation.

Senator LUDWIG—Was that the A-G's delegation?

Ms Leigh—It was the Australian government delegation. Apart from the Attorney-General's Department, the Department of Family and Community Services, the Department of Foreign Affairs and Trade and the Department of Immigration and Multicultural and Indigenous Affairs were also on that delegation. Apart from government departments, HREOC and the National Disability Advisory Council also provided members for that government delegation.

Senator LUDWIG—What stage are we at, at the moment? Are we at the stage where the Australian government has expressed a desire to progress, support or adopt a convention in respect of disability? Has there been a statement from A-G's in that regard or are we pre that at the moment?

Ms Leigh—At the last UN ad hoc committee, it was decided to set up a working group to collect all of the options in relation to the convention and put together a document that could then be considered by a future meeting of the ad hoc committee. The next meeting of the ad hoc committee will be in mid-2004, so the government has not made any decisions about delegation attendance at that meeting at this stage, but it certainly has not made any decision to the contrary either. So we are continuing to work actively on the convention, although Australia is not on the working group that is putting together the working document for the ad hoc committee.

Senator LUDWIG—That was my next question. Minister, do you know whether the Attorney-General's has a view about the disability convention—whether it is intending to adopt it? It is not on the working group as we know.

Senator Ellison—That is something I am not aware of, and I will have to take that on notice. I will try to find that out during the day.

Senator LUDWIG—Perhaps this question is best directed to Dr Jonas. Page 147 of the annual report notes an increase in the vilification of and violence against Arabic and Muslim Australians since September 11, 2001. I am wondering what sort of work HREOC might be undertaking on this issue.

Dr Jonas—We had heard anecdotally and from a number of the peak bodies that vilification was occurring. This was not being reflected in our complaints statistics. This is not uncommon: we often find that when particular groups are the subject of vilification, the complaints from them actually fall off as people bunker down or put their heads down, not wanting to be seen to be creating any more trouble for themselves. This was particularly the case when One Nation was vilifying people from Asia and Aboriginal people—our complaints from those people actually fell off.

We were not getting complaints from the Muslim and Arabic communities yet we heard that these things were happening. So we started a project called Isma, which is an Arabic word for 'listen', and we have been holding consultations with Muslim and Arabic communities—and the Sikh community in Western Australia as well—to hear directly from them some of the experiences that they have been going through.

Senator LUDWIG—Is that embodied in a report or do you intend to make a report in respect of that?

Dr Jonas—We will be making a report. I expect that that report will be ready in about January or February.

Senator LUDWIG—When the report is available, can you provide it to the committee? It will be very helpful. Will the report include the places you have gone to and the issues that were raised?

Dr Jonas—That will all be included in the report. We have been to all the major capital cities. We have held a lot of regional consultations as well. I think we have had about 60 or 70 meetings so far.

Senator LUDWIG—Can you say what the general feeling is at the moment? Has that been expressed to you? Have certain issues come out which strongly suggest anything particular?

Dr Jonas—It is pretty wide ranging, and it would be hard to put my finger on any one or two of them at the moment. But, certainly, a lot of concern has been expressed about the way in which the media treats Muslim and Arabic people in this country, especially since September 11. A lot of people have felt that they have been very unfairly treated by the media.

Senator LUDWIG—What about the trends in complaints, particularly in that area? You say they do not reflect a level and that is why you have gone out and undertaken a listening process. Is there any other way that you can identify whether there have been any trends in racial vilification or violence against those communities in particular? Is there any other way that you have developed?

Dr Jonas—There have not been other ways that we have developed, because we have felt that the best way to do it is to go and talk to people and hear from them. I suspect, but did not say before, that another reason why it is not necessarily reflected in our complaints is that we do not have legislation dealing with vilification on the grounds of religion. That is not covered by the Racial Discrimination Act, though it is possible that some people may not be coming to us with their complaints because we would have to say that we do not handle complaints on the grounds of religion. We do not have religious discrimination legislation.

Senator LUDWIG—Do you keep a record of any of those people who may come to you in that area?

Ms Clifford—We do get a number of inquiries, either telephone or written, and we explain the limitations of the federal law in relation to religious discrimination. Most of those callers would be referred to state agencies that have broader statutory roles to play in discrimination complaints. The number of inquiries that we get about religious issues, although I cannot give you the details, are listed in our annual report in relation to the total make-up of the types of complaints that people call the complaint information line on.

Senator LUDWIG—At the moment, do you get any feedback from the state organisations as to what they might be able to deal with in this area? Clearly, your organisation cannot deal with them.

Ms Clifford—There are issues with a number of states. In New South Wales they have a similar jurisprudence issue as to whether religion is covered under their law. Their ground of discrimination is ethno-religious discrimination, and there are some cases in progress at the moment to determine whether that covers just religion or whether an ethnic root is needed for the ground of discrimination. Victoria has a broader interpretation. They just have religious discrimination, as does Queensland. The states all vary to some degree in the coverage of religious discrimination.

Senator LUDWIG—Is this an area on which you have spoken to Attorney-General's? Have you spoken about increasing or utilising a legislative amendment to allow you to deal with some of those areas?

Ms Clifford—I think the commission is on record as asking that religious discrimination be made unlawful at the federal level.

Senator LUDWIG—Minister, what is the process from here then?

Senator Ellison—I will have to take on notice the question of the view of the Attorney-General on this issue and get back to you. I am not aware of any proposal for any change, but perhaps the officers of the department can assist if there is one.

Ms Leigh—As Ms Clifford has explained, the question of the application of the current legislation to religious discrimination is one where there is some coverage already. For a start, under the Human Rights and Equal Opportunity Commission Act, it is possible for the commission to investigate and conciliate allegations of religious discrimination against a Commonwealth body or in the employment context. The Racial Discrimination Act prohibits discrimination on the bases of a number of grounds, including ethnic origin. There is the question about whether that would include discrimination on the ground of religion.

I note that the explanatory memorandum to the racial hatred bill, which was the bill that amended the Racial Discrimination Act to insert the provisions about racial vilification, actually stated that the term ‘ethnic origin’ is intended to have a broad meaning and that it is not necessarily limited to nationality and it would, therefore, extend to other groups of people, such as Muslims. So there are some issues that are yet to be explored about the coverage of the legislation as it stands.

In terms of whether there should be any amendment to the legislation, I think in the first instance the government’s general position in relation to human rights matters is that the most effective steps are educational steps of the sort that have already been outlined by HREOC. I do not think I can add anything more to that.

Senator LUDWIG—So you think the legislation is clear and does not need amendment, or do you think it is unclear and may be examined in the courts?

Ms Leigh—I am explaining that there are some issues about the scope of the legislation as it stands and I certainly would not say definitively that it does not cover that issue. I do not want to go too far here giving legal views about what the legislation covers—

Senator LUDWIG—No, I am not asking for a legal view.

Ms Leigh—but there is clearly an area there to be explored.

Senator LUDWIG—You heard the commission indicate that there were cases that might be proceeding in New South Wales. Is the Attorney-General intervening in those to put a point?

Ms Leigh—I understand that is before the Antidiscrimination Board in New South Wales. Is that the matter? It would not be usual for the Commonwealth to intervene in a matter before a state antidiscrimination board. We will of course monitor developments in that case.

Senator LUDWIG—Turning to another issue, Ms Goward, where is the *A time to value* report up to now? Have you received a response from the government in respect of that?

Ms Goward—Not directly, but I understand it has been looked at. No, we have not had a formal response to the report. In a sense it was not a report directly for government; it did not go through the formal report processes to parliament, so it cannot be quite considered in the same light as other HREOC reports. We have obviously had acknowledgment of receipt of it and that it would be considered.

Senator LUDWIG—And the acknowledgment indicated that it would be considered. How long has it been since it was provided to government?

Ms Goward—It was provided in December 2002.

Senator LUDWIG—Was there an expectation on your behalf that the government would do something?

Ms Goward—I thought the report made a pretty good case, but obviously governments run countries, not human rights commissions, so it was always going to be their call.

Senator LUDWIG—Have you taken it up with the government since then?

Ms Goward—Yes, I have raised it with a couple of ministers and been told that there are issues that they have to consider and a broader policy framework in which they would like to place it before they make any definitive decisions. That is mostly on the public record, I think.

Senator LUDWIG—Where to next, then, for the report?

Ms Goward—I know that the use of the term ‘report’ is a sensitive issue—

Senator LUDWIG—I am happy to revise it and simply say ‘discussion paper’.

Ms Goward—That is probably a better expression. I think it stands and it is really just a matter of public debate and comment now.

Senator LUDWIG—Minister, is it the intention of the Attorney-General’s Department to respond to the discussion paper?

Ms Leigh—It would not be the type of paper that the government would normally make a formal response to, but I note that there is a family and work task force being chaired by PM&C that I have mentioned previously at estimates that is looking at this broader area. So, in terms of government looking at the issue, Ms Goward’s review certainly has been already taken into account in that work and any policy decisions by the government about the area would be involved in the context of that task force.

Senator LUDWIG—You do not think it has just been buried by the government? It seems to have gone off the plate.

Senator Ellison—I think the question has been answered. The work that is being done on this has clearly been outlined and we cannot take it any further than that. It is not a question of government burying this; it is in the public domain and is being discussed and the government is considering it. It is not something you would rush into. We want to get this right and make sure that everything is considered. I think, Madam Chair, that really we have answered it as much as we can.

Senator LUDWIG—Are A-Gs on the working group?

Ms Leigh—Yes, Senator.

Senator LUDWIG—How many meetings has it had that A-Gs have participated in?

Ms Leigh—Did we give you the number of meetings at the previous estimates?

Senator LUDWIG—Yes. I was just wondering how many there had been since then.

Ms Leigh—Since the last estimates there have not been any further formal meetings of the working group.

Senator LUDWIG—Has it produced any paper, any discussion or any outcomes that might be considered by the AG?

Ms Leigh—That task force is chaired by the Department of the Prime Minister and Cabinet, so any work that comes out of it will be reported to the Prime Minister.

Senator LUDWIG—You are not aware of any, though, are you?

Ms Leigh—I think that task force has been producing quite a number of documents as part of working through the issues, and that work is ongoing.

Senator LUDWIG—Perhaps I should try there instead. Thank you. Is the commission considering intervening in the working family test case currently before the Industrial Relations Commission?

Ms Goward—Yes, although the final decision is yet to be made. Of course we will be considering it. It would not be proper to make an announcement publicly.

Senator LUDWIG—No.

Senator KIRK—I have some general questions I was hoping to ask of the president. Hopefully someone else will be able to answer the questions for me. The questions are in relation to interventions by the commission in the last financial year. I wonder if someone could advise me of how many times the commission has intervened in court proceedings.

Mr Lenehan—In the last financial year the commission intervened in six matters.

Senator KIRK—Were there any matters in which HREOC sought to intervene but was refused the right to intervene?

Mr Lenehan—No. If I could add to that response: the commission has never been refused leave to intervene in a matter before the courts.

Senator KIRK—Of those six matters, were there any—and, if so, how many were there—in which the Commonwealth was also a party?

Mr Lenehan—Could I take that on notice? The matters are all dealt with in the annual report. I could look at that now but it would take a little bit of time.

Senator KIRK—Thank you. Those are all the questions I had.

CHAIR—Commissioner Goward, what was the outcome of the forum held in Melbourne, I think, on sexual servitude and trafficking issues and what are the next steps for HREOC?

Ms Goward—We considered it a very successful conference, and it was preceded by a two-day workshop. The point of that workshop was to train people who might have to deal with that issue. Particularly given the government's decision to fund a package, I thought this was something of a priority. That two-day workshop was very successful. It was attended by a number of police officers and Commonwealth officials. The principal trainer was Paul Holmes, who is an internationally recognised expert in countertrafficking and a former police officer in the UK. He for two days went through considerations of an approach that might be best. Since that two-day conference the interest of the commission has been in monitoring the

package, which at first glance looks pretty comprehensive, particularly with respect to the decision to provide visas to trafficked women. I hope we will be able to work further on this issue with the government if it so wishes.

CHAIR—In terms of the training, you had cooperation from the state and federal police in participating in that?

Ms Goward—I would have to say more from the Federal Police. We have yet to successfully engage state police departments, despite the fact that state governments tend to be the ones responsible for the licensing and policing of prostitution more directly. That is of some disappointment.

CHAIR—What is the barrier to that engagement?

Ms Goward—I think you would have to ask them.

CHAIR—Perhaps you could give us on notice some idea of the initiatives that the commission has taken in endeavouring to engage state police forces. It is a matter that the committee can pay some attention to.

Ms Goward—I think there might be a jurisdictional issue if we did it in anything other than an invitational way.

CHAIR—I understand that, but if one's invitation is not taken up then there is not much one can do, is there?

Ms Goward—I can certainly provide a 'question on notice' answer.

CHAIR—Thank you very much. Dr Ozdowski, Dr Jonas, Mr Lenehan and Commissioner Goward, thank you very much for your assistance this morning.

Dr Ozdowski—Madam Chair, thank you again for hearing us earlier.

CHAIR—I am glad that we could facilitate you.

[10.26 a.m.]

Australian Transaction Reports and Analysis Centre

Senator LUDWIG—In dealing with exchange of information on foreign income transactions, have you been dealing with Centrelink or the Child Support Agency in relation to compliance issues? Of course, I do understand that sometimes they interrogate your database and it might be difficult for you then to answer the question. I think I have tried asking this question before.

Mr Jensen—Before I answer your question, I would like to thank the committee for its indulgence in my delay this morning. In answer to your question, Centrelink and the Child Support Agency do not have access to our data at this point. I understand that there is legislation presently before parliament and they may well have access in the future.

Senator LUDWIG—If they were granted access, how would that be dealt with?

Mr Jensen—Access can be granted in a range of ways but, generally speaking, under a memorandum of understanding we would agree with the chief executive officer of the organisation as to how that access would be given. It would normally be restricted to a

relatively small number of people within the organisation and it would be online inquiries, plus we may provide other and/or legal support to them.

Senator LUDWIG—Have you had discussions with them about how that might occur?

Mr Jensen—We have had discussions with them. That will develop obviously as a result of the legislation and in the development of the memorandum of understanding. We have not gone into detail on a memorandum of understanding at this stage because we need to have the legislation passed before we do that.

Senator LUDWIG—I might leave that until February. Has AUSTRAC had any discussions with Centrelink or the Department of Family and Community Services about automated data matching for social security and family assistance compliance powers?

Mr Jensen—Any form of data matching is possible. We would do it in accordance with the Privacy Commissioner's guidelines and that is the extent of our discussions at this point.

Senator LUDWIG—Let me understand that. There has been no outcome of those discussions?

Mr Jensen—There is no outcome of any of the discussions at this point. They will be developed in accordance with the development of the memorandum of understanding.

Senator LUDWIG—Is data matching something you can do or you cannot do?

Mr Jensen—You can do it and it is conducted with other agencies, but there are a set of guidelines and principles set down by the Commonwealth Privacy Commissioner and we abide by those. There are certain reporting requirements, notification requirements in respect of those. It depends on whether you are—I might not get the terminology correct—the agency initiating the data matching or an agency assisting with the data matching. There are certain reporting obligations depending on what role you have. We meet all of those reporting obligations, as do our partner agencies, when there is a data matching exercise going on.

Senator LUDWIG—And do you do more data matching more generally?

Mr Jensen—We specifically do not do the data matching. Anything we do is only fairly small. It is generally the agency.

Senator LUDWIG—You are not the initiator?

Mr Jensen—Not the initiator. The agency would be the initiator of the activity to use our data in that process.

Senator LUDWIG—So you have data matching in other MOUs, and then included in that is the acknowledgement of the Privacy Commissioner principles. Is that how it works?

Mr Jensen—That is correct. It may not necessarily be mentioned in the MOU as a separate category, but during the consultations on the MOU we may agree that that process is appropriate.

Senator LUDWIG—This is a tough one, but have you examined whether it is possible to deal with it in an automated sense? I know the legislation is not in place but, should the legislation be in place, have you considered whether you might need to address whether there are any practical limitations to data matching?

Mr Jensen—From our legislation, there are no practical limitations that I am aware of, as long as we abide by the guidelines. From a technology perspective, I am not aware of any difficulties. It is a matter of working with the technologies as they are being developed. So I do not think there are any constraints in the way that they can be conducted—or controlled, for that matter. It is just a matter of going through each individual exercise as it comes up, because all the exercises will be given.

Senator LUDWIG—Can you match TFNs?

Mr Jensen—We cannot match TFNs, because we do not have that information. That is not a reportable requirement under our legislation.

Senator LUDWIG—Is there a way to make it a primary matching key within your system?

Mr Jensen—We would need to have that information reported to us to match that. There would need to be an amendment made to a range of legislation—tax legislation in particular and perhaps ours as well—to be able to get that information.

Senator LUDWIG—That is not on the horizon at the moment?

Mr Jensen—Not on the immediate parliamentary horizon, no, I would not think so, but we have had discussions over a period of time with the Taxation Office and a range of other organisations about this very issue.

Senator LUDWIG—Is it early days for those discussions or are they just preliminary discussions about the general issue?

Mr Jensen—I would suggest they are probably preliminary at this stage and it would be up to the government to decide whether it was appropriate or inappropriate.

Senator LUDWIG—Do you keep data on foreign transactions?

Mr Jensen—We keep data for approximately eight years. That data would be on all international funds transfer instructions which are customer based into or out of Australia.

Senator LUDWIG—Have you entered into any new MOUs since the last time I asked you this question?

Mr Jensen—Domestic or international?

Senator LUDWIG—Both.

Mr Jensen—Domestic—I do not believe so. There have been some changes in organisations which have meant that we have had to sign a MOU with a revised entity, but I do not think there have been any domestically at this point. There have been quite a number internationally. There have probably been about 10 we have signed over the past three or four months. In fact, I signed three just last week.

Senator LUDWIG—And what was the nature of those?

Mr Jensen—The exchange of financial intelligence to assist in anti-money-laundering and to counter terrorist financing.

Senator LUDWIG—Can you provide a list of those countries?

Mr Jensen—We can certainly provide that to you.

Senator LUDWIG—That would be helpful. Are they templates? I hasten to say I do not want to use that word often, but are they model MOUs or are they templates that you then use for those countries? If there is a divergence from the standard template, could you just flag that with us and let us know what the nature of the divergence is—whether it is to accommodate an own country issue or a foreign country issue?

Mr Jensen—Most of them are a standard template with a few minor amendments to it based on legislative requirements in the other country.

Senator LUDWIG—You do not need to flag them if they are technical issues.

Mr Jensen—There are no real technical issues in there. They are a generic type of MOU.

Senator LUDWIG—In respect of small banks and the information technology systems that have been put in place to support the international campaign against money laundering, there was an article that claimed that small banks do not have the relevant software to recognise anything other than standard Western naming conventions. Do you have any reason to believe that more Australian banks are less able to contribute to the international campaign against money laundering?

Mr Jensen—It is a fairly general question. I will answer it in a general way.

Senator LUDWIG—I thought I would start with ‘general’.

Mr Jensen—The technology is available, and it is relatively easy to get. We use products to assist us to interpret names, and that has advanced quite significantly since the time when we implemented our technology. I think the small banks and others have the ability to use technologies. We try to help out wherever we can with the reporting requirements by assisting them with technology developments. We constantly look at that in our own environment. With respect to the naming conventions, it would be difficult for me to determine what each of the banks had or what other organisations may have.

Senator LUDWIG—The article that I am looking at—I am happy to make this available if you are not aware of it—was by Kelly Mills and appeared in the *Australian* on 29 July 2003 under the heading ‘Little banks “lagging” in anti-laundering’. It said:

Small banks in Australia do not have adequate IT systems in place to support the international campaign against money laundering, a regional bank executive claims.

Does your organisation then examine this issue to see whether there is veracity in those claims? If there is a problem, do you seek to have a meeting with small banks to work out what the issue is and whether you can assist them to overcome their problem?

Mr Jensen—What that is referring to is the wider issue of name lists resulting from terrorists’ financing. We are not a party to what is going on there. It was being pursued by the Department of Foreign Affairs and Trade, together with the Australian Federal Police and ASIO. I understand also that some technology was developed to assist in that process. Having said that, also a lot of technology has been developed by the private sector because it is an issue that is relevant globally. The products obviously vary significantly in price. Some are relatively cheap and some are extremely expensive, but there is a lot of work going on in that area.

Senator LUDWIG—Turning to the act you deal with, the Financial Transactions Report Act, would the inquiry that has been provoked by those or similar articles lead you to consider having a look at that area to see whether or not small banks can comply and provide data that helps you in money laundering investigations?

Mr Jensen—We have an ongoing program of inspections, which looks at the very small single-entity reporting organisations of cash dealers up to the major banks. We look to see that they have their processes and procedures in place to meet the obligation under our legislation. If we find that they do not, we work to fix that up. We have been very successful in doing that over the past 14 years, and we will continue to do that.

Senator LUDWIG—You believe that all Australian banks are capable of detecting and reporting transactions of interest to a standard sufficient to meet the terms of the Financial Transactions report? Is that a summary of what you have explained to the committee?

Mr Jensen—That is the case. We will continue to look for organisations that are unable to do that, if we have not detected them all already. We use our systems also to try to find that from the information we get. It is ongoing. I cannot say that not all organisations are reporting what they need to to us, but we are working with them to make sure they do. I would suggest that, of the major organisations, we are getting the bulk of the information, if not all the information, that we should be.

Senator LUDWIG—But you are not that confident about smaller organisations, with smaller banks?

Mr Jensen—It is not that I am not confident; it is just that we need to identify where we may not have been in contact with some of them, particularly small remittance dealers, which are growing in number and are largely ethnically based. We are doing quite a significant amount of work to locate them so that they do know their obligations and to work with them to report to us. We have developed some web based software that we are able to provide to them and some other products that we will provide to them to assist them to report to us.

Senator LUDWIG—You mentioned that you have an auditing process in place. Has that thrown up any problems? Is there a list of bad performers or inadequate performers?

Mr Jensen—There is no such list. We work across the range of cash dealer organisations, and that is very broad. In any cash dealer area, we may find relatively small numbers of organisations that may not be doing entirely as is required. Our approach has always been to rectify that so that financial intelligence is available for law enforcement, revenue and national security agencies. We have not taken any legal action, although we are looking at a very small number of potential actions that could be taken in the future.

Senator LUDWIG—That was my next question: have there been any referrals to the DPP in this area?

Mr Jensen—Not at this stage, but we are working with the DPP as to what evidence would be required to progress any of these matters.

Senator LUDWIG—I will try to be careful in this area. What can you tell me about this particular area? Is there a broad category? Are there distinct cases within that, bearing in mind

that they may have prosecutions pending? Perhaps you can save that information for post prosecutions.

Mr Jensen—We are not as advanced as that at this point in time, because this is relatively new to our area of investigating in that sense of compliance with the legislation and getting the evidence that is required. So we are in fact consulting with the DPP and with the Australian Federal Police so that our inspectors are better trained to get the information required. There are some areas where we have found some potential noncompliance and, at this point in time, I would prefer that I did not mention those organisations. It is too early in the process to be able to give that information.

Senator LUDWIG—Is there a broad area, then, that you can name?

Mr Jensen—I think we could say that it is the high-risk cash dealer area that has the potential for facilitation in money laundering matters.

Senator LUDWIG—I think there is an article in the *Courier-Mail* today that mentions that cash dealers ‘also reported a further 8,000 suspicious transactions to AUSTRAC, with possible tax evasion and suspicious customer behaviour’. Is that a particular area?

Mr Jensen—That is effectively the total number of reports of suspicious transactions we are getting, but it is only a small number of the total transactions we get during the course of a year. So that is just a statistical figure, if you like, on one reporting component.

Senator LUDWIG—Thank you.

CHAIR—Mr Jensen, I am glad we could facilitate your appearance, thank you very much. We will go back now to the consideration of the Office of Film and Literature Classification.

[10.44 a.m.]

Office of Film and Literature Classification

Senator HARRADINE—I would like to ask OFLC about the international ratings conference in September of this year.

Mr Clark—Yes, there was a conference in September.

Senator HARRADINE—Have you nothing else to add?

Mr Clark—The conference had delegates and speakers from 16 countries, the majority from Australia. The conference canvassed convergent media and the consideration of computer games, films classification, classification issues and research into classification as well. So it was a very broad conference. It was very successful. Those who attended have been largely congratulatory about the conference and the content.

Senator HARRADINE—How about consumers? For example, what was the cost to attend that conference?

Mr Clark—The cost to attend the conference for a three-day registration was in the vicinity of \$1,000.

Senator HARRADINE—Doesn't that preclude many small groups of concerned citizens—ordinary parents and people like that?

Mr Clark—In looking at the conduct of the conference, that price is not an unusual price. That would be a modest price compared to many. It was certainly not considered to be an expensive conference.

Senator HARRADINE—But don't you agree that the issue of ratings must exercise the minds of more people than the professionals in the field?

Mr Clark—Yes, it does, and, yes, the price might preclude some people, but we did not have a large number of people who said that it was too expensive.

Senator HARRADINE—How many consumer groups were there?

Mr Clark—Could I take that on notice? From recollection, the Australian Consumers Association was certainly there. Young Media Australia and a parents and citizens association were there.

Senator HARRADINE—So there were three.

Mr Clark—No. That is from recollection. I would like to take that on notice and provide you with more detailed advice from the registrations.

Senator HARRADINE—Out of how many? How many actually attended?

Mr Clark—There were 120 in attendance in total.

Senator HARRADINE—What about the speakers?

Mr Clark—That included speakers. I do not have a total figure for you, but there would have been 10 or 12 speakers each day, on panels and in individual presentations.

Senator HARRADINE—Who were the keynote speakers?

Mr Clark—The keynote speakers were Dr Jeffrey Brand from Bond University, Dr Guy Cumberbatch from the United Kingdom and Professor Craig Anderson from the United States. There was also Mr Nigel Williams from the United Kingdom, who was talking about Internet material. I think that they were the four keynote speakers.

Senator HARRADINE—Do you have copies of their keynote speeches?

Mr Clark—Those are being progressively put onto our web site.

Senator HARRADINE—What was the aim of the conference?

Mr Clark—The aim of the conference was to look at how we and classification bodies in other places are dealing with convergent media. As you know, we have adopted our combined guidelines for films and computer games. We wanted to have those scrutinised and looked at by attendees. We were also looking at how countries are approaching new media and the classification process.

Senator HARRADINE—How do we sit amongst those countries?

Mr Clark—I suppose I am biased, but I think we sit very well. We have a system that has a mix of advice and regulation. We have a system that provides good advice to the community. We have a system that is broader than many other jurisdictions, where they will just do films and not engage with games or the other material that is submitted to us. Some countries have no regulation.

Senator HARRADINE—I know there was some chagrin about the decision of the government last year—or it may have been this year—to ensure that R-rated computer games were not permitted in this country.

Mr Clark—That is correct, and that is still the case.

Senator HARRADINE—How many of the people in the meeting—and who were they—sought to set the scene for that decision to be attacked?

Mr Clark—There was none at the conference. That was not an issue that was discussed at the conference.

Senator HARRADINE—What is the regime in the United States?

Mr Clark—The regime in the United States is a self-regulatory system which is administered by the Entertainment Software Rating Board. It is a body that is funded by industry. They provide ratings which are, I think, fairly consistent with the European ratings which are also self-regulatory.

Senator HARRADINE—Professor Anderson's keynote speech, as I understand it, raised the issue of harm being caused to players of violent computer games.

Mr Clark—Yes, it did. He is of the view that there is a direct relationship between playing violent computer games and aggressive behaviour both in the short and in the longer term.

Senator HARRADINE—What did it cost the OFLC?

Mr Clark—To conduct the conference?

Senator HARRADINE—Yes.

Mr Clark—I do not have a final figure yet. I can take that on notice and make that figure available to you.

Senator HARRADINE—Under what part of the budget is it provided for in this document?

Mr Clark—The bulk of it has been brought forward into this financial year, so there is very little in the—

Senator HARRADINE—Doesn't anybody know how much it was?

Mr Clark—Can I take the figure on notice? The final figures for the conference have not yet been done, and I am certainly happy to make them available to you.

Senator HARRADINE—Okay. In Mr Anderson's speech he detailed evidence of the danger of violent computer games. I understand there was some disagreement on that question. Has the OFLC determined what research has been taken into account when considering the important issue of violent computer games? Was the strength of opposition to Professor Anderson a prelude to a new push to allow violent games easy access into Australia?

Mr Clark—The answer to the final question is no. Ministers have taken a decision that R-rated computer games will not be permitted. The Australian classification scheme looks at all research and the most recent, in terms of looking across the board, is the 2001 UNESCO International Clearinghouse on Children and Violence on the Screen. That was a summary of

research into the effects of violence. That research stated that there were still too few studies on the influence of games to draw any conclusions about their effects. That is consistent with what happened at the conference, in that Professor Anderson put his view and others put quite contrary views in relation to that material. The scheme, as it operates—and the intent of ministers—is that computer games are treated more strictly than other media because of their interactive content. So, much as there is that debate around harm in relation to games, we have a scheme which is inherently stricter.

Senator HARRADINE—The previous Attorney-General made a commitment that the OFLC guidelines would be reviewed one year after their implementation in March this year. How will that review be conducted?

Mr Clark—It is a review of the operation of the guidelines. That review will be conducted by the OFLC. We have not yet finalised the methodology, but at this stage we are certainly keeping careful records of decisions where it might be seen that there is some change or movement in standards.

Senator HARRADINE—So the OFLC will undertake it; it is not going to be done by an independent examination?

Mr Clark—That is correct. The decisions in classification are made by the board. The review will be conducted by the OFLC.

Senator HARRADINE—So it is a review of the operations?

Mr Clark—Yes.

Senator HARRADINE—What does that mean?

Mr Clark—It just means that the new draft guidelines do not represent a change in standards. We are reviewing the operation of it—how the board has been using it—to check that that is in fact the case.

Senator HARRADINE—By what measures will the performance of the guidelines be assessed?

Mr Clark—I do not have the answer to the methodology question yet, but it will be comprehensive and there will be an opportunity for members of the public to make submission into the operation of the guidelines.

Senator HARRADINE—Will you publish the measures that will be adopted to assess the performance of the guidelines?

Mr Clark—We will make available all of the process about the review of the operation but, as I say, I do not have the methodology finalised. Certainly it will be a very open process.

Senator HARRADINE—Once you have considered the measures to be adopted, will you provide the committee with a copy of those?

Mr Clark—I do not see that that is a problem.

Senator HARRADINE—Thank you. What is the process the OFLC uses when employing consultants?

Mr Clark—We do not employ a lot of consultants. We have tended to use a select tender process for the work that is undertaken.

Senator HARRADINE—I understand that there are a few consultants who have been employed a number of times. Could you provide us with the names of those people who have been employed a number of times?

Mr Clark—Certainly. I cannot do that now—I do not have that information with me—but I can make that available.

Senator HARRADINE—Is Dr Brand one of them?

Mr Clark—He has been employed twice. He did the report on the review of the guidelines and, recently, a small research project which related to classification systems in other countries and how they are structured, but that was really an information paper.

Senator HARRADINE—Yes, but the first one was a major contract.

Mr Clark—That was a more significant contract.

Senator HARRADINE—Would you provide us with the details of the amount of money that was paid?

Mr Clark—Yes, I certainly can.

Senator HARRADINE—On page 41 of your annual report you talk about the growing expertise of media proprietors in using and marketing recent technologies continuing to provide challenges for the OFLC.

Mr Clark—Yes.

Senator HARRADINE—You then indicate a number of things, including that people are breaching the OFLC guidelines:

The type of marketing does not directly impact on classification decisions. However, it raises issues for distributors and publishers about legally marketing those products in a rapidly changing media environment.

Could you explain what that means?

Mr Clark—Recent developments mean that, for instance, a DVD can be stuck on the cover of a magazine. There are then complex issues about whether it is a film and whether a film should have advertising approval if it is not classified. There is a whole range of issues that emerge from there. On television advertising, there was a recent example where a drink was being advertised in combination with an upcoming film and the film was not yet classified. We interpreted that as being an advertisement for the film, even though the primary product was a drink. That did not go to air, but these are the sorts of complex issues we are dealing with. Mobile telephones with games, for instance, is another one. It is increasingly difficult to put all the products that are emerging into neat pockets.

Senator HARRADINE—Do you keep in close contact with law enforcement agencies? If so, with whom?

Mr Clark—We have an enforcement network. The community liaison scheme coordinator is in regular contact with them and with the censorship officials in each state and territory.

They do site visits and they report their findings to them as they travel around the country, so there is a good flow of information.

Senator HARRADINE—Who particularly do you deal with mostly in that area?

Mr Clark—We deal with the police, apart from in Queensland where we deal with the Office of Fair Trading. A designated police officer or person from the Office of Fair Trading is the key point for coordinating enforcement activities.

Senator HARRADINE—Do you see this as a growing problem with the new technologies?

Mr Clark—Yes, it is.

Senator HARRADINE—It does not give us much of an idea about how you are dealing with it.

Mr Clark—We have the guidelines and the code in the act so we can make classification decisions. In the marketplace you have a lot of pressure from producers and distributors to have this out there and we as the regulators must ensure that they are advised as to their obligations in the law. That creates a very tense situation for some companies, because they are not able to control the products within Australia as they are being shipped in from overseas.

Senator HARRADINE—How are you tackling that problem?

Mr Clark—We tackle the issue with regular contact with the people who are engaged in either producing or distributing this material and by telling them what their obligations are. There is a lot of education in the industries that we deal with.

Senator HARRADINE—Do you get a good response from them?

Mr Clark—Generally speaking, yes. The peak bodies and the companies we deal with are responsive to our giving that information. I would say we have a fairly high level of cooperation.

Senator HARRADINE—And, if you do not, it is over to the law enforcers.

Mr Clark—Yes, of course.

[11.05 a.m.]

Australian Crime Commission

Senator LUDWIG—As I understand it, the ACC has launched a nationwide call for information and submissions about firearms trafficking in July this year. Is that correct?

Mr Milroy—That is correct.

Senator LUDWIG—What has been the response to that call to date?

Mr Milroy—There has been one submission and a number of pieces of information received by the agency. I can provide further details out of session, if you wish.

Senator LUDWIG—Thank you. Effectively, you have one submission and a couple of calls. Is that the sum total?

Mr Milroy—It is a little bit more than that, but I can provide the details. Some of the information is a bit sensitive.

Senator LUDWIG—Is there more than one submitter?

Mr Milroy—I will take that question on notice.

Senator LUDWIG—Two? Three? I am trying to ascertain why you would take that on notice. Why wouldn't you know how many submissions have been made?

Mr Milroy—I would prefer to be clear on the point. I believe there were not many submissions, but I had better provide the answer to the number of submissions and other information out of session. As I have indicated, the source of some of the information is a bit sensitive.

Senator LUDWIG—Have they generated any leads or investigations?

Mr Milroy—Yes, we have taken some action from information we have received. Again, it is operationally sensitive.

Senator LUDWIG—Did you expect more submissions or contacts than that? Was the response poor?

Mr Milroy—No, but as a result of the activities undertaken by the agency and operational activities we are talking to sources in that industry. Information is coming forward as a result of our probing. But, in relation to the advertisement that was put out, no.

Senator LUDWIG—What was the cost spent on the advertisements?

Mr Milroy—I can provide you with that out of session.

Senator LUDWIG—So you will take that on notice?

Mr Milroy—Yes, I will take it on notice.

Senator LUDWIG—Did it have any support or backup from the ACC for dealing with the potential inflow of information? In other words, given that you have a public campaign, did you target officers to receive that information or was that part of the general information flow within your organisation?

Mr Milroy—It was part of the strategy at the time of doing other probes as well as the public request.

Senator LUDWIG—Did you have ACC staff dedicated to dealing with this issue?

Mr Milroy—Yes, I did.

Senator LUDWIG—How many staff were dedicated to dealing with it?

Mr Milroy—Again, I can provide you with that on notice, but it was 24 hours a day during the period that we ran the ad. Our information staff is continuing to gather information in that area.

Senator LUDWIG—How long did the ad run for?

Mr Milroy—It was run over three or four days nationwide.

Senator LUDWIG—So you banded for the three or four days plus a few more after that or just for the three or four days?

Mr Milroy—Yes. We actually manned the 24-hour hotline for some period afterwards. Again, I can provide that to you.

Senator LUDWIG—Do you have the breakdown of the total cost?

Mr Milroy—I can provide that, yes.

Senator LUDWIG—You receive some information from it. Given the information rising from the calls, have you been able to reach any conclusions about the flow of illegal firearms in and out of Australia or any other issues that may have arisen?

Mr Milroy—As I indicated earlier, inquiries are ongoing at the present time. We are involved in quite a number of overt and covert operations across various jurisdictions at the present moment. We will be providing an update in relation to our findings to the board at the meeting on 4 December.

Senator LUDWIG—Have you been able to identify the primary source of illegal firearms into Australia?

Mr Milroy—No.

Senator LUDWIG—Have you been able to come to a conclusion about the impact of the gun buyback schemes on the availability of illegal firearms in Australia?

Mr Milroy—Not at the moment, no.

Senator LUDWIG—Do you intend to?

Mr Milroy—Yes, it is part of the guns for sale report that we are updating at the present moment. As a result of our gathering intelligence and liaison with various agencies, we are hoping to provide the board with up-to-date information in December.

Senator LUDWIG—The information will be made available to the board. From there, will you make a public report or inquiry or is that for the board to determine?

Mr Milroy—That will be subject to the board's decision.

Senator LUDWIG—Will you conduct a review of the effectiveness of the advertising campaign?

Mr Milroy—Yes.

Senator LUDWIG—Has that been undertaken at this point in time?

Mr Milroy—Not at the present time, no, but we will.

Senator LUDWIG—When?

Mr Milroy—Because of the information we have acted on, we will be doing that assessment again, in conjunction with the submission to the board in December, as part of the overall submission.

Senator LUDWIG—Does the ACC believe that the current investigations aimed at tackling high-level black market gun smuggling would be useful in pursuit of gun smugglers?

Mr Milroy—Yes, in conjunction with other actions.

Senator LUDWIG—What other actions?

Mr Milroy—I take the view that it is not about dealing with these things in isolation. A strategy of working with partner agencies at a Commonwealth, state and territory level, in a strategic approach using not only the undercover processes but other investigative intelligence-gathering methods in a national approach, will achieve some results.

Senator LUDWIG—In dealing with the issues of resourcing and staff dedication to this area, can you advise exactly what staff you have in this area.

Mr Milroy—The ACC has a dedicated firearms investigation team, which is supported by in-house surveillance and other intelligence-gathering capabilities, so the team numbers fluctuate depending on the number of operations we are running across jurisdictions. In addition to that, where there are dedicated state task forces, we are running a number of operations in partnership with those. So the actual numbers on a particular project varies depending on the particular project we are working on. In relation to the actual number that the ACC has dedicated, I can provide you with those details if you wish.

Senator LUDWIG—Yes, thank you. How long has that team been in place for? Is it one team or two teams, or do you just call it ‘a team’.

Mr Milroy—It is one. It is based on the determination approved by the board on 13 May. That team has been in place since May and has been progressively growing in size since that time due to the number of operations and target projects that we are currently undertaking.

Senator LUDWIG—In tackling black market gun smuggling, do you call on expertise from other areas or is that already contained within the team?

Mr Milroy—Within the team, but we also liaise very closely with our federal counterparts and other experts. We have also had discussions—and we will expand on those—with overseas agencies in relation to the problems they are having with handguns.

Senator LUDWIG—Did that originate from a specific request by the government to pursue this particular area?

Mr Milroy—No, it is part of the strategy that was outlined to the board for them to approve the determination. The strategies indicated that we would consult with industry, other agencies and overseas agencies to get a better understanding of the problem as part of our overall objectives and strategies.

Senator LUDWIG—How many current requests are on the books at the moment for the ACC to undertake?

Mr Milroy—In relation to?

Senator LUDWIG—Requests from the Attorney-General to deal with particular investigations.

Mr Milroy—Do you mean what determinations we are currently pursuing?

Senator LUDWIG—Yes. Perhaps we can call them determinations then.

Mr Milroy—That current work is based on what is approved by the board, and that is subject to the submissions that we submit to the board in relation to matters. Based on those submissions, the board then considered those requests and have made the decisions that they have at the moment. I can advise you that, at the May board meeting, the board approved us to undertake special intelligence operations using the coercive powers on vehicle rebirthing, amphetamines and other synthetic drugs. The board's meeting in September authorised a special intelligence operation using the coercive powers on identity crime, which includes card skimming. In May the board approved to undertake special investigations of serious and organised crime using its coercive powers in South-East Asian organised crime, principally heroin importation and trafficking, established criminal networks, money-laundering and tax evasion in concert with serious organised crime and firearms trafficking. At present we are also undertaking a classified strategic assessment of people trafficking for sexual exploitation and a cybercrime assessment. Those are all the matters approved by the board for the ACC to carry out investigation and intelligence-gathering activities.

Senator LUDWIG—They are all the current ones that you have on the books.

Mr Milroy—That is correct.

Senator LUDWIG—Have you made any particular requests yourself or is any area developing requests, particularly in areas that the ACC see as areas that require particular attention?

Mr Milroy—Those are the matters that the ACC have submitted to the board.

Senator LUDWIG—And the board has approved all of those.

Mr Milroy—Correct.

Senator Ellison—There is a matter I need to clarify regarding some evidence given by Mr Milroy in relation to—perhaps I did not understand Senator Ludwig's question—the reference to firearms trafficking and where it came from. Was I right in understanding that?

Senator LUDWIG—Yes. I thought I would let it go.

Senator Ellison—The genesis of it really was in the Australian Police Ministers Council last year.

Senator LUDWIG—That is what I thought too.

Senator Ellison—I think Mr Milroy might have been understanding the direction of it apropos the board running the direction of the inquiry, but the genesis of it was the Australian Police Ministers Council when the Commonwealth raised it as a matter of priority and it was agreed to by the states and territories. That was the genesis of the matter. The direction of the inquiry, of course, has been by the ACC board. That is the issue that I wanted to clarify.

CHAIR—Thank you very much for that clarification, Minister. Have you anything further?

Senator LUDWIG—No.

CHAIR—Mr Milroy and Mr Phelan, thank you both very much.

Senator Ellison—I just want to clarify something else. I think there was a question put to Mr Milroy about the primary source of illegal guns. The ACC has a report which has gone to members of the IGC—the intergovernmental committee—in which comments are made as to the major source of illegal guns. I have some difficulty as to the detail we can go into in relation to this report because it is going to members of that committee. It just might make the position clearer, if you like, in relation to that. I will see if we can give the committee further information on that.

CHAIR—On the basis, Minister, that anything the committee takes during the estimates process must be received as a public document.

Senator Ellison—Yes, and also that this is a report to an intergovernmental committee involving other ministers. So I need to check on that because comments are made in relation to where the major supply comes from. As there are other ministers involved, it would be wise of me to check on that first because it could add further detail to the answer.

Senator LUDWIG—That would be helpful. I was going to ask for the matter that went to the board, but I thought you would refuse that. But any other information you can provide would be helpful.

Senator Ellison—You can understand my predicament, because this does involve ministerial colleagues from other governments and it has gone to them. I need to check that it has been received and that it is appropriate to release it at this stage.

CHAIR—The committee appreciate your offer, Minister, and will await that information. As there is nothing further, Mr Milroy and Mr Phelan, again thank you very much for your time.

[11.24 a.m.]

Federal Court of Australia

Senator KIRK—When was the annual report forwarded to the minister? I have only just received it this morning.

Mr Soden—It was 9 October.

Senator KIRK—When was the report tabled?

Mr Soden—31 October.

Senator KIRK—That was last Friday. On the last occasion we were here we talked about proposed protocols for handling serious complaints against federal judicial officers. Has the Federal Court provided a response to the Attorney-General's Department as yet in relation to this?

Mr Soden—Yes, the Chief Justice has written to the Attorney about that matter.

Senator KIRK—Can you give us some idea when that letter was written?

Mr Soden—I cannot recall the precise date. I think it was either the last week of September or the first week of October. I am reminded that it was 9 October.

Senator KIRK—Is the Federal Court required to do anything further in relation to that or just provide its response and then wait for the Attorney-General's Department?

Mr Soden—We have not been asked to do anything else at this stage that I am aware of.

Senator KIRK—Ms Leigh, where does it go from here?

Ms Leigh—Following the receipt of that response from the Federal Court, we have followed up with the Family Court and the Federal Magistrates Court and we understand that responses from those courts are both in preparation. In fact, we understand that the federal magistrates considered this issue at a meeting they had on 23 and 24 October, so we are expecting a response from the Chief Federal Magistrate based on that meeting in the very near future. In the first instance, as you can see, what we are doing is gathering all of those responses.

Senator KIRK—Perhaps I will ask the Family Court and the Federal Magistrates Service when they come before us later on in the day. In relation to migration review, just last week, on 27 October, the Attorney-General, as you would be aware, announced a review of migration litigation. What involvement, if any, will the Federal Court have in this review?

Mr Soden—Quite extensive from our perspective. Justice Sackville, one of the judges of our court, has been nominated by the Chief Justice to represent the court on the major steering committee, I think it is called. We have dedicated one of our more experienced deputy registrars to the working party on a full-time basis. I met with the chair of the committee, Hilary Penfold QC, last week and we have provided at this early stage quite a collection of information in relation to statistics and other documents with some ideas about how the system might be improved.

Senator KIRK—Did you provide those documents to Ms Penfold of your own initiative or at her request?

