



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

THURSDAY, 25 MAY 2006

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Thursday, 25 May 2006

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

Senators in attendance: Senators Allison, Fierravanti-Wells, Heffernan, Kirk, Ludwig, Ian Macdonald, Nettle, Parry, Payne and Scullion

Committee met at 9.00 am

ATTORNEY-GENERAL'S PORTOFOLIO

Consideration resumed from 24 May 2006.

In Attendance

Senator Ellison, Minister for Justice and Customs

Management and Accountability

Mr Robert Cornall AO, Secretary

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

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

Ms Jan Blomfield, Acting General Manager, Corporate Services Group

Mr Graham Fry, General Manager, Information and Knowledge Services

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

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Mr David Finlayson, Assistant Secretary, Public Affairs

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

Output 1.1

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

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

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

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

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

Output 1.2

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

Mr Jim Faulkner, Assistant Secretary, Constitutional Policy Unit

Ms Amanda Davies, Assistant Secretary, Classification Branch

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

Output 1.3

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

Mr Matt Minogue, Assistant Secretary, Human Rights Branch

Ms Helen Daniels, Assistant Secretary, Copyright Law Branch
Ms Joan Sheedy, Assistant Secretary, Information Law Branch
Ms Deborah Jacka, Assistant Secretary, Review Coordination Branch

Output 1.4

Mr Bill Campbell QC, First Assistant Secretary, Office of International Law
Mr Greg Manning, Assistant Secretary, International Security and Human Rights Branch

Output 1.5

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

Output 1.6

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division
Mr Steven Marshall, Assistant Secretary, Native Title Unit
Mr Richard Glenn, Acting Assistant Secretary, Native Title Unit

Output 1.7

Dr James Pople, First Assistant Secretary, Indigenous Justice and Legal Assistance Division
Mr John Boersig, Assistant Secretary, Indigenous Law and Justice Branch
Ms Katherine Jones, Assistant Secretary, Legal Assistance Branch

Outcome 2: Coordinated federal criminal justice, security and emergency management activity, for a safer Australia**Output 2.1**

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division
Mr Geoff Gray, Assistant Secretary, Criminal Law Branch
Mr Craig Harris, Assistant Secretary, National Law Enforcement Policy Branch
Mr Chris Dennis, Director, National Law Enforcement Policy Branch
Ms Catherine Hawkins, Assistant Secretary, International Crime Cooperation Branch
Ms Sheridan Evans, Acting Assistant Secretary, Community Safety and Justice Branch
Mr Geoff Main, Director, Community Safety and Justice Branch
Mr Andrew Walter, Principal Legal Officer, International Crime Cooperation Branch
Mr Anthony Seebach, Principal Legal Officer, International Crime Cooperation Branch
Ms Victoria Bickford, Acting Principal Legal Officer, International Crime Cooperation Branch
Mr Peter Thomson, Acting Assistant Secretary, International Crime Branch
Mr Nick Morgan, Section Head, International Crime Branch
Mr Richard Oliver, Executive Project Director, AusCheck
Ms Annette Bouchier, Executive Manager, AusCheck

Output 2.2

Mr Geoff McDonald, Acting First Assistant Secretary, Security and Critical Infrastructure Division
Mr Mike Rothery, Assistant Secretary, Critical Infrastructure Protection Branch
Ms Annette Willing, Acting Assistant Secretary, Security Law Branch
Ms Catherine Smith, Principal Legal Officer, Security Law Branch

Output 2.3

Mr Trevor Clement, Director General, Emergency Management Australia
Ms Diana Williams, Assistant Secretary, Emergency Management Policy
Mr Peter Channells, Assistant Secretary, Community Development