Mr Soden—As I have mentioned to this committee before, we are burdened with the migration jurisdiction. We have been looking at a number of options for procedural reform for some time. We have been putting together ideas in document form for our own internal consideration—for some of our committees' consideration et cetera. We provided copies of those sorts of documents. They include our analysis, for example, of how the systems work in other countries. That is from our perspective, of course, in terms of practice and procedure of court, but because we had undertaken that and other examples of inquiry we did provide that on our initiative to the inquiry. I should indicate that we are also asking all of the judges in the court and all the senior staff of the court for any suggestions for improvement to process that they might have had in the past or they have at present. We will put that all together and similarly will provide that to the review.

Senator KIRK—Can you remind me about the nature of the body that is looking into this. I understand that Ms Penfold is the chair and you have indicated that Justice Sackville is the representative of the Federal Court. How many members are there on the body itself?

Mr Govey—It might be more appropriate if we deal with that question. The head of the review, as has been mentioned, is Hilary Penfold. Then there is a steering committee which will have representatives of the department. It will include Justice Sackville, who has already been mentioned; Rolf Driver, who is a federal magistrate; John Blount, who is the Deputy Principal Member of the Refugee Review Tribunal; Andrew Metcalfe, Deputy Secretary in Prime Minister and Cabinet; Philippa Godwin, Deputy Secretary of the Department of

Immigration and Multicultural and Indigenous Affairs; Mr Henry Burmester from the Australian Government Solicitor; and me, as the chair, from the Attorney-General's Department. Then there is the secretariat, which has been pulled together from various agencies including the Attorney-General's Department, the Department of Immigration and Multicultural and Indigenous Affairs, the Federal Court and the Refugee Review Tribunal. Those people will be working on a full-time basis with Ms Penfold, who is also working on a full-time basis.

Senator KIRK—Prior to the announcement of the review, was the court consulted about what terms of reference may be appropriate?

Mr Soden—Not that I am aware of.

Senator KIRK—So, as far as you are concerned, the announcement was made and then you did what was asked of you in order to get the review up and running?

Mr Soden—I am not aware of any involvement that we had in the development of the terms of reference. I should say, however, that it was not a surprise to us that it happened. Something like that had been in the wind for some time, if I can describe it that way. As I said before, we are very keen to be involved.

Senator KIRK—Could you provide the committee with updated figures in relation to unrepresented litigants? You may need to take that on notice, but you may have it with you.

Mr Soden—Page 46 of the annual report gives a summary of the details and page 47 shows a graph of the percentage. The precise figures for last year and the year before are in table 3.4 on page 48. They are figures, of course, to the end of financial year. There would be no real change in those that we are aware of.

Senator KIRK—Just from looking at the graph—and, as I said, I received this only this morning—it appears that there has been a slight decrease between 2001-02 and 2002-03 from 41 per cent to 37 per cent.

Mr Soden—That is true. I should say that the proportion of unrepresented litigants in all of the migration matters that have been remitted by the High Court to our court has not come to account yet because we have not finished processing them all. A large number of them were represented in certain places, but we have not finished processing them all and we are just not sure of the proportion. It is likely that a large number of those, in proportional terms, will end up being unrepresented.

Senator KIRK—What were the figures there? There were about two or three thousand, were there not? How many cases?

Mr Soden—It will be approximately 2,000, all up.

Senator KIRK—Last time you were here you indicated that you planned to have a new case management system, Casetrack, in place. I think you indicated that it should be operational by the end of the year. Can you tell us whether that is still on track to be operational by then?

Mr Soden—Yes, it is on track. Only last week we confirmed the live dates in the first of the registries, being before the end of year, and we will roll it out progressively to all of the

registries across the court. The larger ones will be last because that is where the biggest amount of work has to be done before the end of this financial year. So, yes, it will start before the end of this calendar year.

Senator KIRK—And you expect by the end of the financial year it will be in place right across the court?

Mr Soden—It will be in operation across the court and the old system will be replaced.

Senator KIRK—How many years has it taken to put this system in place?

Mr Soden—You asked me that question on the last occasion, Senator, and I think I said it has taken a number of years. From the time we decided that it was a good idea to replace FEDCAMs, because it had a use-by date, it has probably taken four to five years until the handover.

Senator KIRK—What is the approximate total cost to date of this roll-out?

Mr Soden—Most of the costs are going to occur in this financial year. Last financial year it was only about \$250,000, which was mainly for some of the start-up project costs. The balance this year will be mainly in the purchase of the equipment—the servers et cetera—and the software licensing, and we have a budget for it of \$3 million.

Senator KIRK—And you expect to incur that in this financial year?

Mr Soden—That should all be incurred by the end of this financial year.

Senator KIRK—Does that \$250,000 you mentioned include the cost of the project that was begun but never completed?

Mr Soden—No, it does not.

Senator KIRK—What was the cost of that aborted project?

Mr Soden—I would be relying on my memory, Senator—I would have to take that on notice.

Senator KIRK—Okay.

Mr Soden—I must say, though, that project did not incur any purchase costs. We could bring to account the costs of the staff time in terms of the project, but we were careful to enter into a contract with a potential supplier that avoided any purchase cost.

Senator KIRK—So it would have been in the vicinity of what sum?

Mr Soden—There was a lot of work done in the development of how a system would work and the development of the specifications. A lot of that work, although you could treat it separately as work in relation to a project that did not proceed, was valuable work in relation to the Casetrack system. So it was not time and effort thrown away—

Senator KIRK—It was not really lost.

Mr Soden—but it can be separately costed. We will take that on notice.

Senator KIRK—Thank you. This information, again, may be in the report you have provided us with, but what is the statistic on migration cases in the court?

Mr Soden—I have brought along a collection of statistics, which I table.

CHAIR—Thank you, Mr Soden.

Mr Soden—There should be enough for members of the committee. These are similar to statistics that I have provided in the past. I have today, with the consent of Mr May of the federal magistrate's court, combined the Federal Court and federal magistrate's court statistics so you can see an across-the-board trend. The first page is an indication of that. You can see on that graph a marginal decline in the Federal Court, a dramatic increase in the federal magistrate's court and a net total increase. The figures on the first page include the matters remitted from the High Court up to 30 June, and of course there have been another 1,400 since 30 June.

The second page is an attempt to show the trend excluding what might happen as a result of High Court remittals. Again you can see a large decline in the matters to the Federal Court, a large increase in the matters to the federal magistrate's court and a net increase overall. All of the substantive numbers and percentages are there for your assistance.

The third graph shows appeals to the full court. The next graph is just applications to the Federal Court. The final graph shows joint applications to the Federal Court and the federal magistrate's court, but again I must stress that they exclude the 1,400-odd remittals that we have received after 1 July.

Senator KIRK—What accounts for the marked increase in the matters before the federal magistrate's court and the not quite corresponding decrease in the Federal Court?

Mr Soden—Primarily, the creation of the jurisdiction in the magistrate's court and the transfer of cases from our court to that court. Cases are being commenced in the magistrate's court, but I think presently the bulk of the matters are those that are transferred from our court to the federal magistrate's court.

Senator KIRK—Are the figures here the number that are transferred from the Federal Court to the federal magistrate's court?

Mr Soden—On the first page. Going down the 2002-03 line you will see that as at 30 June there were 657 out of 740.

Senator KIRK—I see. So that many were transferred to the Federal Magistrates Service.

Mr Soden—I have mentioned to you on previous occasions that there is a substantial benefit for us in the magistrates doing that work at first instance, if I can call it that, because most of the appeals from the magistrate—and there are many of them—come to the Federal Court and, subject to a decision of the chief justice in relation to the matter—and he has a look at all of them—he can direct that a single judge of court deal with appeal from a magistrate. So a large proportion of the matters are being finalised by one magistrate and one judge rather than four judges.

Senator KIRK—That is a change, obviously, in the last 12 months?

Mr Soden—That is a trend that has occurred particularly in the last 12 months.

Senator KIRK—And those figures are reflected in these statistics when I look carefully?

Mr Soden—In the third graph you will see the comment down the bottom that approximately 85 per cent of the number of appeals in that graph are heard by a single judge of the Federal Court.

Senator KIRK—So that is leading to greater efficiency then, I would imagine, in the court?

Mr Soden—It certainly enables the judges to devote their efforts to other work, yes.

Senator BOLKUS—Can I just ask a few questions arising from one of your earlier answers. You said that the court had done some analysis of how to manage the caseload, especially in the migration area, and you have prepared documents in respect of that. Can we get access to that?

Mr Soden—I do not think there is a problem with that. I think I mentioned comparative analysis. To be clear, I actually asked for work to be done for our consideration internally in relation to how the jurisdiction was exercised in other places—UK, Canada and New Zealand. There was a summary prepared for our internal consideration about that. I do not see a difficulty in making that available to the committee.

Senator BOLKUS—Do you have it with you now?

Mr Soden—I do not, I am sorry.

Senator BOLKUS—If you can make it available to us, it would be great. Just for the moment, though, can you think of anything that did stick out as an idea that could have some currency here in our jurisdiction?

Mr Soden—There was one particular initiative that struck me personally as a good idea, and I know the review will have a look at it. It was all about the way in which leave is granted for appeals from a tribunal to a court. It is the way the system works in the UK. First of all, there is a leave provision in the UK—that is, you have to get the leave before you can appeal.

Senator BOLKUS—You get the leave from where?

Mr Soden—That is the interesting point. You have to make your leave application to the tribunal first of all, and you can renew that leave application to the court. One of the phenomena that I found when reading about that was that, if the original tribunal is required to consider whether there is a point of law upon which leave ought to be granted, it makes them think carefully about that in the knowledge that, if they refuse, the application can be renewed but, if there is a point, they can grant leave. It is my understanding, from the discussions I have had over some time with people from England about why it is done, that moving the requirement for leave to be granted at the tribunal so long as you can renew it as a right works reasonably well. It is certainly different from what we do here. It seemed to me to be a good idea to have a look at it, at least.

Senator BOLKUS—Have you considered whether that leave application could be brought before the Magistrates Service as opposed to the Federal Court?

Mr Soden—I presumed it could when I was thinking about it.

Senator BOLKUS—That is the document you have prepared so far, but you are doing ongoing work as well?

Mr Soden—We are participating in the review.

Senator BOLKUS—You are collating ideas from the bench and from others in the court? I think you said that earlier.

Mr Soden—That is true. We are not being reactive to questions asked; we are trying to be proactive and to come up with suggestions that might be worth considering.

Senator BOLKUS—Can you make those documents available to the committee as well?

Mr Soden—I cannot see a difficulty with that.

Senator BOLKUS—Thank you.

Senator KIRK—I have another question in relation to the Migration Review Tribunal that I did not quite understand last time. What exactly is the time frame? I understand the review has been announced. It might be for Ms Leigh to advise us, but has the steering committee called for submissions from various interested parties to date? What is the process?

Mr Govey—The process will be very much a matter for Ms Penfold as head of the review. The steering committee will meet for the first time later this week and, no doubt, we will have discussions then about the process Ms Penfold has in mind. From the discussions I have had so far, I would expect it to be a consultative process. Given the short time frame, though, it will be a reasonably targeted consultative process; in other words, they will need to work out who they need to speak with and, I would expect, to arrange meetings with them.

Senator KIRK—What is the time frame?

Mr Govey—The review is required to report before the end of the year.

Senator KIRK—Essentially it is left to Ms Penfold's discretion as to whom she consults and who she asks for submissions from and the like. Is that correct?

Mr Govey—In essence that is right, although I would expect that to be the subject of discussions at the steering committee meeting.

Senator KIRK—Have the terms of reference been made publicly available?

Mr Govey—They have. Ms Leigh has just reminded me that the terms of reference talk about consultation and list some of the organisations that one would expect to be consulted—courts and tribunals, government departments and other government agencies, bodies representing litigants and legal practitioners and other people involved in the conduct of litigation.

Senator KIRK—And that is all to happen before the end of the year?

Mr Govey—That is right, although I think it is worth noting that these are issues that have been around for some time and, like the Federal Court, our department and other departments have been doing a little bit of work. But it will be a very intense process—there is no doubt about that.

Senator KIRK—Thank you.

CHAIR—As there are no further questions for the Federal Court representatives, I thank the witnesses.

[11.46 a.m.]

Federal Magistrates Service

Senator LUDWIG—Mr May, I have a copy of your organisation's annual report. When was that provided to the minister?

Mr May—I believe it was provided to the minister on Thursday of last week. The production of the report was delayed due to the delivery of the ANAO letter on 7 October, and we then had to go to the printer, hence the production delay.

Senator LUDWIG—And what was the ANAO letter?

Mr May—The ANAO letter was delivered to us on 7 October—at least that is the date that it bears. The delay in getting that was due to a debate that was going on between the ANAO, the Department of Finance and Administration, our organisation and, I understand, some other organisations about the management of special accounts.

Senator LUDWIG—And what was that about? Can you provide any information?

Mr May—Regarding our organisation it was in relation to the management of what is called the 'litigants trust fund', which is an account where moneys are directed by court order to be paid into the court and are held by the court and then paid out according to another court order.

Senator LUDWIG—What was the upshot?

Mr May—The upshot was that a letter providing the financial statements was delivered by the ANAO. There was no upshot insofar as these financial statements are concerned. I understand that the ANAO will be publishing a report about the conduct of special accounts in due course, and that report will obviously be tabled in due course.

Senator LUDWIG—We will look with interest for that. In respect of new appointments, have there been any new appointments to the FMS?

Mr May—There have not, Senator.

Senator LUDWIG—The last time we were here there was discussion about some new appointments. There was some funding for additional appointments; is that right?

Mr May—I think the point we were at last time was that in the budget estimates there was some funding provided for two positions within our court—that funding was provided through a reallocation of earlier appropriations—and the provision of ongoing money for those two positions. The government has announced that four positions are to be created, and the two additional positions will come from a transfer of funds from the Family Court. That transfer will occur, I imagine, in the next budget appropriations.

Senator LUDWIG—So it has not happened yet?

Mr May—No.

Senator LUDWIG—Those two places have been filled then?

Mr May—No, they have not. No positions have actually been filled yet.

Senator LUDWIG—When are they likely, Minister, to be filled? Ms Leigh?

Ms Leigh—They are under active consideration at the moment. The positions were advertised in May. There was a selection process and interviews, and the Attorney is currently considering the question of whom to appoint.

Senator LUDWIG—There is a short-list on the Attorney's table, is there?

Ms Leigh—Yes.

Senator LUDWIG—How long has that been on the table for?

Ms Leigh—Only a short time. As you are aware, the Attorney was only recently sworn in as Attorney.

Senator LUDWIG—Yes. If we look at it from that perspective, it has only been on the table since the appointment was made, I guess.

Ms Leigh—In fact, my recollection is that we put the short-list to the Attorney since he was appointed.

Senator LUDWIG—Do you have any idea of when the appointments will be made?

Ms Leigh—No.

Senator LUDWIG—With respect to the transfer of funds from the Family Court, will they be dealt with in the next budget or will they be dealt with prior to that? How do you envisage the process that will be put in place?

Mr May—The simple answer is that, as I recall, the arrangement we have with the Family Court is that they will be dealt with in the next budget. We expect that the appointments will be made towards the end of this year. There are some other funding issues that will balance out and we will deal with them next year.

Senator LUDWIG—How many appointments will be made? Are there two or four appointments to be made?

Ms Leigh—Four appointments.

Senator LUDWIG—We are waiting for the Attorney-General to announce four?

Ms Leigh—That is correct.

Senator LUDWIG—There is funding for two of those and you will fund two until the next budget?

Mr May—There is funding for four appointments.

Senator LUDWIG—I should say there is funding for four. Two are spoken for, two will come out of your budget until such time as you can purvey an arrangement, if we can call it that, with the Family Court to then deal with it in the next budget, like a deferred payment.

Mr May—Indeed, what will happen is that all four of them will now come out of our budget in this appropriation year and then we will receive a transfer from the Family Court for the funding of two of those positions in the out years.

Senator LUDWIG—Will the funding pick up from when they are appointed?

Mr May—No. The transfer of funding will pick up from 1 July next year.

Senator LUDWIG—You will then support them for the four appointments till then?

Mr May—Yes.

Senator LUDWIG—Where is the report of the review at now?

Mr May—Again, I should refer this to the Attorney-General's Department.

Senator LUDWIG—We are now talking about the review again. Where is that at?

Ms Leigh—It has been concluded and it is with the Attorney.

Senator LUDWIG—How long has it been with the current Attorney?

Ms Leigh—I think we put it up shortly after he was sworn in.

Senator LUDWIG—Only a short while then, I guess?

Ms Leigh—Necessarily; yes.

Senator LUDWIG—Is there a target date for release? Will it be released?

Ms Leigh—That is a matter for the Attorney.

Senator LUDWIG—Minister, could you take on notice two issues: is there a target date, if it is to be released—I guess that is the subsidiary issue—and if it is not going to be released, why would it not be released?

Senator Ellison—I will take that on notice.

Senator LUDWIG—Ms Leigh, are you able to identify any issues that were raised in the review which need addressing at first instance?

Ms Leigh—I think that would probably be premature at this stage.

Senator LUDWIG—Who has borne the cost of the review?

Ms Leigh—As we mentioned in the past, the cost has mainly been with respect to officers' time and the time of the members of the courts who have been on the steering committee and who have assisted the working group who have been preparing the report. There was a consultant. I recall that I previously provided detailed information about the cost of the consultant, Mr Des Semple, who participated in the steering committee meetings and gave us comments on the drafts as we progressed.

Senator LUDWIG—Who was the consultant?

Ms Leigh—Mr Des Semple.

Senator LUDWIG—How much was he paid?

Ms Leigh—I think I provided that information previously, but he was paid a total of \$5,592.50.

Senator LUDWIG—Who paid that bill?

Ms Leigh—The Attorney-General's Department.

Senator LUDWIG—Turning back to the migration review, are you participating in that?

Mr May—Federal Magistrate Driver is a member of the steering committee.

Senator LUDWIG—Will there be only the one staff member participating in the review? It was announced on 27 October. When did you receive notification of it?

Mr May—We received formal notification of the review on the day of the minister's press release.

Senator LUDWIG—Will there be one staff?

Mr May—We have no staff participating. A federal magistrate is a member of the steering committee but, unlike the Federal Court, we have not made anybody available to participate in the work of the secretariat.

Senator LUDWIG—Do you expect to? Do you expect your magistrate to require some assistance?

Mr May—I expect the secretariat will come to us regularly asking for information about how matters progress in the court and the workload of the court, and that some of my staff will be fairly much tied up on the review in the next couple of months, but we do not have the resources to make anybody available full time.

Senator LUDWIG—Were you consulted about the terms of reference prior to the—

Mr May—I do not believe we were consulted about the terms of reference exactly. We were consulted over some period about the possibility of a review happening and about the general thrust of the matters that the review would be considering, but I do not believe we saw a copy of the terms of reference until the minister's press release or shortly prior to that—on the same day or maybe the afternoon of the day before.

Senator LUDWIG—In respect of the workload of both the Federal Court and the Federal Magistrates Court in migration matters, what total of your caseload would it comprise? I am not sure whether I can find that in here.

Mr May—I always have difficulty answering that question because it really depends on how you count the caseload. The way I prefer to answer the question—

Senator LUDWIG—I am trying to find different ways of asking about the cases.

Mr May—If you count up the number of individual applications that are made you end up throwing in divorces and bankruptcies. It skews the workload if you count it that way. The way I prefer to answer the question is that we currently have somewhere between three and four of our 19 federal magistrates working substantially on migration work week to week. That gives you an indication. If you use the three figure, it is somewhere around 16 to 20 per cent of the workload of the court.

Senator LUDWIG—Thank you. I might use that initiative next time. In relation to the judicial complaints protocol: on the last occasion I think the committee was interested in the protocol for handling serious complaints against judicial officers. Has the FMS provided a response to the Attorney-General in respect of that issue?

Mr May—I do not believe the response has gone yet. As has previously been mentioned, the federal magistrates met on 23 and 24 October and discussed the draft protocol at that time and formed a view about what the response would be. I am unaware whether the Chief Federal Magistrate has actually sent the letter that it was agreed would be sent.

Senator LUDWIG—I wonder if you could take on notice if it has been sent or whether the letter can be made available to the committee when it is sent.

Mr May—It will be a matter for the Chief Federal Magistrate whether she would make the letter available.

Senator LUDWIG—That is why I asked whether you could take that on notice.

Mr May—I will take it on notice.

Senator LUDWIG—Regarding unrepresented litigants, the annual report details something in the order of—

Mr May—I think it is 18 or 19 per cent of applicants in family law. What we do not have yet is good data about respondents and their participation as self-represented litigants.

Senator LUDWIG—What is your anecdotal evidence? Do you think that is on the rise as well?

Mr May—I think it is pretty constant at the moment. That 18 per cent figure has been around in our court for quite a while.

Senator LUDWIG—And the way you are addressing that is through pro bono work?

Mr May—Internally, we are addressing it in a range of ways. We have a specific project which is referred to in the report, which we have loosely described as a ‘day in the life’ project. It is a way of tracking through what happens with a self-represented litigant from the time they first come to a lawyer, a legal aid service or a community legal centre and then tracking them right through the court process. We have issued a discussion paper, and responses on that discussion paper are due to be received by the end of this week. We are currently recruiting a range of people in community legal centres who will be the participants in the second stage of that exercise, and they will be tracked through the court process. We have found that one of the real difficulties in getting any sort of information about self-represented litigants is recruiting litigants to actually participate in a process that will give us hard data. We have designed the project around that, and hopefully it will produce some useful results.

An early result from that project is a simple guide to running contravention applications in the court, which we have published on our web site. One of the interesting things we have found about self-representation in the court is that it is not even across the board. The 18 per cent of applicants figure applies to final order applications, but the self-representation rate in relation to contravention applications is about 60 per cent and the self-representation rate in relation to divorce is over 65 per cent. So some applications tend to have a far higher rate of self-representation than others, and we are targeting those.

Senator LUDWIG—You mentioned a document earlier, not the guide. Is that available to us?

Mr May—The discussion paper?

Senator LUDWIG—Yes. Is that available to the committee?

Mr May—Yes. I can arrange for that to be provided to the secretariat if you would like.

Senator LUDWIG—Yes, please.

CHAIR—As there are no further questions for the Federal Magistrates Service, thank you very much, Mr May.

[12.02 p.m.]

Family Court of Australia

Senator KIRK—When was your annual report forwarded to the minister?

Mr Foster—An advance copy went to the Attorney-General on 29 September. A printed copy was sent to the Attorney-General on 10 October, and the report was tabled on Friday, 31 October.

Senator KIRK—On the last occasion, we talked about the decision by the government not to replace two of the judges in the Family Court and to transfer some of the funds from those appointments to the Federal Magistrates Service to enable them to appoint two magistrates. Would you update us on what is occurring there?

Mr Foster—In relation to the workload or in relation to the transfer of funds?

Senator KIRK—I am particularly interested in the transfer of the funds.

Mr Foster—We have reached an agreement now with the Federal Magistrates Court as to how much funding we should transfer, and that figure is in the order of \$470,000 per federal magistrate. But, due to the timing issues of the appointments and some other funding arrangements we have with the Federal Magistrates Court, we have been able to retain some funds to employ two additional SES registrars, one in Brisbane and one in Sydney, until 30 June 2005. In effect, the full transfer of the \$470,000 per FM will be in the 2004-05 budget.

Senator KIRK—I would like to clarify that it is \$470,000 per federal magistrate.

Mr Foster—Yes.

Senator KIRK—So it is almost \$1 million. Did you say that \$470,000 has already been transferred?

Mr Foster—No. That is the figure we have agreed. For this financial year, basically because of the lag in appointments, we will not transfer the money until the appointments are there, until the money has to be spent. That has enabled us to employ some band 2 registrars, as I said, to base in Brisbane and Sydney until June 2005.

Senator KIRK—Have those appointments occurred already?

Mr Foster—The appointment in Brisbane was an ongoing appointment. We are going through a process at the moment of trying to identify a person in Sydney.

Senator KIRK—You mentioned workloads before. What has been the effect on the Family Court's workload as a consequence of the two judges not being replaced?

Mr Foster—Perhaps I can first talk about some of the input since the implementation of the Federal Magistrates Court as I think that will give a bit of context about where we are going with our workload. Since the introduction of the Federal Magistrates Court, divorces have been reduced by over half—56 per cent, in fact—and interim filing is down by approximately one-sixth or 15 per cent. There are still a number of files being transferred

between both courts, but we transferring about three-quarters of the files that are being transferred between the two courts. For the end of the 2002-03 financial year, 77 per cent of matters were resolved through mediated agreements. The target is 75 per cent, so we are doing quite well. Regarding the delay of final orders, 75 per cent of the applications disposed of did so within 16 months of being filed. But the standard is six months, so we are well over the standard. In terms of elapsed time to trial from commencement—which is the figure you asked for last time, Senator—75 per cent of final order matters disposed of in the termination phase did so within 25 months of being filed compared to 25 months in the previous year and 24 months in the year before that. So for the overall elapsed time from filing to determination the figures have been reasonably consistent. We do not have a standard for measuring that figure, but a delay of 25 months is not a very satisfactory set of circumstances at all. That is the reality of what is happening in Adelaide. For Melbourne, would the same set of input figures be useful for you or don't you need that?

Senator KIRK—I am concerned with seeing whether or not there is a big variation between the registries. The question is whether or not there has been an impact on those registries that have lost the judges.

Mr Foster—I think the delays were unacceptable prior to the decision being made. It is going to take a while for the impact of that decision to be worked through. The figures have not actually changed significantly. That figure that you asked for last time is still a figure of concern.

Senator KIRK—Perhaps you could provide on notice figures for each of the registries, as you did for Adelaide. That would be helpful.

Mr Foster—Certainly.

Senator KIRK—Could you give us an update on Project Magellan?

Mr Foster—Yes, I can. We now have implementation plans for all registries for Magellan, except in New South Wales. We are having ongoing discussions with the New South Wales Department of Community Services in an attempt to have the Magellan approach adopted. I think their major concern is the resource implications for them in relation to Magellan. We do not believe there will be significant resource implications for them. They are having a little bit of difficulty accepting that, so we are still having discussions with New South Wales about that. In every other case, the implementation of Magellan is progressing across the country.

Senator KIRK—When you say implementation, is it actually being rolled out? Is it in progress?

Mr Foster—Yes, across the states.

Senator KIRK—Is it fully rolled out in each of the registries except for New South Wales?

Mr Foster—That is right.

Senator KIRK—How long is it going to take to sort out these issues with New South Wales?

Mr Foster—I really cannot put a time frame on that, because discussions are still continuing. We are having discussions at all levels to try to resolve it. I guess we just have to

try to convince and demonstrate to the department that they need not be concerned about it in terms of resources, and certainly that is not the evidence in other jurisdictions.

Senator KIRK—So it is fair to say then that the authorities in all other states and territories have agreed to participate and be involved in this?

Mr Foster—It starts by lodgments from this month. It will take some time before these matters are worked through the system, so there will be some time before there is any evaluation of that. It has actually commenced in all jurisdictions except New South Wales.

Senator KIRK—When are you planning to do an evaluation of the project?

Mr Foster—We did an evaluation of the project and that was published in April 2002. It was based on that evaluation that the decision was made to roll out Magellan in the other jurisdictions. There needs to be a reasonable period of time for cases to whip through the system. I would have thought nothing inside of 12 months in any event.

Senator KIRK—So there are no plans to have a review at the end of 12 months, the end of two years or anything such as that as yet?

Mr Foster—Certainly not within 12 months. There is also the Attorney-General's Department's evaluation as well because obviously the Attorney has an interest in terms of the legal aid commitment.

Senator KIRK—Sure. Are there any plans to conduct an evaluation of the project at some point?

Mr Govey—I have not got the details, but the impact on legal aid and that aspect of lifting restrictions on legal aid will be reviewed.

Senator KIRK—Do you have any sort of time frame as yet—following 12 months?

Mr Duggan—We are currently agreeing to terms of reference in relation to evaluation of the legal aid aspects of Magellan. We anticipate that there would be some evaluation undertaken in the next 12 months, but that is still yet to be determined.

Senator KIRK—Last time you were here we talked about the proposed protocol for handling serious complaints against judicial officers. I asked the question of the Federal Court when they were here. I now ask you whether your court has provided a response to the Attorney-General's Department.

Mr Foster—The response has not been forwarded yet. I actually spoke to the Chief Justice about two weeks ago. The draft had been circulated to the judges of the court and the Chief Justice now intends to respond on behalf of the court.

Senator KIRK—Did he give you any indication as to when he is likely to have that response prepared?

Mr Foster—We were hoping it might have been before these hearings. I guess it is imminent.

Senator KIRK—Last time we talked about the review of security at court registries and, as I recall, the department indicated that a review of physical security was ongoing across all

four federal courts. It may be appropriate for the department to give us an update on what is occurring in relation to this review of security.

Ms Leigh—I think I explained last time that a review was being undertaken. That review has been completed and it is being considered by the government at the moment as to whether there should be any additional funding provided to the courts in relation to security.

Senator KIRK—Are you able to tell the committee what the major findings were of the review?

Ms Leigh—I do not think that would be appropriate at this stage.

Senator KIRK—Do you have any idea when a response is likely to be received? Did you say it was with the Attorney-General?

Ms Leigh—The Attorney is considering it and the government is considering whether additional funding should be provided.

Senator KIRK—Minister, can you give us any update on where this review in relation to security might be at?

Senator Ellison—That would be within the budgetary process, and I cannot comment on that.

Senator KIRK—Finally—and again this may be in the report but, as I said, I have not had a chance to look at it—could you give us an update on the most recent statistics on the number of unrepresented litigants in the court?

Mr Foster—In terms of the figures we are using, nothing much has changed. From our research, about 40 per cent of litigants are self-represented at some stage during the litigation process. From my perspective, there has been nothing that has been brought to mind that would suggest that that figure has changed significantly since the last time we reported on it.

Senator KIRK—Could you provide on notice the updated figures?

Mr Foster—Absolutely.

CHAIR—There being no further questions for the Family Court, thank you very much for appearing, Mr Foster.

[12.16 p.m.]

High Court of Australia

Senator LUDWIG—I notice that the annual report is not one of the ones that came in on Friday nor earlier. Can you tell us where it is?

Mr Doogan—Unfortunately, this year, for the first time in my recollection, we are running a bit behind time due to a number of circumstances.

Senator LUDWIG—So we cannot blame the minister?

Mr Doogan—You cannot blame the minister, no. We hope that the report will be tabled within a month.

Senator LUDWIG—Can you briefly explain the circumstances?

Mr Doogan—Yes. It is a combination of factors, the first factor being that the person responsible for collating it was struck by tragic family circumstances, resulting in the untimely and unexpected death of a partner.

Senator LUDWIG—Perhaps we could just leave it at ‘personal reasons’. I do not need the exact detail. If there are reasons other than personal ones—

Mr Doogan—There are other reasons as well. There has been a threefold increase in filings, so there are workload problems as well as centenary activities and having a small staff overall. People were spread thinly, the result being that we are running late. I apologise for that and hope it will not happen again.

Senator LUDWIG—Did those centenary celebrations include the F111 as well?

Mr Doogan—It did.

Senator LUDWIG—Can you tell us a little about that? Was the request for the F111 from the High Court, the registry or the judges?

Mr Doogan—It was a mixture of all of those things, I guess. A committee was set up to establish the centenary activities and in particular to deal with the centenary conference that took place. It was something that was arranged as part of the conference.

Senator LUDWIG—Who made the request?

Mr Doogan—The court made the request of the Defence Force.

Senator LUDWIG—What was the cost of that?

Mr Doogan—There was no cost to the court. My understanding is that it was done as a training exercise to fit in as part of the finale to the conference.

Senator LUDWIG—Was a working group established for the centenary celebrations? If so, who was on it?

Mr Doogan—A committee was chaired by the Chief Justice. Justice Callinan, one of the other judges, Mr Cornall, the Secretary to the Attorney-General’s Department, and I were the primary members of the committee. From time to time we also drew on people from the Australian National University who were concerned with the papers and the speakers and the Australian Bar Association, which provided the secretariat and undertook the organisation of the conference.

Senator LUDWIG—Who came up with the idea of an F111 doing a dump and burn?

Mr Doogan—I could not answer that offhand. I do not recall exactly. This conference was planned over more than a 12-month period and it was done merely as a part of—perhaps I should say—the final dinner. There was a dinner put on at the National Museum and that dinner began with a performance by an Indigenous dance group, who in turn had choreographed their performance into fireworks, and the fly-past was effectively the finale to the fireworks.

Senator LUDWIG—You indicated that it was a training exercise. When you made the request, did you inquire of Defence what the cost would be?

Mr Doogan—No, I did not.

Senator LUDWIG—Surely you work to a budget, or did you just expect that the defence department would meet it?

Mr Doogan—I understand that it has been a regular part of their training exercises for many years and a regular event throughout Australia to have similar fly-pasts.

Senator LUDWIG—But not as an after-dinner event, surely.

Senator Ellison—I think it is really a question for Air Force, Madam Chair, as to where and when they do their training exercises.

Senator BOLKUS—We will ask them.

Senator Ellison—Ask Air Force, but I do not think that Mr Doogan can really speak for the RAAF in relation to this matter. The request was made and they answered it. There was no cost to the High Court. Really, whether it comes from the Defence budget or whether it is the appropriate way to deal with a flight and the cost involved, that is a matter for Defence.

Senator LUDWIG—Is it appropriate to ask the Defence Force to provide a training exercise for an after-dinner event?

Mr Doogan—I would say yes. Putting it in context, I think, first of all approvals were obtained from all necessary authorities for the events relating to the conference. Secondly, there were media advices put out in relation to the event. It was mentioned during the day on radio. From my own direct observation, I can say to you that there were families gathered along the lakeside to watch the events. They obviously took a great deal of interest in it and enjoyed it greatly. It has been reported to me as well that a large number of people who heard on radio that this was going to happen gathered on Mount Ainslie for the sake of taking photographs. Indeed, the photographs that were used locally in the *Canberra Times* I understand were provided by people who had heard about it on the radio and took themselves up to a high point to film it.

Senator LUDWIG—If we look at it in a broader view, how does it fit in with the overall celebrations that the High Court had in celebrating the centenary? It just escapes me how a dump and burn fits into a celebration of the High Court having a 100-years anniversary, but I am all ears.

Mr Doogan—The conference that was held was I think generally agreed to be a fairly intensive conference, with a lot of hard work being put into the conference side of it.

Senator BOLKUS—This was a bit of light relief, was it?

Mr Doogan—This was part of the light relief at the dinner.

Senator LUDWIG—Loud light relief.

Mr Doogan—I should say too that far many more people have told us how they enjoyed the spectacle than those who complained about it.

Senator BOLKUS—That is not always a good test, Mr Doogan.

Mr Doogan—Perhaps not, but it is a fact.

Senator Ellison—No doubt they are all taxpayers, so they were entitled to some view, weren't they?

Senator BOLKUS—They were paying for it, weren't they, Minister?

Senator Ellison—And they were happy to do so.

Senator BOLKUS—Whether it was a training exercise or not, they were still paying the bill.

CHAIR—Shall we continue with questions, Senator Ludwig?

Senator LUDWIG—When was the media announcement of the event put out? Can the committee have a copy of that press release?

Mr Doogan—I am informed that there was a media release put out on the Wednesday prior to the conference, and the event occurred on the Saturday. I am told that Defence put out something on the Friday as well.

Senator LUDWIG—Perhaps we could have a copy of the media release that the High Court put out. That would be helpful.

Mr Doogan—Yes.

Senator LUDWIG—You are not willing to say, from your own recollection, who sitting around the table with you suggested the F111? Was it you?

Mr Doogan—No. There were many meetings.

Senator LUDWIG—It was not something that you always wanted?

Mr Doogan—I must say on a personal level I have always enjoyed the spectacle of them. In your own state you would see them twice a year.

Senator BOLKUS—It is curious, Mr Doogan. This is not an ordinary request and not an ordinary way to celebrate anything. I would have thought that, if it was raised by anyone, who raised it and when would probably stick in most intelligent people's memories. I am bemused at the fact that you cannot remember. Was it a judge, for instance?

CHAIR—Notwithstanding your observations, Senator Bolkus, Mr Doogan has twice undertaken to take that matter on notice.

Senator KIRK—Unfortunately, I was not able to attend the conference, so I would like to get a better picture of who in fact did attend the conference.

Mr Doogan—There was a wide representation at the conference. I will go back one step before I deal with the Australian attendees. It has been a common practice over a long period of time for courts to invite the chief justice or their counterparts around the world to attend similar conferences. As a result of that, the court sent invitations out to approximately 20 chief justices from around the world. Of that number, 16 were able to accept the invitation and, due to circumstances that arose close to the conference time, 14 of them were able to actually attend.

Senator KIRK—Who paid for their attendance? Was that the High Court or did they pay that themselves?

Mr Doogan—They paid for their own air fares to come to the conference, but the High Court, again following the usual practice over many decades, paid for the accommodation and meals.

Senator KIRK—The accommodation and meals?

Mr Doogan—Yes, and any actual conference expenses incurred during the course of the conference.

Senator KIRK—What was the conference fee?

Mr Doogan—The conference fee was approximately \$1,200—a little under \$1,200.

Senator KIRK—So the High Court paid that \$1,200 fee for those 14 chief justices. Is that correct?

Mr Doogan—Yes.

Senator KIRK—Are you going to continue and tell me who else was invited and who attended? Perhaps there were Australian judges and others.

Mr Doogan—Yes. In round figures, approximately 350 persons, plus accompanying persons, attended the conference. The 350 comprised a mixture of judges, barristers, solicitors and legal academics. There was a quite broad range of people.

Senator KIRK—How many of those persons were paying customers?

Mr Doogan—The vast majority of them were. For example, all of the judges from throughout Australia—from the different courts—paid for themselves, as did the practitioners and academics.

Senator KIRK—So the High Court met the expenses—both the conference fee and the accommodation and meals—for those 14 that you mentioned? Were there any others?

Mr Doogan—There were others as well. As part of this, we—and when I say ‘we’ I am talking of the committee that put all this together—thought that it would be good to provide an opportunity for the best law students from around the country to attend the conference, as it is something that they would not normally have the opportunity to do. The dean of each law school throughout Australia was invited to nominate one or two students to attend the conference. From memory, I think there were about 16 who attended under those conditions. The court actually met the costs of bringing them here.

Senator KIRK—Why were there only 16? Aren’t there 32 or so law schools throughout Australia?

Mr Doogan—Yes, there are, but a number of them did not take up the offer.

Senator KIRK—So the High Court paid the air fares, accommodation and the like for those students. So, all up, about 30-odd persons had their expenses covered. What was the total budget for the conference, from the High Court’s perspective?

Mr Doogan—I cannot answer that at this stage, because the Australian Bar Association undertook all of the organisational arrangements on behalf of the court. When I, knowing that I would likely be asked about this today, made inquiries of the association, they had not yet received all of their bills, so they are not in a position to finalise matters.

Senator KIRK—Who organised this conference? Were conference organisers contracted to organise the conference on behalf of the High Court?

Mr Doogan—No, it was the Australian Bar Association itself.

Senator KIRK—Are you aware whether the ABA contracted it out to someone else?

Mr Doogan—No, they did not. I am aware that they actually used their own staff.

Senator KIRK—The reason for my questions is that I was concerned about the conference fee being considerably higher than most like conferences, so I was trying to determine why the fee was in that vicinity and whether or not it was in order to subsidise the students and the judges that you have referred to. Can you give us some idea as to how the budget for the conference was arrived at?

Mr Doogan—Yes, it did exactly what you are saying. It was struck on the basis of endeavouring to take into account the costs of these invited guests—the chief justices from around the world—as well as the students. It was simply a case of identifying total costs. I should add that, in addition to this, the ABA negotiated a sponsorship by Thomsons, the owners of the Lawbook Co., publishers of the official reports for the court and publishers generally in accounting, tax and law.

Senator KIRK—You said before that the ABA has not finalised its accounts yet so it is unaware whether there has been a profit or a loss. In the event that there is either a profit or a loss, who takes the profit or bears the loss?

Mr Doogan—The High Court.

Senator KIRK—Has the court budgeted for any sort of outlay that it might need to make if there is a loss?

Mr Doogan—You will recall that, in the current financial year and the last financial year, funds were provided especially for the purpose of centenary activities. So, within the overall sum allocated to the court, we anticipate that we will meet all costs from within that special allocation. It is our aim and intention that, for the balance of the funds that are available, these will be directed towards educational pursuits.

Senator KIRK—Finally, in relation to the centenary and the merchandise, I am wondering whether all the merchandise was sold, whether there was a profit or a loss and whether the High Court is responsible for the contracts or whatever was involved in the production of that merchandise?

Mr Doogan—Yes, the High Court arranged for the production of all of the items of merchandise. Some were given out as gifts, I hasten to add. But the rest were sold so that no loss would occur. In other words, whilst the court paid out money in advance to have the goods produced, the sale of that merchandise was intended to cover the costs. But I suspect that the proceeds will in fact exceed the costs.

Senator LUDWIG—Did you have a military band on the Friday night?

Mr Doogan—No. On the opening night, the Thursday night, yes, there was a military band—and the federation guard.

Senator LUDWIG—Is this an idea that the court has in its mind that, since the Attorney-General will not defend itself, the High Court might consider garnering support from the defence department?

Mr Doogan—No.

CHAIR—I think you should leave that there.

Senator LUDWIG—Well, it seems very defensive.

CHAIR—Any questions of substance, Senator Ludwig?

Senator LUDWIG—On the last occasion we were discussing the High Court's deliberations on proposed changes to special leave applications. Where is that at now?

Mr Doogan—There have been no changes since the last occasion.

Senator LUDWIG—Has a decision been made by the court or the government to make any changes in this area?

Mr Doogan—I cannot answer that.

Senator LUDWIG—Not in respect of the government; but in respect of the court, you do not have any procedures or practice notes that might alter the position?

Mr Doogan—No.

Ms Leigh—That matter is under consideration by the government, Senator. In particular, I would mention that there is some general work going on in the department about the civil justice system—broader strategic work that includes that issue.

Senator LUDWIG—And when is that likely to be finalised? Is there a time and date for completion?

Mr Govey—I think we expect that review to be finished by the end of the year, and I should also say that I think some of the issues are also relevant to the migration litigation review, which we have talked about before.

Senator LUDWIG—When that is finalised, can that be made available to the committee?

Mr Govey—It is a report to the Attorney, if you are talking about the first one; therefore, it will be a matter for the Attorney as to whether he wishes to release it.

Senator LUDWIG—Perhaps, Minister, you could take that on notice.

Senator Ellison—I will take that on notice.

Senator LUDWIG—Do you have statistics for migration by way of either case work, case load or the amount of time that judges might have to dedicate to dealing with migration matters now?

Mr Doogan—No, I cannot say; there are certainly no dedicated judges for migration matters. But I can give you statistics about the workload of the court, which are updates on what I have given you previously. I think immigration matters filed is the best indicator for our court, because very few matters are discontinued. During 2002-03 there were 2,384 new immigration filings out of a total of 2,925. In other words, the vast bulk of the filings during the year were immigration matters. That comes out at 82 per cent of all matters filed for the year.

Senator LUDWIG—And some of those are now being referred to the Federal Court?

Mr Doogan—Yes. As you know from our past discussions, the difficulty with all of this is that you do not deal with things nicely and neatly in one financial year. They tend to roll over

so that, short of beginning with a particular file and analysing what happened to it, you cannot necessarily relate matters filed this year to what happened the year before or what will happen next year. I can only talk to you about the broad indicators. Quite a large number of them, as you know from the last occasion, were referred to the Federal Court.

Senator LUDWIG—Is that trend continuing?

Mr Doogan—I cannot say that there is a trend at this stage. What went to the Federal Court was a large group of files that arose from call-overs in Sydney and Melbourne. These were the so-called Muin and Lie matters.

Senator LUDWIG—Yes, I recall those.

Mr Doogan—I can tell you, for example, that at the Melbourne call-over, to give you an indicator of the results, two of them were dismissed, nine were stood over for further consideration and 464 were remitted to the Federal Court. At the Sydney call-over, four were stood over, 109 were remitted to the Federal Court and there were 80 where it was indicated that they would be discontinued. Putting those together, you had 99 discontinued, 577 remitted, 13 stood over to another date and three dismissed or refused.

Senator LUDWIG—Is that practice alleviating the number of immigration matters that are being dealt with by the High Court or is that still a burgeoning area?

Mr Doogan—No. As indicated by that figure, 82 per cent of all filings up to 30 June were all immigration matters and they were a mixture of original jurisdiction and appeals. It is a circular result in some respects. You can assume, for example, that of the matters referred to the Federal Court some of them or most of them—I could not say which—may be unsuccessful and that, in turn, will likely trigger the application for special leave to appeal which will bring it back into the court again.

Senator LUDWIG—That was why I asked you about special leave earlier, to see whether that has been remedied; otherwise, you were on this treadmill. What action is the High Court currently considering in dealing with the growth in migration cases. Is there anything you have put in place to address the number?

Mr Doogan—No, nothing special has been put in place. I guess it comes down to watching the trend, in that a lot of these matters were people who had come here some years ago. We also had the situation, which I think we have discussed previously, of having two particular solicitors involved in a very large number of matters—one in Sydney and one in Adelaide.

Senator LUDWIG—They seem to have got a lot of notoriety of late.

Mr Doogan—Yes. Again, from my perspective, I can only sit and wait to see what happens in relation to one of those solicitors who, I understand, has been referred for investigation for some of his practices.

Senator LUDWIG—Yes, we can leave that for the DPP. Obviously you are aware of the review of migration litigation.

Mr Doogan—Yes.

Senator LUDWIG—Is the High Court involved, the registrar or the chief justice?

Mr Doogan—No, certainly not so far. We have had no invitation or request.

Senator LUDWIG—Have you seen the terms of reference? Were they sent to you?

Mr Doogan—No, I have not.

Senator LUDWIG—A migration review has been announced and nothing has been sent to the High Court about it, even though you have a number of cases to deal with.

Mr Doogan—Not that I have seen.

Senator LUDWIG—Does that surprise you? It surprises me.

Mr Doogan—I do not know that I am surprised. It has been common knowledge over many years that the court tends to decline to become involved in these types of reviews for the reason that, if the end result of the review produces litigation, it is highly likely that that litigation will ultimately find its way to the High Court. So in those circumstances it is quite common for the court to decline to become involved or to express an opinion.

Senator LUDWIG—So you were not consulted about the terms of reference.

Mr Doogan—No.

Senator LUDWIG—Ms Leigh, was that a deliberate course of action that was taken? Mr Govey, I see that I had it wrong in the first instance and that you will be answering the question.

Mr Govey—Perhaps I should say that all the relevant documentation is now in the press release that went out, which I assume the High Court does have, announcing the terms of reference.

Senator LUDWIG—They seemed to say no.

Mr Govey—But I would also anticipate that if they wish to, and having heard what Mr Doogan has just said maybe they will not, I have no doubt that Ms Penfold will be consulting and giving an opportunity for the court or its staff to make comments. In terms of the consultation beforehand, the terms of reference were developed up within government by the relevant departments and they advised the ministers. Having regard to the nature of it, there was no substantive outside consultation on draft terms of reference. There were, though, consultations with various bodies, I think including the court, about the difficulties being encountered in this area and those consultations were taken into account when the terms of reference were drawn up.

Mr Doogan—Perhaps I could add that it is also common, when there are reviews of one kind or another, for the court to become involved by way of the provision of factual information.

CHAIR—As there are no further questions, Mr Doogan and Mr Howard, thank you very much.

[12.48 p.m.]

Insolvency and Trustee Service Australia

Senator LUDWIG—I would like to turn to the Attorney-General's Department issues paper of 21 November 2002, which was due to receive comment by 20 February 2003, I think. Where is that family law report at? There are a couple that you have been doing. We

have followed up on part X, but there is that earlier one that was part and parcel but also sort of separate. There has not been a final report on that, has there?

Mr Gallagher—It is correct that there is no final position on that. I will ask David Bergman, who is up to speed on it, to answer your question.

Mr Bergman—As you have noted, the submissions on that issues paper were due by February this year. The paper raised some fairly complex issues in terms of both what changes to the law would be required and what they would mean in practice. There were quite a lot of submissions coming in well after February and we were keen not to move further with that consultation until we had had some of those submissions. We convened a meeting on 29 July with the Bankruptcy Reform Consultative Forum and with representatives of the family law sector, given that this also involves changes to the Family Law Act. That discussion highlighted once again the complexity of the issues. Also, it was not until May this year that the actual report of the task force was released. That had provided people with more information that they then wanted to make some comments on. I believe we are in a position now where we will be very shortly providing advice to the Attorney on the outcomes of that consultation.

Senator LUDWIG—In respect of the review of family law and bankruptcy law schemes, is there a report that has been finalised by ITSA?

Mr Bergman—We are not actually preparing a report on it. The task force report was the start of it. Now what we need to do is provide some advice to government about implementation of those recommendations.

Senator LUDWIG—In what form? Will there be recommendations?

Mr Bergman—There will be recommendations.

Senator LUDWIG—Have they been finalised?

Mr Bergman—They are almost finalised.

Senator LUDWIG—Is there a target date to get them to the Attorney-General?

Mr Bergman—At the moment our target is this week.

Senator LUDWIG—Can you say what the nature of the issues is in the recommendations? Do they go for change or status quo?

Mr Gallagher—The proposals in the discussion paper outline the recommendations. Notwithstanding a range of complexities that have been highlighted in consultation and that, in a sense, we were aware of, the proposals are in accordance with those recommendations. We expect some refinements but as a generality the recommendations will be along the lines of those identified in the task force report.

Senator LUDWIG—Can you say—or not—whether the recommendations will provide for a review of the financial agreements to ensure they cannot be used to defraud legitimate creditors, for things in that sort of area, or is that a separate issue again?

Mr Bergman—There are some recommendations in the report that were also in the issues paper to allow for a trustee in bankruptcy to recover property that was transferred pursuant to a financial agreement—so that is one measure which is directed at that—and to take the

relating back period in bankruptcy, notwithstanding that there has been a transfer pursuant to a financial agreement.

Senator LUDWIG—You are aware of the recent judgment that was reported in the *Sydney Morning Herald* on 17 and 27 October about that issue. Of course, the names are all suppressed so you and I will have to be careful about how we deal with it. What can you tell me about ITSA's response to that?

Mr Bergman—I might ask Mr Duggan to talk about it because it is really an issue about the Family Law Act rather than the Bankruptcy Act.

Mr Duggan—I am aware of the matter that you raise. The Family Court judge concerned referred that judgment to the Attorney for his consideration. We have briefed the Attorney on the issues raised in that case and listed options for possible reform, and the Attorney is keen to move ahead with options for reform dependent upon approval processes and what have you. He is aware of the concerns that were expressed by the Family Court in that matter.

Senator LUDWIG—Is this a matter that ITSA will include in its recommendations or is this a separate matter that has arisen as a consequence of the case? If it is the latter, is ITSA reconsidering its recommendations in light of the case?

Mr Duggan—The matters raised by the court are probably peculiarly for the Family Law Act to respond to. They obviously impact upon the issues with which the bankrupt barristers task force has been concerned. However, they relate specifically to provisions that were introduced in 2000 to deal with binding financial agreements. At the moment the minister is looking into the possibility of a legislative response—more quickly, if you like—that might flow from the other recommendations.

Senator LUDWIG—Has a report been finalised on this matter and given to the Attorney-General?

Mr Duggan—There has been a briefing provided to the Attorney.

Senator LUDWIG—Minister, I take it that is not available at this point, as it is a briefing document to the minister? I would hate to put words in your mouth.

Senator Ellison—Advice to government, as I have said before, is not given in these committees. That has been a longstanding practice.

CHAIR—Indeed.

Senator LUDWIG—I was just trying to qualify what it was. Thank you. Turning back to ITSA: in respect of the recommendations of the review of part X of the Bankruptcy Act, where are we at with that?

Mr Bergman—We provided drafting instructions to the Office of Parliamentary Counsel during the week before last, so we are awaiting the commencement of drafting of that legislation.

Senator LUDWIG—Is the Canadian type code of ethics, as outlined in paragraph 4.52 of the report, an issue that you are going to include?

Mr Bergman—The proposal is to prescribe, in the regulations, some requirements in relation to who can be a controlling trustee, both in terms of accreditation beforehand and

defining what their obligations and standards of performance should be. The Canadian model is just one, and this is an issue that we will be looking at in conjunction with the industry. There is already some ongoing work happening with the Insolvency Practitioners Association of Australia to develop some of these standards, not just in relation to controlling trustees. We need to have some further discussions about exactly what form they will take, but certainly the Canadian model is one that we will consider.

Senator LUDWIG—And then, in relation to a simple majority vote to accept a debtor's proposal in lieu of a special resolution requirement, are you going to adopt the overseas practice and the consistent voting model or are you going to depart from that?

Mr Bergman—There is no recommendation to change the existing—

Senator LUDWIG—So you are going to leave that the way it is?

Mr Bergman—We will leave it at a special majority.

Senator LUDWIG—So you have the benefit of having it. If it is envisaged that it will go to the Attorney-General before the end of the year—or this week, I guess, is what you have said—maybe you could take on notice, Minister, whether the target date for making that is going to be made public. Otherwise I will be back here in February, I guess, asking how long it has been on the minister's table.

Senator Ellison—I will take it on notice, Madam Chair.

CHAIR—Thank you very much, Minister.

Senator LUDWIG—In respect of proposal 8 of the part X review, it seems that legislative amendments would be made to require persons to have past accredited technical training. What I was trying to ascertain is how you are going to include courses, educative processes, to ensure that controlling trustees have sufficient knowledge about what their responsibilities might be, whether ITSA is going to conduct courses or whether you are going to encourage TAFEs or universities to develop them. I also want to know whether you plan to have any requirements for people to undertake these courses, and what they might include.

Mr Bergman—Once again this is something that we need to talk to the industry about. One of the reasons behind this recommendation is that a lot of people who act as controlling trustees are solicitors who do not deal with this on a regular basis; it is not their core business. So there is also some scope for the Law Council or for state law associations to look at this as part of continuing legal education. I would not have expected that ITSA would be solely responsible for delivering that training. There are also other courses out there already that we might be able to tap into.

Senator LUDWIG—In respect of the examination of investigations and any prosecutions, your annual report is available but I just do not have it in reach at the moment. I was wondering if you have a brief on how many prosecutions you have been successful in for the last financial year. I take it that is included in your report.

Mr Gallagher—It is.

Senator LUDWIG—Just give a page reference and I can look it up from there.

Mr Gallagher—It is on page 33 of the ITSA annual report.

Senator LUDWIG—Thank you.

CHAIR—As there are no further questions to ITSA, Mr Gallagher, that saves you coming back after the lunch break. Thank you very much, Mr Gallagher, Mr Bergman and Mr Lowe, for your attendance today.

Proceedings suspended from 1.07 to 2.11 p.m.

CHAIR—We will start with outcome 1 in the Attorney-General's Department: An equitable and accessible system of federal civil justice.

Senator LUDWIG—We usually have a general area first. I am not sure where this might come in, but there was an issue in relation to the matter that arose in the joint sitting—or joint meeting, perhaps. Was there any request by A-Gs for advice in respect of whether or not it was constitutionally valid to have a joint meeting?

Mr Govey—Not as far as I am aware. I should add that any request of that kind in the ordinary course of events would go to AGS rather than to us.

Senator LUDWIG—That is probably right, but you had none?

Mr Govey—Not as far as I am aware, no.

Senator Ellison—On a general matter, I notice that next year's sitting period has been released and it shows estimates for the week beginning 16 February.

CHAIR—Oh happy joy, Minister! It is only our second week back.

Senator Bolkus interjecting—

CHAIR—We are not even going to tell you when Easter is next year, Senator Bolkus! It is a secret.

Senator LUDWIG—Is that sitting pattern more generally available?

CHAIR—You were the one who said they were privy to further information this morning, Senator Ludwig; so we think you had it first.

Senator LUDWIG—Could you remind the committee of what this human rights instrument, the optional protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment does? This is about the second or third time we have asked questions about it, but to keep it in context I understand it combats torture by establishing a new UN subcommittee to inspect domestic facilities as such—prisons and the like.

Ms Leigh—That is correct. It establishes a subcommittee of the Committee against Torture to visit places of detention in countries that are parties to the protocol.

Senator LUDWIG—What else does it have? It requires parties to have in place domestic inspection mechanisms as well, doesn't it?

Ms Leigh—That is the key provision. Any further details I would need to take on notice.

Senator LUDWIG—Thank you. It is fair to say that the protocol provides stronger mechanisms than those currently existing to combat the use of torture. That is the case, isn't it?

Ms Leigh—It provides for visits. That is a specific measure that it provides for.

Senator LUDWIG—What are those visits designed to achieve?

Ms Leigh—Those are to visit places of detention and examine those in relation to the issues covered by the convention against torture.

Senator LUDWIG—So you would agree it is a significant measure to combat torture?

Ms Leigh—You could imagine many measures. I do not know that I am in a position to weigh them up.

Senator LUDWIG—You will recall that on the last occasion we discussed the reasons why the Australian government had refused to support the adoption of the torture protocol. Has anything changed since then?

Ms Leigh—No.

Senator LUDWIG—As I understand it, it has been adopted by the United Nations General Assembly?

Ms Leigh—That is correct.

Senator LUDWIG—Are you aware how many countries have signed the torture protocol?

Ms Leigh—I would need to take that on notice.

Senator LUDWIG—Do you know the number?

Ms Leigh—No.

Senator LUDWIG—You explained to the committee that the government refused to sign the torture protocol because it is not prepared to allow the UN committee to visit Australia. Is that still the case?

Ms Leigh—The reason is that becoming a party to that protocol constitutes a standing invitation. The government's view is that it should have the opportunity in each case to decide whether such international committees should visit Australia.

Senator LUDWIG—If you have a convention against torture, and the idea is to have visits by UN committees to see whether the convention is being adhered to or whether there are those sorts of practices going on in detention facilities, would it not defeat the purpose of it if each country could veto a visit in the way you are proposing Australia could? If every country exercised an option to veto, the UN committee would have no work I would presume.

Ms Leigh—It is the nature of the international system that countries have sovereignty and they decide what they are willing to adhere to.

Senator LUDWIG—But do you see the point I am making? It would be a pointless exercise to have a torture convention where each country vetoed the inspection mechanism that it was designed to address.

Ms Leigh—I am not sure I am in a position to agree or disagree with you on that.

Senator LUDWIG—Minister, if you have a convention that provides for inspection processes and then each country adopted the Australian position—that is, to veto—would it not defeat the purpose of the torture convention in the first place?

Senator Ellison—Can we clarify: are you talking about the protocol?

Senator LUDWIG—Yes, in particular the inspection.

Senator Ellison—That does not apply to the whole convention, as I understand it.

Ms Leigh—The protocol is a particular mechanism. We are still bound by the convention itself.

Senator LUDWIG—You are still bound by the convention, but the protocol requires an inspection regime. If you can veto the inspection regime, which is designed to focus on detention centres, it takes out a significant element—being able to see whether the convention is being adhered to.

Senator Ellison—There are many reservations to conventions, which you find across the board internationally. Countries always have the right to reserve their position. What we say is that we are exercising our right here. We have done so in other cases, and we have not done so in others. It is really for each country to determine their domestic situation and how they see their obligation under that international instrument.

Senator LUDWIG—Do you see your obligation in that respect being that you require a veto power for an inspection process of the UN committee's monitoring of the application of the torture convention? Is that how you see it, Minister?

Ms Leigh—There are other mechanisms as well. Under the convention itself, Australia already has obligations in relation to reporting and responding to complaints that people might make. So there are a number of mechanisms for checking the enforcement of that convention in Australia, to which Australia does subject itself.

Senator LUDWIG—But a key mechanism you are not prepared to concede to?

Ms Leigh—This is an additional mechanism that is established by an additional instrument. Australia has accepted all of the mechanisms under the convention against torture.

Senator LUDWIG—With respect to the January 2001 and January 2002 meetings, did the Attorney-General's Department go to the committees, or to the negotiating session at least?

Ms Leigh—I do not have particular dates. Are you talking about the sessions negotiating that?

Senator LUDWIG—Yes.

Ms Leigh—I understand that there were 10 sessions and that Australia attended eight of those. I can tell you the dates of the two that Australia did not attend, and those were the ones held in January 2001 and January 2002.

Senator LUDWIG—Have there been any since then?

Ms Leigh—They were the sessions negotiating the protocol. The protocol has since been adopted.

Senator LUDWIG—So, since January 2001, you have not attended any session on developing the protocol.

Ms Leigh—There were 10 meetings in total. Australia attended eight of them. There will be no more because the protocol has since been adopted. They were the meetings to develop the text of the protocol which was subsequently adopted, so the work of that group is finished.

Senator LUDWIG—Is there any reason that you did not attend the last two?

Ms Leigh—I would need to take that on notice, Senator.

Senator LUDWIG—Has a briefing been sought by the new A-G in respect of the protocol?

Senator Ellison—I think we will have to take that on notice, Chair. I will take it up with the minister.

CHAIR—Thank you very much, Minister.

Senator LUDWIG—In respect of the National Action Plan on Human Rights, on the last occasion I think the committee discussed the lack of progress on producing a revised national action plan. If I have put it too harshly, please correct me. For the record, can you remind the committee of when the government announced it would develop a revised national action plan?

Ms Leigh—When it first announced it?

Senator LUDWIG—Yes.

Ms Leigh—That was in December 1998.

Senator LUDWIG—And that was the 50th anniversary of the Universal Declaration of Human Rights, wasn't it? That was the occasion.

Ms Leigh—I cannot imagine that that would have been 50 years—

Senator LUDWIG—Yes, it has been that long in developing, hasn't it?

Ms Leigh—The Universal Declaration of Human Rights was in 1948; yes, that is 50 years.

Senator LUDWIG—What work has taken place on the national action plan since the last committee hearing?

Ms Leigh—Since the last hearing, we have done some work on the actual draft itself. It has been redrafted and restructured to make it more focused and more user-friendly. We have also done some updating. I think I mentioned at the last hearing that the major work that would still need to be done would be updating the content of that document, and we have done further updating. We had a request from the Office of the High Commissioner for Human Rights for information on good governance practices in Australia for promotion of human rights, and we looked at some of the material we had prepared for the national action plan and updated that in order to provide that information. We were also able to use that opportunity to do the updating work on the national action plan itself.

Senator LUDWIG—Is there a target date for completion?

Ms Leigh—I cannot give you a date, Senator.

Senator LUDWIG—So you started it in 1998—

Ms Leigh—That is when it was announced.

Senator LUDWIG—What priority do you think the government has ascribed to it? What priority has your branch or area given it? Is it a high priority, a medium priority or a low priority?

Ms Leigh—It is one of the priorities of the division.

Senator LUDWIG—One of them.

Ms Leigh—Yes.

Senator LUDWIG—Do you categorise these priorities?

Ms Leigh—As I mentioned before, we have a list of things at any one time that we are working on, and some will be driven by parliamentary timetables or other deadlines. We constantly juggle and shift our resources to meet particular deadlines and, in the periods that remain, we are working on the other priorities.

Senator LUDWIG—It does not seem that it is very high on your agenda, does it?

Ms Leigh—I would not agree with you on that.

Senator LUDWIG—Why wouldn't you agree with me? You first started in 1998 and, if I am not mistaken, it is 2003. You have been at it for a long time. Is there money allocated in the budget to deal with it?

Ms Leigh—Not specifically. It is part of the budget that is allocated to the Civil Justice Division.

Senator LUDWIG—You would agree with me that the budget decides priorities as well. So it is not a specific budget item then, is it?

Ms Leigh—None of the matters that I am responsible for in the division have a specific budget allocation.

Senator LUDWIG—So let us get back to why you think it is still a high priority then.

Ms Leigh—Because it is on my list of priorities.

Senator LUDWIG—How many things are on the list?

Ms Leigh—It is quite an extensive list. It changes every day because new things arise, but at any one time there would be quite a large number of matters that we are progressing in the division.

Senator LUDWIG—So it has taken about five years to write this government's policies and programs on its action on human rights? Is that a short summary of how long it has been taking to do this? It just seems a bit ridiculous to me.

Ms Leigh—Along with the other things that are being progressed alongside it.

Senator LUDWIG—No; it is just this I am talking about. We have not got a document yet, have we?

Ms Leigh—Not publicly, no, Senator.

Senator LUDWIG—A draft?

Ms Leigh—Yes, certainly.

Senator LUDWIG—Is that available?

Ms Leigh—That is yet to be submitted to the Attorney.

Senator LUDWIG—So five years for a draft and two Attorneys later: it does not look like it is a priority to me, that is all I can say.

Senator Ellison—What you have to remember is that other things have been done along the way. For instance, recently we decided to ratify the protocol on the trafficking and suppression of women and children. That is a very important decision. No doubt you could include that in a policy document on human rights, but I would much rather have the action than the words, because the document on your policy on human rights is not worth a cup of cold water if you do not have the action that goes with it. We have been out there working on a number of international instruments. People-smuggling and trafficking is one that I have had personal involvement in. That is the priority—the action rather than just some statement that says nice things. That is the government's view.

Senator LUDWIG—Minister, is there a problem with it? Here is the opportunity. It has been five years in the making. Is there a problem? Has it stalled? Is there a reason why it has been five years?

Senator Ellison—You have heard the department say that they have been working on it and it is a matter of priority, but there have been other things that have been dealt with along the way. I just gave you one example which I think is rather significant. That has occupied the department's time more importantly, I would say from my own personal view, than some piece of paper. That is about actions. If you want to know how busy things are, ask the Joint Standing Committee on Treaties. It is a work in progress and these things do take some time, but of course along the way things are occurring which require the government to act and we have been acting. That is more important—actions speak louder than words.

Senator LUDWIG—Perhaps you can then update us on how many times the group dealing with the national action plan have met and the dates they have met since I last asked that question. Minister, I wonder whether you could ask the Attorney-General whether he intends to make it a higher priority or at least have a budget allocation or provide staffing to finalise the action plan.

Senator Ellison—I will take that question on notice.

CHAIR—Were you directing the question to Ms Leigh to be taken on notice, Senator Ludwig, or were you asking that now?

Senator LUDWIG—There was one to Ms Leigh and one to the minister.

CHAIR—Do you wish to respond now, Ms Leigh?

Senator Ellison—I think Ms Leigh can answer one question now.

Ms Leigh—Since the last Senate estimates hearing, that working group has not met as a group. We have had consultations with the Department of Foreign Affairs and Trade and the Department of the Prime Minister and Cabinet on a one-to-one basis. I should add also that, as I mentioned, we have been updating the document and, for those purposes, we have had to consult with the Department of Employment and Workplace Relations, the Department of

Immigration and Multicultural and Indigenous Affairs, the Department of Education, Science and Training, the Department of Communications, Information Technology and the Arts, the Department of Health and Ageing, the Department of Family and Community Services, IP Australia and the Australian Electoral Commission.

Senator LUDWIG—It might be easier to take this on notice. If you could provide the dates of those consultations and any responses received from those various departments in respect of those consultations, that would be helpful. If there are any where you are still waiting to see—that is, making an appointment with or any outstanding responses—where a response has been indicated but has not yet been received, that would be helpful. With respect to staffing in the human rights branch—I think we have dealt with this a number of times before so you might have a brief about this—on the last occasion I think we discussed the issue of staff turnover. In question on notice No. 10 you indicated that 19 staff had left the branch since February 2002. Perhaps you could update the committee on turnover since budget estimates.

Ms Leigh—Since the last estimates hearing, there have been three permanent departures from the human rights area.

Senator LUDWIG—So how many ongoing or non-ongoing positions are now vacant?

Ms Leigh—I think I mentioned before that it is not accurate to talk in terms of the number of positions vacant because I have a budget which I have to manage and it depends what happens during the year. For example, if there is a lag in recruiting, I might have a little extra money that enables me to recruit someone extra. Also it depends on what mix of positions I recruited as to how much that costs. I cannot talk of the set number of positions that I have and how many are vacant. I can, however, say that at the moment we are undertaking recruitment action for three positions and one of those has a person acting in it. I expect to have an additional two staff after that recruitment process is completed.

Senator LUDWIG—How many are there in the branch altogether?

Ms Leigh—At the moment in the human rights area there are 20 staff.

Senator LUDWIG—Are they all full time?

Ms Leigh—They are all full time, but two of those staff are on graduated return to work and they are working shorter hours.

Senator LUDWIG—Do you have any allocation for temporary or part-time staff?

Ms Leigh—Some of the staff in the branch are non-ongoing. Apart from those on graduated return to work, none of the staff is currently part time.

Senator LUDWIG—How many are non-ongoing?

Ms Leigh—They are part of the 20 I mentioned. Of the 20, 11 currently are ongoing and nine are non-ongoing.

Senator LUDWIG—When are their contracts due to terminate? Are they staged in the next couple of years or six or 12 months?

Ms Leigh—Could I take that on notice, Senator?

Senator LUDWIG—Thank you. We also discussed morale in the human rights branch. How is morale?

Ms Leigh—I am happy with morale in the human rights area and, indeed, in the division.

Senator LUDWIG—That was your answer last time, was it not?

Ms Leigh—Yes. I do not think there has been any change since last time.

Senator KIRK—I have already raised this issue a couple of times with some of the courts. It relates to the judicial complaints protocol. I want to get a complete picture as to the courts that the department has received a response from and the date on which those responses were received.

Ms Leigh—We received comments from the High Court dated 5 February 2003, from the Federal Court dated 9 October 2003 and, as you heard this morning, we are expecting comments from the Federal Magistrates Court very shortly. I understand from Mr Foster's comments this morning that the Family Court are also working on their comments.

Senator KIRK—Has the department followed up with the FMS and the Family Court to find out the progress of their responses?

Ms Leigh—Yes. We have been in touch with them throughout the period but specifically after receiving the comments from the Federal Court. As I mentioned, that was on 9 October, so that was quite recently. After we received those, we contacted the Family Court and the Federal Magistrates Court to inform them that we now had the Federal Court's comments and to inquire about progress.

Senator KIRK—When were their responses first sought? Was it towards the end of last year?

Ms Leigh—That is correct.

Senator KIRK—Have you given the FMS or the Family Court any deadline?

Ms Leigh—Originally we had, but not more recently. They understand that we are very keen to get their comments. I think that, by indicating to them that we now have the Federal Court comments, it is indicating that we are looking to them to provide those comments as quickly as possible.

Senator KIRK—Has the department consulted with other groups or bodies in relation to this protocol?

Ms Leigh—I think I previously mentioned that, in addition to the four courts, the Attorney wrote to Mr Thomas, a retired judge of the Queensland Court of Appeal. He has written in the area of judicial ethics, so for that reason the Attorney wrote to him seeking his views. Mr Thomas has also replied, on 10 January this year.

Senator KIRK—The only outstanding responses are from the Federal Magistrates Service and the Family Court?

Ms Leigh—That is correct.

Senator KIRK—Since receiving the responses from the Federal Court, and the High Court some months ago, has the department made any changes to the draft protocol as a consequence of the comments from those two courts?

Ms Leigh—No. The comments from the High Court were quite limited. We, of course, considered those comments, but it seemed more appropriate to await further comments before looking at what changes might be made.

Senator KIRK—Are you going to wait until you have received all of the responses before you make any changes to the draft?

Ms Leigh—We are hoping to receive them quite soon and the next step will be to brief the Attorney on those comments.

Senator KIRK—Is there any timetable for the briefing of the Attorney or will you just sit and wait until they send in their responses?

Ms Leigh—We have been actively seeking those responses.

Senator KIRK—Do you have any time frame in mind, such as the end of the year? It has been almost 12 months now.

Ms Leigh—It has. I am quite hopeful that we will get the responses from those courts quite quickly. As soon as we do, we will be preparing a briefing for the Attorney.

Senator KIRK—Obviously I do not want you to tell me the details of the comments that were sent in by the Federal Court, but were they extensive?

Ms Leigh—They had substantive comment in them, yes.

Senator KIRK—Do you envisage it will take some time to look at all of the responses and to make necessary amendments to the protocol?

Ms Leigh—It is quite a complex issue, so we will need to give careful consideration to those comments.

Senator KIRK—It would be difficult to say how much longer we are going to be waiting?

Ms Leigh—That is correct.

Senator KIRK—Has the government given you any indication as to the time frame that it would like to see before this is completed?

Ms Leigh—The government is keen to move on the issue, and because of that we have been following up with the courts.

Senator KIRK—Minister, is the government still intending to proceed with the protocol?

Senator Ellison—I will take that on notice and take it up with the Attorney-General.

Senator KIRK—If all this work is being done, one would imagine that something will come of it.

Senator Ellison—I do not have any knowledge of the Attorney-General's intentions. I think it is appropriate that I take that question on notice.

Senator LUDWIG—Before we leave that area, is the alternative dispute resolution a matter in your area, Ms Leigh?

Ms Leigh—That is correct. The Family Law and Legal Assistance Division also has some responsibilities, particularly in relation to the family law aspects of alternative dispute resolution.

Senator LUDWIG—Is your responsibility in that area overseeing the operation of ADR more generally or is it only with how it operates in the Attorney-General's portfolio?

Ms Leigh—No, it is generally. We have a general responsibility in relation to ADR, and particularly there is the National Alternative Dispute Resolution Advisory Council. The secretariat to that council is part of the division.

Senator LUDWIG—You have seen the Sue Tongue report in relation to legal service directions?

Mr Govey—That is a matter for the Office of Legal Services Coordination because—

Senator LUDWIG—I know that, but my question is: have you read it, Ms Leigh?

Ms Leigh—Personally, no, but I am certainly aware of it.

Senator LUDWIG—Are you aware of the comments in it in relation to ADR?

Ms Leigh—Yes.

Senator LUDWIG—What are you doing about it then?

Mr Govey—The responsibility for taking action in relation to that is a matter for the Office of Legal Services Coordination.

Senator LUDWIG—What role do you play in terms of alternative dispute resolution?

Mr Govey—Perhaps the best way of describing it is that there is one further carve-out from Ms Leigh's divisional responsibilities, and that relates to what might be termed 'use of ADR by government' in the conduct of its disputes. Because the conduct of litigation and disputes—

Senator LUDWIG—That is why I asked in the beginning what the role of ADR was.

Ms Leigh—I mistook the question. I was explaining that it was a general policy responsibility, for example, in relation to the courts, not just in relation to—

Senator LUDWIG—So I can leave all of that for there. That is okay.

Mr Govey—I think that is probably better.

Senator LUDWIG—The preamble to the actual question was just trying to establish what your position was in respect of ADR, but I will leave it. Page 45 of the annual report deals with actual expenditure at output 1.1, which was \$9.896 million. Is that a shortfall from the \$11.552 budgeted for in the 2002-03 period? If I am right about that, what accounts for the shortfall?

Mr Kennedy—Looking at that table, there are a number of factors that determine the variation. If I could explain those, that may give some explanation to the question you are asking. In our budget process, which occurs in the March-April period, we use an estimate for the allocation of budgets to divisions. As we go through the year, those allocations may change if there are changes in priorities or if there is a need to make adjustments within each

group. The second factor that comes into play is that those output prices and actuals also include departmental overhead figures, so that will include corporate services and information technology services. Again, in the budget process we make an estimate of those amounts and of the way in which their attribution will be made. As we go during the year, that can change, staffing levels can change and the overhead can change. A third factor is that the department did record an operating deficit, which was not factored into the original budget estimates. That is also a factor that comes into play. In summary, the department manage our resources at an overall level and during the year there may be changes to the allocation that we had at budget time.

Senator LUDWIG—That was \$2 million?

Mr Kennedy—That would apply across all of the outputs for both outcome 1 and outcome 2.

Senator LUDWIG—How much was the operating deficit in total?

Mr Kennedy—For the core department, it was \$6.8 million. In the manner in which we record revenues and expenses, there were accounting deficits relating to payment of moneys to CrimTrac. We had brought appropriation to account in a prior year. Also, we incurred some additional guarding expenses that we needed to fund from our reserves. So there was a total operating deficit of \$19.5 million.

Senator LUDWIG—Is it possible to break that down by output?

Mr Kennedy—I would have to take that on notice.

Senator LUDWIG—I appreciate that. You said that CrimTrac was how much?

Mr Kennedy—It was \$9.4 million.

Senator LUDWIG—In deficit?

Mr Kennedy—The payment that was made to CrimTrac was from moneys that we had brought to account in the previous year as revenue. From a financial reporting point of view, the revenue side had already occurred in a previous year. With the expense occurring at a different time, we ended up with a deficit, which perhaps can be best seen against the fact that we made a very large surplus in 2001-02.

Senator LUDWIG—Is it fair to say that you got the money out of them last year and spent it this year?

Mr Kennedy—We got the money from budget last year, and spent it this year. That is right.

Senator LUDWIG—What else out of that \$19 million? You mentioned additional guarding.

Mr Kennedy—That was \$3.3 million.

Senator LUDWIG—And that was a deficit in the true sense of the word?

Mr Kennedy—That is correct. We are required to meet all our guarding funds from within our existing resources, and the requirement for expenditure was greater than the funding that we had available to us.

Senator LUDWIG—Is that for the Australian Protective Service? Is that the area?

Mr Kennedy—It is a purchase of the APS guarding services for diplomatic and consular missions.

Senator LUDWIG—Is there any explanation as to why additional purchases were made or required?

Mr Kennedy—In general, we are not able to estimate with a great deal of accuracy what may happen in the future with respect to events that may occur that may give rise to a need for additional guarding. It is always a bit of a volatile situation.

Senator LUDWIG—That accounts for \$12-odd million. What about the rest?

Mr Kennedy—The rest is the core department \$6.8 million deficit. Of that, approximately \$3 million relates to increasing leave provisions. The rest is primarily a result of increasing workloads in the department that were met.

Senator LUDWIG—I do not have any further questions on output 1.1. I have a general question that Mr Cornall might want to take on notice. There seem to be a lot of reviews. I have to admit the truth: I tend to lose track of them over the couple of years between when they are provided for, when the release date is, when they go to the minister and when the government responds to them out of the Attorney-General's area. I could ask about each output, but I wonder whether you could take it more generally on notice from each output—whether there is a summarised table anywhere that provides a way we can keep track of the number of reviews that have been commenced, finally terminated or reported, and whether the government has responded to them, out of the A-G's. I know it is a task.

Mr Cornall—I do not mind doing it. We will take that on notice and see what we can do.

Senator LUDWIG—In terms of major reviews or major reports.

[2.50 p.m.]

CHAIR—We will move on to 1.2, Support for the Attorney-General as first law officer, advice on constitutional policy and promotion of Australian legal services internationally.

Senator KIRK—I have some questions in relation to outsourcing of legal work. On the last occasion that we were here we discussed the steps the department was taking to review the outsourcing of legal services. On 24 September the government released the report of the review of legal outsourcing, the Tongue report. For the record, could you tell the committee what, according to the report, the government spent on lawyers in each year since 1998-99 through to the current year?

Mr Anderson—Would you like the figure for each year?

Senator KIRK—Yes, thank you. I think that is four or five financial years.

Mr Anderson—The figure for the 1998-99 financial year was \$143,531,138; the figure for 1999-2000 was \$183,014,108; the figure for 2000-01 was \$217,331,812; and the figure for 2001-02 was \$242,967,510.

Senator KIRK—Could you tell the committee how these figures compare with Commonwealth spending on legal aid during the same years?

Mr Anderson—You would need to direct that to the family law and legal assistance division.

Senator KIRK—So you do not make any comparisons between the amount the government spends on its lawyers and what is spent on legal aid?

Mr Anderson—No, my division does not do that.

Senator KIRK—Are you familiar with the findings of the Tongue report?

Mr Anderson—Certainly, Senator.

Senator KIRK—Are you aware of the fact that the report reveals that the disparity between government on government lawyers and spending on legal aid has grown significantly over the years?

Mr Anderson—Can you direct me to where in the report that is, Senator?

Senator KIRK—Good question. I do not have the report with me so I cannot tell you the exact page.

Mr Anderson—I am not aware of that actually being specifically addressed in the report.

Senator LUDWIG—I think the point that is being made here is that you have given the figures for the spending on government outsourced lawyers from 1998 to now—

Mr Anderson—It is not just outsourced lawyers; it is also internal lawyers working within government departments as public servants. So it is the government's legal spend both internal and external.

Senator LUDWIG—By survey, by those who filled out the survey form and returned it. You would think it was an underestimation, though, wouldn't you? Or do you think it is an accurate reflection of the amount of money spent both on outsourced lawyers and in-house lawyers?

Mr Anderson—It is the most accurate snapshot currently. There were some areas where some agencies noted that to provide the detailed answers being sought in the survey would require them to go invoice by invoices through their spending and they were not therefore able to provide the detailed breakdown sought but they were still able to provide the overall spending by agency. We think it is fairly accurate. There are certainly some areas in the report such as the first year survey, the 1998-99 year, where agencies had the most difficulty in accounting for their spending and Ms Tongue found in her report that over the period of the survey agencies demonstrated that they were better able to account in detail for their total expenditure. I should also note that we are aware that the Logan report in 1997 had estimated a figure of \$198 million. As Ms Tongue found, we have some reservations about the 1998-99 year, and in particular the reservations are about the ability of agencies to accurately estimate the cost of their in-house lawyers. In terms of the external spend, we are satisfied that that is fairly accurate.

Senator LUDWIG—There seems to be a disparity between the Sue Tongue estimation—the survey report of the 1998 figures—of \$143 million and the earlier report, which I think you said was \$198 million.

Mr Anderson—Yes.

Senator LUDWIG—Can you account for that or were there different methodologies used to develop the information?

Mr Anderson—The first point, the point I just made, is that in 1998-99 the figure provided by agencies for their internal legal spend—lawyers as staff—seemed a bit lower than it should have been in that year. Secondly, very different methodologies were adopted. The Logan report was not a survey in the same manner going out to every agency.

Senator LUDWIG—What are you doing to develop an accurate picture of how much the government spends, both internally and externally, on lawyers?

Mr Anderson—The review makes some recommendations about best practice and the development of a best practice guide for accounting for legal expenditure. It suggests that the Office of Legal Services Coordination in my division work with the ANAO to develop a best practice guide. We have had some discussions with the ANAO about doing that, and they are currently planning an audit of legal expenditure by agencies in this financial year. We expect to have further discussions with them, both before they do that audit and afterwards, to firm up any best practice guidelines.

Senator LUDWIG—What confidence level would you subscribe to these figures? Do you think they are completely accurate? Are you confident they are highly predictive of the actual expenditure, or do you think they are a bit further down the line?

Mr Anderson—In respect of the external spend, we have a high degree of confidence. Agencies are generally very able to account for their external spend because they have obligations under the Financial Management and Accountability Act for tracking external expenditure. In some areas, particularly in 1998-99, agencies had difficulty providing the detailed breakdown that the survey sought. They also had some difficulty accounting for their internal spends. Those are the two qualifications I have about the report. But we have a high degree of comfort with the external expenditure.

Senator LUDWIG—How long have you been aware of the difficulty in trying to track internal spend? You say that you have a high degree of confidence in what they have spent externally, but you do not have the same degree of confidence in their internal spend on legal services. Is that correct?

Mr Anderson—Certainly. Having received the report and seen the survey responses from agencies, that is where the question arises in my mind. It has only been in this calendar year.

Senator LUDWIG—Are you saying to the committee that this is the first you have seized on the idea that other departments are not dealing very well with their internal legal spend, which has been raised here before? Was no thought given to the idea that they might not be able to be very predictive of how much they spend internally on legal services, notwithstanding legal service direction?

Mr Govey—Perhaps it is worth noting that the primary responsibility for legal expenditure is with the agencies and departments concerned. At the end of the day, the Attorney-General's Department does not have any responsibility in relation to how much money each agency spends on its legal services. Consistent with the FMA Act, that is a matter for them in the discharge of their obligations.

Senator LUDWIG—So the legal service directions are of what value?

Mr Govey—If I could broadly characterise it, they relate to the quality of the way in which people conduct their services, but they do not relate to the amount of money spent on services. With one exception, they do not regulate that expenditure but, for legal counsel or barristers, there are limits on hourly and daily fees. Even that does not go to the overall quantum; it just goes to the amounts that can be charged, on a daily or hourly rate, by particular counsel for particular matters.

Senator LUDWIG—The Australian Law Reform Commission highlighted the lack of information on government legal spending in its January 2000 report, didn't it? What have you done since then? You have had a report by Sue Tongue that has confirmed that to you. You have known of the problem for a couple of years and you have commissioned another report to have a look at it again to tell you that it still exists. For how long are you now going to wait before you start to do something about it?

Mr Govey—As Mr Anderson mentioned, there have been discussions with the ANAO, and I think that both the ALRC report and the report by Ms Tongue have highlighted, for agencies, the importance of them getting a better handle on their legal expenditure, and hopefully they will take that lesson away. But, as I say, on top of that there will be, we hope, certain standards and guidance provided through the ANAO's work.

Senator LUDWIG—You rejected the ALRC's report back in 2000. Are you now going to rely on Sue Tongue's report?

Mr Govey—I do not know that we rejected it, Senator. I cannot remember the exact formulation of the response that was made by the government, but I think in a very real sense the work that has been done since does reflect action taken in the light of that recommendation from the ALRC.

Senator LUDWIG—The government response to recommendation 32, on 18 June 2000, was:

This recommendation is not accepted. The separate appropriation formerly known as 'compensation and legal' to which the recommendation refers was discontinued on 30 June 1999. The relevant distinction is now between 'administered' and 'departmental' items. Legal expenses fall within 'departmental' items. The general assumption is that all compensation and legal expenses are 'departmental' items, included in the price of output appropriations.

That was originally in the ALRC report under 'Information for government' 4.82, 4.83 and 4.84. Paragraph 4.82 starts off: 'There is also a need for greater information in the public domain on government spending on legal services.'

Mr Govey—I think that is all consistent with what I was—

Senator LUDWIG—I am happy for you to correct me. That this has been happening is not a revelation out of the Sue Tongue report; it seems to be an issue that has been around for some time. I asked about the Sue Tongue report and what was happening and the answers I was getting back seemed to me to indicate that it is a new issue and it is never been heard of before, but that is not the case. This has been around for some time and you have not done anything about it since it was highlighted in *Managing justice: a review of the federal civil justice system*. Now you are relying on the ANAO to help you progress it, whereas I am not

sure that was a matter that you rejected some time ago—you were not going to have the ANAO helping you and now you are saying that the ANAO can help. It seems to me that you are either backflipping or you have no idea. I am happy to be corrected.

Mr Govey—I think the distinction that needs to be borne in mind is the one I was trying to make before, Senator—that is, it is not a matter for a central coordinating agency like the Attorney-General's Department to take on some sort of responsibility for it. As part of the Sue Tongue report, we did gather up further information about expenditure, and it is consistent with the notion that it is each agency's responsibility—that it is a matter for them to look at. Of course, if the ANAO can come up with something that is across the board in terms of guidance or standards, that is very good as well. It is not something for which the Attorney-General's Department ultimately has responsibility.

Mr Anderson—I would like to add that if I was understood to be saying that this was a new issue, I certainly was not intending to say that. The Logan report itself said that it was forecast that legal expenditure by agencies would increase, so it was actually stated in a public report then, in 1997.

Senator LUDWIG—I do not think it is a question of it increasing; I think it is a question of being able to itemise—and keep that in the public domain—where the money is being spent. That is the purpose of it all, at the end of the day: to be able to identify that the taxpayers are getting value for money—so that, both internally and externally, they can ask the department or look at the department's annual report, or any other report for that matter, that says: this is how the money is being spent and it is being spent on taxpayers' behalf. Can we do that now with respect to internal legal services?

Mr Govey—That is a matter for each agency. They have those responsibilities.

Senator LUDWIG—You do not see a role. So your answer is: it is a matter for internal agencies and you do not see a role through the A-G's.

Mr Govey—I think we have taken on a role to the extent that it is reflected by what we have been talking about with the Tongue report, but—as I said right at the outset—it is not our primary responsibility. The primary responsibility for justifying expenditure and ensuring that there is value for money is a matter for each agency.

Senator LUDWIG—So what is your role in respect of that issue?

Mr Govey—I think in an overall sense we would say that, if there is something that we can do to help the process from, if you like, a good governance perspective, we would do that. That is what we have done by facilitating the involvement of the ANAO.

Senator LUDWIG—When was the Auditor-General called in?

Mr Govey—We would probably have to take that on notice, Senator.

Senator LUDWIG—Was that a matter that the Auditor-General raised with the Attorney-General's Department, saying, 'This is an issue I need to have a look at,' or did you ask the Auditor-General to come in and have a look at the issue?

Mr Anderson—The ANAO have actually had a reserve topic for a number of years to look at legal expenditure. This year is the first year that they have actually advanced it to their

main topics, but we had discussions with them before they came to us. That is my understanding. We could confirm that, Senator.

Senator LUDWIG—It would be helpful to understand exactly the process that was involved. I do not recollect whether it was a reserve matter but, if it was, is it a matter that you then decided to seize on and ask the Auditor-General to investigate? Perhaps you could just put the committee straight as to what the guidelines were.

Mr Anderson—We certainly advised them, for example, that we were having the review carried out and noted that, if they were going to advance their topic to the main list of topics, we would have information that would be of assistance to them and we would look to work with them.

Senator LUDWIG—Perhaps you could also include in the answer what you have asked them to look at or what they have indicated that they will look at—whichever way, whoever came first—or, if it was a discussion, what the outcome of that discussion was in terms of what they would specifically look at. It comes back to the original question in that, if your department only has an oversighting role in respect of this area and it is still up to each individual agency to deal with the internal value for money, does the Auditor-General have to then track down each department again? Going to you will not fix the problem if there is a poor performance in reporting of the internal legal spend, will it? You will agree with me on that one!

Mr Anderson—I think that must be right, Senator.

Senator LUDWIG—Perhaps you can also take it on notice as to whether the Auditor-General is going to look at that issue as well.

Mr Anderson—To the extent that it would be appropriate for us to deal with that, yes, Senator.

Senator LUDWIG—If not, I will put it on notice for every other department.

CHAIR—Are there further questions in that area, Senator Ludwig?

Senator LUDWIG—Yes, I think there are a few.

Senator KIRK—I have some questions in relation to equal opportunity in briefing policy. As I recall, on 2 September Senator Coonan expressed support for the strengthening of legal services directions to promote greater equality of opportunity in the engagement of counsel by Commonwealth agencies. I wondered whether or not Senator Coonan had raised this matter at all with the Attorney-General or with the department.

Mr Anderson—I am not sure whether Senator Coonan has raised the matter with the current Attorney-General, and I am not sure whether she has raised the matter with the former Attorney-General. She has not raised the matter with the department.

Senator KIRK—So there has been no formal correspondence that you know of between Senator Coonan and the department.

Mr Anderson—That is correct.

Senator KIRK—What work has been undertaken on this issue by the department, if any?

Mr Anderson—The department has been undertaking a review of the legal services directions, which were first issued in 1999, to look at a range of issues that have arisen in our administration of the directions, things that agencies have encountered when—

Senator KIRK—Can I ask you to speak a little closer to the microphone? I am having trouble hearing you. Sorry.