Output 2.4

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

Administrative Appeals Tribunal

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

Australian Crime Commission

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

Australian Customs Service

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

Administrative Review Council

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

Australian Federal Police

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

Australian Government Solicitor

Ms Rayne de Gruchy, Chief Executive Officer

Mr David Riggs, Chief Financial Officer

Australian Institute of Criminology and Criminology Research Council

Dr Toni Makkai, Director

Australian Law Reform Commission

Professor David Weisbrot, President

Mr Alan Kirkland, Executive Director

Australian Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General

Chief Financial Officer

Assistant Legal Adviser

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen PSM, Director

Mr Alf Mazzitelli, Chief Finance Officer

CrimTrac

Mr Ben McDevitt, Chief Executive Officer

Ms Nicole McLay, Chief Financial Officer

Family Court of Australia

Mr Richard Foster PSM, Chief Executive Officer

Ms Angela Filippello, Principal Registrar

Mr Stephen Andrew, Acting Executive Director Client Services

Mr Bruce Hunter, Executive Director Corporate

Family Law Council

Mr Kym Duggan

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive Officer

Mr Philip Kellow, Deputy Registrar

Mr Gordon Foster, Executive Director Corporate Services

Federal Magistrates Court

Mr John Mathieson, Chief Executive Officer

Ms Charlotte Stockwell, Executive Director Operations

High Court of Australia

Mr Christopher Doogan, Chief Executive Officer and Principal Registrar

Ms Rosemary Musolino, Acting Senior Registrar

Mr Lex Howard, Marshal

Human Rights and Equal Opportunity Commission

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

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

Ms Karen Toohey, Acting Director, Complaint Handling

Ms Susan Roberts, Acting Executive Director Legal Services

Mr David Richards, Finance Manager

Insolvency and Trustee Service Australia

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

Mr David Bergman, Adviser, Policy and Legislation

Mr Peter Lowe, Executive Director

National Native Title Tribunal

Mr Chris Doepel PSM, Registrar and Chief Executive Officer

Mr Hugh Chevis, Director Service Delivery

Mr Erwin Winkler, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Damian Bugg AM QC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Ms Stela Walker, Deputy Director Corporate Management

Office of Film and Literature Classification

Mr Des Clark, Director

Mr Paul Hunt, Deputy Director

Mr Steve Sanders, Business Manager

Office of Parliamentary Counsel

Mr Peter Quiggin, First Parliamentary Counsel

Ms Glenyce Francis, General Manager

Office of the Privacy Commissioner

Ms Karen Curtis, Privacy Commissioner

Mr Timothy Pilgrim, Deputy Privacy Commissioner

High Court of Australia

CHAIR (Senator Payne)—Good morning, ladies and gentlemen. I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. The committee will today continue its examination of the Attorney-General's Department proceeding to the order on the circulated agenda and the committee will begin with questions to the High Court of Australia. The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. The committee has agreed to the date of Friday, 14 July 2006 for receipt of answers to questions taken on notice and any additional information. The committee does request that answers be provided to the secretariat in electronic format wherever possible. If you are in the committee room with a mobile phone, please turn it off or to silent operation while you are in the room.

I welcome the secretary of the Attorney-General's Department, officers of the department and associated agencies. I remind officers when they are called upon to answer a question for the first time, to please state their full name and the capacity in which they appear before the committee.

I also 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, to resolution 1(10) which states in part:

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

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

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

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. Mr Cornall, do you have any opening remarks or do you have any material you need to place before the committee following yesterday's proceedings?

Mr Cornall—No, Madam Chair, I do not.

CHAIR—Thank you very much. We will move straight into questions for the High Court then. Welcome, Mr Doogan and officers, and we will start with Senator Ludwig.

Senator LUDWIG—Thank you, Chair. Mr Doogan, did the High Court get any new money in this budget?

Mr Doogan—Yes, we did get additional funds in the budget primarily for some additional staff to cope with the growing workload, together with funding for positions that we had previously not been funded for but which were essential to the working of the court.

Senator LUDWIG—Has that gone some way of alleviating—I think there was in my words—the problems about trying to deal with the workload?

Mr Doogan—Yes, that was so. I have just been reminded, we are talking about the current budget, the current year, rather than the forthcoming year?

Senator LUDWIG—No, the forthcoming year.

Mr Doogan—No, there is nothing in the forthcoming year, but in the year that we are currently in, we were granted additional funds.

Senator LUDWIG—Yes, that is what I thought. So there is really only a short term measure for additional funds but that has not been sustained in the next year's budget?