Mr Anderson—The legal service directions have been around since 1999 when they were first issued by the then Attorney. A number of issues have arisen since that time, and we are now looking at reviewing the directions to make sure they are still current and as effective as they should be. One of the issues raised in the directions in 1999 was an encouragement to government agencies and to legal service providers to brief counsel widely and, in particular, to brief women. Our review will raise the question of whether there needs to be a stronger encouragement for the Commonwealth to brief women.

Senator KIRK—When did you say this review that you are referring to was initiated?

Mr Anderson—I think it probably started around the end of last calendar year. It is a review that will go to the Attorney, and we will recommend that there then be an external consultation phase. But, of course, that is a matter for the Attorney.

Senator KIRK—So you are saying that discussion papers will be prepared which will then be forwarded to the Attorney.

Mr Anderson—That is correct.

Senator KIRK—And then there will be consultations following that.

Mr Anderson—That is what we would be recommending.

Senator KIRK—Was this review undertaken at the request of the Attorney?

Mr Anderson—I believe we started it on our own initiative because, as I said, we had become aware of some issues in the day-to-day administration of the directions with which agencies could perhaps receive further assistance. The encouragement to brief women was one that we were certainly aware of before the matter was in the press with Senator Coonan.

Senator KIRK—What sort of time frame do you have in mind for the completion of the discussion paper at least?

Mr Anderson—It will go to the Attorney this month. The further time frame after that I cannot say, because it will depend on what the Attorney wants to do with it.

Senator KIRK—You say that you initiated this review yourselves. Is that a consequence of some concern about briefing practices by agencies or is it because of concerns as to whether the equal opportunity policy was being adhered to?

Mr Anderson—No, it was not because of any concern. We were looking generally at the directions to see whether any parts needed to be expanded. I think it is worth noting that the public sector generally is a better briefer of the female members of the bar than the private sector. That has been noted, I think, by the Victorian Lawyers Association, and other bodies have looked at the issue.

Senator KIRK—Does the department keep any records, or have any information, on the extent to which agencies currently observe equal opportunity practices? From what you have just said, you do have some knowledge. Are records kept?

Mr Anderson—We do not keep records of other agencies' briefing practices. That is a matter for the other agencies.

Senator KIRK—So you do not seek information from the others in relation to these matters?

Mr Anderson—No, we do not.

Senator KIRK—When consultations are conducted after this paper is prepared, will you be asking the agencies to provide you with statistics on their briefing practices over the last few years?

Mr Anderson—We are not envisaging that.

Senator KIRK—When you say you as a department are not, do you mean that perhaps the Attorney may seek this information?

Mr Anderson—Obviously I cannot comment on what the Attorney may wish us to do.

Senator KIRK—Minister, has the new Attorney-General taken any position on this matter?

Senator Ellison—I am not aware of that, but I will take it on notice.

Senator KIRK—I have here extracts from the legal service directions on equal opportunity appendix D, paragraph 16. As I understand it, the department can request information on equal opportunity from agencies, pursuant to this paragraph. I wonder how often the department has done so, if ever.

Mr Anderson—We have not done it with respect to the equal opportunity dimension. Obviously we are particularly concerned about the rates at which agencies are briefing counsel. We have records of the rates of counsel. We have not gone out to agencies to ask them for the gender mix.

Senator KIRK—When you say 'rates', do you mean the charge-out?

Mr Anderson—The legal service directions are explicit about the charge-out rates at which agencies can brief without permission. We pay a lot of attention to that, but we have not sought information about the gender mix of agency briefing practices.

Senator KIRK—Is that because you have not seen the need to seek that information from agencies?

Mr Anderson—No, we have not seen the need to do that.

Senator KIRK—So there is no follow-up on this issue from the department's point of view. There is no keeping track of it.

Mr Anderson—As I noted, the public sector is understood to be quite a good briefer in terms of briefing women barristers.

Senator KIRK—When you say it is understood to be, is that just anecdotally? Is there any hard information that supports that?

Mr Anderson—I think it was the Victorian Women Lawyers Association report that indicated that the public sector was a much better briefer. I do not have the figures from that report. That was obviously only in Victoria.

Senator KIRK—So there has not been any independent research done that you are aware of in relation to this, apart from what the Victorian lawyers are referring to. Is that what you are saying?

Mr Anderson—That is correct. I am not aware of anything else.

CHAIR—On that matter, are you aware of a letter from the Australian Women Lawyers to the new Attorney-General in relation to this matter and of their endeavours to try and have the matter listed at the next meeting of SCAG, I think, through the Tasmanian Attorney-General?

Senator Ellison—Did you say the SCAG meeting?

CHAIR—I think so. I am seeking clarification from Mr Anderson.

Mr Anderson—I am aware that there has been a proposal that it be put on the agenda for SCAG.

CHAIR—Is that a matter within the control of the Attorney-General?

Mr Anderson—It is a matter that has to be consented to by all the attorneys-general, as I understand it.

CHAIR—Could I ask that information be provided to the committee as a process of a question on notice in relation to that matter being placed on the agenda for the next SCAG? Also, I am not sure whether you answered me in relation to the Australian Women Lawyers letter to the Attorney-General.

Mr Govey—I think we are aware of that letter. I will just seek confirmation.

CHAIR—And of whether it has been responded to.

Mr Govey—The Attorney-General has received the letter, but I think only recently and, as far as we are aware, no response has been given.

CHAIR—Thank you very much.

Senator LUDWIG—In respect of Senate reform, what role is the Constitutional Policy Unit playing? I think there was a discussion paper put out in relation to Senate reform.

Mr Faulkner—I am sorry, I cannot quite hear you.

Senator LUDWIG—In relation to Senate reform there was a discussion paper dealing with section 57. What role did the Constitutional Policy Unit play in that?

Mr Faulkner—A very minor role, in the sense that there were some discussions at officer level between the Department of the Prime Minister and Cabinet and me about some early drafts.

Senator LUDWIG—The issue of constitutional reform does not come back to your policy unit. It goes to, as I understand it, the legal and cultural branch of the Department of the Prime Minister and Cabinet.

Mr Faulkner—That is right.

Senator LUDWIG—Why is that? Was any reason given to you? Why wouldn't it be an issue paper that the Attorney-General's Department, especially their Constitutional Policy Unit, would look after and deal with?

Mr Faulkner—Broadly, this was an initiative of the Prime Minister and his department has had primary carriage of the matter.

Senator LUDWIG—So your only involvement was an early discussion with the section in the Department of the Prime Minister and Cabinet?

Mr Faulkner—Yes. My involvement has been simply through the branch of PM&C that you have mentioned on some drafts.

Senator LUDWIG—Did you have any involvement in selecting the consultative group or organising public meetings or have you been requested for assistance in any further work of the legal and cultural branch of the Department of the Prime Minister and Cabinet?

Mr Faulkner—No, Senator.

Senator LUDWIG—That is no to all of those three questions.

Mr Faulkner—That is right, yes.

Senator LUDWIG—In respect of cooperative schemes, has the Constitutional Policy Unit done any work on possible constitutional reform to enable the Commonwealth and states to enter into more stable cooperative schemes?

Mr Faulkner—The matter of cooperative schemes has been on the agenda of governments—federal, state and territory—for quite a few years now, really since the decision in re Wakim, which was looking at the cross-vesting arrangements, and then again after the decision of the High Court in Hughes, which was a case about Corporations Law and which made a number of observations that caused governments to look at the way cooperative schemes were set up. I think it is fair to say that the Constitutional Policy Unit within the Commonwealth Attorney-General's Department has been looking at this matter in some detail.

Senator LUDWIG—What does the Constitutional Policy Unit do then? It does not do constitutional reform—

Mr Faulkner—I wouldn't necessarily accept that.

Senator LUDWIG—It does not seem to, other than look at the issue of cross-vesting legislative schemes, comment on it. Is there more concrete work that you do?

Mr Faulkner—I am sorry, I did not quite catch the last part. Were you suggesting that the Constitutional Policy Unit was not involved in the question of reforming cooperative schemes?

Senator LUDWIG—No. I listened to your answer and it seemed to me that you were saying there is work ongoing—it is a bit airy fairy but you will get around to doing something eventually. I am trying to understand a bit more in detail what you do then.

Mr Faulkner—Perhaps a couple of examples might help, in chronological order. The Constitutional Policy Unit was heavily involved in work for the republic referendum. For example, I was seconded to PM&C to look after the legal and constitutional side of preparing the referendum—which was 18 months work really—and the unit within the department was heavily involved in supporting many aspects of that task. The Constitutional Policy Unit was in charge of the reference of powers by the states to the Commonwealth to secure the constitutional foundations of the corporations arrangements. The unit was also responsible for looking after references of state power to support the federal terrorism offences, which were re-enacted last year.

In addition to that, the unit has a continuing role in relation to all Commonwealth constitutional litigation. There are many cases running at any time that raise constitutional issues. Wherever a matter does raise a constitutional issue, notices are issued to all attorneys under section 78B of the Judiciary Act, and the Constitutional Policy Unit is involved in considering whether it is appropriate for the Attorney-General to intervene and, if he does intervene, what kinds of arguments are put. That is not spectacularly exciting I suppose, so far as most of the population is concerned, but it is a large part of what we do. There are more interesting and high-profile undertakings which we are involved in from time to time.

Senator LUDWIG—That gives it a more concrete feeling. So why were you sidelined in relation to the section 57 review of the Senate? If you have that sort of high-profile involvement, one would expect you to have a high-profile involvement of Senate reform.

Mr Faulkner—I am afraid I cannot really add much to my earlier answer. This was an initiative of the Prime Minister, and his department for that reason has the carriage of the matter.

Senator LUDWIG—So your role amounted to an early discussion, and that was it?

Mr Faulkner—Several discussions, I suppose. They were clearly not totally insignificant, but perhaps not quite the same role we had in relation to some of those other matters I mentioned.

Senator LUDWIG—Did you have a role or will you have a role in the constitutional validity of the joint sittings recently held with President Bush and President Hu? Have you been asked to provide advice in respect of that matter?

Mr Faulkner—No, I have not been asked for any advice on that.

Senator LUDWIG—When you say that you have not been asked, do you mean inclusive of your unit, the Constitutional Policy Unit, or you personally?

Mr Faulkner—My unit. I understand Mr Govey answered a similar question previously.

Senator LUDWIG—I know, but I thought I would try again.

Mr Faulkner—We are ad idem on that matter.

CHAIR—That is very tenacious of you, Senator Ludwig.

Mr Cornall—With *Resolving deadlocks*, there are a lot of policy decisions that are relevant in the preparation of that paper. The legal issues are relatively clear and it sounds as though Mr Faulkner was consulted on those, but the policy and other considerations are very much a matter for the Prime Minister and his department.

Senator LUDWIG—I do not have anything further on 1.2.

Ms Leigh—Before we move to 1.3, earlier I was asked about the Work and Family Taskforce in Prime Minister and Cabinet. Since the last Senate estimates hearing, there have been two meetings of that task force, one on 2 July and one on 8 August. Anticipating a follow-up question, the department was represented at both those meetings at the branch head level.

CHAIR—Thank you for clarifying that, Ms Leigh. We now move to 1.3: Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services.

[3.26 p.m.]

Senator KIRK—Last time you were here, there was some discussion on the negotiation of the new legal aid funding agreements. As I recall, you indicated on that occasion that you expected a formal offer would be made around October this year. Could you give us an update on that?

Ms Lynch—Yes. I note that at the last estimates hearing I indicated that we anticipated we might be in a position to make a formal offer in October. Had I been more accurate, I think I would have said that I anticipated we might be in a position to commence formal negotiations around October. I think I also went on to indicate later in the hearing that no set timetable had been made. We have not as yet commenced formal negotiations, but we have continued to talk extensively with the states about issues in those negotiations.

Senator KIRK—When are you expecting those formal negotiations to begin?

Ms Lynch—I am loath to specify a particular date, having specified one already and had—

Senator KIRK—Is it likely to be this year?

Ms Lynch—Again, I am loath to give you a specific date, but, as I said, since we last spoke to you in May, we have had extensive consultations with each of the state and territory commissions in relation to matters arising under the legal aid agreements and potential issues for the renegotiations. Quite a bit of work has been done and continues to be done on them.

Senator KIRK—What are the stumbling blocks in the way?

Ms Lynch—I would not describe them as ‘stumbling blocks’. I think I indicated last time that there are a number of processes internally at the Commonwealth level that we would need to go through. Also, we continue to discuss issues with the commissions. I think it is that our timing has extended more than we might have anticipated rather than there being a particular stumbling block at this stage.

Senator KIRK—Could you advise the committee of the progress in the discussions with the Australian Grants Commission and legal aid commissions on the funding distribution model?

Ms Lynch—The process of looking at the funding distribution model has been very much an iterative process with the commissions and the Commonwealth Grants Commission. We have sought the views of the Grants Commission on a number of comments that have been highlighted by commissions. We have considered different factors as indicators of the need for Commonwealth legal aid. We have developed a range of models and options in relation to comments that have come back to us from the Legal Aid Commission. I can take you roughly through the discussions we have had with the commissions since we last spoke in May. On 22 May—I am not sure whether that was before or after the last estimates—we had a meeting with the subcommittee of National Legal Aid to look at options that we had developed after the February meeting of National Legal Aid. At that time we provided a comparison of model options to the subcommittee, plus I think we showed them a new model that we developed with the Commonwealth Grants Commission. We also provided them with a review that the Commonwealth Grants Commission had done on a critique that had been provided to us through the Queensland Legal Aid Office.

We met with National Legal Aid on 4 June. We advised them that we had commissioned some more work on further models. Then as late as 2 October this year we met again with National Legal Aid when we provided them with some more information showing a comparison of different models using different factors, different census data, and updated the data from legal aid commissions. We invited comments back from the commissions at that meeting. I do not think we have had anything back from them yet. Again, it has been an iterative process between us, the Grants Commission and the legal aid commissions.

Senator KIRK—No model has been agreed as yet?

Ms Lynch—No, and we have not finalised the review ourselves at this stage.

Senator KIRK—Again, do you have any time frame as to when this is likely to be finalised?

Ms Lynch—No, I do not have a time frame. We mentioned to legal aid commissions in October that we were proposing to start drawing the review to a close. We had provided a number of different options and models. We have not finalised our report on that review yet, so I do not have a date for you on which we anticipate the review being finalised.

Senator KIRK—You would be aware that the Senate Legal and Constitutional References Committee is currently involved in an inquiry into legal aid?

Ms Lynch—Yes.

Senator KIRK—I wondered whether the department had taken any note or even seen perhaps the submissions to the committee.

Ms Lynch—I think last time I looked at the inquiry's web site there were about 91 submissions. I have looked directly at some of them myself. There is an officer in the legal aid section who is working through them, reading each of them and looking at issues on them. So he is very much aware of how that inquiry is proceeding.

Senator KIRK—On another matter, I wonder whether or not the department is aware of evidence that a growing number of private practitioners are withdrawing from legal aid work, particularly in the family law area.

Ms Lynch—We are aware that that is an issue that has been raised with us and there are a number of reports around that indicate that that may be an issue. We are aware of that.

Senator KIRK—When you say it has been raised with you, who has it been raised by?

Ms Lynch—Legal aid submissions, for example, have raised it with us.

Senator KIRK—Is the department aware of any evidence to confirm this?

Ms Lynch—We are aware that there have been a number of reports prepared at various times or discussions—

Senator KIRK—By whom were those reports prepared?

Ms Lynch—I do not have the list with me of what work has been done. I will take that question on notice.

Senator KIRK—Has any thought been given by the department to conducting such an inquiry itself?

Ms Lynch—We have been looking at that issue. The department has sought some assistance through the University of Canberra on reviewing available research for us.

Senator KIRK—You have asked the University of Canberra to investigate it for you?

Ms Lynch—Yes, in a review of the available research on that issue.

Senator KIRK—What are the terms of reference of that review by the University of Canberra?

Ms Lynch—I apologise, I do not have the terms of reference with me. I can take that on notice. Their main task is to look at the available research on participation of lawyers in the legal aid system, particularly in family law.

Senator KIRK—When is it expected that that research will be completed?

Ms Lynch—We have seen a draft report, but I do not have a date when we would anticipate a final report.

Senator KIRK—The research is well under way then, if you have a draft report?

Ms Lynch—Yes. The people at the University of Canberra have done considerable work reviewing the available information and data.

Senator KIRK—This was commissioned by the department?

Ms Lynch—It was commissioned by the department.

Senator KIRK—The government does have some concern then about this trend of private practitioners moving away from legal aid work.

Ms Lynch—The purpose of the report is to gauge the issue.

Senator KIRK—In March 2001 the Attorney-General released a discussion paper on the national fee scale for legal aid work to address this very issue. I am wondering what the outcome of that discussion paper was.

Ms Lynch—I do not think that there is anything I can really add. That is an issue still with government.

Senator KIRK—Is the minister aware what may have happened to that discussion paper on the national fee scale—whether anything is going to come of it?

Senator Ellison—That would have budgetary implications. That is something I cannot comment on. We are, of course, entering the budgetary process at this time of year. It will be considered along with everything else.

Senator KIRK—Finally, I wondered if you could give us an update on the number of calls received by the regional law hotline.

Ms Lynch—We have prepared the usual handup updated to September 2003, which we have with us. Ms Pigeon has a copy. It has the figures up to the end of September 2003 for calls to the hotline.

Senator KIRK—Perhaps you could just give us some idea.

CHAIR—Could you table that, Ms Lynch?

Ms Lynch—Yes.

Senator KIRK—Have the numbers increased or decreased overall?

Ms Lynch—There has been an increase in the calls to the hotline. For example, I note that the number of calls to the regional hotline in September was 137. It was 105 in August, 134 in July and 82 in June, so there has been some significant increase. In fact, I think I have the combined figure for July to September, which indicates that there has been an increase in the number of calls. When I looked at the figures last night, I saw that we had achieved the same number of calls. The total number of calls for the regional law hotline was 354 in 2002-03, and so far there have been 376 calls from 1 July to 30 September to the regional hotline.

Senator KIRK—So it is quite a significant increase. Last time you were here you indicated that a submission had been made to the Attorney-General containing options for reform of the hotline.

Ms Lynch—Yes.

Senator KIRK—What progress, if any, has been made in relation to that?

Ms Lynch—A submission has been provided to the new Attorney-General on that issue.

Senator KIRK—Is that the same submission that had been made available to the previous Attorney-General?

Ms Lynch—It is not the identical submission, no. It has been amended and updated. But I do not have any further information to provide to you on the issues relating to the regional hotline.

Senator KIRK—What was the nature of the submission that you gave to the Attorney-General?

Ms Lynch—It was a departmental submission setting out the department's views and advice in relation to the regional hotline.

Senator KIRK—Do you have any idea as to when you are likely to see an outcome?

Ms Lynch—That would be a matter for the Attorney.

Senator KIRK—Minister, is there any time frame in relation to this hotline, or is it a budgetary matter again?

Senator Ellison—I would have to take it up with the Attorney.

Senator LUDWIG—The family law branch made a submission to the House of Representatives Standing Committee on Family and Community Affairs inquiry into child custody arrangements. When was that submission forwarded to the committee?

Ms Lynch—I am just checking to see whether I have the actual date on which it was forwarded. Unless Mr Duggan has the date, I may need to take on notice the date that we actually lodged it with the committee. I am sorry I do not have that date in my notes.

Senator LUDWIG—Please. I should check the web site, but have you appeared before the committee?

Ms Lynch—Yes, Senator.

Senator LUDWIG—When was that?

Ms Lynch—On 15 September we appeared before a public hearing of the inquiry.

Senator LUDWIG—Were you asked to deal with the issue of rebuttable presumption of joint residence?

Ms Lynch—Yes, we did discuss that at that hearing.

Senator LUDWIG—So I will be able to go to the transcript on that issue. Did you deal with whether or not it would impact on the levels of litigation in family law either positively or negatively?

Ms Lynch—I recall being referred to the South Australian government submission and asked if I thought there would be an impact on legal aid. I recall that my answer was if there was an increase in litigation then there was potential for an impact on legal aid.

Senator LUDWIG—Has your section undertaken any overseas research about whether the presumption exists in overseas jurisdictions, and what does research indicate?

Ms Lynch—My colleague Mr Duggan would have more detail on that.

Mr Duggan—There are a range of different approaches to this in a range of American states. We could not find an overseas jurisdiction which had exactly the same presumption as is being proposed.

Senator LUDWIG—Did you find a similar one? Have you prepared a report or paper?

Mr Duggan—We have done some research in relation to the American system. We would not say it was completely comprehensive.

Senator LUDWIG—Was that made available to the House of Representatives committee? If not, can it be made available to this committee?

Mr Duggan—I need to take that on notice because I am not entirely certain about that.

Senator LUDWIG—Thank you. Is there further work you have got to do in respect of the House of Representatives committee?

Ms Lynch—I think at the end of those hearings the committee indicated that they may ask us to come back for further evidence, and we took some questions on notice at the hearing which we are finalising responses to at the moment.

Senator LUDWIG—Is any legislative work being undertaken by your branch or have you requested legislative work to be undertaken in this area? In other words, are there any proposed amendments to the legislation that currently exists in this area on this matter or a very similar matter?

Ms Lynch—In relation to the terms of reference to the particular inquiry?

Senator LUDWIG—Not so much the terms of reference but in the area of child custody and that sort of area. What have you got on your plate?

Mr Duggan—In terms of drafting instructions and what have you, the only legislation that currently exists is one you would be aware of, the Family Law Amendment Bill 2003, which touches on the area. It does not deal specifically with the issues, I would have thought. That is the only legislation we have currently ongoing.

Senator LUDWIG—In relation to the use of family law financial agreements, those that are used or misused to defeat creditors as the case may be, on 17 and 27 October the *Sydney Morning Herald* carried reports by Elizabeth Sexton on a Family Court judgment. We spoke about this earlier with the department. The department is aware of this judgment, isn't it?

Mr Duggan—Yes, Senator.

Senator LUDWIG—That article, as I understood it, indicated that the court found it did not have jurisdiction to set aside financial agreements designed purely to place assets beyond the reach of creditors of one of the partners to the marriage. Is the government concerned about that approach?

Mr Duggan—Which approach are we talking about?

Senator LUDWIG—The system of financial agreements that are put in place which are potentially open to abuse and defrauding of creditors.

Mr Duggan—As I indicated to you previously, the judge concerned in the Family Court referred that judgment to the Attorney-General. We have provided advice to the Attorney, who was concerned about the issues raised by the judge in that matter and has considered a range of options for possible response which are currently being considered.

Senator LUDWIG—So they are the steps that you are taking to remedy potentially the defect in the Family Law Act?

Mr Duggan—Indeed. The Attorney is very concerned about the issues that were raised and has sought to move as quickly as possible.

Senator LUDWIG—Where are we up to then? Have you developed a legislative response yet?

Mr Duggan—Not as yet.

Senator LUDWIG—Are you drafting amendments?

Mr Duggan—It depends on the availability of resources of the Office of Parliamentary Counsel and the approval process of government. The matters are under active consideration, and the Attorney is certainly seized of the concerns of the court and is keen to move as quickly as is possible.

Senator LUDWIG—You have requested the Office of Parliamentary Counsel to prepare a draft?

Mr Duggan—As I have indicated to you previously, the matter is still yet to be finally approved through government so I would prefer not to take that matter any further.

Senator LUDWIG—I can ask them too. They sometimes answer! All right, I will ask them.

Senator KIRK—I want to ask some questions in relation to international child custody or abduction cases involving, in particular, non-Hague convention countries. Is the department ever asked for advice or assistance in relation to such matters?

Ms Lynch—In relation to abductions to non-Hague convention countries?

Senator KIRK—Abduction and child custody matters, yes.

Mr Duggan—Yes, we are.

Senator KIRK—When was the last time you were consulted in relation to this?

Mr Duggan—I could not give you a definitive answer; I may need to take that on notice. Because of the nature of the work that the central authority within my branch do, we get regular requests for assistance in this regard. For example, we have a bilateral agreement with Egypt, which is a non-convention country, and we have discussions in relation to Lebanon. So there are ongoing issues in relation to non-convention countries.

Senator KIRK—You say you are asked for assistance. From whom?

Mr Duggan—Often that assistance will be sought from a parent whose child has been abducted about what is possible in that regard. The department does run a financial assistance scheme which in some cases is available to assist those people who, of course, would normally have to take private proceedings in the country in which the child has been abducted to.

Senator KIRK—Is the department ever asked for advice from other Commonwealth agencies like DIMIA, for example?

Mr Duggan—DIMIA occasionally request advice from us. We have regular discussion or consultation with DFAT in this regard because often our requests will come through the post in a particular country.

Senator KIRK—I am wondering whether or not you are aware of a case that was reported in the media of an Iranian child whose name is Massoumah Mastipour. In July she was removed from her father, who was in the Baxter detention centre, and deported to Iran. Are you familiar with this case?

Mr Duggan—Sorry—we have just had a consultation about the confidentiality of the person's name.

Senator Ellison—Normally we can go to a matter of generality but not to specific cases for obvious privacy reasons.

CHAIR—Indeed, on the record.

Senator KIRK—I think my questions relate not so much to her privacy but more to the process that surrounded her removal.

Senator Ellison—Generically is fine. Any generic question is fine.

CHAIR—You did ask about awareness of a specific case. I think the minister is indicating that it would be easier to discuss this in generalities than in specifics.

Senator KIRK—Certainly. In relation to such a case in the public domain—

Senator LUDWIG—It is on the public record.

Senator Ellison—What the media does—

CHAIR—Does it make it right, Senator Ludwig?

Senator Ellison—When you have officials at the table, great weight is placed on what they say. There may be questions which elicit information which goes to private personal details. The media can very well do that but I think it is different when you are dealing with the department. We certainly cannot sanction canvassing in public details of individuals. I just do not think it is appropriate. It has been a longstanding approach that has been adopted at these committees.

Senator LUDWIG—I agree with you, Minister. I think it is the case that the department does know where the line is and can indicate at what point it does cross the line. But it also gives the media an opportunity to correct it if there are errors or omissions that require addressing in respect of some of these matters. If not, the general questions that will flow are, as I understand it, of a general nature in any event. I just wanted to make the point that, although the department does not comment on individual cases, I think a different tack is sometimes taken when they are well-known and are in the media. Also, it gives the department the opportunity to seek a correction if the media, on those rare occasions, have got it wrong.

CHAIR—I would also say that this committee is at great pains not to compound any problems that have been created by exposure—inappropriate, in some cases—of specific matters and details thereof.

Senator Ellison—Let us take the questions and see how far we can go, bearing in mind that we are dealing with a juvenile, as I understand it. It is a little bit more sensitive than it otherwise would be.

Senator KIRK—Of course; but my question really went to the process surrounding the removal of this individual. My main interest is whether the department was consulted by DIMIA in relation to the legalities of the removal. As I understand it, according to the Attorney-General, there was a claim that the father had illegally removed the child from Iran in contravention of a court order. Obviously this gives rise to the questions that I was asking you before in relation to international child custody or abduction cases. My question really

goes to whether the department was consulted in relation to the law in this area before the decision was made to deport the child.

Mr Duggan—The carriage of this matter almost entirely was a matter for the Department of Immigration and Multicultural and Indigenous Affairs. It was not a matter that this department—at least my branch anyway—had any substantive involvement in.

Senator KIRK—There was no advice sought from you in relation to the legalities of it?

Mr Duggan—My understanding of the situation was that the only advice we provided was that the relevant country was not a Hague convention country.

Senator KIRK—So there was an approach made by DIMIA to seek some advice, but it was a limited, narrow question that an answer was sought for.

Mr Duggan—That is right.

Senator KIRK—With respect to this narrow legal question asked of you, does the department have any concerns or views about whether such information should be provided before such an action is taken? Or does it take the view that it is entirely for DIMIA to make its decisions and wear them, so to speak?

CHAIR—As I advised at the beginning of the session today, I do not believe the department has views or opinions and certainly should not be asked for views or opinions in that way.

Senator KIRK—In that case, I will ask whether such advice has been sought from DIMIA in relation to the legality of the removal of individuals in the past. You say ‘not in this case’ or ‘only on a narrow matter’. I am trying to determine whether it is the practice for DIMIA to seek such advice.

Mr Duggan—Whether DIMIA seeks advice from its own legal advisers on a case by case basis is a matter I am not aware of—that is a matter for DIMIA. In relation to these particular issues, our branch provides essential authority for the Hague convention proceedings. That is the extent of our involvement.

CHAIR—Thank you. We have now concluded 1.3. Ms Lynch or Mr Duggan, was there anything else you wished to add?

There is one issue that I just want to clarify in relation to the Hague convention that I mentioned previously. Our advice was provided to the mother, not to DIMIA; I apologise for that. The mother asked, through the post, and we provided advice that Iran was not a Hague convention country and that, therefore, the central authority was not able to assist other than to indicate to her what other avenues might have been available, such as private proceedings in Iran. That is all we could do.

[3.55 p.m.]

CHAIR—We will now move to output 1.4, legal services and policy advice on international law.

Senator LUDWIG—I understand that Australia will be putting forward a candidate to be chairperson of the United Nations Commission on Human Rights next year. Is that correct?

Ms Leon—The candidacy for the Commission on Human Rights is a matter handled by the Department of Foreign Affairs and Trade, Senator.

Senator LUDWIG—Do they discuss it with you or your section, and have they?

Ms Leon—They do. I am aware of the processes that are going on but I do not know to what extent they have been put into the public arena by the Department of Foreign Affairs and Trade. So I think it would be better if questions on that matter were directed to that department.

Senator LUDWIG—That might be your view, but I am asking the question. I just want to know what you know about it or what involvement your section has had in relation to it. I think that is a legitimate question that I can ask.

Ms Leon—We do not have any particular responsibility in relation to that appointment. I am aware in a general way, because of the discussions I have with the department and because of the material that flows through the office, that the matter is under consideration, but it is not something that my office or this department has responsibility for.

Senator LUDWIG—So you do not have any responsibility in relation to sponsoring a candidate, putting forward a candidate or selecting a candidate on the selection panel?

Ms Leon—No, Senator.

Senator LUDWIG—What about the objectives of the chair or the objectives of gaining the chair? Would that be within your area of responsibility?

Ms Leon—No, Senator. The only place where there would be some responsibility for the Office of International Law would be if the chair did come to Australia. Then there might well be aspects of international law policy that we would wish to see advanced through the Commission on Human Rights. That might then be taken up with the Department of Foreign Affairs and Trade with a view to developing the strategy or the approach of the chair in the future. But the actual candidacy for the chair, the decision to nominate for that or the decision to select a particular candidate are all matters within the purview of the Minister for Foreign Affairs.

Senator LUDWIG—Has the UN treaty committee adopted to date any of the reforms suggested by Australia?

Ms Leon—Do you mean reforms to the treaty committee system?

Senator LUDWIG—Yes.

Ms Leon—There have been a number of initiatives that Australia has been promoting that have been examined with some interest by the international bodies.

Senator LUDWIG—Given the time constraints of the committee, you might want to take this on notice. The areas that I am interested are: what are the nature of the reforms; how many reforms have been put forward; where are they currently; have they been considered by the UN treaties committee and has there been any resolution of any of them? Or could you answer that in short form?

Ms Leon—I can answer that now, Senator. The reforms proposed by Australia have been considered in a number of fora so it is not as straightforward as saying that the UN as a

singular body has adopted a particular attitude to particular proposals. The proposals that have been put forward by Australia and other countries in relation to treaty body reform have been considered individually by each of the treaty committees as well as in a number of workshops that have been convened by Australia over the past three years that have been attended by other countries and by members of some of the treaty committees at different times.

In addition, the Secretary-General of the United Nations put out some proposals for reform which have since been responded to by the Office of the High Commissioner for Human Rights—and the recent report of the Secretary-General on UN reform issues took up some of those—that are consistent with suggestions that have been made by Australia. These include having an expanded core document to reports to the treaty bodies, pursuing streamlined reporting procedures and harmonised reporting guidelines. I should say the fact that those have been taken up as issues is not quite the same as having them adopted in the sense that there have not, as yet, been concrete changes along those lines made to the working procedures of the committees, but Australia is pleased to see they have been raised as issues and recognised as areas where further work needs to be done.

Senator LUDWIG—So what is the next step? Do you call it by name in terms of that group approach or is it just generally referred to as a diplomatic initiative to reform the treaty committee?

Ms Leon—We tend to refer to it as the overall activity towards treaty body reform, which has been expressed in that high-level diplomatic initiative for the past three years. Australia has gained considerable support from a wide number of states for those reforms and will continue to work both with the Office of the High Commissioner for Human Rights and with other states to press for continued momentum. As I said, Australia has proposed a number of reforms that have garnered interest and support in the international bodies, and we will continue to work to see those reforms implemented.

Senator LUDWIG—So we are at a stage where none have been adopted and there has been no outcome, but we are still pressing them?

Ms Leon—It is not that there has been no outcome. The particular initiatives I referred to in the Secretary-General's report were only released in the last couple of weeks, so it is a little soon to expect that they will have already been implemented. There have been some positive changes that have already occurred. The treaty committees have all now conducted dialogues with states and appear to be making that a regular feature of their engagements with states parties so that there is a formal process for the treaty committees to discuss their approach and working methods with states. There is a project in train in the Office of the High Commissioner for Human Rights to harmonise the reporting guidelines of the committees. That was a direct result of an Australian initiative. There has also been some work done on improving the reporting timelines for committees. So there have certainly been concrete outcomes that we are pleased to see. We are aware that there is considerable work still to be done, and Australia will be continuing to contribute both to that work and to the momentum for the work to be done within the United Nations.

Senator LUDWIG—What can you tell me about the Edward Young case? Is that a matter that comes under your area?

Ms Leon—Yes. The Young case was considered by the Human Rights Committee on 6 August this year. The department received the committee's views on 3 September. The committee expressed the view in that case that Australia had violated article 26 of the International Covenant on Civil and Political Rights—which is, broadly speaking, about the right to equality before the law—because of the case Mr Young brought alleging that he had been denied a pension under the Veterans Entitlement Act on the basis of his sex or sexual orientation.

Senator LUDWIG—When is the response required by?

Ms Leon—There is no formal requirement for a response under the covenant, but the committee has asked for a response within 90 days.

Senator LUDWIG—Will you meet that deadline?

Ms Leon—As I said, it is not a formal requirement so we do not see it as a deadline. It is a request by the committee and I am not able to say at this stage whether we will be responding in that time frame.

Senator LUDWIG—Minister, if the decision is made to respond, can you let the committee know within the next 90 days and what the response is?

Senator Ellison—I will do that.

CHAIR—Thank you very much, Minister.

Senator LUDWIG—In respect of the more general issue, will your office do an audit of federal legislation to identify provisions which may discriminate against Australians in same sex relationships, or would looking at that issue be another part of the A-Gs area, given the Young case?

Ms Leon—The Young case does not relate to federal legislation or programs generally; it relates only to a particular provision of the Veterans Entitlement Act. So responding to the Young case would not necessarily involve an audit of the sort you envisage. The role of the department, in cases of this nature, is ordinarily to consult with the area of government that has policy responsibility for the matter where a violation has been found, whether that be a federal government department or, as in some cases, a state or territory government. To ascertain in those consultations what the appropriate response is, sometimes these cases give rise to questions of law that are purely about international law, in which case the response might reflect an international law analysis largely generated from the Office of International Law. Sometimes these cases might give rise to policy considerations where the response then reflects the policy considerations that are the responsibility of the relevant federal government department. It does rather depend on the particular case how the consideration goes, and the nature of the response that is given.

Senator LUDWIG—So the summary of that might be that, on that matter generally, you are not doing anything more in relation to it? Or are you?

Ms Leon—We have been consulting with the Department of Veterans Affairs on that case.

Senator LUDWIG—Is that the only department you have been consulting with?

Ms Leon—On that case?

Senator LUDWIG—Yes.

Ms Leon—So far as I am aware, yes.

Senator LUDWIG—And the issue more generally?

Ms Leon—The issue of same sex rights?

Senator LUDWIG—Yes.

Ms Leon—We do not have any policy responsibility for that issue more generally.

Senator LUDWIG—Thank you. In respect of the funding to the United Nations Office of the High Commissioner for Human Rights, has Australia ever contributed to the voluntary fund established by Ms Mary Robinson?

Ms Leon—I am not aware, but I think that would be a matter within the knowledge and responsibility of the Department of Foreign Affairs and Trade. In the context of treaty body reform, I am aware that we made, via the Department of Foreign Affairs and Trade, a special one-off grant particularly for the purpose of a project to harmonise the guidelines for reporting under the international human rights instruments. As for grants to that office more generally, that would be a matter for the Department of Foreign Affairs and Trade.

Senator LUDWIG—Thank you. I do not have any further questions in this area.

CHAIR—That completes questions under 1.4. Thank you very much, Ms Leon and Mr Campbell.

[4.10 p.m.]

CHAIR—We will now consider output 1.7, Legal services and policy advice on native title.

Senator LUDWIG—In relation to appointments to membership of the Native Title Tribunal this year, who has been appointed? Have there been new appointments?

Mr Anderson—That is a question for Ms Leigh.

Ms Leigh—Can I confirm that you have asked about appointments made this year to the Native Title Tribunal?

Senator LUDWIG—Yes. I was wondering who has been appointed, who has not been appointed, who has not had their term renewed and the reasons therefore.

Ms Leigh—An appointment of a full-time member was made in Perth in July. A full-time member was appointed in Victoria at the same time. When I say that the appointment was made in Perth in July, it actually took effect from 1 September, which is probably a more relevant date from your point of view, Senator. An additional full-time member was also appointed in Perth in October.

Senator LUDWIG—What are their backgrounds?

Ms Leigh—I would like to take that question on notice.

Senator LUDWIG—You do not have that information available?

Senator Ellison—You are talking about their CVs?

Senator LUDWIG—Yes. Where were they employed immediately before? Were they from the community or were they from companies? What sorts of backgrounds do they come from and what experience do they bring to the table?

Ms Leigh—I would like to take that question on notice.

Senator LUDWIG—You do not have that available? That seems a bit amazing.

Ms Leigh—I do not have it here in my notes, no.

Senator LUDWIG—When will you have that information available?

Ms Leigh—If I could take the question on notice, that would probably be the most convenient way.

Senator LUDWIG—I was looking at a front-page article in the *Courier-Mail* announcing the appointments. I am a bit incredulous to understand that you do not know or have not read about those issues.

Senator Ellison—When was the article dated?

Senator LUDWIG—I do not have the date, unfortunately.

Senator Ellison—I was just wondering whether it was recent or whether it was a while ago.

Mr Cornall—I think it was on 13 August.

Senator LUDWIG—Yes, I thought it was a couple of months back, not that long ago. Anyway, maybe I will put that on notice. It is just that there was a reasonable amount of disquiet in the community about those appointments, particularly in relation to their backgrounds. I just want to confirm what their backgrounds are, whether you did any background checks, whether you agree that they are reasonably neutral appointments to the Native Title Tribunal and those sorts of issues. It is a bit hard if we cannot get off first base.

Mr Cornall—Mr MacPherson was a corporate lawyer of many years standing in Victoria. I cannot remember the company he worked for. I think it was Shell, but I might be wrong about that.

Mr Govey—It was Shell.

Mr Cornall—Mr Govey has confirmed that. I think he was for some time the chairman of the Australian Corporate Lawyers Association, Victoria, and was held in very high general regard. I do not know about Mr Catlin's background, but we could probably get that quite quickly for you.

Senator LUDWIG—Thank you. I understand that you did not reappoint Mr Tony Lee, who was an Indigenous member of the tribunal. Is that right?

Ms Leigh—That is correct.

Senator LUDWIG—What I am trying to ascertain is that you employed two corporate lawyers and did not reappoint Mr Lee, an Indigenous member of the tribunal. You can understand that some people might take a view that the Native Title Tribunal is not free from influence. I was hoping that you could correct that.

Mr Anderson—I am able to give some further background on Mr Catlin. I understand that he had worked for both the Western Australian government and the Victorian government in the native title areas and that, for a very short period before being appointed to the tribunal, he worked for MIM. But I understand that his main background is in the Western Australian and Victorian governments.

Senator LUDWIG—And no-one worked for Xstrata?

Mr Anderson—They are the only details I had on him. I just thought I would add those.

Senator LUDWIG—Thank you. What about the possibility of the perception of bias in those sorts of things? That is the area I wanted to explore with you about how you deal with that and how you ensure that there are appointments which are free of bias when you look at the appointments from companies or the corporate world into this area and you do not reappoint someone who may have a background in this area. I am just trying to ascertain the view of the Attorney-General's Department about these sorts of matters. You could perhaps start by explaining why you did not reappoint Mr Tony Lee, unless there is an issue that you cannot air before the committee.

Mr Cornall—All appointments are matters for the Attorney-General and the government, so we are only able to say that those matters are considered by government in making those appointments.

Senator LUDWIG—Perhaps you can take it on notice then. I think you understand the issue that I am raising. I can articulate it.

Mr Cornall—I understand the issue, but the point I am trying to make is that these appointments are made by government, and they make their own decisions about who to appoint, the appropriateness of certain backgrounds and so forth. We do not have a role to play in making those decisions.

Senator LUDWIG—So we can eliminate the Attorney-General's by saying you do not have a role in respect of the process of selecting the appointments or providing—

Mr Cornall—It depends on which appointment you are talking about. In some matters we would conduct interviews and recommend candidates for the Attorney to consider. The Attorney may then consider those candidates and others, interview those candidates and form his own view about the appropriateness of them. If we do that, we are normally members of a panel and not just the only representatives on the panel. The matters are then decided on an individual basis, but ultimately the decision rests with the Attorney-General and with the government.

Senator LUDWIG—What about the last two appointments this year? Did you have a role similar to what you outlined in them?

Mr Cornall—I personally do not know, I am sorry. I was not personally involved in it.

Ms Leigh—Senator, I mentioned three appointments to you. In the first one that I mentioned, there was a panel of the type that the secretary has outlined and the department was on that panel. I was the departmental officer on that panel. Of the other two appointments that I have outlined, one of those positions was advertised and then the government moved to make its decision from that point without any preliminary interviews of the type that the

secretary has outlined. In the case of the third one, there was not any additional advertisement but, as I have mentioned, the other two positions had been advertised and that was drawn on by the government in making the decision for the third position.

Senator LUDWIG—So the three people are—

Ms Leigh—Mr O’Dea was the first one I mentioned. That was the first full-time appointment in Perth, which took effect on 1 September.

Senator LUDWIG—And that was by a panel.

Ms Leigh—The process was, as the secretary outlined, an advertisement and initial interviews by a panel comprising two officers from the Attorney’s office and me from the department. As is usually the case, we then prepared a short list of candidates that the Attorney might wish to consider. That list went to the Attorney, and a decision was made by the Attorney and government on an appointment.

Senator LUDWIG—So Mr O’Dea made an application and he was on the recommendation list.

Ms Leigh—I just hesitate to say whether he was or he was not, Senator, because as a general principle I would not go into that much detail in discussing how precise names come before the Attorney.

Senator LUDWIG—I think you would. If it went through that process or it just fell onto his table out of his pocket, I would like to know and I am sure the committee would like to know.

Ms Leigh—I am just talking generally now; but, if I could expand a bit more, in the normal case, first of all, the Attorney would decide whether or not to advertise—

Senator LUDWIG—I do not want to interrupt you, but can we not deal with the generality but deal with the specifics? We have got Mr O’Dea out of the way. Who else is there?

Ms Leigh—I will just check with the minister on that. Yes, the person who was selected was on that short list provided by the panel.

Senator LUDWIG—And the other two?

Ms Leigh—In the case of the second one, as I mentioned, there was an advertisement, but no interviews were conducted on that occasion.

Senator LUDWIG—How did the list get to the minister?

Ms Leigh—Those who applied were put to the Attorney and the Attorney made a decision.

Senator LUDWIG—So all of those people who applied were put before the minister?

Ms Leigh—That is my understanding, yes.

Senator LUDWIG—How many people applied?

Ms Leigh—I would need to take that on notice.

Senator LUDWIG—And the third?

Ms Leigh—Of the third, there was no advertisement; but, as I indicated, because we had previously advertised and had processes, that was available to be drawn on by the Attorney in making a decision.

Senator LUDWIG—So what list was then put before the Attorney in relation to the third, and who is the third?

Ms Leigh—The third person is Mr Catlin. He applied for other positions and so his name was already there to be considered.

Senator LUDWIG—He applied for the position at first instance.

Ms Leigh—On both the other occasions, as I understand it.

Senator LUDWIG—For both the advertised positions. And how did he then end up before the minister? Were the names of all those people who applied in both the first and second instances, save for Mr O’Dea and the other person who was successful, put before the minister?

Ms Leigh—All of those names were already with the Attorney. Each time the full list of people who apply is provided to the Attorney and then, if a decision is taken to conduct interviews, a short list of those is provided in addition, but the Attorney already has the full list of people who apply on each occasion.

Senator LUDWIG—So there was not a short list prepared in relation to the third—or was there?

Ms Leigh—Not as far as I am aware, no.

Senator LUDWIG—And then did you provide any background or additional information to the list to assist the minister in making his decision?

Ms Leigh—Not as far as I am aware.

Senator LUDWIG—Can you check on that, because you keep saying, ‘Not as far as I am aware,’ so perhaps there might be some doubt in your mind.

Ms Leigh—If what I have said is incorrect, I will certainly correct the record.

Senator LUDWIG—Was the Attorney-General’s Department involved in the Victorian native title agreement with the Wotjobaluk people in Victoria?

Mr Anderson—That matter is currently in mediation and, as you would appreciate, I do not think it is appropriate that I discuss what is going on in mediation.

Senator LUDWIG—My apology, I thought it had finished.