Mr Doogan—Well, it has been sustained in the sense that the funds that were given last year were given on a continuing basis but I think you are possibly referring to the small reduction in funding.

Senator LUDWIG—Yes.

Mr Doogan—That was, as I understand it, largely as a result of one-off adjustments relating to insurance premiums.

Senator LUDWIG—What happened there? Was there an increase in insurance premiums?

Mr Doogan—Perhaps I could ask Mr Howard to answer that.

Mr Howard—Senator, the reduction actually was a combination of a number of factors but mainly parameter adjustments from prior years. As I understand it is the changes in the wage cost index that applies. There was also a reduction this year in workers compensation premiums as a result of changes to insurance premiums.

Senator LUDWIG—What has that meant to your bottom line?

Mr Howard—Well, it certainly makes next year that much tighter but I do not believe that it places us in any difficulty.

Senator LUDWIG—Perhaps we can just have a look at what the workload is like. How many new matters in the original jurisdiction have been filed in the year to date?

Mr Doogan—In total for the year to date we have had 503 new matters.

Senator LUDWIG—Can they be said to be segregated into different areas?

Mr Doogan—Not really, Senator. They cover the whole spectrum. Of course, immigration matters continue to feature.

Senator LUDWIG—Yes. I was going to come to that. In terms of immigration matters are they still featuring prominently in that 503?

Mr Doogan—Yes, 175 or the 503 are immigration matters so that is 34 per cent.

Senator LUDWIG—Has that been a reduction or an increase relative to the last couple of years?

Mr Doogan—It is a reduction overall. You will recall that on past occasions we have talked over the last several years about going right back to the Nguyen Ly cases where cases in their thousands were removed to the Federal Court and the Federal Magistrates Court.

Senator LUDWIG—Yes.

Mr Doogan—Well, they are in a slow pattern coming back, for example, through special leave applications.

Senator LUDWIG—I see. So is there a breakdown of those 33 or 34 per cent of immigration matters which, in my words, are long tail matters that are returning?

Mr Doogan—Yes. As on past occasions we have updated the immigration matters and I can hand up if you wish a table that shows the break-up of all immigration matters filed by case type and will take you through to 15 May.

Senator LUDWIG—That would be helpful, thank you. In terms of the finalisation of matters, do you keep those statistics?

Mr Doogan—Yes, we do.

Senator LUDWIG—Do you have up to the current period?

Mr Doogan—In terms of bulk, the area in bulk numbers, are special leave applications. They have declined slightly this current year.

Senator LUDWIG—I was going to say that if you have got those figures the area I was looking for was those which are special leave applications; how many were granted and if they were granted, how many appeals were then heard or finalised and then a comparison to

the previous years—in other words, the area showing an increase or decrease of those special leave applications where obviously the balance of those must have been either withdrawn or declined. Is there another category other than that?

Mr Doogan—Yes, Senator, I do have all of those. In fact, if you like, what I could do is to hand you up the various tables that have been put together as briefing tables for myself.

Senator LUDWIG—That would be helpful.

Mr Doogan—These should give you a complete run-down on all the matters filed, immigration matters, self-represented litigants and the usual published figures in relation to fees and waivers and so on.

Senator LUDWIG—That would be helpful. Just while we are doing that, in terms of the self-represented litigants: is that still on the rise or has that plateaued out?

Mr Doogan—Yes, they are still on the rise. As at 30 April 2006 self-represented litigants had grown slightly in the civil category roughly around the same percentage. The total for the year ended 30 June 2005 was 58 per cent and that was made up—

Senator LUDWIG—Is that all matters?

Mr Doogan—Yes, that was all matters so 63 per cent of civil matters were unrepresented but criminal matters were 20 per cent and when you combined the lot that came to 58 per cent for the year. Now in the current year through to 30 April the unrepresented civil matters accounted for 59 per cent by self-represented litigants—that is a slight decrease from last year to date—but on the criminal side there was a slight increase; it has gone up to 28 per cent.

Senator LUDWIG—Have you done any comparison with the Federal Court or the Federal Magistrates Service—although the comparison might not hold—about whether they are experiencing the same degree of unrepresented litigants appearing in their courts?