Mr Anderson—I can say that we are a party.

Senator LUDWIG—What can you tell me about it then—just that it is in mediation?

Mr Anderson—I can tell you that the Australian government is a party and that it is currently in mediation.

Senator LUDWIG—I thought they had agreed. Why is it in mediation? Isn’t there an agreement?

Mr Anderson—There is a large number of parties. The Victorian government has indicated that they have reached an in-principle agreement with the Wotjobaluk people, the applicants.

Senator LUDWIG—My mistake, I thought that the agreement had been finalised.

Mr Anderson—That has certainly been publicly announced by the Victorian Attorney-General, but there is a number of other parties. The Commonwealth is only one of those other parties; there are also pastoralists, apiarists, Telstra—

Senator LUDWIG—Who is disagreeing then? Can you tell me that?

Mr Anderson—I cannot actually say that anyone is disagreeing; it is just that the details are still being mediated. Victoria reached a state of satisfaction sooner than other parties, that is all.

Senator LUDWIG—How do you have a mediation where nobody disagrees? What is to be dealt with?

Mr Anderson—Hypothetically, you could have a mediation where the only point of disagreement was the terms—

Senator LUDWIG—So we do have some disagreement?

Mr Anderson—No, I am saying hypothetically, Senator. Obviously I cannot comment on what is being discussed in the mediation, but even if the parties were fully in agreement on what they think the outcomes should be there is still the question of the terms of the determination itself recording, for example, that there would be—

Senator LUDWIG—I understand that, but can you tell me generally what the issues are? The Victorian government have an in-principle agreement. You are saying that they are not the only party to the agreement, that there are others and that as a consequence it is in mediation. How long is it going to be in mediation? Are they substantive issues and what is the nature of the issues? You do not have to go to the detail.

Mr Anderson—They are substantive issues, but a state or territory government is always in a position of being the primary respondent in a native title case because it is about the land that they themselves are responsible for. So it is usual for a state or territory government to be the first party to form a view of the evidence or of the arguments being put forward by the native title applicants. In this case the Victorian government had anthropological and other evidence and it decided that it was satisfied very early on. The other parties are now going through the process of looking at the evidence that has been provided by the applicants and seeing whether they themselves are satisfied. So that process is being worked through. I cannot say how long it is going to take all the respondents to come to a view as to whether or not they are satisfied.

Senator LUDWIG—Did the Attorney-General's Department take a view in respect of the Victorian government agreeing in principle with the agreement and did they communicate that to the Victorian Attorney-General?

Mr Anderson—There have been communications which are subject to the same confidentiality orders, being part of the mediation, and there has been communication

between the parties on a range of issues. Obviously there has been media speculation as to the Commonwealth position, but that is simply speculation. I cannot say what the Commonwealth position is.

Senator BOLKUS—Has the department been giving riding instructions from ministers as to how to handle this issue?

Mr Anderson—We have made recommendations to the minister and we have had advice on some aspects back from the minister. Some decisions have been made, but no final position has yet been communicated by the Commonwealth.

Senator BOLKUS—I am trying to work out what your riding instructions are as a department. Would it be fair to say that you are locked in to the letter of the Native Title Act as a negotiating point or do you have flexibility to accommodate interests or agreements outside the letter of that act?

Mr Anderson—There are two ways that the Commonwealth can deal with an agreement. One way is making sure that matters that are being agreed as a determination of native title are consistent with the requirements of the Native Title Act, but then we could also agree to matters being non-native title outcomes. Things can also be agreed whereby there is a settlement between the parties—assistance might be provided et cetera—but that is not done as a native title agreement. So there are two different forms under which any agreement can proceed. Sometimes you will have both of them side by side; other times you might just have one or the other.

Senator BOLKUS—So in this case are you locked into the Native Title Act or do you have flexibility?

Mr Anderson—Any determination of native title that the Commonwealth agreed to would have to be consistent with the Native Title Act, but there is also flexibility to consider non-native title outcomes at the same time.

Senator BOLKUS—Is it your view that the Victorian government has deviated from that act in its in-principle agreement with the people?

Mr Anderson—I am cognisant here of the confidentiality requirements in the mediation.

Senator BOLKUS—Sure. I am not asking you which particular points; I am asking you for an overall perspective. Is it the federal government's view that the Victorian government has deviated from the Native Title Act?

Mr Anderson—The Australian government's view of the proposed agreement will have to be communicated first to the parties in that mediation. I feel constrained in responding.

Senator BOLKUS—It has not been as yet?

Mr Anderson—No, it has not been.

Senator BOLKUS—When do you intend to do that?

Mr Anderson—Hopefully shortly, but it does need first to be communicated to the parties in the mediation. The mediation is to occur at a date later this month—I cannot think of the exact date.

Senator BOLKUS—When did Victoria and the Wotjobaluk people sign their in-principle agreement?

Mr Anderson—They have not actually signed an in-principle agreement, as I understand it, but Victoria announced that it was prepared to enter into an in-principle agreement late last year.

Senator BOLKUS—Has it taken the Commonwealth government a year to try to sort out its position?

Mr Anderson—It has taken the Commonwealth government and other respondent parties that time. There have been a number of things happen in the case, such as seeking further information and evidence from the applicants. The applicants first put on affidavits in the case before the Yorta Yorta decision was handed down by the High Court. They have since put on a number of other affidavits and provided other material. Victoria had also declined to provide its anthropological and other material to the parties, so no-one could assess why Victoria was prepared to reach an in-principle agreement. Since that time we have had some material given to us by Victoria. They have given us some but not all of their anthropological material so we could assess that. We have had other affidavit material from the Wotjobaluk people so we could assess that as well. It has taken some time to get that further material so we could actually see the basis for the case and the basis for Victoria's position.

Senator BOLKUS—If you are talking about anthropological material, you are really going to the essence of the claim. If you are still trying to sort out those fundamental issues, it is a pretty adventurous claim to make that there is no disagreement, isn't it?

Mr Anderson—I am not quite sure I understand the question.

Senator BOLKUS—Anthropological details, tenure, connection to the land and so on are very much the foundation of native title claims, so if you are still trying to sort those issues out the implication is that there is a long way to go before the Commonwealth is satisfied.

Mr Anderson—That is one possible implication, but I feel constrained from commenting on the stage that the mediation has reached. I would simply say, though—and this should not be taken as agreeing—that it is going to take a long time.

CHAIR—I think the officer has done his best to assist. There being nothing further on 1.7, thank you very much, Mr Anderson. We will move on to outcome 2.

Mr Cornall—Excuse me, Chair. I have the press release the Attorney published on the appointment of Mr MacPherson and Mr Catlin which gives some details of their background.

Senator LUDWIG—Mr McPherson from Shell is specialised in the resource industry and Mr Catlin was from Xstrata, formerly Mount Isa Mines. You can see the point I was trying to elicit from you as to whether you are ensuring not only that there is probity in appointments, as it seems you have demonstrated, but also that there is no perception of bias. These two are from large companies.

Mr Cornall—As we have said, Mr Catlin also had a background with the Department of Justice in Victoria and the Department of the Premier and Cabinet in Western Australia where he was responsible for native title issues.

[4.33 p.m.]

CHAIR—We will move on to outcome 2, output 2.1.

Senator KIRK—Last time we were here there were questions asked on the International Criminal Court and the question was raised about negotiations for an article 98 agreement with the United States. I wonder if someone can give me an update on those negotiations with the United States.

Ms Blackburn—At this stage the negotiations with the United States are continuing.

Senator KIRK—How much progress has been made since the last round of estimates, which was in May?

Ms Blackburn—It would not be appropriate for me to provide details of the particular interactions within the negotiations. They are confidential between the Australian government and the United States government. I can confirm that negotiations are continuing; it is an active matter for both governments.

Senator KIRK—So there have been meetings, or correspondence at least.

Ms Blackburn—It is an active negotiation.

Senator KIRK—Obviously no agreement has been reached. It is still in negotiations.

Ms Blackburn—That is correct.

Senator KIRK—Could you give us some guide as to how much longer you see these negotiations continuing for and when you are expecting some sort of outcome?

Ms Blackburn—I am sorry, I cannot put a time frame on it. It continues to be an active negotiation and I cannot say when those matters will be concluded.

Senator LUDWIG—It has been active a fair while, though, hasn't it?

Ms Blackburn—Yes, it has.

Senator LUDWIG—How long has the committee been asking questions about this? I do not think we have got, in all fairness, a definitive answer on this issue and it seems to have been going on for more than a year, from my recollection., but I am open to a longer time frame.

Senator Ellison—It could take another year. These international negotiations can take a long time. As Ms Blackburn has said, we cannot reveal the details of negotiations with another government.

Senator LUDWIG—I understand that.

Senator Ellison—I fully concede it is taking a long time, and no doubt it will take some time yet.

Senator LUDWIG—If nobody gets too upset, I will keep asking every time and see where we are.

Senator Ellison—I appreciate the question and understand why you ask. It is an important question and a reasonable one.

Senator LUDWIG—I do not suppose I can ask whether it was raised with President Bush when he visited.

Senator Ellison—That is a matter for the Prime Minister. I will take it on notice and see what I can come back to you with. There were some matters which were made public as to what was raised during that visit. I will make some inquiries.

Senator LUDWIG—Thank you. I was going to reserve questions for the AFP, or particularly ASIO, in respect of Hicks and Habib as to whether or not any arrangements have been made or are in train or progress for their return. I suspect it would be the Criminal Justice Division that would deal with that. If they were to be returned, what law would be considered? I just wonder where we are up to with that. There has been some speculation about it, that is all.

Mr Cornall—We deal with that in our department in output 2.2, which comes after Ms Blackburn's division.

Senator Ellison—That would be a good point to ask those questions.

Senator LUDWIG—I thought it would be either here or the next one, and I did not want to miss the opportunity. My next question is on the National Indigenous Justice Strategy. In the current annual report, it says that the strategy is part of the government's commitment to work with state and territory governments to reduce the rate of Indigenous representation in courts and in custody. It says the crime prevention branch has reviewed current programs and material on Indigenous justice issues. To give that a little more substance, what has the National Indigenous Justice Strategy achieved this year? Is there a milestone or an issue you can point to to say, 'This is what we have accomplished'?

Ms Heriot—What we are doing at the moment under this is a review of measures that have been implemented across Commonwealth, states and territories since the 1997 ministerial summit. We have been in consultation with other jurisdictions and also across the Commonwealth and we will also be consulting with national Indigenous organisations at the NAJAC summit later this year. It is the process of reviewing these activities that we have been undertaking.

Senator LUDWIG—There are no new programs or new materials this year?

Ms Heriot—We have undertaken a range of measures under the National Crime Prevention Program that are relevant, but the work on the strategy is a review of the strategy rather than new measures.

Senator LUDWIG—How many people have been working on the strategy?

Ms Heriot—I think we have taken a question on notice from Senator Ridgeway on this previously. Essentially, it is being handled by one team in the section. They have been working on it fairly substantively. We advised last year that a number of departmental officers were involved in the revision. I have not, I am afraid, got a dollar update on the figure we gave last year, though it would of course have significantly increased. We have one officer who works primarily on matters related to Indigenous justice—both the strategy and the Aboriginal Justice Advisory Committee—and he has support from one or two officers depending on the peak demand around meetings and that sort of thing. That is an EL1

position. They also of course receive a percentage of time from the section head and me as branch head, but I cannot give you a dollar ASL figure for that.

Senator LUDWIG—Is the team committed full time to that? Is that the team's work in developing the strategy or does it involve only part of their time?

Ms Heriot—It would be their predominant priority. That small team would predominantly deal with this matter and provide support for NAJAC, the National Aboriginal Justice Advisory Committee.

Senator LUDWIG—Is there a target date for the conclusion of the development of the strategy?

Ms Heriot—We would hope to put something to government shortly after the November summit.

Senator LUDWIG—Will there be any budget implications? Will it cost money? Will you put a package to government that says, 'This is the strategy and this is how much it will cost,' or, 'This is what we will require'? And have you been speaking to the Attorney-General's Department about any budgetary requirements to fulfil the strategy that might be developed?

Ms Heriot—That would be part of a budget process consideration.

Senator LUDWIG—Have you taken that into consideration? Is there a dollar figure for the strategy?

Ms Heriot—I do not have a dollar figure that I could give you.

Senator LUDWIG—What sort of strategy is it?

Ms Heriot—The work to date has been looking at those measures, as I indicated, that have been adopted since the 1997 summit across the states and territories to see what appears to be promising, what has been evaluated and what has been shown to work well, which initiatives are being most actively pursued and, from that, we will be looking at those areas that the justice system has direct impact on that might be most promising. I am sorry, that does sound vague. We hope to have a discussion paper issued in time for the November summit, but I do not have anything public that I can give you at this point.

Senator LUDWIG—When that discussion paper is available, can you make it available to the committee as well?

Ms Heriot—Certainly.

Senator BOLKUS—Is it anticipated that the paper or the summit will canvass the legal aid needs of Indigenous people?

Ms Heriot—The summit is being convened by the National Aboriginal Justice Advisory Committee. So its agenda and I imagine a whole range of issues will come up in the course of that. I cannot at this point anticipate what they might be.

Senator BOLKUS—For a justice strategy, it seems like a pretty fundamental issue to consider legal aid requirements. Is your discussion paper canvassing this issue at all?

Ms Heriot—Not at this point, I do not believe.

Senator BOLKUS—Who makes a decision not to canvass such an issue?

Ms Heriot—I do not think it was a decision not to canvass it. The focus of the work has in fact been on initiatives that have been implemented. We have been looking around alternative justice procedures largely and I think that has driven the shape of it. That is what most jurisdictions have been implementing.

Senator BOLKUS—You are looking at what has been implemented, and you are looking at alternative justice procedures, but you are not looking at the cost of them or the community's needs for them?

Ms Heriot—I am sorry, Senator, I do not understand the question.

Senator BOLKUS—I think that is a problem of itself.

CHAIR—I do not think that is very helpful, Senator Bolkus.

Senator BOLKUS—My point was: if you are looking at a justice strategy then you have got to look at access to justice. If you are not looking at some of the impediments to justice, I do not know what you are doing. The legal aid and legal assistance needs of Indigenous communities is a pretty critical aspect of access to justice, and you are telling me your discussion paper is not canvassing it. I asked you who made the decision not to canvass it, and you said, 'No decision has been made.' But someone must have decided not to canvass this issue.

Ms Heriot—We discuss initiatives funded by ATSI around—or we will be discussing, once it is finalised—for example, legal aid services in the areas of family violence and that sort of thing, so we are looking at them as initiatives in place.

Senator BOLKUS—Sure, but are you looking at the actual need for Commonwealth assistance? This is, I suppose, a Commonwealth issue, even under this government's definition of Commonwealth issues for legal aid. Are you looking at the actual need, or are you just discussing the issue theoretically?

Ms Heriot—We are looking at the issue on the basis of information we have around measures in place. We would imagine that we would get commentary on that from the national Indigenous organisations, which we would then feed into the discussion.

Senator BOLKUS—But you have not gone out, for instance, to all the legal aid commissions, the community based legal services or the Indigenous communities to try to get a real appreciation of what is needed by way of assistance for Indigenous Australians as part of this strategy. You have not done that foundation work.

Ms Heriot—We have consulted with states and territories through the relevant justice departments and have got information through them and also through ATSI.

Senator BOLKUS—Do you have some appreciation of the dollar amount that might be required?

Ms Heriot—I have not seen a figure, Senator.

Senator LUDWIG—So what we have is a statement in the annual report with no substance. That is about the sum total of it. You have got a reviewing of programs without any outcomes, and you have got no conclusions that you can point to about what your strategy is, other than a brief statement in an annual report.

Ms Heriot—What we have done is look at the literature around what is emerging promising practice. We have gone out to jurisdictions and Commonwealth agencies to see what programs and practices they have in place. We have done analyses of trends and emerging issues based on that. We will be discussing the issue at the Indigenous summit that NAJAC is convening later this month. On the basis of that material, we will be making a report to government.

Senator LUDWIG—Thank you.

CHAIR—Does that mean we have finished in output 2.1?

Senator BOLKUS—Mr Cornall, are you satisfied that this job has been done comprehensively enough?

Senator Ellison—What we have is the NAJAC summit, which we are relying on for advice, and there are discussion papers going out before that. I cannot pre-empt what NAJAC is going to say.

Senator BOLKUS—Minister, there will be no surprises—this issue has been around for a quite a while.

Senator Ellison—Yes, but you have got to remember that, when you are talking about legal aid, the Aboriginal Legal Service is administered by ATSIC. What we are looking at here is something quite separate and apart in relation to crime prevention, diversionary programs and a whole range of issues which deal with Indigenous justice.

Senator BOLKUS—And legal assistance has got nothing to do with that?

Senator Ellison—It has, but, of course, that is the responsibility of ATSIC and Indigenous Affairs. Can I say that of course legal aid and legal assistance would be a consideration. I do not think it has been ruled out by Ms Heriot in her evidence at all. It is just one aspect of the whole spectrum, if you like. This particular aspect of legal aid that you are focusing on is something which is run by ATSIC through the Aboriginal Legal Service. ALS is entirely separate to the legal aid commissions around the country, and it has been for a very long time. Alternative dispute mechanisms, again, are alternatives to legal aid, if you like. I have seen some in the north-west of my state where the communities resolve matters and where feuding between families is resolved quite separately and apart from ALS and legal aid.

Senator BOLKUS—Minister, I think we should probably agree to disagree because we could take this on for a while.

Senator Ellison—We are not disregarding legal assistance at all but it is just one of many aspects to consider in Indigenous justice. We are talking about crime prevention, too. We are not talking about after the event when the person has been charged; we are also talking about how to avoid it.

Senator BOLKUS—In that respect, access to legal assistance is quite critical. My perspective would be that if you are developing a justice strategy then you do not just say, ‘Well, the one fundamental part of it belongs to another department and therefore we are not going to take an interest in it.’

Senator Ellison—We do not have control over it. That is the issue.

Senator BOLKUS—You do.

Senator Ellison—NAJAC have been set up as a national Indigenous body to advise the government on Indigenous justice. We rely on them. This department and the officers here have no control over ATSIC or ALS.

Senator BOLKUS—But you do have control over the direction of the strategy, but maybe I will not respond to your next comment.

Senator Ellison—Anyway, we have undertaken to give you a copy of the discussion paper.

CHAIR—There are no further questions on 2.1. Thank you, Ms Heriot and Ms Blackburn.
[4.51 p.m.]

CHAIR—We now move on to output 2.2, Legal services and policy advice on security law.

Senator LUDWIG—My question is in respect of the continuing issue of Hicks and Habib. Last time—and it might have been with you or the AFP—we were discussing whether or not they would return and, if they were to return, whether there was accommodation that could be provided in a detention facility, whether there has been any ongoing discussion with them, whether they had had a recent visit by either ASIO or the AFP and those sorts of issues. I was going to save that to ask the AFP, but it is really a question of whether the Attorney-General's Department can tell me what their involvement has been to date and whether there have been any developments since the last time we were here.

Mr Cornall—There is expected to be another visit to Mr Hicks and Mr Habib very shortly, and that will be undertaken by the AFP and by ASIO. I do not anticipate they will have much more they can add to that except that that visit should take place in the very near future. Last time I think we were talking about, if Mr Hicks was prosecuted and if he was convicted, whether he could serve part of any term of imprisonment in Australia. Those discussions have not advanced any further than they had last time because the matter has not progressed since then, but it has always been our understanding with the Americans that should those events occur—and Mr Hicks be prosecuted and convicted—he would be transferred to a prison in Australia at the earliest possible time.

Senator LUDWIG—Would legislation be required to effect that or are existing arrangements in place that would allow that to occur?

Mr Cornall—My understanding is that our existing international transfer of prisoner arrangements would allow that to occur.

Senator LUDWIG—That is the treaty that was signed I think last year?

Mr Holland—Yes. We are examining our existing legislation to make sure that it will allow us to take Mr Hicks back should that opportunity arise. Obviously, the United States would need to look at their legislation to ensure similarly that there would not be a problem. In anticipation of what might occur, we are working on that.

Senator LUDWIG—Is there a view about that? Is there existing Australian law to permit that? Have you asked the Americans whether or not their legislation permits it?

Mr Holland—We have certainly drawn the matter to the attention of the United States. I think at this stage it would not be appropriate to indicate precisely where we are in our consideration of our legislation, other than to say that we are looking at it to make sure that there are no obstacles.

Senator LUDWIG—What can you tell me? Is it in reliance on the recent treaty?

Mr Holland—Yes, it would be. It would come under the framework of the international transfer of prisoners regime.

Senator LUDWIG—That is the one I was trying to think of.

Mr Holland—It would be under that framework and that is what we are working on.

Senator LUDWIG—How much work have you done on it to date?

Mr Holland—I could not give you the hours and time, but we have certainly looked at the possibilities and the issues. We are hoping to resolve those, but we would need to have an understanding of the US regime to be able to finalise our own approach to these things.

Senator LUDWIG—Has work started on that yet—on looking at the US?

Mr Holland—In terms of the United States, I do not know. I do not know the answer to that question.

Senator LUDWIG—Has it been raised with the Americans?

Mr Holland—Yes.

Senator LUDWIG—Who has raised it? Was it A-G's or the minister?

Mr Holland—It has been raised through normal diplomatic channels.

Senator LUDWIG—You might have to help me with what 'normal diplomatic channels' are.

Mr Holland—It just means that it has been done through our post in Washington.

Senator Ellison—We also raised transfer initially in the delegation which I led to Washington in July, I think it was. That was raised as an issue.

Senator LUDWIG—What was the outcome of that?

Senator Ellison—It was still very early in the piece, because we still had to look at our legislation: what would be required and how it could be effected. But we raised it as something to be dealt with—to be discussed.

Senator LUDWIG—Is the next visit by the AFP and ASIO a regular visit? I know it is a regular instance, but is it a visit for any particular purpose—or is it just a general wellbeing call?

Mr Holland—It is a visit that we have requested in order that the relevant agencies can have further discussions with Mr Hicks and Mr Habib. That is the purpose of the visit—so that they can talk to them and have discussions with them.

Senator LUDWIG—So A-G's have requested this particular visit?

Mr Holland—The Australian government has requested the visit.

Senator LUDWIG—Can you tell me the purpose?

Mr Holland—The purpose is to talk to Mr Hicks and Mr Habib.

Senator LUDWIG—About?

Mr Holland—I think that is a question you might like to raise with the agencies.

Senator LUDWIG—All right.

Senator BOLKUS—Can I ask another question related to this. There has been a standing request for legal assistance for Hicks and Habib. Hicks's lawyers have been particularly active in that respect. Has that been further considered by the government?

Mr Holland—I am sorry, Senator; I will have to take that question on notice, if I may.

Senator BOLKUS—Legal assistance is one thing, I suppose. Is assistance to go and visit him—to cover travel—also under consideration? You may want to take that on notice as well, unless you know the answer now.

Mr Cornall—At this stage, our clear understanding from the United States is that a private solicitor acting for Mr Hicks or Mr Habib would not get permission to go to Guantanamo Bay.

Senator BOLKUS—What about permission for a private solicitor acting for Mr Hicks to go to wherever to meet with the designated legal advisers for Hicks and Habib for preparation of the case?

Mr Cornall—It is my understanding that, at this stage, legal advisers have not been designated for Mr Hicks. At this stage, Mr Habib has not been put into the category of people who may be considered for prosecution, so the issue with Mr Habib at this point does not arise in terms of having designated counsel.

Senator BOLKUS—In terms of the consideration of where they are in the process, as you say, Mr Habib is not one of those people classified as you described. Is Australia involved in that discussion—in consideration of the evidence—or is that something that is just being done by the US or the US military?

Mr Cornall—The decision to designate the six detainees for consideration for prosecution was an American decision.

Senator BOLKUS—Were we not consulted at all?

Mr Cornall—Not as far as I am aware.

Senator BOLKUS—Do we provide any background evidence in respect of Australian citizens?

Mr Holland—Again, I think that is a question you would have to raise with the agencies.

Senator KIRK—Could we be updated on Mr Hicks? Are there any further details as to when his trial is likely to be? Do we have any further information in that regard?

Mr Holland—There is nothing further to add to the comments made by the Prime Minister after his discussions with President Bush last week.

[5.00 p.m.]

CHAIR—As we have completed questions for output 2.2, I thank Mr Holland for his attendance. We now move to output 2.3, Provide national leadership in the development on emergency management measures to reduce risk to communities and manage the consequences of disasters.

Senator LUDWIG—Emergency Management Australia has a particular role in relation to chemical, biological, radiological, nuclear and explosive incidences, doesn't it? I think we have discussed this before.

Mr Templeman—We did discuss this in detail at the last hearing in May. We have had a role in this activity from the point of view of ongoing training. But more importantly, in the 2002-03 budget, the government announced some significant initiatives—in the order of \$17.8 million—to enhance national chemical, biological and radiological preparedness over the next four years. In the last 12 months we have expended the first phase of that equipment by spending \$8.4 million in the purchase of specific equipment to provide a cache of material in each state and territory with a Commonwealth reserve. In the week ending 26 September, about \$900,000 worth of equipment was delivered and receipted by each state and territory. That equipment comprises personal protective clothing equipment, detection equipment and analysis type equipment. We are now in the process of embarking on the next phase of the purchase, which involves the procurement of decontamination systems, which we would hope to have delivered to states and territories by May next year.

Senator LUDWIG—As I understand it, the Australian Defence Force Incident Response Regiment was established in 2002 with the idea of strengthening Australia's preparedness for—and consequent management of—chemical, biological and radiological nuclear and explosive incidents, which seems to be a very similar topic to yours. Is there a process put in place to coordinate the two roles? Are they different or are they the same? Do you take precedence or do they?

Mr Templeman—Some of the issues that you are raising would be best directed towards the Defence portfolio, specifically in relation to the operational context in which the Incident Response Regiment was set up. More importantly, it is probably better addressed in the context of its war fighting role, which it is really there for. Our business is around enhancing the first response capacity in a state or territory, whose responsibility, first and foremost, would be the protection of life and property. That is the initiative to which the federal government agreed—the proposal we put up in 2002-03.

Senator LUDWIG—I understand that I can ask the Defence Force about their particular regiment and what it is doing. I am interested in whether you have talked to the defence department about who takes the first response. If there is an incident and both Emergency Management Australia and the regiment turn up, what happens?

Mr Templeman—There are operational arrangements for the way in which the defence forces would be activated in that particular circumstance. My understanding is that it would take some considerable time to determine whether the Incident Response Regiment would be needed to be deployed. The other thing I should state is that developing the budget reform package in 2002-03 involved detailed consultation and agreement between the Attorney-

General's portfolio, Defence and the Health and Ageing portfolio because there was a total package announced by the Attorney and the other two ministers at that time.

Senator LUDWIG—Is there an agreement in place as to how it is all going to work?

Mr Templeman—The understandings fall back to this. States and territories are, first and foremost, to respond initially. If they are overwhelmed, in this particular circumstance there are mutual aid arrangements which will apply between other states and territories providing support and assistance. Then there are issues where they can ask for assistance from the federal government such as asking for assistance at the time of any disaster, and coming to Emergency Management Australia and obtaining the federal Attorney's approval to arrange for that assistance to be provided. That can also include, on request, activation of Defence Force assistance. That would also depend upon the availability and the deployability of the IRR at the time. That specific issue is an operational issue which is best directed to Defence.

Senator LUDWIG—So there is an MOU in place as to, in an operational sense, who will take precedence at a particular incident?

Mr Templeman—The Attorney-General, being the responsible minister for emergency management in the Commonwealth, has a very clear mandate under the administrative arrangements orders in relation to his responsibility for the provision of federal government assistance to a state or territory at the time of a disaster.

Senator LUDWIG—So there is not a duplication of the resources already allocated to EMA—through the regiment and then EMA having the same coverage of issues?

Mr Templeman—Clearly no, Senator.

[5.07 p.m.]

CHAIR—We will move on to 2.4, Development and promotion of protective security policy, advice and common standards and practice.

Senator LUDWIG—Can you give me an update of the air security officers program? The last time you were here, we were discussing whether or not it was going to go international.

Mr Tyrie—My understanding is that the negotiations are still under way in relation to the international aspects of the ASO program.

Senator LUDWIG—Is it still in the process of being increased, or is it static at the moment in terms of how many flights and the commitment of the number of officers?

Mr Tyrie—I do not think that has been worked out at this stage.

Senator LUDWIG—What about the current program in the domestic regime?

Mr Tyrie—You are asking me whether there is an increase?

Senator LUDWIG—Yes.

Mr Tyrie—I cannot answer that. I would have to take it on notice.

Mr Cornall—Senator, the Australian Federal Police—

Senator LUDWIG—I know they oversee it.

Mr Cornall—It is actually part of the AFP.

Senator LUDWIG—Now it is, yes. It is worth while checking with the department what they know about it as well.

Mr Carnell—I could add something.

Senator LUDWIG—You see, you never know what you guys know.

Mr Carnell—My understanding is that the program is fully operational, including the original estimate of maximum numbers.

Senator LUDWIG—Thank you. I only ask it here so that—Mr Carnell will understand—I can avoid the AFP referring me back to the Attorney-General's Department when you have already gone home. Is there any plan by the Attorney-General's Department to undertake a review of the effectiveness and efficiency of the program?

Mr Carnell—There was the Stevenson review a little while ago.

Senator Ellison—We have already had one.

Senator LUDWIG—I know we have had one. Are there to be any more?

Senator Ellison—It was not that long ago we had that one.

Senator LUDWIG—It had not been operational that long before you reviewed it either.

Mr Carnell—It was always established on the basis that it would be reviewed after a year's operation and that was completed earlier this year.

Senator LUDWIG—There was a news article on 10 October by Mr Geoff Askew, the group manager of Qantas security and investigation services division. Are you aware of that?

Senator Ellison—There have been a few that have involved Mr Askew and Qantas on this issue.

Senator LUDWIG—He commented at a security conference in Melbourne in October 2003 that 'enhanced training of flight crews and improved security related to cockpit doors means that it is possible that resources devoted to sky marshals or his security officers could be best employed elsewhere'. That was the upshot of what he said. Do you have any comment in relation to that? I am happy for you to take that on notice because I do not have the article here to provide to you.

Senator Ellison—I am not so sure that Mr Askew was quoted entirely accurately there. What he was saying was that these other areas that are being developed are more important. But I think it is fair to say that Qantas still regards their domestic ASO program as important. It continues to provide the seats for the ASO program, and I think that is indicative of the regard that Qantas has for the program. Certainly, as I recall, Mr Askew was making the comment that Qantas's training of flight crew, which demonstrated itself on the Tasmanian flight—

Senator LUDWIG—The spin might be mine in the end.

Senator Ellison—We have always said things like the training of flight crew, ASOs, the cockpit door are all complementary to each other. They all add up to a more comprehensive framework of aviation security.

Senator LUDWIG—Right.

Mr Cornall—On the question of the review, I have just seen in the briefing notes that the Minister for Transport and Regional Services announced on 13 August:

Australia's aviation security framework will be assessed as part of the continuous review process to ensure all aspects of the system are positioned to meet emerging threats.

That is not within this portfolio, but it might be something that has come to your attention from another source.

Senator LUDWIG—Yes, I see. Sometimes there are too many reviews. I will leave that area to the Australian Federal Police. It might be more appropriate that those questions be directed to the AFP now that they have that under their wing. In relation to the Australian counter-terrorism arrangements, is the Attorney-General's Department involved in the development of counter-terrorism policy in Australia? Is that part of your role? I think TAG East is where there has been budget allocation.

Mr Tyrie—A question regarding the Tactical Assault Group East should be referred to the Department of Defence. But, in relation to the first part of your question, yes we are involved in the development of policy. The Department of the Prime Minister and Cabinet has carriage of the policy issues with regard to Australia's counter-terrorism arrangements.

Senator LUDWIG—Is the Attorney-General's Department aware of the decision to set up an Australian Defence Force Tactical Assault Group on the east coast? I know it is in the area of the Department of Defence, both TAG East and the idea to set up TAG on the east coast, but was A-G's consulted about that, given the overarching role in counter-terrorism operations? I am just trying to find out how these groups, between the A-G's and the Defence Force, work to ensure that the best outcome is delivered.

Mr Cornall—Last year the government took an overall view of all proposals for counter-terrorism measures and looked at them all collectively through the Secretaries Committee on National Security and the National Security Committee of Cabinet. As a participating department in the Secretaries Committee on National Security we are aware of all of those proposals that go forward. But some of them are developed in different departments, specifically within their areas of responsibility. They are then brought together by government and looked at in that more comprehensive way, often in the budget process.

Senator LUDWIG—What I am trying to ascertain is whether there has been any duplication or whether the coordination role is being undertaken by a lead agency, if we can use that hackneyed phrase. What we have now got is the Attorney-General's Department, the Australian Federal Police, the Defence Force and now a proposal for TAG, and we have got the possible role of state police forces in counter-terrorism measures. We have Emergency Management Australia dealing with first response. We have got the Defence Force now setting up a regiment. It appears that the government is, in this instance, putting resources into this area more broadly. We can examine each of those programs within the relevant portfolio areas, but what I am trying to ascertain is who is coordinating it, who is saying that this section or department will be the lead agency to ensure that we do not have a range of uncoordinated responses.

Mr Cornall—Partly to address that issue, the Department of the Prime Minister and Cabinet has established a coordinating group that does have a whole-of-government

perspective to ensure that there are not any gaps in what we are doing and to minimise duplication. Then different operating departments have different areas of responsibility depending on what allocations have been made to them under the administrative arrangements orders. A lot of them are within this department, but there are quite a few aspects of counter-terrorism issues that would involve other departments. For example, if you are talking about aspects of terrorism that could injure individuals, obviously we are talking about involving the Department of Health and Ageing. So the Department of the Prime Minister and Cabinet has an overall view and many of the other day-to-day responsibilities are within this portfolio, but there are quite a few in other places as well. To draw all these things together, the National Security Committee of cabinet has the policy responsibility and overview.

Senator LUDWIG—In relation to critical infrastructure protection, this is really another coordination role, I suspect. Are the steps that the Attorney-General's Department has taken to ensure the protection of Australia's critical infrastructure part of your area as well?

Mr Cornall—Yes, it is.

Senator LUDWIG—And what stage of development has the trusted information-sharing network reached?

Mr Ford—The Critical Infrastructure Advisory Council, which the previous Attorney set up, is the body which oversights the trusted information-sharing network. It is something which is continually under development. The council met first on 27 August and will meet again on 4 December, so it is gradually being extended and developed in that way.

Senator LUDWIG—What about the information-sharing network? Where is that up to?

Mr Ford—It basically comprises sectoral groups in areas such as communications, energy, water services, financial services and so on. They all are represented on the Critical Infrastructure Assurance Council at the moment. They also are expected to meet themselves and those bodies have met and are developing their own strategies, action plans and so on under the general umbrella of the broader group.

Senator LUDWIG—Has that been finalised or is it still in its development process?

Mr Ford—It is still in the process of development. The ones that have been done so far are communications, energy, financial services, the food chain—food distribution and so on—health and water services. It is being extended as we broaden it.

Senator LUDWIG—Are there target dates for completion of these sorts of issues?

Mr Ford—There are not target dates for the formation of new services, and that is because it is a process to some extent from the bottom up of other sectors wanting to come aboard. The group that I have just outlined to you, the six sectors, is fairly comprehensive. The ones that might be added to that are, for example, transport—that has not been formed yet, but it could be formed soon—and there may be one or two others, but that is a matter of discussion.

Senator LUDWIG—Are you aware of the Trusted Information Sharing Network and the project Brentwood being run by the Defence Intelligence Organisation?

Mr Ford—I am not very familiar with that, no.

Senator LUDWIG—So you are not aware whether there would be incidences of duplication—or the possible existence of duplication—and how that might otherwise be dealt with?

Mr Ford—It is such a broad area that we continually come up against potential problems of duplication and we address them in various ways. We have a Commonwealth group that meets from time to time which includes elements of Defence. Some of these issues will be addressed there—this week, in fact. I am not sure if that covers the particular one you mentioned.

Senator LUDWIG—Perhaps next time they have a meeting you can ask.

Mr Ford—Sure.

Senator LUDWIG—We can follow that up in February. Do you determine who can and who cannot be involved in the network? Is there an issue there?

Mr Ford—Yes, there is. Basically, to be involved in the network you must be involved in what the government regards as part of the critical infrastructure. This is not word for word—it is just from memory—but the working definition of that relates to activities and services which, if degraded, would seriously affect Australia's defence capabilities, security, vital economic interests and so on. So it is a pretty tight definition. The broader issue of e-security for the information economy generally is one in which we have an interest, but it is one that is coordinated by the National Office for the Information Economy.

Senator LUDWIG—If critical infrastructure owners install safety equipment, is there an Australian standard or equivalent on security equipment that needs to be met?

Mr Ford—No, there is not. The reason for that is that this has never been seen as an exercise where we have the answers now. It is an exercise of building up best practice and exchanging information and so on between the public sector and the private sector and, indeed, internationally. So its standards are developing.

Senator LUDWIG—The US have a standard, though, do they not?

Mr Ford—Yes, they do. In fact, we have also been very active internationally within the OECD, and there have been some discussions there at a level above that of standards. The extent to which we have achieved commonality is in broad principles, which were endorsed and issued by the OECD about a year ago. There is now work under way to implement those new guidelines on security, but that is at a very general level.

Senator LUDWIG—So there is no standard. What about security advice? Is there some sort of national accreditation for people offering security advice to critical infrastructure owners?

Mr Ford—Could I just answer your statement that there is no standard. I do not accept that, simply because there are a number of standards. There are US standards, there are British standards and—

Senator LUDWIG—But there are none in Australia.

Mr Ford—Yes, there are.

Senator LUDWIG—Do you use the US standard?

Mr Ford—I would have to get further advice.

Senator LUDWIG—I am happy for you to take it on notice to clarify it.

Mr Ford—Yes, I will take it on notice.

Senator LUDWIG—What concerns me is that there does not appear to be a standard that is required to be met in Australia, by which critical infrastructure owners could then say, ‘This is what we require.’ It seems to be a continuum: you could adopt the UK or you could adopt the US. The infrastructure owner might end up picking the cheapest, which might not always be the best, the most efficient or the most effective.

Mr Ford—I will take that on notice.

Senator LUDWIG—Is there a standard or national accreditation program for people offering security advice to critical infrastructure owners? It is the same sort of issue.

Mr Ford—It is the same issue. I think I will take that on notice, too, if that is okay.

Senator LUDWIG—Thank you. Did you say that you were not aware of the project Brentwood being run by the Defence Intelligence Organisation? I think that was the answer. It just surprised me at the time. I thought I might give you a second opportunity to have a think about that.

Mr Ford—I think it is something that I may have been told about. I am really in the position of supervising this, and some of the people with more direct knowledge in particular areas are not here. But, again, that is an area I could take on notice.

Senator LUDWIG—It might be helpful, because the follow-up question would have been that it would seem the Attorney-General is making no effort to coordinate their efforts to protect critical infrastructure. If that project is about, what others are about? I suspect that is not your real answer, so let us try to get to the real position of what, how and who was doing this sort of critical infrastructure protection, how the thing is coordinated and the oversighting role, if any, that the Attorney-General’s plays in all of this.

Mr Cornall—Just before we leave that point, I am not personally aware of Operation Brentwood but it would surprise me if it overlaps with what we are doing. Critical infrastructure is owned by the Commonwealth, the state and territory governments, essential utilities and the private sector. We are trying, through the critical advisory council, to form a network in which people can meet—and also in sector or industry groups as subgroups—to together develop strategies to respond to the threats and risks that they might face and how they might act if any of those risks come to eventuality. I am not aware of any other project that is designed to do that.

Senator LUDWIG—It might be my confusion, but there seems to be a growth in this area.

Mr Cornall—We have been trying to put in place a national framework that will provide a basis on which the people who control the national critical infrastructure can join and together find solutions, on the basis that no-one actually controls a computer network and no-one controls the networks that it interacts with. If we do not act in a joint way, we will not find a solution. We are just trying to put a framework together for people to work collectively on these solutions. I am not aware of any other project in Australia that seeks to do that.

Senator LUDWIG—Perhaps we could just see whether it is similar. If so, my comments adhere. If it is different, I am happy to withdraw them—and we can go from there. And don't tell the communications minister about the Internet.

[5.28 p.m.]

CHAIR—We move to questions on output 2.5?

Senator LUDWIG—Yes. Is the Attorney-General's Department directly or indirectly responsible for the Australian contribution to the security of Prince Henry Charles Albert David, otherwise known as Prince Harry, during the time of his visit in Australia?

Mr Tyrie—The Attorney-General's Department, through the PSCC, is responsible for coordinating security in relation to the visit by those members of the Royal family. The actual delivery of the service is of course by the state and territory police in the jurisdiction where it is occurring, although the AFP do have a liaison officer with Prince Harry.

Senator LUDWIG—Is there a budget allocated for the protection of the prince during his unofficial visit to Australia?

Mr Tyrie—The costs of the security are absorbed within the normal departmental costs of organising security.

Senator LUDWIG—Do you know how much those costs will be that are absorbed?

Mr Tyrie—I cannot tell you that.

Senator LUDWIG—Can you take it on notice?

Mr Tyrie—I will.

Senator LUDWIG—Is there a standard practice for the Australian government to fund security details for visiting dignitaries on an unofficial visit?

Mr Tyrie—The answer is yes, there is, but it depends upon the significance of the visit and the individual. We have done it for former President Clinton, Mrs Blair and, in this case, Prince Harry, because of the threat assessment in relation to UK interests that exist in Australia at the present time.

Senator LUDWIG—How often does it occur? This is one. When was the last one before this?

Mr Tyrie—I cannot recall. I would have to take that on notice.

Senator LUDWIG—I cannot recall any either.

Mr Tyrie—I think it was Cherie Blair, but I am not too sure about that.

Senator LUDWIG—That rings a bell too. We might move on then. If I understand, the matters of the departing APS to the Australian Federal Police can be dealt with in the Australian Federal Police area?

CHAIR—Yes, that is right, with Federal Agent Fagan.

Mr Tyrie—Can I just clarify something.

Mr Carnell—I wonder if we could go back to that question of the cost of security for Prince Harry.

CHAIR—Do you wish to add further information?

Mr Carnell—The larger part of the costs are borne by states and territories in that their police provide much of the security. We are not in a position to provide those costs, but we have taken on notice what are the Commonwealth costs.

CHAIR—I understand that, and I am sure that is how Senator Ludwig understood it. Mr Carnell was just clarifying that the costs the department has undertaken to provide information on to you are Commonwealth costs.

Senator LUDWIG—Yes, that is all I expect that they would be able to do.

CHAIR—Thank you for pointing that out, Mr Carnell and Mr Tyrie. If there are no further questions for Mr Tyrie, we will close on that. Thank you, Mr Tyrie. The committee will take a brief adjournment.

Senator Ellison—Is there a need for 2.6 or 2.7?

CHAIR—They are now within the discussion of the AFP rather than as separate outputs, Minister.

Senator Ellison—Thank you.

Proceedings suspended from 5.32 p.m. to 5.40 p.m.

CHAIR—Mr Cornall, I understand you have one matter to clarify before we move to the Australian Federal Police.

Mr Cornall—Thank you, Madam Chair. I said that in relation to the visit to Mr Hicks, AFP and ASIO were going. I understand that is incorrect. AFP is not going; ASIO is going.

CHAIR—Thank you for that point of clarification.

Australian Federal Police

CHAIR—I welcome the Commissioner, the Deputy Commissioner and Federal Agent Fagan.

Senator LUDWIG—Does the AFP have any further interest in relation to Mr Hicks and Mr Habib? I note the secretary has mentioned that ASIO are visiting next and you are not. Is there any reason for that?

Mr Keelty—The AFP has not seen Mr Hicks or Mr Habib since May last year. We do have some ongoing interest in relation to Mr Hicks but not Mr Habib.

Senator LUDWIG—Do you intend to visit in the future? Is there anything in train?

Mr Keelty—There is nothing proposed at this point in time.

Senator LUDWIG—Can you explain the AFP's involvement in what we could perhaps call the 'Brigitte' issue. I have been reading, as you probably have, some of the *Sydney Morning Herald* articles, and trying to ascertain the role the AFP has played in that. Did the immigration department alert the AFP to the presence in Australia of Mr Brigitte?

Mr Keelty—The AFP's involvement has been as part of a joint operation with ASIO and the New South Wales Police. The AFP, ASIO and the New South Wales Police were acting on

information provided to ASIO by the French authorities. I do not know that we had any direct involvement with DIMIA as part of that.

Senator LUDWIG—So who alerted the AFP in relation to Mr Brigitte's presence in Australia?

Mr Keelty—From memory, it was ASIO.

Senator LUDWIG—When was that?

Mr Keelty—On 8 October.

Senator LUDWIG—How was that communicated? Was that by telephone, fax or to an operational unit?

Mr Keelty—From memory, there is an existing joint counter-terrorism team in Sydney, comprising AFP and New South Wales Police, as there is in every other state. From my memory of it—if it is wrong, I will correct the record—the ASIO office in Sydney asked to meet with the joint counter-terrorism team in Sydney on that date.

Senator LUDWIG—Was it granted that ASIO meet with the counter-terrorism team?

Mr Keelty—Yes.

Senator LUDWIG—What happened from there? I understand it is an operational matter, but if we continue I am sure you are experienced enough to tell me if it is an operational matter at some point. I am trying to ascertain the role of the AFP in the matter more generally.

Mr Keelty—The joint team then went about trying to locate Brigitte. Brigitte was located on 9 October 2003 and it was at that point in time that he was detained by immigration in respect of visa violations.