Mr Doogan—Yes, I think they are in a sense, but I make that statement merely from casual discussions and so on with my counterparts in the other courts.

Senator LUDWIG—Is there any work being undertaken by you or the A-G's? It seems to be rising and it does not seem to be at all decreasing or plateauing out in terms of unrepresented litigants. Some may regard them as a good thing or a bad thing. I will remain neutral at this point. In terms of addressing some of the issues that arise with them, for example, the court documents being filed, the standard of presentation, the types of submissions that are made—and they are probably more likely to be oral than in writing and if they are in writing they may not conform quite as easily as others—I would imagine that there is usually more additional work that is created as a consequence of unrepresented litigants within the jurisdiction. Perhaps you could confirm that for me.

Mr Doogan—The whole area of self-represented litigants is quite a complex mix but our experience suggests—and this is borne out by the extremely low rate of success—is that no matter how low the prospects of success might be in terms of coming to the court, they are not dissuaded.

The number of self-represented litigants coming to the court is affected by many factors, the main one we believe being that in most instances they are simply not required to pay any

fees, and the bulk of the people not paying fees are in possession of either pensions, pension cards or healthcare cards. One of the concerns that you might recall from previous occasions that we had was that the self-represented litigants were causing additional costs, unnecessary costs, to the respondents who in most instances felt obliged to actually respond and deal with the case that had been put against them, and this drew out the time from litigation commencing in lower courts right through to the end.

You will recall that one of the changes we made when we did the rewrite of the rules in 2004, which took effect in 2005, was in fact to create a special procedure for litigants in person, whereby they have to put in the first instance their case in writing, and they do not have to serve documents on the other side unless there is a direction to do so by the court. What that has meant is that the time taken with these matters has reduced and the cost to respondents has been reduced in the sense that they do not have to do anything unless they are directed to do so by the court, and in the vast majority of cases there are very few cases where directions are made to serve the other side.

Senator LUDWIG—What usually happens at that point, they are withdrawn, or they lapse?

Mr Doogan—No, they are determined on the papers.

Senator LUDWIG—Are there separate figures—I have not had an opportunity to look at the list—of those unrepresented litigants who are determined on the papers? I presume in that case the special leave is not granted.

Mr Doogan—Yes, there is. To give you an idea, for the period 1 July 2005 through to the end of April 2006, there have been 414 matters dealt with that have come to the court in that written case format. Of the 414, 370 were dealt with on the papers, and the remaining 44 were dealt with in the traditional form of application books. I should say that 39 of those 44 matters were unrepresented applicants, and I also have to say to you to complete the picture that 100 per cent of those matters were unsuccessful.

Senator LUDWIG—That is the figure I was seeking. It is not particularly encouraging for a self-represented litigant is it?

Mr Doogan—No, it is not, but I think to be blunt about it, it is not the fact that they are self-represented, it is the fact that their cases have no merits.

Senator LUDWIG—Is there any work being undertaken by you or Mr Cornall, the A-G, about the issue, more broadly in the sense that there are resources being consumed by self-represent litigants? Self-represented litigants have a right and there is no argument about that, and certainly I am sure they feel that they have a case, but partly it could be an educative process or partly it could be work undertaken to actually work through some of the issues to intersect them earlier about their problem. Clearly the issue that is being litigated must have had some genesis with—and we have not actually got the types—but I suspect they relate to government action or government inaction. Has there been any analysis to have a look at the range of issues that self-represented litigants might bring forward that relate to areas that you could impact upon?

Mr Cornall—There has been a great deal of work done about the issue of unrepresented litigants by government, by courts, by law societies and by others. It is an extraordinarily difficult problem because people are entitled to have access to the courts irrespective of whether they have a good case or not and I think it is highly instructive that 100 per cent of cases which Mr Doogan referred to were unsuccessful.

The huge majority of cases that go through the court system do not end up at the High Court, and that is because litigants accept the fact that there is a judgment at a lower level and that their case has been lost. Many litigants are also obviously constrained by the fact that they are paying costs and you do not continue to incur costs if you have got a bad case. One of the reasons why unrepresented litigants do not have legal assistance is because legal assistance is normally granted against two tests: a merit test and a means test. Many unrepresented litigants have it quite clearly pointed out to them that their case has no legal merit but they persist with it.