Senator LUDWIG—Who advised immigration when he was located? Perhaps we could step back a bit: how was he located in that sense? Was there a lead, did counter-terrorism know where he was or was immigration advised?

Mr Keelty—My understanding of it is that there were inquiries made to locate him, as there would be for any person of interest. He was located through those inquiries, and my recollection is that ASIO informed DIMIA.

Senator LUDWIG—What happened after that? Was he detained by the immigration department?

Mr Keelty—That is correct. He was deported on 17 October. The New South Wales Police accompanied Brigitte on the flight from Australia back to France.

Senator LUDWIG—Did the AFP question Mr Brigitte?

Mr Keelty—Not to my knowledge, no.

Senator LUDWIG—Did the AFP make any inquiries with Interpol or in France to ascertain who Mr Brigitte was?

Mr Keelty—Not to my knowledge. The AFP liaison office in London has engaged directly with the French authorities on Brigitte to mirror what was happening in relation to the communication between the intelligence agencies.

Senator LUDWIG—When was that?

Mr Keelty—I do not have the date in front of me, but I may be able to get it while I am speaking to you.

Senator LUDWIG—If the AFP did not question him, were you aware whether or not ASIO questioned Mr Brigitte?

Mr Keelty—Yes, they did.

Senator LUDWIG—Did the AFP take any statements or information from those questions by ASIO?

Mr Keelty—No, not that I am aware of, but at that point in time the full understanding of Brigitte was not known. What was happening was that initial response to the advice from the French authorities, the discovery of the immigration violations, the detention of Brigitte and his return to France. It was subsequent to his return to France that the additional information was provided.

Senator LUDWIG—Let me clarify this. When was that advice received from France? What was the nature of that advice?

Mr Keelty—I do not have the actual date in front of me, only that he was returned on 17 October. He was questioned on several occasions before his return. The AFP was present during his interviews with ASIO, but he was largely uncooperative. I do not have the date in front of me when the additional information came in from France.

Senator LUDWIG—You indicated that it was in relation to the visa violations. Is it normal for the AFP to be present at ASIO questioning in relation to a visa violation? It does not seem to be right. I am just trying to get the proper chain of events. Can we put them in sequence?

Mr Keelty—My understanding is that, following the initial advice from the French authorities—

Senator LUDWIG—What was the nature of that? I am sorry to interrupt you, but I have asked that and I have not been able to clarify in my mind what sparked the initial activity.

Mr Keelty—I do not have that advice in front of me. I am not sure, given that it is advice from a security agency in another country, whether I would be in a position to give it to you. But I will certainly check.

Senator LUDWIG—Perhaps we could generalise it, if necessary.

Mr Keelty—Certainly. Following that advice, he was located and detained. Our presence there is not unusual when we are working jointly with ASIO when somebody is spoken to. It was obviously through checking his background and his identification papers et cetera for being in Australia that the visa anomaly was discovered. What would normally happen there is that we would hand the people over to immigration. So nothing untoward has happened here. This is a very normal process in every other aspect.

Senator LUDWIG—So up to that point there was not anything unusual other than a visa violation. Is that a fair statement?

Mr Keelty—What I am saying is that the circumstances of his questioning by ASIO with the AFP present are not unusual. The discovery of a visa violation in these circumstances meant that he needed to be detained and from that point on it was a matter for government policy to decide whether to retain him or deport him, and he was deported.

Senator LUDWIG—When was the minister advised?

Mr Keelty—I do not have the date—or the briefing—in front of me, but I could get it while we are still talking.

Senator LUDWIG—Was the Attorney-General the relevant minister who was advised or were both the Minister for Justice and Customs and the Attorney-General advised?

Mr Keelty—I do not want to speak for ASIO but I would imagine they would have briefed the Attorney-General, and we briefed the Minister for Justice and Customs.

Senator LUDWIG—So you are not sure when you briefed Minister Ellison, I take it. Do you recall when you were briefed?

Senator Ellison—I am sure I could find that out very quickly. I will take it on notice.

Senator LUDWIG—Who made the decision to deport? Was that the immigration department? I take it that Minister Vanstone was then advised.

Mr Keelty—I cannot answer that.

Senator LUDWIG—Did the AFP's involvement cease in that respect when the immigration department became involved? When did it take up again? Clearly it has.

Mr Keelty—We did not stop.

Senator LUDWIG—I see.

Mr Keelty—We have continued our interest from that point on. Since the matter was first brought to our attention by ASIO we have continued our interest in it.

Senator LUDWIG—Post the deportation, has the AFP continued to have an interest in Mr Brigitte?

Mr Keelty—That is correct.

Senator LUDWIG—In what manner? Can you explain that? In what type or what form?

Mr Keelty—We continue to liaise through our LO in London with the French authorities and we have continued to work with ASIO and the NSW Police on other matters here in Australia.

Senator LUDWIG—The continuing interest was about further information that had been provided by the French authorities post his deportation? Or is there something new or did it come from the original interviews that occurred?

Mr Keelty—The initial advice about Brigitte was received on 22 September but it did not express any urgency or any particular concern about him. It was treated as relatively routine in the context of other demands made on ASIO, as I understand. However, subsequent to the advice received on 7 October there was some urgency expressed, but also provided was other information of concern that Mr Brigitte might have been in Australia for terrorism related

purposes. It was then on 8 October, as I mentioned before, that the AFP and the New South Wales joint counter-terrorism team were advised. Immigration was advised late on 9 October, by which time Brigitte had been located. He was then taken, as I mentioned, into immigration custody and remained at a detention centre. He was returned to France on 17 October under escort by NSW Police.

Senator LUDWIG—In some of the papers it talks about a cell. What is the status of the terrorist cell? The newspaper talks about smashing a terrorist cell. Did a terrorist cell exist? Can you explain that?

Mr Keelty—There have been a number of reports in the press, not all of which have been accurate. For my part, some have been very heavily edited in terms of media interviews. The work of the investigation team is still very much at a preliminary stage. They are still following leads, and are continuing to speak to people associated with Mr Brigitte.

Senator LUDWIG—So there are still associates Mr Brigitte may have had contact with in Australia that may be of interest to the AFP or ASIO—we are dealing with the AFP at the moment.

Mr Keelty—To the joint team.

Senator LUDWIG—The joint team is probably a better way of putting it, thank you. Can you explain where those investigations are up to?

Mr Keelty—It would be inappropriate for me to describe that.

Senator LUDWIG—When Mr Brigitte was detained, as far as you are aware, was he detained by the immigration department?

Mr Keelty—That is correct.

Senator LUDWIG—Did the AFP then interview him post detention or whilst in detention?

Mr Keelty—As I understand, ASIO did the interview, and we were present for the interview. At that stage, it was still very much an intelligence matter.

Senator LUDWIG—Was it after the ninth when you were advised it was more urgent?

Mr Keelty—Yes, that is correct. It was after the ninth when he was taken into detention.

Senator LUDWIG—How many times was he interviewed by the AFP?

Mr Keelty—We were present during interviews with ASIO on two occasions before he was deported.

Senator LUDWIG—What were the dates?

Mr Keelty—I can get those dates for you.

Senator LUDWIG—Thank you. Was the AFP involved in the determination to deport him?

Mr Keelty—Not that I am aware of.

Senator LUDWIG—Perhaps you could take that on notice. The other issue that is a subsidiary of that is whether the AFP then said, ‘We would prefer you didn’t; we might have

more questions,' or 'We are still investigating the terrorist cell and require further interviews with Mr Brigitte.'

Mr Keelty—I am not aware of any requests by the AFP for him not to be deported. My understanding of it is—and I will correct the record if I am wrong—that the deportation was part of a usual process for a person who is in the country with visa violations.

Senator LUDWIG—From the AFP's perspective, is it correct to say that you had no further interest in Mr Brigitte in relation to his activities in Australia at that time?

Mr Keelty—That is correct. I think the majority of that information came after he was returned to France.

Senator LUDWIG—I am trying to determine if you knew that there was terrorism advice on 7 October.

Mr Keelty—Yes, that is correct. There was subsequent advice received by ASIO on 7 October. That then resulted in a brief being provided by ASIO to the AFP on 8 October.

Senator LUDWIG—As far as I can ascertain from what you have said—and I am happy to be corrected—we have a brief on the seventh, we have ASIO advising you of matters so that you knew at least that there was some interest in Mr Brigitte in relation to terrorism matters and, subsequently, the immigration department deported him. You have expressed no further interest in him at that point. It seems peculiar to me that if you were aware that there were issues why you would not continue to pursue them. Or were you satisfied that—

Mr Keelty—I mentioned to you that during the interviews with him he was uncooperative. So all the joint investigation team had up until the time of his deportation was some information provided to ASIO that expressed concern that he might be in Australia for terrorism related purposes. But he was not cooperating at that point in time. When he was deported that was part of a usual process.

Senator LUDWIG—Did the French authorities contact the AFP in relation to his return?

Mr Keelty—Not directly. The majority of that early interaction—in fact, all of it—was between ASIO and their counterparts in France. After his return to France I had a meeting with the Director-General of ASIO, and we talked about how we might progress the investigation. One of the avenues involving the AFP was that, through our liaison office in London, we would establish police-to-police relationships with the French authorities to cover off whether the French police had any separate information in relation to Brigitte.

Senator LUDWIG—The immigration department then deported him. Was he deported to the police or immigration officials in France?

Mr Keelty—He was escorted by New South Wales police. As far as I am concerned—in the absence of other advice—it was handled by the immigration authorities in France.

Senator LUDWIG—Perhaps you could check that just to make sure. Are you aware of any others who have been associated with Mr Brigitte who may be from places other than Australia, who are being held, detained or questioned in relation to the issue?

Mr Keelty—I do not think it would be appropriate for me to answer that question, on the basis of where the operation is at.

Senator LUDWIG—It was worth a try. What about those who might hold Australian passports? The investigation is continuing, and that is the position we are in?

Mr Keelty—That is correct, Senator.

Senator LUDWIG—I turn to another area. Australian Federal Police officers are currently serving in ongoing deployments outside Australia, such as those in the Solomon Islands and East Timor. How many officers from the Australian Federal Police are selected in deployments outside Australia? I am trying to ascertain the total number of AFP officers serving in the Solomons and East Timor. Are you still in Papua New Guinea?

Mr Keelty—No, we are not in Papua New Guinea. In Cyprus it is—

Senator LUDWIG—That is the place I was trying to think of.

Mr Keelty—totally AFP. In the Solomons it is totally AFP. In East Timor it is a combination of AFP and state police.

Senator LUDWIG—Are they experienced officers, in the sense of length of service and seniority, whom you have sent overseas on those deployments?

Mr Keelty—Yes, they are. There are criteria that are applied by the United Nations for the United Nations deployments. The Regional Assistance Mission to the Solomon Islands is not a United Nations deployment, although officers are deployed with the knowledge of the United Nations. Those people are experienced people. There are not only AFP officers and staff but also staff of the Australian Protective Service.

Senator LUDWIG—How many in total are now serving? Is it rotational? Is there a way of ensuring that they do not serve there for too long? Do they have a relief?

Mr Keelty—It does rotate. The AFP's commitment is 151 full-time personnel. We also have a number of APS personnel, and I will just get that figure for you. While we are getting the figure of the APS numbers in RAMSI, I will say that there are 26 deployed to East Timor and 16 to Cyprus. We still have eight working in Bali under Operation Alliance and there are eight in Jakarta working under our further joint operations against terrorism in Indonesia.

Senator LUDWIG—What percentage of your operational officers are now overseas?

Mr Keelty—There are 275 employees deployed overseas—that is, roughly 10 per cent of AFP employees.

Senator LUDWIG—It is a significant number from your operational staff who are now serving overseas, isn't it?

Mr Keelty—That is right; 275.

Senator LUDWIG—Of that, there are always people on annual leave, sick leave, long service leave and other leave. What is your normal number during a year of people who are on leave and would not be able to present for operational duties?

Mr Keelty—I can get the figure of FTEs for you. Deployed overseas is 7.9 per cent of the AFP work force, and there are 56 Australian Protective Service members in the Solomon Islands.

Senator LUDWIG—How does that impact upon your ability to carry out the tasks that you are allocated in Australia?

Mr Keelty—Obviously there is an impact. Firstly, it is a decision of government that we do that, so we are doing it. Secondly, we have the lowest attrition rate that we have ever had on record. I think it sits at 4.2 per cent. I stand to be corrected.

Senator LUDWIG—I congratulate you on that, and on where you have come from those heady days where I think it was double that, wasn't it?

Mr Keelty—Thank you, Senator. We also have lapsing programs over the next 12 months, which is allowing us to retain staff that might otherwise have not been able to be retained by the organisation. Sorry, the attrition rate is 4.8 per cent.

Senator LUDWIG—I was interested in how that impacts upon your investigations and whether or not you then end up with less experienced officers conducting complex investigations in Australia as a consequence of sending experienced staff overseas. How do you cope with that—or is that not happening?

Mr Keelty—One way that we are addressing that is obviously by continuing to monitor the impact on operational outcomes, but the Solomons in itself is an operational outcome so we cannot discount that. We are looking at work that is not being able to be undertaken in terms of the referral and the run time for operations, and we are getting together some data on that.

In terms of the qualifications of people, we have recruited close to 500 police in the last three years. The profile has not changed; the average age has been up to 29. About 70 to 75 per cent on average have tertiary or postgraduate qualifications. So the profile of people joining the organisation is much different from what it might otherwise be. In terms of their capacity to address the work that they undertake, we have not seen a dramatic difference in that. Obviously what we try to do is partner people with more experienced people. This was an evolution that we had to go through as part of our natural growth, so it is something that we are conscious of and that we are trying to manage the best way we can.

Senator LUDWIG—Concerns were expressed by the Australian Capital Territory minister about ensuring that there were experienced investigators doing policing service in the ACT. Have you addressed those concerns? I take it that you are aware of those comments?

Mr Keelty—Yes, I am aware of the comments. I have met and discussed this with the ACT Minister for Police and Emergency Services, Mr Bill Wood. I have contacted him on a number of occasions in relation to, certainly, the Solomon Islands deployment. I met with key officers from the Department of Justice and Community Safety here in Canberra last Wednesday, and the ACT Minister for Police and Emergency Services met with the Minister for Justice and Customs last Monday, I think, to discuss the issues. We do not have any major disagreement. We are trying to manage the contract we have with the ACT government and to reduce the impact on ACT policing as best we can. I should say that we are caught between a rock and a hard place with some of this because, if we were to shut off to ACT policing these opportunities for overseas deployments, we would have a serious morale problem in the ACT. It would be said that we had not opened up to people in the ACT opportunities that the organisation engages itself in. So it is a matter of significant work force planning and it is

something that we are very actively engaged in, not only at the ministerial level with both ministers but also at the departmental level.

Senator LUDWIG—I may as well get this one out of the way early. The *Canberra Times* on Thursday, 30 October—I am sure you have seen it, but if not I can provide you with a copy—mentioned that 46 people were dressed as police. Do you want to provide an explanation of what went on there?

Senator Ellison—I think they had me there too; it was an amazing article.

Mr Keelty—The article in the *Canberra Times* was very much embellished and you might note, Senator—hopefully you did—that the *Canberra Times* printed a correction the day after that article was published. I can tell you that a total of 531 staff of the AFP contributed as part of the Australian Federal Police response to the visit to Canberra by President Bush. A breakdown of the personnel by region or classification is: 324 from the ACT, 11 from our northern region, 31 from our eastern region, 30 from our southern region, 55 from our national headquarters and 34 from the AFP college. Of the 531 total, 46 were unsworn staff of the AFP. I might point out that the unsworn staff of the AFP support us in every aspect of what we do. They are in the Solomons, they have been in Bali and they have been in East Timor. So they are an integral part of the organisation in the work that they do and the skills that they bring to the organisation.

Of the 46 unsworn members, a large proportion were working out of the Winchester Police Centre in the communications area and in the intelligence area; a large proportion were at our services complex at Weston; a total of 13 were deployed as bus drivers to shift police from one point to another during the visit, whether it be from Parliament House to the Lodge or the US embassy; and a proportion of them were in the basement of Parliament House, handing out meals. So the article was largely embellished.

The reason some people wore what we call tabards—which are vests with the police insignia or the word ‘police’ on them—was that they were driving buses and they had to stop at checkpoints. The buses were not police buses; they were charter buses. So they wore civilian clothing with a police tabard, and I think six had overalls with ‘Federal Police’ on the overalls. We have now moved to have other words put on there, such as ‘police support’, similar to what we do with volunteers in policing—and I should point out that there were 24 volunteers in policing assisting us with the visit as well.

Senator LUDWIG—That was my next question. So it is fair to say that you are now addressing that issue—that you have recognised that it can lead to a problem. I am happy for you to put your words to it, but it seems to me that even someone dressing up with a tabard or an overall with insignia on it might lead the public to mistake the identity of the person and the capacity in which they work.

Mr Keelty—That is correct, and I take your point. None of the unsworn members were deployed in duties where they would have to exercise police powers, such as dealing with demonstrators. It was all to do with supporting the sworn police.

Senator LUDWIG—Is there a program for the unpaid volunteers?

Mr Keelty—Most police forces in Australia have a Volunteers in Policing program, and we have a large one here in Canberra, where people—largely people who retired and some who are handicapped—who enjoy working with the police and assisting the police in the work that we do in the community offer their services as volunteers. We have a particular uniform that we provide those people, and they assist us with all manner of things from ceremonial matters to large functions that we might have. In terms of the visits which occurred in the week before last, they were helping in the distribution of meals and other paraphernalia, largely to assist in areas where we do not need sworn police to assist. It is a way of engaging the community more completely than we otherwise would.

Senator LUDWIG—So there are both the unsworn officers and the volunteers, then. I will cut to the chase and say they were not required because of any deficiencies or lack of resources of the AFP, but they were part of programs that you have had for some time, and you have utilised unsworn officers in that capacity before.

Mr Keelty—That is correct. In fact, my recollection is that in the planning for the Bush visit and the visit of the Chinese President, the numbers we were looking for were 450. We actually had 531, so we had a surplus in case of a contingency. That surplus was still put to use, but we could have drawn on other resources, had we needed to. There were sufficient resources for us to deal with the issue.

Senator LUDWIG—In relation to the unsworn officers wearing protective overalls or tabards, section 63 comes to mind, but on my reading of that section it would not apply, notwithstanding that there is a defence of reasonable excuse anyway. It seems to suggest that a number of tests have to be met before it would be able to be utilised, but there seems to be a defence in any event. That does not apply, does it? Or does it apply?

Mr Keelty—I do not think it does apply in the circumstances in which they were deployed. They presented themselves at checkpoints where there were police or APS people so that they would be readily identifiable. It is not a case of passing themselves off as police officers—

Senator LUDWIG—No.

Mr Keelty—which is where section 63 would apply.

Senator LUDWIG—I do not know whether you are familiar with this, but in other states there are moves afoot because of security officers acting as and effectively looking like police persons and a lot of the state legislation does not have these provisions or the provisions do not apply to instances where you have got effectively roadside people who direct traffic and security guards who then wear similar clothing. In the ACT the same problem has occurred. This is slightly to the side, but I notice there is section 63 of that legislation and there does not seem to be one on the books which goes to the other issue out there. Is that a matter that is under investigation or are there no roadworks in the ACT?

Mr Keelty—It varies from state to state. For example, in Queensland the state police actually can work a second job on roadworks et cetera with the appropriate authority. It is an issue that Australasian policing has addressed in the separate identification of police officers, but in this case we did not have people falsely identifying themselves as police offices but people who for security reasons were being readily and more easily identified as being part of the overall security footprint. It was not a matter of resources; it was simply a matter of trying

to get the people there. As I mentioned, as a result of the unfortunate embellishment of the situation by the *Canberra Times*, we are taking steps to create police support clothing, not uniform—I would not put it that strongly—or something that readily identifies a person not as a sworn office but in support of the police who are present, something similar to the police volunteers.

Senator LUDWIG—The other area was the witness protection program. You may recall that there was an article about a witness during a trial in Sydney Central Local Court in mid-September 2003 where an AFP officer admitted, allegedly under oath, that forging of medical certificates to allow witnesses in the witness protection program to avoid testifying in open court on the basis of medical infirmity was standard AFP practice. What can you tell me about that? Is that standard AFP practice?

Mr Keelty—Certainly not. On 17 September 2003 during a committal hearing a magistrate in the New South Wales Central Local Court expressed dissatisfaction about the way the AFP dealt with an issue of a protected witness who was unable to attend the committal hearing and the production of a medical certificate by an AFP officer to cover the absence. I was not in the country at the time, but when I became aware of the issue I found there were some aspects of it that were unusual. One is that it was not a Commonwealth prosecution; it was in fact a state prosecution. It was a witness who was being protected by the AFP on behalf of another agency.

When we became aware of the matter on 17 September we referred the matter to the Commonwealth Ombudsman on 18 September. The Commonwealth Ombudsman, whom I spoke to, replied on 19 September advising that he had appointed special investigators to undertake an investigation into the matter. On 13 October the Ombudsman provided me with a copy of the special investigation report seeking my comments. I replied on 20 October and on 27 October the Ombudsman publicly released his report. I thought he had also publicly released the executive summary.

He formed the opinion that there was no improper conduct by any AFP officer in relation to the medical certificate that was the subject of the inquiry, but he did conclude that the action taken by the AFP officers was ill-advised. He has made recommendations for alternative future procedures. At the same time, I spoke to the Ombudsman. Because I was concerned that we may have a flaw in our processes and that that flaw could continue into evidence being given in other proceedings, I sought the Ombudsman's consent to allow me to engage in a total review of the National Witness Protection Program—which was undertaken. The review included a member of the Attorney General's Department, as well as former Assistant Commissioner Alan Mills, who was actually in charge of the creation of the legislation from the AFP's perspective and the original policy. The review will see what improvements we need to make to the process. The review by Mr Mills will take into account the additional recommendations made by the Ombudsman to improve the process, because we do accept the Ombudsman's findings in relation to the matter.

Senator LUDWIG—Are the Ombudsman's findings public? Perhaps you could take that on notice.

Mr Keelty—The executive summary is public but, because it is a witness protection matter, I do not think the full report could be released because of the legislation.

Senator LUDWIG—It could not be released here, as we could not take it in camera. Anything released here would be public.

Mr Keelty—That is right. As I understand it, the Ombudsman's media release and executive summary is on the Commonwealth Ombudsman's web site.

Senator LUDWIG—I can chase that up. I was not so much interested in the incident itself as the action that the AFP is now taking to address the issues—or, at least, to ensure that those matters could not happen. You are telling me that you have a program in place headed by Mr Mills to address this. When is it likely to report?

Mr Keelty—I met with Mr Mills for the first time last week. We are hoping that he will complete his report by 19 December.

Senator LUDWIG—We can leave that until February to ask what the outcome of that is, and what recommendations might be put in place. We spoke about civilians carrying out volunteer work. Are there other civilians that carry out work within the AFP? They do administrative work, I understand—so there are administrative tasks to do.

Mr Keelty—They are the people I described to you as the 'unsworn members'. We have a unified work force in the AFP, where the sworn and unsworn members are covered by the same provisions, the same act and the same certified agreement rather than as it was previously where the public servants and the police were covered by the Australian Public Service regulations. We have got them all under the one act. At the moment we have a 68:32 per cent ratio of sworn to unsworn people in the AFP; and an 89:11 per cent ratio in the APS. I can give you the figures: there are 2,377 sworn police in the AFP and 1,097 unsworn staff. There are 1,096 Australian Protective Service officers in the APS and 142 unsworn staff equivalents—or administrative assistants.

Proceedings suspended from 6.30 p.m. to 7.30 p.m.

Senator LUDWIG—Lately the AFP has played a role in attacking the problem of sex trafficking in Australia. I am interested in not only the role you now have but also when the AFP first became aware that it was an issue that required addressing.

Mr Keelty—Certainly our interest in this area built up during 2001-02. While I could not put dates on it, I know that it was the subject of discussion by the transnational crime management team in terms of the allocation of resources. You might recall that at the beginning of each year we divide up the capacity of hours and allocate that to different crime types. As I recall, the sexual servitude issue, while it might not have been commonly referred to as that at the time, was part of our discussions. I vividly recall visiting Cambodia in 2001 and talking to the Cambodian national police about the issue of sexual servitude and the trafficking of not only women but also young children across the borders into Cambodia.

Senator LUDWIG—Is the 23-member strike force within the AFP the section that is now going to deal specifically with this issue? As I understand it, that is part of a package that was released by Minister Vanstone.

Mr Keelty—Sorry, in reviewing the papers I have here I see we had our first investigation into sexual servitude matters in 1999 and a crime management strategy on trafficking in people was established in 2001. I will try to get you the details.

Mr Davies—As you say, we have been working on this since 1999 when we had our first matter. There has been a build-up and a recognition within the organisation to formalise processes. As a result, as the commissioner said, we put it into the 2001 crime management strategy. We also ensured that our overseas officer network, particularly throughout South-East Asia but the whole network, was focusing on that. With regard to the 23 positions in the new transnational sexual exploitation and trafficking team you referred to, we are currently in the process of finalising those arrangements.

We will have a similar place as we have had in the past with the NIDS drug program with the strike team arrangement. Whilst there will be some fixed elements focused in Canberra—for reasons around some of the work that has to be done across departments and so on—there is recognition of a need for ongoing investigations in different parts of Australia at different times. We will be swinging people onto particular operations as the need arises. As with the drug strike team arrangement, the team of 23—if focused in Canberra, or anywhere else for that matter—would be attentive to investigations across the country at varying times. The AFP have opted to work to the hours of the team of 23. In fact, I can give a solid assurance that in the near future the hours committed from the AFP to this type of crime will exceed the hours of 23 persons.

Senator LUDWIG—I have some detailed questions, but it might be easier to place them on notice so that you can take them away and deal with them in a little bit more detail. They relate to funding and how you will utilise it, staffing and those sorts of issues, so I might deal with it in that way. The last AFP issue I have relates to the Australia Protective Service and how that is now going. We had the benefit of a fair amount of information from a Senate Legal and Constitutional Legislation Committee inquiry into another piece of legislation, but I was just looking for an update, particularly relating to the coordination role and ensuring they form part of the AFP and how they will be integrated whilst maintaining the firewalls, given they will still be used as outsourced security.

Mr Keelty—The implementation of what we have called Project Merida, which is the integration project, is now well advanced. It is a four-phase program, and it is currently up to phase 3. On 17 September the Minister for Justice and Customs authorised preparations for a draft bill that would give effect to further integration. On 19 September an integration workshop equipped 10 working groups with tools to develop the implementation plans. From 22 September to 26 November a period for working groups to develop their implementation plans has been set aside. By 8 December the phase 3 implementation plans will be presented to the General Manager for Protection and Guarding, an endorsement by the project steering committee. Phase 4 will commence from December this year and will be the implementation period for approved plans. End dates will vary for each working group to varying degrees.

In terms of consultation, the Executive Director Protection has visited 13 AFP APS officers since July last year. The Director of Operations for the Australian Protective Service routinely meets with the CPSU and the TWU in the normal course of business. Our Director of Workplace Relations is meeting regularly with the Australian Federal Police Association, and

each APS office is programmed to receive a visit from a member of the protection and guarding management team on a routine basis—not less than twice per year. At the beginning of this year the General Manager of Protection and Guarding met with all employee representative groups after taking up his appointment. We can give you a breakdown of the executive meetings. Suffice to say that we are trying to coordinate at the policy level legislation being introduced at the same time. We are also trying to communicate with staff as best we can.

In addition to the framework I just described, Protective Service people have been involved in Bali since we were first deployed to Bali. They worked with us and the Northern Territory Police on the Pine Gap demonstrations last year. They gave assistance to us during the ACT bushfires in January this year. They worked in a joint operation with us and the South Australia Police over the Easter break at the Baxter detention centre protest. We have deployed the APS to the Regional Assistance Mission in the Solomon Islands. The AFP and APS operations were combined for the recent visits of President Bush of the United States and President Hu of China. So a lot of integration is happening. Obviously, we have to maintain consultation with each of the interest groups, particularly the unions. In the AFP we went to single union coverage in 1989. This dimension adds a further challenge to where we go to from here. We are conscious of that and we are working hard to continually consult.

Senator LUDWIG—One issue in relation to this matter is cost. How much has been earmarked for the AFP out of the package? Have you been told how much you are to obtain out of the announcement by Minister Vanstone so that you can use it in the team?

Mr Keelty—Minister Vanstone?

Senator LUDWIG—I am sorry, the announcement dealing with sex trafficking in Australia.

CHAIR—That was the announcement of some time ago.

Senator LUDWIG—Yes.

Mr Keelty—We have shifted from the APS to—

Senator LUDWIG—It just struck me while we were here that I had finished with the APS but had not followed through with the sex-trafficking issue, so I thought I would switch back for a second.

CHAIR—So we are on trafficking and you were referring to Senator Vanstone's release in her previous capacity as Minister for Justice and Customs?

Senator LUDWIG—That is right.

CHAIR—So that is some time ago.

Mr Keelty—If I have understood the question correctly, it is new money, and that will start from the beginning of the next calendar year.

Senator LUDWIG—How much is that?

Mr Keelty—It is \$7 million over four years.

Senator LUDWIG—That is your share to deal with the issue?

Mr Keelty—That is correct.

Senator KIRK—I understand that in February estimates a number of questions were asked by Senator Brown in relation to passengers on SIEVX. I wanted to know whether the AFP has a list of the names of the passengers on that vessel.

Mr Keelty—The AFP has previously advised that we are in possession of a list that was provided to us by a confidential source after the vessel sank. The list purports to contain some details of passengers, but its veracity has not been tested. We are not able to release the content of that list outside the investigation, because it may compromise the confidential source. We accept, and we urge others to accept, the probability that it is unlikely that a full and comprehensive list of those who boarded SIEVX, or those who subsequently drowned, will ever be available. I just point out that that is part of an ongoing investigation, and proceedings in that matter are imminent.

Senator KIRK—That was my question—as to whether or not the investigation of that matter was ongoing, and you have said that it is. I probably cannot take it much further, so thank you.

CHAIR—Commissioner, thank you very much for coming back after the break and for assisting the committee.

[7.47 p.m.]

Australian Security Intelligence Organisation

Senator LUDWIG—An article on 12 October in the *Sun-Herald* reported that ASIO had used its new powers. What new powers had you used in relation to the Brigitte matter. I have the article here if you need to refer to it.

Mr Richardson—But that does not mean that it is right.

Senator LUDWIG—No. That is why I am asking you. You have a wonderful opportunity here to correct the record.

Mr Richardson—At this point we do not wish to state publicly whether we have or have not used the new powers in respect of the Brigitte case because that is an operation that is real, live, current today and we do not think it would serve anyone's interests by stating publicly precisely what we are or are not doing in respect of that investigation.

Senator LUDWIG—What can you tell me about the investigation? Can we start from the other end then?

Mr Richardson—Yes, sure. I think much of it is already on the public record, but I can step through it. As you know, the French authorities advised us on 22 September that Brigitte might have travelled to Australia. They advised us that he had reportedly had some training in Pakistan or Afghanistan. They asked if we could ascertain whether he was still in Australia, and indeed specifically asked that we not take any action in respect of him if we were to locate him. No urgency or priority was given to that request by the French authorities.

The question has arisen as to why the French did not advise us before what we now know was his arrival in Australia on 16 May. We do not know precisely what the French authorities knew about Brigitte in May as opposed to September, but we do know that but for the French

advice in late September and early October it is very unlikely that we would have been aware by now of Brigitte's presence in Australia. Indeed, but for the French advice he would probably still be here. The advice they provided in September and October and their subsequent cooperation with us has been central to our investigations and to the prevention of whatever Brigitte might have been up to. Our own impression is that the French were themselves finding out more about Brigitte as the investigation went along. So, from where I sit, the French have been nothing less than cooperative, and I see no reason to bag them in respect of their cooperation. Indeed, I think the information they have given us and the cooperation they have provided have been central to the progress that we have made.

As I mentioned previously, their initial advice on 22 September did not express urgency or any particular concern. It was treated within ASIO as a relatively routine matter and, in the context of other demands on us, such as the Jemaah Islamiah investigations and a range of other investigations, it was not given a high priority. Indeed, without it being given a high priority it was treated as routine, and the fact that he reportedly trained in Pakistan or Afghanistan did not change that.

The French subsequently provided advice, which we received on 7 October, which not only stressed urgency but provided other information and expressed concern that he might be in Australia for terrorism related purposes. The AFP and the New South Wales Police Service were briefed on 8 October and, following his identification and confirmation that he appeared to be working in breach of his visa conditions, Immigration was advised late on 9 October and he was then taken into immigration detention.

He was returned to France on 17 October under escort, as you are aware. He was questioned on several occasions before his return, but he was largely uncooperative. I think that is also on the public record. Whether we could have used our new powers with Brigitte is a moot point. That aside, it made good sense to us to send him back to France, because they knew more about his activities and were far better placed to question him than we were. The subsequent information we received from the French has certainly validated that judgment.

ASIO, the Australian Federal Police and the New South Wales Police are still investigating Brigitte's activities in Australia. We have made very good progress over the past week, but I do not believe it would serve the public interest to detail that. I can say that Brigitte was almost certainly involved in activities with the intention of doing harm in Australia, but there are many unanswered questions and it is those questions that we are pursuing. The final point I might make is that I believe a feature of the investigation has been the cooperative and supportive approach across agencies at the federal level and also between federal and state agencies.

Senator LUDWIG—Has ASIO asked for or received any warrants since Mr Brigitte was deported?

Mr Richardson—As you know, we did conduct a number of enter and search operations last Sunday. Those operations were under warrant. We also undertook a warrant operation soon after Brigitte was detained by Immigration, so the answer to that question is yes.

Senator LUDWIG—I have some more general questions. Has ASIO been asked by the Attorney-General about the adequacy of the present act that you work under?

Mr Richardson—Yes, he has.

Senator LUDWIG—When was that?

Mr Richardson—He has asked about the act. I believe that as a matter of course he asked that question. I cannot recall when, but it must have been a couple of weeks ago.

Senator LUDWIG—Was that in any context? Was it a request to review the legislation?

Mr Richardson—No. I think it was in the context of him seeking a briefing on his portfolio responsibilities and wishing to obtain information about what might be outstanding business.

Senator LUDWIG—What was your response in relation to that request for information?

Mr Richardson—We pointed out that the legislation was not what was initially introduced into the parliament. It was the result of negotiation in the parliamentary process, and that is on the public record. We did mention one or two possible inadequacies in respect of the practical workings of it which we were looking at.

Senator LUDWIG—Is there a review going on? Is information going to be presented?

Mr Richardson—I believe there is a review going on.

Senator LUDWIG—Does that involve your agency?

Mr Richardson—Yes, it does, but our input into that is being held up while we address the Brigitte investigation.

Senator LUDWIG—Has ASIO provided a brief to the A-G about the adequacy or inadequacy of the current legislative regime that you work under?

Mr Richardson—Along the lines that I have already indicated.

Senator LUDWIG—So there has been nothing concrete such as a document or a report?

Mr Richardson—Not at this point, because, as I said, we are preoccupied with the Brigitte investigation. But we have expressed the views I outlined earlier.

Senator LUDWIG—Is everything now in place for the new questioning warrant?

Mr Richardson—Yes.

Senator LUDWIG—From what date was that available?

Mr Richardson—I would have to take that on notice. I think some regulations were tabled in parliament a little while ago. We have matters in place now, but I cannot give you a precise date off the top of my head.

Senator LUDWIG—Has it been used since it was introduced or become available for your agency to utilise?

Mr Richardson—Again, I would prefer not to answer that because I could give an answer that could have implications for the other answer I gave in respect of the Brigitte matter.

Senator LUDWIG—Are there reporting requirements in relation to the use of that questioning?

Mr Richardson—Yes, there are. There is a requirement that we report in our publicly available annual report each year, from memory, the number of warrants we seek and the number of warrants approved.

Senator LUDWIG—Is that annual report available?

Mr Richardson—No, because the current annual report only goes to 30 June 2003 and we did not have everything in place by 30 June 2003.

Senator LUDWIG—On another note, was that annual report filed by Friday?

Mr Richardson—No.

Senator LUDWIG—Where is it at the moment?

Mr Richardson—It is on my desk.

Senator LUDWIG—That is an interesting place to have it. When will it be available to the committee?

Mr Richardson—I do not know. It will be available to the committee as soon as we can do it, but I am about halfway through it and I have not had time to complete my part of the process.

Senator LUDWIG—So the minister hasn't got it yet either.

Mr Richardson—No.

Senator LUDWIG—Do you have a memorandum of agreement or an understanding with the French authorities for the free flow of investigation or knowledge?

Mr Richardson—Not a memorandum of understanding, no.

Senator LUDWIG—I am unfamiliar with the area myself, but is there an understanding or a protocol to deal with the French or Interpol?

Mr Richardson—We have liaison arrangements with somewhere between 210 and 230-odd agencies globally. Basically the arrangements work whereby, when there is information that you consider might be relevant to another country's interests, you share that information.

Senator LUDWIG—There was a matter that you answered earlier that I need to clarify in my own mind. You mentioned it being a moot point whether you would be able to use the power or not. The Attorney-General stated in parliament today a similar line. He said in relation to the provisions of the ASIO legislation that it would:

... require the Attorney to be reasonably satisfied in relation to any requests that a person is going to be able to offer substantial assistance with regard to a suspected terrorist activity in Australia. That is the nature of the test. The advice that I have received from the competent agencies is that it is a moot point whether we would have been able to satisfy that test.

Is that the same issue?

Mr Richardson—Yes.

Senator LUDWIG—What does it mean?

Mr Richardson—I think 'moot' has a dictionary meaning—

Senator LUDWIG—I know what 'moot' means.

Mr Richardson—It is a proper word. I believe you will find it in the dictionary and it means what the dictionary says it does.

Senator LUDWIG—But what test are we talking about?

Mr Richardson—The test is the test as defined in the act.

Senator LUDWIG—For?

Mr Richardson—For the exercise of a questioning warrant.

Senator LUDWIG—So that is the test we are talking about. So it is the nature of the test, not the test itself. It says:

The advice that I have received from the competent agencies is that it is a moot point whether we would have been able to satisfy that test.

Was the test in the original bill introduced into parliament?

Mr Richardson—I cannot recall the detail of what was in the original bill introduced into parliament and what was the precise final outcome in that area. I cannot recall it off the top of my head. But the test is there and it is articulated in the legislation. I might say that you can only make sense of that judgment in terms of what we knew about Brigitte at that time. We now know a lot more about Brigitte than we did then. As I said, leaving aside the exercise of the new power for Brigitte, it made good sense to us to send him back to France because they knew more about his activities and were better placed than we were to question him.

Senator LUDWIG—I will come back to this one. Correct me if I am wrong, but the test that we are referring to is the same test as was introduced in the original bill; it was not amended?

Mr Richardson—I honestly would not know.

Senator LUDWIG—So is that test deficient in any way? Is it adequate or is it the test that is required?

Mr Richardson—I think probably a range of legal people might be able to answer that question better than I can.

Senator LUDWIG—I think you undersell yourself, Mr Richardson, in that respect. The first this committee is going to understand what powers you have and have not used is when you finally do your report for next year? We are not going to be able to ascertain how many warrants have been—

Mr Richardson—Not necessarily, Senator. I think the difficulty I face as of tonight is that we are in the middle of an important investigation and it does not make sense for me to give a public commentary on what we are doing or not doing in the context of that investigation. That might be very different down the track, so I would not want you to draw the conclusion that we would not be in a position in subsequent committee hearings to answer the question that you want me to answer now.

Senator LUDWIG—Perhaps quite wrongly, I had drawn that conclusion. So, if we reverse it, when we next meet in February if you are able to I would not still mind an answer to those issues if the matter has passed.

Mr Richardson—Sure. And may I say that it is not a matter of what I feel like; it is a matter of our judgment in the context of the investigation—and I am not seeking to hide behind that.

CHAIR—The point that you make is the basis upon which the committee has always operated in engaging with your organisation and other organisations that deal with operational matters.

Senator LUDWIG—When was all the machinery in place then to enable ASIO to seek to use the—

Mr Richardson—I think, Senator, that you asked me that before—

Senator LUDWIG—I just did not think that I got quite a definitive answer.

Mr Richardson—No, because you said that you would take it on notice. I said that I could not give you a precise answer and you asked whether you could put it on notice.

Senator LUDWIG—The immigration department deported Mr Brigitte, as I understand it?

Mr Richardson—Yes.

Senator LUDWIG—Was that a matter for the immigration department or did you then, in consultation with the immigration department, think it was the best outcome for Mr Brigitte? Who suggested the idea?

Mr Richardson—I would have to take that on notice. I do not know who precisely suggested the idea. The French certainly asked for him to be returned to France. Consultation certainly involved us; I believe it involved the AFP and the New South Wales Police and I believe it involved Immigration. He was in immigration detention; therefore, the formal decision as to whether he is returned to France or not would be an immigration decision. I stand to be corrected, but I think that you will find that that is the case. In a situation like this, they would obviously consult with people such as us.

Senator SCULLION—Mr Richardson, I am careful not to seek an opinion, but, as I understand it, you were operating in areas outside a memorandum of understanding with the French. So it was effectively—

Mr Richardson—No. I said that we did not have a memorandum of understanding with the French.

Senator SCULLION—That is what I am saying. I am just making sure that it is clear that you were operating outside of the normal—

Senator Ellison—In the absence of one.

Mr Richardson—We were operating as we normally do with overseas agencies.

Senator SCULLION—Indeed. As a supplementary to the question from my colleague: do you think that in the future, having seen what you have done, it would be easier to operate within a MOU or do you think that the relationships and structures are fine now?

Mr Richardson—I know that this is a heretical view, but I personally think that MOUs are designed for organisations that cannot get it together otherwise and simply have to be bureaucratic about it. However, I know that most organisations have MOUs between them,

and they normally point to them by way of an indication of cooperation. I certainly would not propose that we start to have a range of MOUs with all the liaison arrangements we have around the world.

The French have been very good. For what it is worth, the other thing I might mention by way of an observation is that it has been my experience before parliamentary committees that the Australian parliament has normally been concerned to ensure that organisations like ASIO operate proper judgment with respect to what is shared with overseas agencies about Australian citizens. I think you will find that most countries have similar sensitivities with respect to their own citizens. As far as I am aware, the French authorities did what we would expect them to do in this situation—that is, when they became aware of a possible Australian connection, they made contact with us.

Senator SCULLION—Thank you, Mr Richardson.

CHAIR—There being no further questions, Mr Richardson, thank you very much for your attendance this evening.

[8.14 p.m.]

Australian Customs Service

CHAIR—I welcome Mr Woodward and his officers.

Senator MARK BISHOP—I will just make two points at the outset. I have arranged my questioning in line with the main outputs from Customs—outputs 1 to 5. But there are some quite important corporate support areas, entitled ‘Enabling outputs’ in the annual report. I would like to begin with those, if that suits the committee. As I understand it, enabling outputs involve resources, security and IT support. For the information of the officers, I will address issues relating to Tradegate; the ICS systems development; the security breach at Mascot; resources—in particular, narcotics resources; ship inspections; container inspections; port security; the US 24-hour rule, in passing; facial recognition technology, surveillance; fisheries, in passing; the trade modernisation legislation; and, if time permits, the customs anti-dumping bill No. 2, which is on the *Notice Paper*. I turn to Tradegate first. At the outset, Mr Woodward, as a member of Tradegate, can it be confirmed that Customs operates a trust fund for the investment of surplus funds in IT development for the industry?

Mr Woodward—There is a cargo automation development fund, which I assume is the fund you are talking about. It has about \$2 million in it. There is also a fund that Tradegate has, and we are involved in the collection of that. But I assume that you are talking about the \$2 million fund, which I describe as a trust fund. I think there is a new financial management term for it.

Senator MARK BISHOP—The Tradegate development fund is fed by a levy which I understand has now ceased.

Mr Woodward—Yes.

Senator MARK BISHOP—What is the current balance in the account?

Mr Woodward—It is about \$2.5 million.

Senator MARK BISHOP—What will happen to those funds when Customs withdraws from Tradegate and the ICS system is fully operational?

Mr Woodward—The disposition of those funds has nothing to do with whether Tradegate continues to exist. There is a second form of development funding—which is not the point of your question—where we are involved in the actual collection. If and when Tradegate fades out, it could have implications for that. But the existence or non-existence of Tradegate is completely irrelevant to the disposition of that \$2.5 million fund. We have been in extensive consultation with industry. We have had numerous meetings with industry about the best way of disposing of those funds in a way that is equitable, that is consistent with the purposes of the fund that I describe as a trust fund and that satisfies my responsibilities under the FMA Act.

Senator MARK BISHOP—What is the proper title of the \$2.5 fund?

Mr Woodward—It is a special account under the FMA Act, but it is colloquially referred to as a trust fund. That is how it has historically been known.

Senator MARK BISHOP—How is it colloquially referred to?

Mr Woodward—For years it was described as a trust fund. Then, with the FMA changes, it became known as a special account under the FMA Act.

Senator MARK BISHOP—Does Customs manage that trust fund?

Mr Woodward—Customs manages it; that is right.

Senator MARK BISHOP—Is there a board of directors for that fund?

Mr Woodward—There is no board of directors. The person who, at the end of the day, is accountable for the disposition of those funds is me.

Senator MARK BISHOP—The secretary.

Mr Woodward—The CEO, yes.

Senator MARK BISHOP—Is the final decision as to the allocation of funds a unilateral decision by you, Mr Woodward?

Mr Woodward—Again going back into history, there has been a group of people that have been involved in relation to advising and in many senses actually taking decisions on the disposition of the fund. There have been differences of view within industry. As you can imagine, if you have separate people from different organisations around the table there are naturally differences. You have exporters and importers on the one hand and intermediaries on the other, lawyers and accountants. The fund was run down to the point of about \$2.5 million. The more recent discussions, which have involved the Customs national consultative committee, which I chair, and subcommittees of that committee, have been getting very close to resolution and agreement as to the best and most agreeable way to dispose of the remainder of the funds.

Senator MARK BISHOP—Are you involved in negotiations with the industry contributors as to the distribution of that \$2.5 million?

Mr Woodward—As I say, I chair the consultative committee and over recent years we have had numerous discussions and disagreements, not so much between me and the members of the committee but within the committee itself, as to the best way of disposition. The most recent discussions I have not been personally involved in, but I have been listening to the outcome of those discussions.

Senator MARK BISHOP—I understand the answer to the last question but one was that you were saying that there was close to agreement as to how the funds should be distributed. Is the answer to that yes?

Mr Woodward—That is what I said, yes.

Senator MARK BISHOP—Okay. On how many occasions have the industry partners in Tradegate sought to have funds from the trust allocated to IT projects and how many have been accepted?

Mr Woodward—I cannot give you an answer to that off the top of my head. I will certainly have a look at that. I can say that in exploring ways in which the funds might be disposed of we actually went into the media and asked for those who wished to make an application for use of the funds, obviously consistent with the purposes of the fund, to put forward bids, if I can describe them as that. I think there were about 15 altogether. Tradegate was one of those that put in a bid. Those bids were the subject of an industry committee and Customs examination over the last weeks or month or so and the outcome of that has not yet been determined. But, as I say, we are getting fairly close to resolution.

Senator MARK BISHOP—You said you could not say on how many occasions industry partners had sought to have funds from the trust allocated.

Mr Woodward—No, how many occasions Tradegate has, because there are many industry bidders.

Senator MARK BISHOP—Can we get some sort of ballpark idea: is it one or two, a few, many?

Mr Woodward—Over the years of the existence of the fund there would have been dozens of beneficiaries of that fund, but I cannot give you numbers.

Senator MARK BISHOP—Okay, I will narrow the question. In the last two years, on how many occasions have industry partners in Tradegate sought to have funds from the trust allocated to IT projects?

Mr Woodward—Can I again make a point because I think there may be a bit of misunderstanding. Tradegate is an industry based company, but it is not the only company with an interest in automation development funds.

Senator MARK BISHOP— I do understand that. Tradegate is one of several.

Mr Woodward—Many.

Senator MARK BISHOP—Many. My question is about how many times Tradegate has sought to have funds from the trust allocated to IT projects in the last two years.

Mr Woodward—I can only clearly recall one, which was the response to the most recent bid, but I would like to take that one on notice and see if there have been any others.

Senator MARK BISHOP—Was that one application accepted or rejected?

Mr Woodward—That was the point I was making: it was one of 15 bidders for funds that were considered by an industry group and Customs. To the best of my understanding—and I hope I am not putting a spin on it—there seemed to be no particular enthusiasm for any one of the 15, most of which were obviously submitted with a degree of self-interest and maybe an element of commercial advantage. I think a few were a bit frivolous but for the serious ones it was commercial self-interest that seemed to be driving them.

Senator MARK BISHOP—How long has the fund had these large amounts of undistributed surplus—currently \$2½ million?

Mr Woodward—I would probably need to take it on notice. It is quite a few years and it has been developing over a number of years. But it is only in the last 12 or 18 months, I suspect, that we ceased to take any more contributions from industry and therefore the fund has remained static for something like that time. Again we will clarify that.

Senator MARK BISHOP—Okay, take that on notice. On how many occasions have industry partners in Tradegate sought to have funds from the trust allocated to IT projects? How many have been accepted and what were the reasons for rejection if there were rejections?

Mr Woodward—Since the establishment of the fund? Obviously I will need to take that on notice but, as I said, there have been many industry beneficiaries of the fund over the years.

Senator MARK BISHOP—No, no. I do not want to go back to the beginning of time.

Mr Woodward—Since the contributions stopped, the debate has been: what should we do with the fund? That is the point, and there have been no beneficiaries, to the best of my recollection. There have been no beneficiaries because we could not reach agreement on what to do with the funds.

Senator MARK BISHOP—Okay. Since the contributions to the fund stopped, the number of applications received, the number allowed, the number rejected and the reasons for rejection?

Mr Woodward—None have been allowed. In the recent advertising there were, I think, about 15 applications; we will clarify that. None of them was successful, for the reasons that I mentioned to you.

Senator MARK BISHOP—None were successful because the various applicants could not agree among themselves as to the merit?

Mr Woodward—No, no. We have an industry assessment group; Customs are part of it. There are industry representatives involved in that assessment, and the view, as I understand it, of each of the group that looked at it was that there were no obvious candidates out of that process.

Senator MARK BISHOP—Or there were no obvious candidates that received majority support; there were 15 applications?

Mr Woodward—I am sorry? The assessment was that none of them were worth while. So now we are exploring an entirely different option and my understanding—and it might be resolved fairly soon—is that a compromise may have been reached which is regarded by each of the parties to that as being a reasonable disposition of the fund given the contributors to the fund and the various interests that there are in getting their hands on those funds.

Senator MARK BISHOP—If there is not that compromise type of agreement that you have referred to, what happens to the funds? Do they just remain in the fund?

Mr Woodward—There are differing legal views of this. I will give you the legal view that we have. There may be another view held on the part of legal advisers to one of the industry organisations, or they may have come to a similar view. Our view is that at the end of the day the funds are Commonwealth funds and, if I can use the colloquialism, the minister for finance can grab them. But we are not proceeding down that track.

Senator MARK BISHOP—Prior to the minister for finance grabbing the funds, as you put it, you of course, as the chief officer, have an absolute right to allocate the funds?

Mr Woodward—The decision is mine. I listen to the advice of others, and that is why we have been trying to get a compromise and agreement.

Senator MARK BISHOP—I understand that. Are any applications for funding still pending?

Mr Woodward—The applications that I mentioned to you have not been formally resolved. As I said, the committee has been looking at an option that we believe is consistent with the law, consistent with the purposes of the fund and will satisfy the views of the participants in the assessment process.

Senator MARK BISHOP—So there are currently about 15 applications for access to the funds, but there is not a majority or uniform view that the applications are of sufficient merit and so you are going down a negotiation path to try to bring this issue to a conclusion.

Mr Woodward—The consensus is that they are not of sufficient merit and, therefore, another option ought to be explored. The other option that we are exploring seems to have the agreement of the parties concerned.

Senator MARK BISHOP—Will you take on notice to provide us with details of whether there are any applications for funding still pending? If there are, will you let us know how many, when they will be considered and resolved and the total value of them? Will you also give us the criteria for assessing those applications?

Mr Woodward—Sure.

Senator MARK BISHOP—Is there a deed of arrangement for the management of the fund?

Mr Woodward—There is a set of arrangements that we are obliged to follow under the FMA Act. That has been complied with and the lawyers have confirmed that.

Senator MARK BISHOP—Is that set of arrangements you refer to simply the act itself?

Mr Woodward—No. It was initially a trust account under the act, but it is now a special account under the FMA Act, which has to be set up with the agreement of the Minister for

Finance and Administration or his delegate, but certainly it will be outside of Customs. There certainly has to be an agreed set of what I would describe as objectives for the fund that we must comply with.

Senator MARK BISHOP—If it is not confidential, could you provide us with a copy of the deed for that set of arrangements?

Mr Woodward—We will give you a copy.

Senator MARK BISHOP—If and when ICS becomes fully operational, what will be Customs ongoing responsibility to Tradegate, assuming that it continues to function as a hub for smaller operators?

Mr Woodward—There are two parts to that question. Tradegate and its service provider connect.com are key parties between now and when the ICS becomes fully operational. It is absolutely crucial, and they understand that. We have arrangements in place currently, and there are continuation arrangements under discussion with Tradegate at the moment. When the ICS becomes fully operational, Tradegate will have the option of being one of numerous providers of services to Customs. It will not be, as it is now, the only provider of those sorts of hub services to Customs. Can I say that our relationship with Tradegate, in my view, is very good. The chairman calls on me several times a year and his chief executive comes as well, and we talk about various things. I am as confident as I can be that Tradegate will have an interest.

Senator MARK BISHOP—That is fine, thank you, Mr Woodward. I would like to turn now to ICS systems development. Can you give us an update on the progress of the roll-out of the integrated cargo system, as developed by Computer Associates?

Mr Woodward—Yes, we can. I have here Jenny Peachey, who is our expert on this, but can I just remind you of two pieces of background. One is the fact that this committee undertook an inquiry into the Customs IT systems with a very heavy focus on this, on the connect facility and on Tradegate, which is a subject we have spoken about. It reported in May. Senator Ludwig chaired it. Another important piece of background is that on 17 June last year—in other words, immediately following the report of the committee—I wrote a letter with an attachment which was altogether about 12 pages long that gave an update on where we were in relation to CMR and the program that lay ahead, that picked up all of the issues covered and some criticism, I must say, in the report of the committee and that provided a new timetable. So that is the commencement point. It is in the timetable which we set out in June of last year.

Ms Peachey—Let me go back to your original question. It was an update of the integrated cargo system—

Senator MARK BISHOP—An update on the progress of the roll-out of the integrated cargo system, as developed by Computer Associates.

Ms Peachey—The ICS, as you are probably aware, is developed in a number of phases. The first phase was our high-volume, low-value goods. It was really a pilot that we rolled out earlier this year. The second phase is largely described as the export phase. In terms of Computer Associates' development of that, that part of the system has been developed and

tested, and it is now currently in industry test. It went to industry test on 18 August this year. The roll-out for that for a 'go live'—to use a less technical term—to go into production for industry has been deferred from 1 December this year to 1 March next year. At the current stage we are in industry test, and that will continue through to that roll-out period.

There is one large imports phase, but I will just split that into two parts. The first part of that relates to the cargo reporting elements of import processes. That largely replaces our current air cargo automation and sea cargo automation functionality, plus new functionality that comes with the new systems. That has been built and tested. Computer Associates have delivered that to us and we have done our user acceptance testing on that. At the moment we are in an integration phase with the gateway, the Customs connect facility. We have said that we will look to provide that to industry test—this is not 'go live'—later this year. That is one phase of the import phase. The second part of that is import declarations, which replace what you might know as our COMPILE system now. The baseline is currently scheduled for the build of that system. The build is to be completed on 24 December, on Christmas Eve—

Senator MARK BISHOP—What do you mean by 'the build'?

Ms Peachey—System development is an analysis first of defining what Customs business rules are. The next phase is design in conjunction with Customs, the vendor, CA and the consortium in this case. There is a lengthy design. I might say that the design of the whole ICS system is over 15,000 pages of documentation. This part of the element—

Senator MARK BISHOP—So the analysis and design are scheduled to be concluded by 24 December?

Ms Peachey—No, the build will be completed by then. I am going through the phases. We have analysis and then design and then the build, which is the code for the system application. That is scheduled for completion on 24 December.

Senator MARK BISHOP—So the analysis and design—

Ms Peachey—They are completed. They are finished.

Senator MARK BISHOP—And the build process is to be completed by 24 December?

Ms Peachey—By 24 December. There are a couple of other phases, if I can build upon that. Once the code is cut and the application is developed, it then goes into a stage where the vendors themselves, CA, do their own product testing. They test the product and then it moves into our own user acceptance testing, which is Customs testing. All of that is scheduled for completion, at this stage, for 29 March.

Senator MARK BISHOP—Next year?

Ms Peachey—Yes.

Senator MARK BISHOP—The product test and the ACS testing?

Ms Peachey—Yes, that is right.

Senator MARK BISHOP—Will you meet that?

Ms Peachey—The analysis and design is on schedule and has met schedules, and the build has commenced. We have no indication that we will not meet that. Where we are at with the

exports phase is the integration. Once the product is finished by Computer Associates—they are responsible for building the ICS—we test it. It then needs to be integrated with our gateway, Customs connect facility. That is quite a lengthy and very complicated process. After that integration phase, we are looking at rolling it out to industry test. We do not have a timetable for the integration yet. I hazard to guess a date, but it usually takes four to six weeks to do that.

Senator MARK BISHOP—So the net of that is we have done the pilot, you are doing the export phase, the import phase is divided into two subgroups and the import declaration will go out for industry testing after March next year.

Ms Peachey—That is right.

Senator MARK BISHOP—The export phase is currently undergoing industry test and will go live possibly in March or April next year.

Ms Peachey—On 1 March.

Senator MARK BISHOP—The import phase will be industry tested later this year. I think the minister's office has foreshadowed to us that there will be an amending bill in due course to blow out the effective date of implementation. Are the problems with the ICS the principal cause of delay?

Ms Peachey—With respect to the delays that have occurred in the design phases, we said we would be ready for CA to deliver the product for the first phase on 9 December 2002 and it was delivered to us on 18 December 2002. The second phase delivery was set for 1 April 2003. It was delivered on 29 May, but we negotiated that with Computer Associates so we could take account of some changes that we would have done later and we brought them forward. For the next release, the first part of imports, we negotiated with CA for it to be ready on 17 September and it was ready on 10 October. There have been minor slippages but the real issue is that this is a very large system. To give you an indication, there are over 15,000 pages of system documentation. To date, without the import declaration, we have already delivered 9,400-odd business rules. It is a large system.

That is tracking very well. Where the complexity lies is in making sure that it marries very keenly and properly with our hardware and our gateway and integrates so that messaging through the system is effective. Some of the delays that we have had are about getting that right so the system can be robust enough to go live for industry. It is at that end that we are putting some additional effort at the moment.

Senator MARK BISHOP—It is the implementation and the industry integration connect phase that is the principal force of delay, isn't it?

Ms Peachey—You have to get it right, and we are spending a bit more time doing that. But it is not the application development itself. It has been well on track.

Senator MARK BISHOP—It is the other end?

Ms Peachey—Yes.

Senator MARK BISHOP—So you can confirm that a significant proportion of the problems are caused by the fact that the ICS managed by Computer Associates does not yet integrate properly with the cargo connect facility operated by IBM?

Ms Peachey—I do not think it is quite as simple as that. There is lots of integration that does not relate just to the application itself. It is about the environment, the hardware and all the servers that sit around it. I am not an IT specialist, I am sorry. If I describe it in more lay terms, getting all of the parts of the applications and gateways working properly is where we are putting more effort at the moment.

Senator MARK BISHOP—That is the part that will cause the time delays?

Ms Peachey—It might do, yes. We have learnt a lot from the exports industry test phase that we are going through at the moment in terms of the way to approach integration. We are taking the lessons from that and applying them to the imports phase, but at the same time we are considering any contingency that might arise in terms of getting that integration right.

Senator MARK BISHOP—Correct me if I am wrong, but my understanding is that the time when implementation should be real, operational and functional is going to blow out by two years from the original design time; is that correct?

Ms Peachey—No.

Mr Woodward—The original intention was 1 July 2003, so it would be one year and then potentially there is the new legislation we have. The current legislation allows us to complete by 21 July 2004. What has been raised I think informally is the possibility that there might be problems in the area that Ms Peachey has outlined and in one additional area, which is the design of software to enable the community out there to actually connect with our gateway. It is an area where we have been under intense pressure from the industry basically saying, ‘If we cannot connect with your systems and the systems are not going to work, please give us as much time as you can to develop the software and to test it.’ That is taking into account those pressures from industry. I stress that at a meeting with seven or eight industry representatives which I chaired I went around to the lot of them and they all said it was better to give us more time. That is what the industry view is. And, against the possibility that we might need it, we have raised with the government the possibility of an extension.

Senator MARK BISHOP—A further extension of another 12 months?

Mr Woodward—A further extension, yes.

Senator MARK BISHOP—If the government should accept your recommendation, the time blow-out will be two years because it will go out to July 2005?

Mr Woodward—Can I stress that 12 months is a maximum. If we do need extra time—and we are still shooting for July; that is what our aim is—we believe that it would be prudent to have that contingency. We are certainly not working on the basis that in practice you would need 12 months.

Senator MARK BISHOP—All I know, Mr Woodward, was that it was suggested to my office that the government was giving consideration to extending the current time limit of July 2004 to July 2005.

Mr Woodward—Prudent to the point I am making is ‘for a period up to 12 months’.

Senator Ellison—It is not the government’s aim to have an extension of 12 months. It is just a cautionary measure. We do not envisage the 12 months at all.

Senator MARK BISHOP—Are there also problems between ICS and those clients testing the interface with ICS?

Ms Peachey—There have been some issues. We have about 50 software developers registered who are testing the exports phase at the moment. There have been certainly some incidents that have been reported on some of the messaging. I can give you an update on that.

Senator MARK BISHOP—Would you mind giving me a brief overview of the major problems that have been identified in testing the interface with ICS?

Ms Peachey—We have had about 29,000 messages sent to us since we started the exports testing on 18 August. The early part of that was quite slow and very frustrating for software developers. Since then we have addressed a number of the incidents. About 82 incidents have been reported, but that is across 50 software developers. Twenty-eight of those are Customs’ own incidents that we have raised, because we continue to test as well. There are about 54 from industry. Of those, about half of them have been resolved to date.

Senator MARK BISHOP—So there are still somewhere in the order of 27 to be resolved?

Ms Peachey—There are, but not all of them are critical. We have a rating factor. More of them fit into that ‘moderate’ range and are being dealt with. You asked about the general issues around it. Largely they have involved some hardware issues for us—getting everything sitting together across the gateway and the applications that sit around the integrated product. Some of them have been around EDI messaging—electronic data interchange. We have done a lot of work on our software developer’s guide, which we provide to industry, and some of the problems lie where there has been an interpretation of that guide in a way that is not as we have interpreted it. So we have worked with industry. Software developers have been particularly forthcoming and have given us a great deal of feedback about how the guide could be more precise. We have taken those instances and recommendations on board and we are starting to get some better feedback and better support. The message returns are still a little slow, and they largely relate to getting the environment right. So they are most of the instances. That is a very broad description, as you requested.

Senator MARK BISHOP—Did you say there were 50 software developers currently working to build systems to directly link to ICS?

Ms Peachey—I said 50, but it might be 51. In broad figures, it is about 50.

Senator MARK BISHOP—Are Tradegate also changing their system to interface on behalf of their smaller clients?

Ms Peachey—They are not a software developer as such. They are a hub, a bureau that provides messages to Customs. They are not rolling out the software to connect to the ICS like the other 50. They are software developers that provide this sort of functionality to the trading community.

Senator MARK BISHOP—How many clients are currently testing the ICS as currently developed?

Ms Peachey—Fifty or 51. As I said, it is around that 50 mark.

Senator MARK BISHOP—You said 82 incidents reported across the system.

Ms Peachey—Twenty-eight of which were Customs own incidents.

Senator MARK BISHOP—Is 82 the number of faults that have been logged since you went into test?

Ms Peachey—I believe so. I will need to correct that if I am wrong, but that is my understanding.

Senator MARK BISHOP—Has a dossier of user complaints been sent to Customs?

Ms Peachey—Yes.

Senator MARK BISHOP—Is there any estimate of the cost being incurred by industry in developing their interface with ICS?

Ms Peachey—I do not have that.

Mr Woodward—I am not aware of any listing of costings to the industry.

Senator MARK BISHOP—Has the warranty on the ICS, as developed by Computer Associates, expired as has been alleged?

Ms Peachey—As I described to you earlier, there are three distinct phases of the ICS. The warranty on the first phase has expired, and the warranty on the exports phase has expired and we have moved into a post warranty support arrangement with CA.

Senator MARK BISHOP—What was the first one you said had expired?

Ms Peachey—The warranty around each release is a 90-day warranty after we accept the product. Obviously we delivered the product in March, so that warranty has expired, and in May, so that warranty has just recently expired. We have moved into a post-warranty support arrangement. We have just entered warranty on the first part of the imports phase but not on the second yet, because it has not been delivered.

Senator MARK BISHOP—What do you call it: post-warranty support?

Ms Peachey—It is just support and maintenance for a product that has gone through its warranty period.

Senator MARK BISHOP—When the product has been designed, tested, received, approved and is operational, this is just the maintenance work—

Ms Peachey—It is to make sure that the incidents, for instance, that are arising out of test and other things that have passed this period are being dealt with and that we have resources to deal with those.

Senator MARK BISHOP—What was the original cost estimate for the ICS project and what are the current, best guess costings?

Ms Peachey—With Computer Associates?

Senator MARK BISHOP—Yes.

Ms Peachey—The original fixed price contract was for \$29 million. There has been one contract variation for \$15.4 million. That was gazetted earlier this year. It coincided with the first of the changes of dates for the delivery of the ICS and it related very much to the imports phase of the ICS delivery, which in fact was far more complex than either Customs or the consortium could have appreciated at the time of tender.

Senator MARK BISHOP—What was the original total cost of the ICS project?

Ms Peachey—The total cost?

Senator MARK BISHOP—Yes. You just gave me figures then for the costings for Computer Associates. Are there other costs?

Ms Peachey—We have had some change requests come through where we have changed some scope, which is in contract variations—

Senator MARK BISHOP—I just want the figures. You advised me that the original cost plus agreed variations pursuant to contract was less than \$50 million. I am advised the cost is now close to or has exceeded \$100 million. Is that right?

Ms Peachey—That is total CMR cost of the cargo management re-engineering project. That has had three distinct elements. Part of it was the modelling for what we were doing for the whole re-engineering. The second part of it was the trade modernisation legislation. There was also a business process re-engineering, which has changed the business processes in Customs and the structure of Customs more recently, together with the IT development. So it had various elements associated with it.

Senator MARK BISHOP—Can you give me the total original cost which aggregates all of the elements?

Ms Peachey—I can. Can I take that on notice, because I do not know whether I have the breakdown of those elements at the moment.

Mr Woodward—The figure over the last two years from 2001-02 to now and the projected figures for the remainder of this financial year for the integrated cargo system, the ICS, and the connect facility, which Ms Peachey has mentioned and which is the reference to the IBM that you have in your notes, will total \$145 million by the end of this financial year.

Senator MARK BISHOP—Okay, that is good. I have that now. If we go back to when the project was first developed, the costings were given to government and they did the appropriations, what was the figure then?

Mr Woodward—It depends on where you started out. This project started in 1996 as a cargo management strategy which was just a germ in the minds of a number of people. The first serious phase where some guesswork was done in relation to costing was at the time when we outsourced our computing. We went from having in-house provision of services supplemented by contractors to having EDS as our principal contractor.

As I mentioned at the Public Accounts Committee hearing a few weeks ago, a decision was taken by all three of the leading contenders that we need to fundamentally re-engineer the system. At that stage, it was nothing better than a finger in the wind. To do some basic

systems recasting, the figures that we had initially were in the order of \$25 million to \$30 million. That did not take into account the connection arrangements that we have been talking about, and it certainly did not take into account the enormous complexities of the system design, which became apparent over a period of years.

Senator MARK BISHOP—I understand that. So the original figure was \$25 million and then you had all the connection problems that we have been discussing over the last half-hour, and the complexity has then blown out the scale and the scope.

Mr Woodward—The scale, the way in which it was delivered and the separating out of the components of a connection facility capable of dealing with 55 million EDI messages a year, or 150,000 messages a day.

Senator MARK BISHOP—I do have an appreciation of the complexity of the system. I would like to avoid that discussion because of the time limits. We know that the cost blow-out is now up to \$145 million. Does that come from \$50 million or \$75 million or \$100 million, or what?

Mr Woodward—To the end of the last financial year, we have spent about \$88 million. So the difference between \$88 million and \$145 million is what we will be spending on the development of the system and the CCF this year.

Senator MARK BISHOP—So you will be spending another \$60 million this year.

Mr Woodward—Roughly.

Senator MARK BISHOP—If you and I had been having this discussion at this time last year, that would not have been anticipated.

Mr Woodward—No, I think most of that would have been clear. The uncertainty, to my mind—and I am sure I can be corrected—is the connection facility. Those figures have been rather more difficult to grapple with because there was nothing comparable.

Senator MARK BISHOP—Mr Woodward, that is what I am trying to get a handle on: what is the blow-out in costs due to unanticipated events, the complexity of the work and the scale of the work that were not in the original planning when, for example, Senator Ellison—I presume it was Senator Ellison—signed off on this project to take the submissions to cabinet?

Mr Woodward—There have been a number of ministers involved, going back to Mr Prosser.

Senator MARK BISHOP—Whoever the minister was.

Mr Woodward—As I say, the project has evolved over that period.

Senator MARK BISHOP—If I said to you that the blow-out in costs over the last two years is in the order of \$60 million, is that correct? Or is that just way out of the ballpark?

Mr Woodward—No, I do not think that it is. You are talking about where we were at this time last year, and I am hoping that I have the sequence of events clear in my mind. We had the original \$29.7 million, roughly, for Computer Associates. Then, earlier this year, we finally signed off on an additional \$15.4 million because of the increase in size and complexity of particularly the imports component. The major difference that has emerged

over the last 12 months is an increasing realisation on our part of the complexity of the connection facility interface.

Senator MARK BISHOP—Let us ask the question in a different way. I think you said that the original cost of the Computer Associates contract had increased by \$15.4 million, from \$29 million. That takes it up to roughly \$44 million from \$29 million. What are the figures for the IBM contract?

Mr Woodward—I do not think we can give you the original envisaged figure. We can tell you that in 2002-03 the actual expenditure figure was \$26.3 million and we are expecting to spend about \$20 million this year. What I have not got is a comparison with a nominated figure for the actual—

Senator MARK BISHOP—What was the original contract figure with IBM?

Mr Woodward—The problem we have got in giving a simple answer to that is that there are a number of components. One is EDS has an involvement in the CCF as well as IBM so it is not just an IBM figure that we are talking about.

Senator MARK BISHOP—I will come to EDS and all the other partners in the consortium. What I want to know is the increase in costs from when the original contract was signed with each partner. That is what I am trying to get at and that is what you are deliberately not giving me the information on.

Mr Woodward—I am not deliberately—

Senator MARK BISHOP—Yes, you are. You have been dancing around the point for 15 minutes, and you have answered it in respect of Computer Associates only.

Senator Ellison—Madam Chair, perhaps I could make a suggestion that would help. The way the contract was set up was quite complex. It had different parties to it; it was not just simply contract A was then changed to contract B, because it would see many parties to it. Perhaps Customs could prepare a note for Senator Bishop which sets out the bargain price and who it was for and then the change in the contract, the increase in price and when that occurred. It could be a chart, if you like, of how the contract started and how it comes to be in this position, with the different prices or variations as it went along. That could then give Senator Bishop some idea. Perhaps we are two ships passing in the night with the description of what is a complicated contractual arrangement.

Senator MARK BISHOP—Could that suggestion of the minister be accommodated in a relatively short period of time?

Mr Woodward—Yes, I am sure we could do that.

Senator MARK BISHOP—That is fine.

Senator Ellison—We could go on to other matters and some officers could go away and prepare it. How does that sound?

Senator MARK BISHOP—That is fine with me.

CHAIR—Thank you for that suggestion, Minister.

Senator MARK BISHOP—Can it be confirmed that EDS originally had no role, but has since been brought in as a coordinator?

Mr Woodward—EDS had no role in what?

Senator MARK BISHOP—EDS originally had no role in the original consortium, but has now been brought in as a coordinator.

Mr Woodward—I would put it as the reverse of that. EDS had original responsibility for the development of the CCF and they still have a role, which I was starting to explain before. But we have moved down the track of having IBM equipment, an IBM front end and having IBM as the principal player in the development of that facility. So EDS is involved, IBM is a principal player and there are others involved in relation to security features. SecureNet is a key player. It is not a simple IBM only—

Senator MARK BISHOP—I take that point. Which firm is the lead contractor and responsible for the successful conclusion of the project? That might be a better way of asking the question.

Ms Peachey—In terms of the integrated cargo system, the ICS?

Senator MARK BISHOP—Yes.

Ms Peachey—Computer Associates is the leader contractor for the application development and there are other firms that are parties to that consortium. They are IOCOR and KAZ. EDS is not a party to that systems application development. They, as our IT outsourcer, provide the infrastructure base, all the hardware and equipment, to deliver it. So they are not part of the ICS consortium contract.

Senator MARK BISHOP—What formal processes exist to keep ICS heading in the right direction—that is, making sure all of the contractors comply with their obligations under the various contracts?

Ms Peachey—The contracts are managed very closely. I am talking about ICS because it is my responsibility. We have project governance arrangements. We have a steering committee of which the consortium is a member.

Senator MARK BISHOP—Who is the chair of that committee?

Ms Peachey—Our deputy chief executive officer. We have weekly meetings at various levels with the consortium. We have reports provided on progress. We sign off on all development and test arrangements. We have a project charter that is documented and linked to the contract. The governance arrangements are well defined through the project charter and the contract and there are templates all the way through in terms of managing and delivery. For instance, everything that is provided to us is a final document. There is either a three-day or a 10-day turnaround before we accept it. It is closely managed.

Senator MARK BISHOP—As far as ACS is concerned, it is one of the deputy CEOs who is the chairperson.

Ms Peachey—It is the chair of our steering committee, yes.

Senator MARK BISHOP—Which deputy is it?

Ms Peachey—Mr Drury.

Senator MARK BISHOP—Has there been any budget supplementation for CMR or is Customs continuing to absorb the cost internally?

Mr Woodward—That is an issue that is under consideration in the budget. In the past there has been no specific provision for funding.

Senator MARK BISHOP—So there has been no supplementation to date because any additional supplementation has been taken from the areas within ACS, has it not?

Mr Woodward—Customs has been able to manage it so far.

Senator MARK BISHOP—But that well is almost exhausted.

Mr Woodward—The issue is under consideration by the government.

Senator MARK BISHOP—Will that be a budget matter next year or will it be resolved prior to next May?

Mr Woodward—It is under consideration at the moment.

Senator MARK BISHOP—Perhaps I should ask the minister. Is that a decision for you, Senator Ellison, or does it have to go to cabinet first?

Senator Ellison—That is a decision that the government has taken. This and other matters are under consideration in a budgetary context. It all relates to the bottom line, money. We could spend all night discussing matters which go to the budget context. This and other matters are being considered and I cannot comment.

Senator MARK BISHOP—No, and I am not going to ask you any questions about the detail of it but I can ask you where it is at in the consideration process.

Senator Ellison—It is where everything is in the budget process at the moment. We have ERC coming up—that is not secret—and the time-honoured process of bids going back again to ERC and then the budget in May next year. That is the process.

Senator MARK BISHOP—That is a process. Is it possible that supplementation would be made prior to May of next year?

Senator Ellison—You are talking about the funding for CMR?

Senator MARK BISHOP—Yes.

Senator Ellison—That is a consideration in the context of the budget. I cannot take it any further than that.

Senator MARK BISHOP—Yes, you can.

Senator Ellison—How can I?

Senator MARK BISHOP—I will ask you a question. You have obviously received advice from your department that additional supplementation is required.

Senator Ellison—I am not prepared to say whether I have or not—we have already discussed this today in this committee. What I receive by way of advice is advice to government, and for both the previous government and this government that has not and will not be disclosed. It is a longstanding convention in these committees.

Senator MARK BISHOP—All right then. Are the figures spent on outlays on the CMR currently on track with the amounts that were appropriated in last year's budget? That is, a specific amount has been appropriated in previous budgets for CMR.

Mr Woodward—There was no specific financial provision at all in relation to CMR.

Senator MARK BISHOP—Where was the appropriation for CMR?

Mr Woodward—We receive a total appropriation. Some is earmarked in effect by legislation and others by government decision. What we have is the ability to undertake development exercises, including IT exercises, within the overall limits of the budget.

Senator MARK BISHOP—Were any borrowings made to fund the project?

Mr Woodward—There have been no borrowings from the Department of Finance and Administration or commercially.

Senator MARK BISHOP—Is any consideration being given to new cost recovery charges for the CMR?

Mr Woodward—The new trade modernisation legislation does have a costing regime included in it. There is no doubt, given that that regime was developed a few years ago, that it will need to be looked at again to see whether it remains appropriate. My suspicion is there will need to be some changes, but we will need to wait for the outcome of that review.

Senator MARK BISHOP—How many staff does ACS have on this project, including contractors? Can you take that on notice?

Mr Woodward—Yes.

Senator MARK BISHOP—Has the turnover of staff and contractors since the project began been industry norm or atypical?

Ms Peachey—I would say it has been probably less than normal. On the Customs side of things we have had next to no turnover—there are normal attrition rates, but we have had a long program of people dedicated to this project. On the consortium side, the principals that have been involved in delivering the project have been with us from day one. There is the odd turnover, of course, but this is a large project team. Senator, can I clarify one point that I made. I said that 51 registered software developers are testing with us, and that is right, but there are 75 that are actually registered with us. Of those, 51 are currently testing with us.

Senator MARK BISHOP—Could we turn now to the security breach at Mascot. I do not know whether this is a question for the department or the minister. When can I expect an answer to question 1991, which I put on notice on 10 September?

Senator Ellison—Which one was that? Can you refresh my memory?

Senator MARK BISHOP—That was the one relating to the entry at the Customs building in Sydney.

Senator Ellison—There was a whole series you asked in that lot.

Senator MARK BISHOP—It was a question in 36 parts.

Senator Ellison—The answer is being processed as we speak. I would have to check on where that is at.

Senator MARK BISHOP—Have you authorised it to leave your office, Minister?

Senator Ellison—No, I have not yet. We are still looking at it because of the range of questions. We are giving it close attention, I can assure you.

Senator MARK BISHOP—I thought you might be. When do you think I might receive an answer?

Senator Ellison—It is difficult to put a time on it. I can tell you we are looking at it now.

Senator MARK BISHOP—It is almost 30 days overdue.

Senator Ellison—A lot of questions do go beyond their 30-day limit, and we keep that in mind. I do not say that capriciously—we aim to do that—but it is a detailed question and we want to make sure that we get it right.

Senator MARK BISHOP—How long has your office had it, Minister?

Senator Ellison—I would have to check on that. I think we got it at the end of last week.

Senator MARK BISHOP—I do not want to cover the ground traversed by the Public Accounts Committee on 17 October; I just want to fill in some of the gaps, Mr Woodward. When will you know what data was stored on the servers?

Mr Woodward—We will know with certainty when the two inquiries which are under way have been completed. As we mentioned at the Public Accounts Committee hearings, there are two external inquiries under way: one by Mr Stevenson and Mr Allen and the second by DSD. When those reports are finalised—and, without my wanting to be definitive, they do in fact have a bearing on the timing of the provision of the answers to the questions that you asked the minister—we will have the answers to the questions.

Senator MARK BISHOP—When do you anticipate that you will have the responses from the formal inquiries? Is there a time line involved?

Mr Woodward—I think we are as interested as you are as to when the inquiries will be finalised. A significant part of it is the examination by DSD of copies of hard drives in the servers, which I understand is quite a complex operation. There is also a need to get hold of the copies of those servers and the additional complexity, of course, is that the third part of the external investigation is by the Federal Police. The Federal Police have accessed the servers and have them for their own prosecution action. The next phase in that is on 18 November. So I cannot give you a definitive answer.

Senator MARK BISHOP—Does that mean that, whilst the AFP have the servers and hence the hard drives as evidence in the prosecution, the hard drives are not being examined by the principals in the other two inquiries?

Mr Woodward—I cannot say categorically. I can say categorically that DSD had not started its work as at this morning. I can also say definitively that the case for the hearings which will take place on 18 November is still in the hands of the Federal Police. I cannot say any more.

Senator MARK BISHOP—So they have the hard drives?

Mr Woodward—They have the servers and my understanding is that they have the hard drives.

Senator MARK BISHOP—Could not a copy be taken of the hard drives and provided to—

Mr Woodward—That is what DSD is seeking and, as at this morning, the latest information I have is that they have not been provided, but I cannot say any more than that.

Senator MARK BISHOP—The decision to provide the hard drives for copying to DSD—is that a decision for the AFP or the ACS?

Mr Woodward—It is not for Customs.

Senator Ellison—You have here a situation where there is a criminal prosecution pending and the police and/or the DPP, if they are involved, have sole jurisdiction over the exhibits. It is difficult for me, as the minister, to interfere in a police investigation, because that is the first thing which would be levelled at me. I can take your question on notice, but approaches have been made, as I understand it, and the police run the investigation as they see fit. That involves how they deal with exhibits. That is something you need to take up not with me, not with Customs, but with the Australian Federal Police, because they are the people who are investigating this matter, as they should be, and conducting the prosecution.

Senator MARK BISHOP—Doesn't it strike you as odd that you have two inquiries pending, one by the Defence Signals Directorate, going to possible matters of security breaches; material that was stolen was in the possession of the AFP three days, I think, after the event; it is a relatively simple matter to copy a hard drive; and arrangements have not been made to do that? Doesn't that strike you as absurd?

Senator Ellison—If I were to start telling the Australian Federal Police how to conduct their investigations—

Senator MARK BISHOP—But you are not telling them; you are asking them to make available a hard drive for copying.

Senator Ellison—And I dare say they will make that available when they see it is an appropriate time to do it.

Senator MARK BISHOP—When was the request made to do that?

Mr Woodward—The need for a copy of the hard drive has been known to the police investigators for some weeks, but it is between those two agencies. We are the recipients at the end of the reports.

Senator Ellison—There is also the issue of the January theft, which was mentioned in evidence to the committee the other day. I have asked for the terms of reference of inquiry to be broadened to include that. That is another factor which you need to bear in mind.

Senator MARK BISHOP—When you announced the investigations—I think two or three days after the break-in, from memory; it was very soon—you said in the Senate that, from memory, three separate inquiries had been instituted. No progress has been made on an examination of the content of the material on the hard drive on the servers that were stolen because it has remained in the possession of the AFP. In that correct?

Senator Ellison—That is as I understand it.

Senator MARK BISHOP—A request was made some weeks ago for the hard drives to be made available to be copied. Have AFP not responded or declined?

Mr Woodward—I think you are putting words into my mouth. I am not involved in the negotiations between DSD and the AFP, and I think there is probably a degree of simplicity in how we have both expressed it that is not justified. There is always the possibility that once people got the servers they may have attempted to in some way either modify the servers to expand the capacity, which could affect the quality of the—

Senator MARK BISHOP—We do not know that, because DSD have not started their investigation as the hard drives have not been made available.

Mr Woodward—DSD have done a lot of work. What I have said is—

Senator MARK BISHOP—DSD have done—and correct me if I am wrong—no examination of the hard drives.

Senator Ellison—But they have done a lot of other work which has enabled them to come to some conclusions, as I understand it. In relation to the other inquiry there has been an interim report on the matter, which I have taken to government.

Senator MARK BISHOP—All right.

Senator Ellison—So there has been some progress. It is not as if nothing has happened. We have satisfied ourselves of certain matters. In view of the January matter, it has been widened to include that. Also, we have had an interim report; the final report is not yet to hand. I want the DSD report to include what is on the hard drive, of course. DSD, as I understand it, have made other investigations which have gone part of the way to a final report but I understand what is outstanding, and Customs will correct me if I am wrong, is what is on the hard drive. We have come down to one last matter which needs to be resolved, and that is what is being looked at now.

Senator MARK BISHOP—That is the question now before us and that was the question at the beginning. What was on the hard drive on the two servers that were stolen? Does ACS know what was on the hard drive?

Senator Ellison—That was not the sole question at the outset. The sole question was—

Senator MARK BISHOP—But it was a question, and it is the question I am asking now.

Senator Ellison—It was one of many questions.

Senator MARK BISHOP—It is the question I am asking now.

Senator Ellison—Yes, but there were other questions, such as had the—

Senator MARK BISHOP—Can we answer the question I am asking? The question I am asking is: does ACS know now what was on the hard drive?

Senator Ellison—We have answered that question. They are seeking to ascertain that.

Senator MARK BISHOP—So is the answer to that no?

Senator Ellison—They are seeking to ascertain that, which means no.

Senator MARK BISHOP—Does the department know the full content of the material on the hard drives on the servers that were stolen?

Senator Ellison—No, because the DSD are seeking to ascertain that.

Senator MARK BISHOP—So the answer is no, the department does not know. Two, DSD are seeking to obtain that information. Three, the request has gone into the AFP to copy it. Four, AFP has not yet responded.

Senator Ellison—As to the form of the response, that is something that perhaps Mr Woodward could take on notice and get back to you.

Senator MARK BISHOP—That is okay. Mr Woodward has answered the question to the best of his ability at the moment. If there is further information by way of notice, we will take that.

Senator MARK BISHOP—Given that the intruders were on the premises for two hours, according to the press, why did it take so long to unplug the two servers?

Mr Woodward—We do have some information on that. I just want to be fairly careful that we do not say anything that could in any way prejudice the case that the DPP is running in the courts.

Senator Ellison—I think that is a question you have to ask the AFP. The question as to—

Senator MARK BISHOP—No—

CHAIR—Senator Bishop, would you mind letting the minister finish what he was saying.

Senator Ellison—The fact is that the question you asked goes directly to the manner of theft. That is a matter which is the subject of a prosecution. You would have to ask the Australian Federal Police this, but there may be an allegation that these people may or may not have knowledge—

Senator MARK BISHOP—Knowledge?

Senator Ellison—Yes, knowledge. It speaks for itself.

Senator MARK BISHOP—Knowledge of what?

Senator Ellison—They may or may not have had knowledge of computers, knowledge of how the systems worked, inside knowledge—a whole range things. What I am doing here is not prejudicing the prosecution—and nor should you—because the fact remains that the manner of theft and the degree of expertise could all form part of the prosecution's case. If I were to venture an answer to you now and give you some information on that, it could well stymie a prosecution. It goes to the very facts of the prosecution. For those reasons, it would be irresponsible of me to answer that question.

Senator MARK BISHOP—The question as to why it took them so long to unplug two servers?

Senator Ellison—It goes to how adept they were. You work that out for yourself in a prosecution. I am staying away from the particulars of this and talking in a generic sense for obvious reasons, because I have done many a case myself where the prosecution has alleged

my client was an expert thief. Hypothetically speaking, the defence might be that you are not an expert thief, and that goes to the time it takes to remove something.

Senator MARK BISHOP—I am not making any allegations as to whether they were expert or inexperienced.

Senator Ellison—The question you are talking about—the time it took—goes right to the expertise or otherwise of the facts that the matter.

Senator MARK BISHOP—Did the intruders undertake any other activity whilst on the premises apart from stealing two new PCs?

Mr Woodward—There was one word that I used in the answer we gave that was not correct, and we are in the process of correcting it now if it has not already gone. There were two servers, two desktop computers and I used the term ‘battery charger’. The word should have been ‘battery pack’ that was stolen.

Senator MARK BISHOP—But, apart from stealing the particular objects that have since been identified, did they engage in any other activity whilst on the premises?

Mr Woodward—Based on all the information that we have at the moment and based on the contacts we have obviously made with those agencies involved in the investigation process, there is no evidence that I am aware of at this stage that would suggest that any national security or operational information was in fact prejudiced.

Senator MARK BISHOP—Given that the consultancies have not been concluded, you would not have any other figures on the costings to date?

Mr Woodward—Costings of what?

Senator MARK BISHOP—Costings of the inquiries.

Mr Woodward—Neither has been completed. I am not actually sure that DSD will charge us, but they are exercising their statutory responsibility so they may well charge us, in which case we will pay what they bill us for. The other inquiry, the Stevenson Allen inquiry, is not yet complete.

Senator MARK BISHOP—Have you received any interim charges to date?

Mr Woodward—The bill that we have received so far is about \$40,000 to \$50,000, I understand.

Senator MARK BISHOP—And the anticipated final cost?

Mr Woodward—I am not anticipating a huge increase over that figure. I think that is in the ballpark.

Senator MARK BISHOP—Has the contract with EDS been reviewed for adequacy on security?

Mr Woodward—The contract has not been reviewed in relation to adequacy on security. That does not mean to say that we have not had exchanges orally and in writing with EDS on issues of security.

Senator MARK BISHOP—In the department’s view, were they in breach of the security undertakings or arrangements they have with the department?

Mr Woodward—I will get others to speak. On some of the fundamental issues, such as speed of reaction on the day, they did in fact react quickly, which we subsequently established. There were some other aspects of their response which have concerned me. One principal one came out in the course of the Public Accounts Committee inquiry, and that was differences of advice that we received as to what was actually stolen, and there are some other aspects which have been the subject of further exchanges between us. Again, it came out of the Public Accounts Committee inquiry that control over assets was quite an important part of that. If you do not know what the assets are, it is hard to say what is there at any particular point and what may have gone.

Senator MARK BISHOP—Did the contract with EDS provide for imposition of penalties for physical security breaches?

Mr Woodward—The ultimate sanction, which was mentioned at the Public Accounts Committee, is termination of the contract. There are other less formal mechanisms that are open to us. I happen to think that what we have done so far on this is the appropriate one, which is to make our concerns in some areas known to local management. Again, as I mentioned to the PAC, I have had several discussions with the Managing Director of EDS about it to reinforce the seriousness, in our view, of aspects of this matter.

Senator MARK BISHOP—When it first became public that the servers had been stolen, the minister or the department put out words to the effect that the only material on the servers was emails. Do you recall that?

Mr Woodward—I recall comments that have been made. The point that I make on that is the point that I made to you a few minutes ago. Firstly, definitive information on that must await the receipt of the two reports, which we do not yet have. Secondly, based on the information that we have so far from discussions with Stevenson Allen and DSD, there is no reason for me to believe that in fact any national security or operational information has been prejudiced by the theft of the servers. That is as far as I can go at this stage, and I will not be able to go any further until the final reports have been received by the minister and considered by his colleagues.

Senator MARK BISHOP—Can you advise whether there was any database information on the servers that were stolen?

Mr Woodward—Again, I really want to wait until I see the outcome of the report. A point of some embarrassment to me is that I have had to correct several pieces of advice that I have given to the minister, including what was actually stolen. He has been embarrassed by it, and I am embarrassed that I have not given him correct advice. Frankly, I would rather wait until we get those reports. Then, in the light of cabinet ministerial consideration, I am sure there will be some public announcement.

Senator MARK BISHOP—Do the operators do a backup of the servers?

Mr Woodward—The servers have a backup capability.

Senator MARK BISHOP—How often is that given effect to—daily, weekly, monthly?

Mr Woodward—I do not know.

Mr Harrison—I believe it is nightly.

Senator MARK BISHOP—If, for example, the servers were stolen on the Tuesday, you would have the backup tapes for the Monday?

Mr Harrison—Access to the backup tapes is available to DSD, but they still cannot be sure what is on the hard drives.

Senator MARK BISHOP—Why is that?

Mr Harrison—Because there is a period of time from the backup to the theft.

Senator MARK BISHOP—How long was that?

Mr Harrison—I do not know the exact time of the backup of the night before, but we believe the theft occurred between 4 p.m. and 6 p.m. the following day.

Senator MARK BISHOP—When do you normally back up?

Mr Harrison—I do not know the exact time. I believe it is after midnight, but I would need to check.

Senator MARK BISHOP—If the backup was done at 1 a.m. and the material was stolen at 6 p.m. the following day, that is a period of 19 hours. So you have up-to-date information minus 19 hours of what was on the servers, don't you?

Mr Harrison—That information has been made available to DSD.

Senator MARK BISHOP—And ACS knows it as well, don't they?

Mr Harrison—Pardon?

Senator MARK BISHOP—You know, 19 hours short of the theft, exactly what information was on the servers because the tapes were backed up the night before.

Mr Woodward—There are backup tapes. The backup tapes are available to DSD. What we do not know is the comparison of the backup tapes with what is on the servers. We will not have information on that until the report is provided by DSD.

Senator MARK BISHOP—That is correct, but you know to the nth degree of accuracy everything that was on the servers 19 hours prior to their theft, because you back them up.

Senator Ellison—Can I just correct you there. It was between 4 p.m. and 6 p.m., and there was a backup at midnight. We are not sure of that. That is 16 to 18 hours.

Senator MARK BISHOP—I said 19 hours.

Senator Ellison—Let us just be careful about being so definitive about the time of use it had.

Senator MARK BISHOP—The officer advised that it is backed up every day, so whether it is 19 hours or 24 hours—

Senator Ellison—We understand what you are saying, but the fact is that, out of an abundance of caution, the officials are not willing to give a definitive answer because there is still that period of time that has not been assessed yet.

Senator MARK BISHOP—I understand. My questions now do not relate to the material on the servers that were stolen. That is a prosecution matter, and it is before the courts. Did

the material that was on the tapes—backed up the previous time when the tapes were backed up—contain database information?

Mr Woodward—There is information on the backup tapes. Because of the point I have made about progressive information going to the minister, we have said we need to await the final report from DSD, to put that report to ministers and—

Senator MARK BISHOP—I am not talking about anything that occurred after the last time that the tapes were backed up. That is private and confidential, it is the subject of an inquiry and it is advice going to the minister. I am not talking about that. I am talking about the material that was on the tapes at the time that they were last backed up. My question is: at that time was database information on the backup?

Mr Woodward—I think we are going to have to take this question on notice, given that EDS is the custodian, if that is the right word, of backup tapes. I get the import of your question.

Senator MARK BISHOP—With due respect, Mr Woodward, you know the answer to that question. You know what is backed up every night. Your officers know that and the people at the table know that. It is an established protocol.

Senator Ellison—It is a matter that we have to take on notice because, if you ask the officers at the table what was backed up on a given night, I am sure they would not be able to answer off the tops of their heads.

Senator MARK BISHOP—I did not ask them what was backed up.

Senator Ellison—What was on the tapes—

Senator MARK BISHOP—I asked them whether there was database information contained on the backup tapes.

Senator Ellison—And we will take that question on notice.

Senator MARK BISHOP—They have the answers now. You are refusing to answer.

Senator Ellison—No. We will take that on notice.

Senator MARK BISHOP—Mr Harrison is the chief information officer. He knows what was backed up, as do all the other officers at the table. I wonder if you have been told what was on there, Minister.

Senator Ellison—I can tell you right now, Madam Chair, that we are not going to be bullied into an answer that we might have to correct later on and then get criticised for. I am sorry, but we will take that question on notice and we will make sure that we give Senator Bishop the information he is seeking and we will ensure at the same time, of course, that it is correct.

CHAIR—Thank you, Minister.

Senator MARK BISHOP—Has the minister's office been advised as to the material that was on the backup tapes?

CHAIR—To whom are you directing that question, Senator Bishop?

Senator MARK BISHOP—To Mr Harrison.

Mr Woodward—Has the minister's office been?

Senator MARK BISHOP—Has the minister's office been advised as to the information contained on the backup tapes at the last time that the tapes were backed up prior to the servers being stolen?

Mr Woodward—There is information that relates to that issue in an interim report. We have said we are not proposing to pursue that any further until we get the final report, for the very reason that the minister has just said.

Senator MARK BISHOP—So the answer is yes, the minister's office has been advised.

Mr Woodward—That is not what I said. The comment I made is that there is interim information and we are waiting until we get a final report because we do not want to be accused by anyone of passing incorrect information to the minister and then to his colleagues.

Senator MARK BISHOP—You know exactly what is on those tapes, and you knew within 24 hours of it becoming public because the tapes are backed up on a daily basis.

Mr Woodward—No, that is not true.

Senator MARK BISHOP—You are covering up now, aren't you?

Mr Woodward—That is not true.

Senator MARK BISHOP—What is on those tapes that is so secret that you cannot tell us whether database information is contained on them?

CHAIR—Senator Bishop, the officers and the minister have undertaken to provide you with answers to that question on notice several times.

Senator MARK BISHOP—And we know, Chair, that the same set of questions is in writing and 30 days overdue in the minister's office, but they are refusing to answer the questions.

Senator Ellison—I only received it in the last week.

CHAIR—That is an imputation that you are drawing, Senator Bishop.

Senator MARK BISHOP—I am sorry, Chair?

CHAIR—I said that I think that is an imputation that you are drawing. You cannot tell me what I know and do not know.

Senator MARK BISHOP—The questions are on the public record.

Senator Ellison—For the record, just so that we do not let Senator Bishop mislead the committee or those who will read this report later, Senator Bishop put on notice a 30-part question that came into my office at the end of last week. It is not unusual, therefore, that that question has not yet been answered, due to its complexity and the time that it has been in my office, which is only a short time. I just want to spell out that there is absolutely nothing untoward in that at all. The second thing is that I have had an interim report and I am not going to disclose the contents of that interim report which I took to cabinet. I will make my decision as to what is divulged, or the government will, when we have the final report. But the contents of that interim report are cabinet-in-confidence. It is an interim report, and it would be dangerous in any event to draw conclusions from an interim report.

Senator MARK BISHOP—It would have been very, very useful if you had disclosed to the general public at any time prior to now that the minister's office and the department had full knowledge of the content of the backup material up to 20 hours prior to the servers being stolen. That has not been on the public record. You have not released it. You are refusing to release it now, and you offer no reason apart from the fact that at a later stage an interim report went to cabinet. Oh dear! What a web we weave!

Senator Ellison—I remind the committee that there is a pending criminal prosecution which forms the background of this, and I am not going to prejudice that in any way.

CHAIR—That is not lost on the majority of the committee, Minister.

Senator Ellison—That is the problem we always have when people scream for reviews and inquiries and there is an investigation. I remind the committee that an investigation is something quite different from an inquiry. Police make inquiries, but when you have a prosecution you have a formal investigation, which is something quite different.

Senator MARK BISHOP—It is not a prosecution involving the material that was backed up 24 hours prior to the theft of the servers. Anyway, you have declined to answer the questions, so we will not waste any more time at this stage. Perhaps we might turn now to the issue of the ship inspections. Mr Woodward, do you mind putting on the record what the current processes are for checking and reconciling crew lists, passports and visas once a ship docks?

Mr Woodward—There is a whole series of steps in the process. One key part of the process changed on 1 November when the Department of Immigration and Multicultural and Indigenous Affairs required the production of passports in addition to seafarers' documentation for any face to documentation type checks. The differences are whether or not a vessel is subject to first port boarding, first port boarding being boarding at the time the vessel first arrives in the country.

Senator MARK BISHOP—First port boarding would be the critical time, wouldn't it?

Mr Woodward—It is a critical time, yes.

Senator MARK BISHOP—Perhaps at this stage we might confine the discussion to current processes for checking and reconciling crew lists, passports and visas once a ship docks in terms of first port boarding.

Ms Grant—We actually have two categories of clearance: one set of procedures that relates to cargo commercial vessels and similar but slightly different procedures that relate to passenger cruise liners. Perhaps I will deal with the cargo vessels firstly and hand over to my colleague for the cruise liners secondly. We actually risk assess every vessel that is on its way to Australia in the normal course of Customs activities, and we target those vessels which we consider pose the highest risk to Australia. Prior to increasing our levels of first port boarding—and in the current environment we are putting more of a focus on security issues—if we considered the vessel was not a risk we would actually have the crew's names put through our computer systems checking for any alerts that might be in place, but we would not necessarily go and do a face to passport check of those particular crew members. We

relied on the master of the vessel faxing us those crew lists and basically vouching for the crew on board the vessel.

Senator MARK BISHOP—So you risk assess the vessels that are coming into Australian ports. Prior to arrival, the master of vessels forwards to you crew lists and the relevant details and you check them. If no alert comes up, what occurs then?

Ms Grant—We consider those crew members to be immigration cleared.

Senator MARK BISHOP—Let us say that I am the master of the ABC ship, which has not been identified as a risk alert or whatever the phrase is. You request the passport details, the numbers and like information, and I provide that information. As a matter of routine or exception, do your officers then board the ship to confirm that the information provided is correct? Do they examine or check it in any way?

Ms Grant—Our boarding of the vessels is based on our assessments of the risk that a vessel and its crew pose to Australia. By way of illustration, I could give you some statistics about our boarding. Back in the financial year 2001-02, we boarded 44 per cent of first port arrivals into Australia. In 2002-03, we boarded 68 per cent of first port arrivals. In the first quarter of this year, we peaked at 72 per cent of first port arrivals, in recognition of the fact that the environment we were operating in had changed considerably and some vessels could pose a greater risk now than they did in the past.

Senator MARK BISHOP—Are those figures—44 per cent in 2001-02, up to 72 per cent for the first quarter of this year—for boardings of risk assessed vessels or are they for all first port boardings?

Ms Grant—That is the percentage of all first port arrival vessels that we board now. In the past, totally risk assessed, we were doing 44 per cent. Now, in an effort to board more first port arrivals, we have increased that to 72 per cent.

Senator MARK BISHOP—That would be way over the risk assessment, wouldn't it?

Ms Grant—That is a risk assessment for perhaps the traditional narcotics or other prohibited imports coming into Australia. But now there is the greater threat posed potentially by crew members from a counter-terrorism point of view. When we board those vessels, we muster the crew and do a face to passport check. We check the vessel regulations regarding the crew holding their own passports. We look at the ship's articles, the ship's logs, previous international ports visited, vessel procedures regarding stowaways and various sorts of indicators we might find on that vessel that might indicate criminal activity to us. We also check documentation on behalf of AMSA—the ship's register, the ship's safety certificate, the ship's load line certificate, the international oil pollution prevention certificate, the marine navigation and protection of the sea levy receipt, and the marine oil pollution insurance certificate. We often do that where AMSA is not available to go on board. In some ports, of course, AMSA officers will go on board and do those checks themselves.

Senator MARK BISHOP—So the percentage of first port arrivals has gone up significantly in the last two years. You are doing significant numbers of boardings. You are doing an extensive amount of verification and checking of a range of information that the master contains. Do your officers then do any physical inspection? Do they go walkabout

through the ship and look into the stowage and those sorts of areas to examine contents and the like?

Ms Grant—Yes. On occasions we do a ship search. It is either what we might call a rummage, which is a fairly light search over cabins, storage areas and that sort of thing, or a complete ship search, where we search engine rooms down in the bowels of the vessel. That is definitely when we have risk assessed the vessel as to a particular threat under the legislation.

Senator MARK BISHOP—How many of those full ship searches would you do per annum?

Ms Grant—I do not have that number with me, but I could certainly take that on notice and get you that information.

Senator MARK BISHOP—What do you call the lighter examination?

Ms Grant—A ‘rummage’ is the traditional term.

Senator MARK BISHOP—Can you take on notice the number of rummages you do per annum and the trend lines.

Ms Grant—Certainly.

Senator MARK BISHOP—You do a head count or a line-up of a ship’s crew to check against documents?

Ms Grant—Yes, if we are doing a muster of all crew to do the face to passport check.

Senator MARK BISHOP—How often do you do a muster of all crew?

Ms Grant—Now we are doing that on 72 per cent of the first port arrival vessels.

Senator MARK BISHOP—When will the possession of passports become mandatory for all foreign crew?

Ms Grant—On 1 November this year—two days ago.

Senator MARK BISHOP—When you said earlier that you did a face to passport check, what did you do in cases where crew members did not have passports?

Ms Grant—They were able to present their seafarers identity in lieu of having a passport. It was not mandatory for crew to have a passport, as long as they had the seafarers identity and the master of the vessel vouched that they had them on their crew list.

Senator MARK BISHOP—I suspect a seafarers identity would have been relatively easy to obtain in various parts of the world.

Ms Grant—I am not sure of the issuing arrangements, but I know some of them were very aged.

Senator MARK BISHOP—I bet they were. All foreign crew members of ships porting in Australia from 1 November have to have passports. Is that correct?

Ms Grant—That is correct; that is part of the new IMO requirements.

Senator MARK BISHOP—What checks are made of crew movements once in port? Are they checked on and off the ship or at the port gate?

Ms Grant—Again, I am addressing my remarks to the commercial cargo vessels. We record the movements of the crew into a system we have called ‘intercept’. When they arrive in Australia on a cargo vessel, we record their movement in. If they depart on a cargo vessel, their movement is also recorded in the intercept system. If they depart Australia on an airliner, they will then be in the relevant system for air movements.

Senator MARK BISHOP—If I am a seaman on a foreign ship porting in Australia, I have my passport and I have leave for two days—for whatever reason—can I leave the ship on any number of occasions and return to the ship without any record being made or kept, once I have been approved?

Ms Grant—Once you have been immigration cleared on the original arrival of that vessel, you are virtually cleared into Australia, so you can come and go from the vessel while it is here. It is when the crew member leaves Australia that that crew member is immigration cleared out of Australia.

Senator MARK BISHOP—I understand. Is a copy of the guidelines for inspection available? I presume there is a manual or a set of instructions that Customs officers adhere to when they board a ship and carry out their duties.

Ms Grant—We run training courses in ship search, which are quite well documented. Officers do have guides from that. I do not have any with me here tonight.

Mr Woodward—Can we have a look at that? We do not want to hand out the child’s guide to how you can beat Customs in getting into Australia. Can we just make sure there are no sensitivities?

Senator MARK BISHOP—That is fine. What I am looking for is a copy of the guidelines that direct the officer as to how he should carry out his duties, subject to the caveat you have just entered, Mr Woodward.

Ms Grant—We did provide to the committee—at our last session, I think—a non-confidential version of the boarding guide for small craft. We have a public version and then the full officer’s version. I could make that guide available again.

Senator MARK BISHOP—But we were not talking about small vessels, were we?

Ms Grant—The boarding procedures are very similar, so I can supplement that with some more in-depth—

Mr Woodward—We understand what you are looking for, Senator.

Senator MARK BISHOP—Either or both. Is it known what new inspection procedures have been introduced by US Customs on this same issue in the interests of national security—that is, are all crew now required to have passports and visas if they want to go ashore?

Mr Woodward—We are not sure of the answer to that. Can we take that on notice?

Senator MARK BISHOP—All right. Take this on notice, Ms Grant, for each of the last two years: how many detections have there been by port for illegals, narcotics, explosives and firearms; how many prosecutions have there been by port of arrival; how many infringements have been reported by Customs under the new border security legislation; and how many illegal firearms has Customs seized during the last reporting period?

Mr Woodward—Illegal firearms generally or illegal firearms from vessels?

Senator MARK BISHOP—Illegal firearms from vessels during ship inspections. Are Customs officers trained to use firearms or to arrest armed offenders? Is that part of their duties?

Mr Woodward—Those who are likely to be in a position of arresting people are trained in arrest procedures. So far as firearms are concerned, we have a small number of people, particularly in our northern parts of Australia, who are authorised to carry firearms for defensive purposes—for crocodiles et cetera. The only category trained and authorised to use firearms are our marine crew, who are trained to Federal Police standards and by Federal Police officers.

Senator MARK BISHOP—I turn now to container inspections. In which ports do we have X-ray machines located at the moment—Sydney, Melbourne and Brisbane?

Mr Woodward—Are you talking about the large machines?

Senator MARK BISHOP—Yes.

Mr Woodward—Sydney, Melbourne and Brisbane with Fremantle opening in a few weeks time.

Senator MARK BISHOP—What about Adelaide?

Mr Woodward—It will not have anything of that magnitude. Adelaide will have a very large and expensive what we call pallet X-ray machine.

Senator MARK BISHOP—What about Tasmania?

Mr Woodward—Tasmania will not. There are X-rays in Hobart but they are not anything like that. There are simply not enough containers going through there.

Senator MARK BISHOP—Does Customs own or lease the current X-ray machines?

Mr Woodward—If you are talking about the actual X-ray equipment as distinct from the buildings in which they are housed and the land on which they are built, the equipment I recollect is owned by Customs. There are different arrangements that apply to the buildings in which they are located and the land on which they are built. I think they are 10-year leases—

Senator MARK BISHOP—You gave me a tour of the site in Sydney.

Mr Woodward—The actual gear that moves up and down that you saw is owned by Australian Customs. If my recollection is right, there are different arrangements applying to the buildings in which they are located and the land on which they are built. There are lease arrangements for them; we actually own the gear.

Senator MARK BISHOP—I am talking about the equipment itself, the X-ray machines themselves.

Mr Woodward—We own the equipment.

Senator MARK BISHOP—Is there a maintenance contract, with whom is it with and what is its annual cost?

Mr Woodward—There is a maintenance arrangement. Chinney, I think, is the firm. There may have been a further linkage between Chinney, which was Hong Kong based, and the Chinese manufacturer to provide a new consortium for maintenance in Australia. As regards the actual cost, I do not think we have that figure here. Can we take that on notice?

Senator MARK BISHOP—Yes, please take on notice the annual cost of each of the maintenance contracts for each of the machines. And the contractor, you say, is Chinney?

Mr Woodward—My understanding is that Chinney has now linked up with NUCTECH, the builder, and that they have some kind of consortium arrangement, but we will explain that in writing also.

Senator MARK BISHOP—Whilst you are doing that, please advise how many contractors' staff support the system. In the May hearings, at page 163 of the transcript, you provided some details on costings. Is there any update on those figures? Mr Woodward said:

The operating cost that we estimated for each of Melbourne and Sydney was \$2.7 million in staff, \$2.3 million in depreciation and maintenance and \$2 million in property. In addition, there is the purchase of equipment of about \$5.5 million.

Mr Woodward—My understanding is that that remains the same. If there is to be any correction, we will make that, but that is my understanding.

Senator MARK BISHOP—What is the cost of the contract with Patricks to move containers through the X-ray facility?

Mr Woodward—We have the aggregate figure for the total logistics expenditure but I do not think we have the actual figure for Patricks. Can we take that on notice?

Senator MARK BISHOP—Okay. Have changes been made recently to the time period for X-raying beyond which storage charges are levied?

Mr Woodward—There have not been any changes, given that there are commercial arrangements between the stevedores and those who actually move the containers. We are certainly aware of complaints on the part of some customs brokers that they have incurred additional expenditure because the three-day free storage period has been exceeded. We did some work on a sample of about 3,000 containers, and in the three ports the average percentage where three days had been exceeded was 1.45 per cent. In other words, the number of days when additional costs have been incurred as a result of Customs actions is about 1.45 per cent, which in the total scheme of things is not a great number.

Senator MARK BISHOP—With respect to the statutory limit imposed on recovery of costs for the X-ray—and you had a discussion with Senator Ludwig, which appears at page 164 of the May estimates transcript—is that still short of the Customs cost by \$7.8 million?

Mr Woodward—That is true, but can I also say that joint work is being done between Customs and the Department of Finance and Administration in relation to logistics expenditure, and that will find its way back into the budgetary processes.

Senator MARK BISHOP—Either to supplement the \$7.8 million back to Customs or to amend the legislation to allow greater recovery?

Mr Woodward—They are two obvious options. After that joint work is done the ministers will consider that.

Senator MARK BISHOP—Is there an intention to move from five to 10 per cent of containers inspected?

Mr Woodward—No, there is no current intention to do that. There is the equipment we have, subject to the logistics arrangements—in other words, there are practical limits in terms of getting boxes out of the stevedoring premises, into customs, on the roads and back again. The equipment is capable of handling more than five per cent, but we want to bed down the existing arrangements and build on the successes that we have already had before we go back to ministers to ask them to reconsider that.

Senator MARK BISHOP—So there is no intention at the moment to—

Mr Woodward—There is no intention on the part of Customs to go back to government and say, ‘We think you should expand the current intention of five per cent.’

Senator MARK BISHOP—How many containers are examined at each port per day, on average?

Mr Woodward—The intention is 100 a day in Sydney and Melbourne, 80 in Brisbane and 60 in Fremantle—something of that order—80,000 a year between those four ports when they are all working properly.

Senator MARK BISHOP—Are you hitting those figures of 100 a day in Sydney and Melbourne at the moment?

Mr Woodward—It is cyclical. There are periods where we have not hit that for a host of reasons.

Senator MARK BISHOP—On average then?

Mr Woodward—There have been some weeks where we have exceeded the figure of 500 a week; there have been others where it has been closer to about 80, I think.

Ms Grant—We would consistently exceed a minimum of 450—on average somewhere between 450 to just over 500, depending on local circumstances.

Senator Ellison—There is some evidence that Sydney and Brisbane X-ray facilities are experiencing a slow turnaround due to MUA stop-work meetings and go-slow campaigns. That is another thing that has to be factored in.

Senator MARK BISHOP—What about in Melbourne; is there any evidence of MUA delaying activities in Melbourne?

Ms Grant—The week of 24 October was not the best week in Melbourne because they had had a range of circumstances, including some disruption outside their control, in the waterfront environment.

Senator MARK BISHOP—Who are ‘they’?

Ms Grant—Outside of Customs control.

Senator MARK BISHOP—I see. But, on average, in the four ports you are examining an aggregate of 450 containers per week.

Ms Grant—No. In Sydney and Melbourne, each port is meant to reach a 500 target and in both Sydney and Melbourne they are reaching between 450 to just over 500.

Mr Woodward—The percentage we are talking about is the number that are X-rayed in those facilities. We actually risk assess every consignment and out of that risk assessment process we identify 100 per day in Sydney and Melbourne, for example, that we regard as the highest risk.

Senator MARK BISHOP—I understand that. When you have the four ports operating effectively, you will look to inspect 500 containers per day in each port?

Mr Woodward—It will be 80,000 a year by the time the fourth one is fully operational and it will take a while to get it to that.

Senator MARK BISHOP—That is 1,500 per week, give or take a few.

Mr Woodward—It is 100 in Sydney and Melbourne, 80 in Brisbane and 60 Fremantle.

Ms Grant—We are saying that 100 per day in Sydney is 500 per week and it is the same in Melbourne, then the lower numbers are in Brisbane and Fremantle, reflecting the lower volume coming through.

Senator MARK BISHOP—When you are fully operational in the four ports and you crack the 8,000, you will be inspecting 1,500 per week, give or take a few?

Mr Woodward—That or a bit more—1,600 I think.

Senator MARK BISHOP—When do you think the number will hit 80,000?

Mr Woodward—I would say it will be some months after Fremantle comes on stream because you just cannot start a process—

Senator MARK BISHOP—March next year?

Mr Woodward—I would think by March next year we should be hitting 80,000, yes.

Senator MARK BISHOP—That is fair enough. With respect to that 80,000, how many containers are handled per year?

Mr Woodward—How many containers do we get each year?

Senator MARK BISHOP—Into the four ports.

Mr Woodward—The figure is about 1½ million, from memory.

Senator MARK BISHOP—You risk assess—

Mr Woodward—That is totally into Australia.

Senator Ellison—I think the four ports represent 94 per cent of all containers.

Senator MARK BISHOP—Okay, that is pretty close.

Senator Ellison—So, if it is 1.5—

Senator MARK BISHOP—Or 1.4.

Senator Ellison—you would take 94 per cent of that. But all the containers are screened and risk assessed, so that five per cent has to be looked at in context. It is not willy-nilly; it is not random.

Senator MARK BISHOP—No, I understand that.

Mr Woodward—I will quote the figures, because there are loaded containers and empty containers. Some empty containers are of interest to it as well because there could be something built into the external. In a six-month period—for imports, as distinct from exports—there are almost 900,000 loaded containers and 128,000 empty containers. That is in six months, so double that roughly in a year gives you a ballpark figure for imports.

Senator MARK BISHOP—That gives you almost 2.1 million containers.

Mr Woodward—Yes. That is higher than I thought.

Senator MARK BISHOP—That is 25 per cent higher.

Mr Woodward—Yes.

Senator MARK BISHOP—Nonetheless, you are aiming to physically inspect 80,000 of either 1.5 million or 2.1 million containers imported into this country when you are operational in the four ports after March.

Mr Woodward—Yes. I stress that the smaller ports are included in the total figure. For example, Adelaide is included in the total number of containers I mentioned but not included in the 80,000 figure.

Senator MARK BISHOP—Was any consideration given to backscatter technology?

Mr Woodward—Yes.

Senator MARK BISHOP—Why was it rejected?

Mr Woodward—The assessment team included a couple of professors, so we had expert advice. It was not a bunch of clerks weighing up the merits of particular equipment.

Senator MARK BISHOP—I would not have thought so.

Mr Woodward—But the essence—as a layman speaking—is that transmission X-rays have far greater penetration capability and can go through far more steel than the backscatter, and that clear identification in the container environment in Australia was regarded as having greater merit. I am aware that in the US there are backscatter pieces of equipment that are quite commonly used. The assessment that we made was that the higher penetration capability was what we were looking for. Can I stress that the large machines that we are using work on the basis of six million electron volts. The backscatter equipment that is quite commonly used in some of the American ports has far fewer electron volt capabilities than the equipment we have. The largest equipment that is used anywhere in the world has about nine million electron volts but is also extremely expensive and we simply could not afford it.

Senator MARK BISHOP—So the critical reason why you chose the current system as opposed to the backscatter—

Mr Woodward—The reasons were power, the assessment of the quality of the image and the ability of our people to interpret the results—because a great deal depends on the interpretation. It is not just a matter of the equipment.

Senator MARK BISHOP—If you had gone down the other route with the backscatter technology, you would have examined a lot more containers, would you not?

Mr Woodward—You would have used an entirely different approach. Some of them are mobile X-rays. You would come up with a different approach. But, when we looked at the approach, we did not look at just the capability of the equipment but at the logistical arrangements that were appropriate as well. In fact, they have probably proved to be more complex than the actual decision to purchase that equipment. But we are familiar with backscatter. We have had backscatter equipment in Australia. My first experience with it was about seven years ago, so it is not as if backscatter equipment is unknown to us.

Senator MARK BISHOP—My understanding was that it was cheaper and you could do a lot more containers. I wanted to find out why the department chose to go down the path it did.

Mr Woodward—That is the essence of the answer. The second thing is that the major manufacturers of backscatter equipment are American. They are very good salesmen and they quite often seek to impress people with the capabilities of their equipment.

Senator MARK BISHOP—Your choice of the X-ray machines is linked to your risk assessment process as well, is it not?

Mr Woodward—It is. That is the point that I was making. The selection of equipment was difficult, but the selection of a site and the logistical processes were, in fact, more complex than the actual selection of the equipment. We had to have a system that involved identifying the containers we were interested in, selecting them out of piles of containers and getting them to the facility within the turnaround time. I think the average turnaround time is just under five hours at the moment, which is extraordinarily fast when you consider that that involves selecting a container from the pile and getting it back to the pile. That was very difficult.

Senator MARK BISHOP—Are there any plans in place to inspect containers prior to entry for export onto the waterfront?

Mr Woodward—We do now, so the answer is yes. The intention was that we look at a percentage of export containers in addition to a percentage of import containers. The focus so far has been very heavily on import containers, but the plan envisaged looking at a percentage of export containers as well.

Senator MARK BISHOP—The discussion we have been having for the last 20 minutes has been about import containers.

Mr Woodward—Yes.

Senator MARK BISHOP—Do we currently do any inspection of export containers?

Mr Woodward—I think the number would be very small at the moment because we have been trying to get the procedures right. So the percentage would be in handfuls.

Senator MARK BISHOP—Are we doing a trial at the moment?

Mr Woodward—The 80,000 is an intention to cover both imports and exports, but the heavy emphasis is on imported containers.

Senator MARK BISHOP—I am sorry; I thought that figure of 80,000 was on—

Mr Woodward—It would pick up export containers as well, but the number—I do not have the figure in my head; perhaps we could clarify that on notice—is not huge now. But it will increase.

Senator MARK BISHOP—So over 90 per cent of inspections of containers at the moment relate to import containers?

Mr Woodward—I would say that it is something like 98 per cent or 99 per cent; yes.

Senator MARK BISHOP—Is it likely that, before long, the United States will be insisting on full accountability for container contents and that some kind of X-ray inspection will be required as a minimum? Has that been foreshadowed to you?

Mr Woodward—Are you talking about exports from Australia or generally? Are you talking about other countries or exports to the United States from Australia?

Senator MARK BISHOP—I am talking about the latter.

Mr Woodward—There have been discussions between US authorities and Australian authorities. As you know—this was the beginning of your questions—there are something like 18 ports around the world, and the number is increasing, where there are special requirements in relation to the provision of information to US authorities before cargo is loaded onto vessels. In some cases that does involve X-rays. The discussions that we have had with the US have been premised on the quite sophisticated information holdings we already have in relation to exports—the increasing capabilities we will have out of cargo management re: engineering, which is what we were talking about earlier. We will have far better information, which will enable us to provide accurate information to authorities such as the US. But at the moment there is no intention of doing anything other than what we now do in relation to exports to the US. I have had no indication, including from discussions with my counterparts in the US, that that will change in the immediate future. But it may.

Senator Ellison—Chair, I took on notice a question from Senator Bishop about the DSD situation. I am advised by the Australian Federal Police that in Canberra last Friday they received, by safe hand, copies of the hard drives from eastern region for delivery to DSD to assist them with their investigation. The servers themselves have been retained as evidence in Sydney—that is, the AFP are in the process of handing those copies of the hard drives over to DSD. I am given further information which the AFP have asked me not to provide because it is sensitive to the investigation into why it took some time to provide those copies. I will ask the AFP whether I can provide that information and ask them to test the question of the operational aspect of it. If I can, I will get back to the committee and advise them why it took that time.

CHAIR—Thank you for your advice on the record, Minister.

Senator MARK BISHOP—The Maritime Transport Security Bill requires total screening for entry onto the waterfront, does it not?

Mr Woodward—Total screening of what?

Senator MARK BISHOP—Of people and material seeking access to port and ships tied up at port.

Mr Woodward—There is a whole series of requirements that flows from it. Perhaps I will pass over to Ms Grant again.

Ms Grant—As I understand the draft bill, that is the case.

Senator MARK BISHOP—Will that impact upon the duties that your officers carry out—the screening of all people and materials seeking access to ships tied up at port?

Ms Grant—It will not impact on Customs going about its normal business, because Customs will be designated law enforcement officers under the maritime security legislation. That will mean we are exempt from those screening processes. So, if we need to be in those port environments, we will not need to be screened through those checkpoints.

Senator MARK BISHOP—Mr Woodward, I ask ACS to take on notice a complaint I received through the member for Canberra, Ms Ellis, about the way that Customs treated a Mr Inabinet of Fadden in the Australian Capital Territory. He is a current junior champion who sought to gain clearance of a sporting rifle. I will provide you with a copy of the written correspondence I have from Ms Ellis on behalf of Mr Inabinet.

Mr Woodward—We will certainly have a look at it. The name rings a bell, but I cannot be definitive about it.

Senator MARK BISHOP—I will not go into his allegations now, but they are serious and I ask you to do an investigation.

Mr Woodward—There are answers, and we will give you those answers.

Senator MARK BISHOP—I think we know from some answers to questions on notice or from your annual report that Customs have something like 221 closed circuit televisions in 88 port areas, in 58 ports around Australia. Are those figures broadly correct?

Mr Woodward—Yes.

Senator MARK BISHOP—They are all centrally monitored from Melbourne?

Mr Woodward—Yes.

Senator MARK BISHOP—In the new security arrangements for ports to be run by the Department of Transport and Regional Services, what will happen to that system?

Mr Woodward—They will remain. We still have to discharge our responsibilities for control of the building, so they will remain under our control, and there has been no suggestion that they would go anywhere else.

Senator MARK BISHOP—Will other agencies have access to them?

Mr Woodward—There are occasions when there are particularly sensitive operations under way where other law enforcement agencies could be involved and would require access to the waterfront.

Senator MARK BISHOP—But the new bill does not grant other agencies additional access to those closed circuit televisions that they currently have.

Mr Woodward—I will check on it, but to the best of my knowledge there is nothing in the new legislation which would in any way affect the way in which we discharge our responsibilities at the border, including the monitoring of closed-circuit television.

Ms Grant—I can confirm that that is the case. The new legislation will potentially impact more on port operators. They will probably have a greater need for such CCTV monitoring rather than other regulatory agencies.

Senator MARK BISHOP—What does that mean to you then in Customs?

Ms Grant—That would mean to us that port authorities are likely to ask us if they can share our equipment. We have had a couple of approaches already on that front. There are a lot of important issues that we need to address before a regulatory agency or law enforcement agency is able to share information with the private sector. So, whilst we are not opposed to the concept, we have a lot of issues to work through.

Senator MARK BISHOP—I can understand that. You have to think through those issues. Can we turn briefly to the new maritime security regime. What extra functions will Customs pick up?

Ms Grant—At this stage we are working on a bill—

Senator MARK BISHOP—Presume that bill becomes the act.

Ms Grant—A lot of the detail is yet to be seen. It will be contained in the regulations. We have just seen some drafting instructions very recently. Working on that limited information in a sense, the biggest impact on Customs would be to take on the role of a law enforcement officer under the maritime transport security legislation. That particular legislation will require us, if necessary, if Transport and Regional Services required us to do so, to do things that are very similar to functions undertaken by Customs already—things like stopping and searching people, stopping and searching vehicles or vessels, requesting people to leave a ship or port security zone, removing people from those designated zones or organising for vehicles or vessels to be removed from those zones. So they are very complementary to existing powers of Customs officers.

Senator MARK BISHOP—Will existing powers of Customs officers be widened in any way? They are pretty broad at the moment, aren't they?

Ms Grant—I do not believe that this bill will widen our powers. It is almost as though we will have the same set of powers in two pieces of legislation.

Senator MARK BISHOP—Will Customs secure areas be extended?

Ms Grant—We have no current plans to extend Customs places as we have them designated at the moment. We will need to work closely with the Department of Transport and Regional Services to see whether we need to align boundaries with each other. Some of our section 15 ports, for example, are quite large areas and if those particular gazettals are going to impact on the security zones that Transport and Regional Services may need to set up we would see whether any alignments are necessary and regazettals.

Senator MARK BISHOP—Finally, how is the port security going to be coordinated between state police, AFP, Customs, Immigration and Quarantine in all the ports? How is that going to be done?

Ms Grant—I do not think we are actually at that level of detail yet, in that currently Customs, Immigration and Quarantine all work very closely together in that environment, and

we do that with MOUs in place between us. We each have our responsibilities, so I suppose we have administrative procedures in place to have as little duplication as possible and to have an integrated service for the people coming across the Australian border. We are having discussions with Transport and Regional Services to integrate another player into a fairly well established set of procedures.

Senator MARK BISHOP—The state and federal police would be more minor players in that port security environment, would they not?

Ms Grant—In the port security environment, there are the waterside aspects of port security that, I should imagine, Water Police will play a very important role in. That is an area that we tend not to patrol. Our port patrols tend to be more landside patrols.

Senator MARK BISHOP—That is fine.

Ms Grant—So there are a lot of discussions to be had between all the agencies to ensure that we can work successfully altogether.

Senator MARK BISHOP—Who is the lead agency? Is it Transport and Regional Services?

Ms Grant—Transport and Regional Services has responsibility for this particular legislation.

Senator MARK BISHOP—Which would be the lead agency for handling the negotiations for the port security on site?

Ms Grant—Transport and Regional Services is the lead agency for this maritime transport security legislation.

Senator MARK BISHOP—But they do not have any presence there now, do they, on the security side?

Ms Grant—No, there is not a huge amount of screening in seaports at this point in time, so this legislation will be introducing a whole new set of requirements on port operators. Transport and Regional Services are responsible for getting that implemented with the port operators and the ship operators.

Senator MARK BISHOP—Will Australia be adopting the US 24-hour rule in line with Canada, Mr Woodward?

Mr Woodward—That is something we touched on a little earlier with you in discussion about new requirements for exports to the United States. There are no changes, certainly in the short to medium term, that will impact on us, but obviously our cargo systems have to be capable of dealing with new requirements from the US and from other countries. Obviously anyone involved in exports to the United States—the exporters and the shipping companies—would need to satisfy the US requirements.

Senator MARK BISHOP—But nothing in the short to medium term?

Mr Woodward—Nothing that impacts on Customs as an organisation, but it could well impact on exporters and shipping companies.

Senator MARK BISHOP—Can we now turn to the facial recognition technology. Is it possible to get a progress report on the trial being conducted with Qantas?

Mr Woodward—Yes. I will just pass to Ms Batman.

Ms Batman—We have done about 52,000 transactions. We have over 4,000 aircrew enrolled in the system. We have almost completed the evaluation of the first six months of operation. We are just waiting on the final report from our independent overseas expert, who is pulling the various aspects of that together for us. We are expecting that this month. Generally, something like 98 per cent of the Qantas crew that are using the system are being successfully recognised by the facial recognition software and the connections with our passenger processing system as well. Yes, it is still operating very well. We are just awaiting the evaluation.

Senator MARK BISHOP—It has been put to me that there is research around which shows that the larger the database for the FRT the less reliable and more inaccurate the system becomes. Are you aware of that research, Ms Batman?

Ms Batman—Yes. It comes about because there are at least three different uses for facial recognition, and that aspect of it is the one to many. If you are looking for one face in a database of many faces, that does apply. The bigger the database of faces that you are looking at, the slower it is and the longer it takes. What we are using in the SmartGate trial is a one to one, so it is nearly saying, ‘Is this person, say, Gail Batman, the person that belongs to this face in the system?’ That aspect does not apply in those circumstances.

Senator MARK BISHOP—You are identifying a person in the system and a passport is being examined. Of course, that does not mean someone else cannot use the passport, does it?

Ms Batman—Yes, it does. The system recognises that that is the face of the person who has been enrolled against that passport, so you cannot give that passport to somebody else and be recognised.

Senator MARK BISHOP—So it is not correct to make an analogy of me using Mr X’s timecard to clock on and off?

Ms Batman—No, that is not it. Basically the accuracy is so good in what we are doing that the rate for falsely accepting somebody who should not be accepted by the system is less than one per cent. It is also very quick.

Senator MARK BISHOP—So the larger the database, the more inaccurate—

Ms Batman—Not in our system. That has nothing to do with SmartGate. That has to do with a totally different use of facial recognition. I am not sure how to describe it, but with the software for facial recognition you can do a number of things. You can do one to one, which is what we do. The problem you describe does not happen with one to one. You can do one to many, which is where you have a database full of faces and you try to find a match. The problem that you describe occurs in those circumstances. The other one is what is commonly known as ‘face in the crowd’, where you have a watch list of people of interest and you are trying to find them in a crowd of other people.

Senator MARK BISHOP—What is the purpose of the FRT? Is it just for, say, Qantas crew or is it for all people coming into Australia?

Ms Batman—It is the start of a trial, a working pilot. The current iteration of it is just for Qantas crew because we wanted to start with a safe group of people who were frequent travellers in order to understand it, test it and evaluate it. As I said, we have done an evaluation of the first six months. We are waiting to get that in. Then it is up to the government to consider any further roll-out of that system when they have the results of the evaluation. You could use it for a much broader group of people, but at the moment it is limited to the Qantas crew.

Senator MARK BISHOP—What has the cost been of the trial to date?

Ms Batman—The initial costs of developing and installing the kiosk at Sydney airport were \$1.2 million. We have since then spent \$275,495 on the evaluation. We have a number of other commitments to complete the evaluation. The maintenance costs for both the SmartGate hardware and the facial recognition software are around \$450,000. I have not added all of that up—

Senator MARK BISHOP—There is not going to be much change out of \$2 million. In May you had a discussion with Senator Ludwig about the 400 new passport readers to be installed. Can we have a progress report on the roll-out?

Ms Batman—They should be starting to be installed this week. They are all in the country. They have just been through the pre-installation testing, so they are being installed either this week or next week, and we expect that to be completed by December, more or less. Christmas Island and Broome might be rolling over into next year according to the schedule.

Senator MARK BISHOP—So, by January next year, all installed and all fully operational?

Ms Batman—That is our expectation.

Senator MARK BISHOP—Is the estimated cost of \$15½ million on track?

Ms Batman—That was a four-year cost, I believe.

Senator MARK BISHOP—In that case, if it is a four-year cost, are the first year costs on track?

Ms Batman—They might be just a bit less, but I could take that on notice and get you the detail. I think it was just a bit less than we expected. It was about that order.

Senator MARK BISHOP—Mr Woodward, on page 184 of the estimates transcript of last May you referred to a reassessment being conducted by Admiral Hancock:

Admiral Hancock is superintending a major reassessment of our aerial surveillance requirements. Linked into that will be the need for us to reassess our vessel surveillance and response capabilities as well ...

What is the current status of that work and what is the time line?

Mr Woodward—That is the project colloquially known as CMS 04. It is a fundamental reassessment of the way in which we conduct aerial surveillance or coastal surveillance. In essence, it involves looking beyond fixed-wing and rotary-winged aircraft, although still assuming that they will underpin the surveillance capability, to other options such as satellites, unmanned aerial vehicles, towed arrays, arrays in the water and seeing how that also links

with information that we can get out of Jindalee as it comes operational. And the last element is seeing how that fits in with high-frequency surface wave radar which will be under way during 2004. That project has been through the RFI stage—

Senator MARK BISHOP—RFI?

Mr Woodward—Request for information. We are in discussion with colleagues in other departments and obviously with ministers as to the precise timing of the going out of a request for tender, which is the next major phase in all of that.

Senator MARK BISHOP—What is Admiral Hancock's role in that?

Mr Woodward—He runs Coastwatch and he is superintending, he is masterminding, all this.

Senator MARK BISHOP—What is your thinking now on time lines?

Mr Woodward—The RFT process has to be fitted into the budget time frame. My latest thinking is that it will go out in the first or second quarter of next year, but there is a possibility that it could be earlier than that.

Senator MARK BISHOP—How long would the project take to do?

Mr Woodward—Before it is concluded?

Senator MARK BISHOP—Yes.

Mr Woodward—The end point is obviously getting new contractors to either provide fixed-wing or rotary-winged aircraft, satellites or whatever. The intention is that they will all be in by 2007, and that is assuming that it will take, as our experience suggests, two years to get in place new contracts. So, by 2007, whatever new arrangements come out of this process will be in place.

Senator MARK BISHOP—Perhaps I am not quite understanding. I thought it was Admiral Hancock's task to do a review of the utility of an alternate or new system. Are you saying that decision has been made and we are now—

Mr Woodward—No, it has not been made.

Senator MARK BISHOP—I am a little bit confused.

Mr Woodward—We go through the request for information, we have a number of respondents to that and we go through the sifting process. This is a normal large-scale contractual arrangement. When that process has been completed—it must fit in with the budgetary timetable when ministers take decisions on budget aspects—the next important phase would be going out to request for tender. Then there is a whole lot of work after that—the responses to the RFTs come in, government consideration—and it is a couple of years to actually get new contracts in place. This is a large contract; the new arrangements would be in place by 2007.

Senator MARK BISHOP—We are talking about a total rejig of the current Coastwatch system, aren't we?

Mr Woodward—It is a total relook at how we go about coastal surveillance, yes.

Senator MARK BISHOP—That is right. So we have the current system of surveillance by manned aircraft, we think we might be able to do it better and Admiral Hancock is tasked with the job of devising a new system.

Mr Woodward—He is doing that with a steering committee. We do work on behalf of numerous other agencies and they have to be involved in it as well, so I do not want to leave you with the impression that he alone is doing all of this; he is doing it in conjunction with many others.

CHAIR—Senator Bishop, I advise you that the committee will conclude at 11 p.m. and Customs will not be reappearing in the morning.

Senator MARK BISHOP—Thank you, Chair.

Senator Ellison—Do you want to give us that on notice and we will give you a detailed—

Senator MARK BISHOP—Yes, I will do that. Thank you. On that basis, we can conclude three minutes early.

CHAIR—Mr Woodward, I thank you and your officers for your assistance this evening. The committee stands adjourned until 9 a.m. tomorrow morning.

Committee adjourned at 10.57 p.m.