The question is where do we go with that, and there have been a number of things done. As Mr Doogan said, there were changes to the rules of the High Court to deal with these cases on the papers where the cases were manifestly bad. I think that followed comments by either the court in its annual report or by the Chief Justice in speeches—or in both—that this was the case. So I think there is a significant problem but, short of stopping people having access to the courts that they are entitled to in a democratic society, it is very difficult to see what you are able to do if people persist with a claim when they have been squarely told that their claim has no merit.

Senator LUDWIG—Turning to another short topic: the Judicial College, in terms of the registrar interacting with the judges. Is that working well? Is there any feedback? I know it is a difficult issue without talking to the justices themselves but are they finding, in terms of their talking to others within the judiciary about how it works?

Mr Doogan—I think that is something I should refer to Mr Cornall.

Senator LUDWIG—I do not mind who answers.

Mr Cornall—I am sorry, Senator. What is the question?

Senator LUDWIG—It is really how the Judicial College is working. Do you get any feedback from the judiciary about satisfaction?

Mr Cornall—The college conducts a number of courses during the course of the year and it does seek feedback from the participants. The feedback is considered by the board of the Judicial College and I think it is fair to say that it receives generally positive feedback in respect of the courses it provides. The workload of the college is building up progressively as it develops and as judges support its programs.

Senator LUDWIG—I do not have any further questions, Chair.

CHAIR—If there are not any more questions, I thank you very much. We will move on to the DPP.

Office of the Director of Public Prosecutions

Senator LUDWIG—Good morning. In fact, I have got almost a report card that says you are very good, Mr Bugg. I have tried, let me tell you—

Mr Bugg—It has cost me a fortune.

Senator LUDWIG—I would have preferred to pass but I think I failed, so you win in terms of getting a very good report card. I have tried to look at all the other agencies to see how your complaints have been going and I cannot turn anything up, quite frankly, so I have got to come to the conclusion that not only are you, as I always expected, squeaky clean but your administration is also squeaky clean. If we start with that startling confession from me, we will move to something perhaps I can at least talk to you about it in a bit more detail. There was one matter and I hesitate to go to it, but it was in the *Daily Telegraph* of Thursday, 4 May.

CHAIR—Do you have a copy of the clipping, by chance, Senator Ludwig?

Senator LUDWIG—I do.

CHAIR—Perhaps you could assist the director with a copy of that.

Senator LUDWIG—Having not found anything from any other agency, I have had to go to the *Daily Telegraph*. For those who may not understand, what I was looking at was in terms of complaints and issues that may arise from other agencies as they might deal with the Director of Public Prosecutions. Nobody indicated, in fact, that there were any problems that they saw and, in fact, I think mostly they were good reports. The questions relate more broadly, though, as to whether or not there are new security arrangements in place and the costs of those security arrangements if there are.

Mr Bugg—In terms of across the country I could not give you an answer. I can only speak about the jurisdictions in which obviously matters are now coming before the courts. Security has been an issue in one jurisdiction where the courts are of an earlier year, if I can say that fairly to that jurisdiction, and currently it is anticipated that the particular trial will be heard in the county court in that jurisdiction because of its facilities in terms of security. The letter that that article from the *Telegraph* refers to was really a fairly bland but necessary communication we felt we should make to all the courts in the country to inform them of the likelihood that cases may come before the courts and, rather than have delays with people having to obtain security clearances, it might be appropriate that people in key positions, who may have to handle documentation and sensitive material, have the appropriate clearances, so that obviously there would be no delay when the matter comes before the court. That was the nature of that.

Senator LUDWIG—The comment from the Law Council was that it remains concerned that the courtroom should remain under the control of the judge. That is not being impinged upon? In other words, it was a letter to indicate what the arrangements were likely to require.

Mr Bugg—Yes. We were not trying to take over the courts, we were trying to avoid a log jam by arriving at court and finding that there may be some problem with either the clearances, that is security clearances—and they do take some time—but there was mention in there about B class safes. Obviously storage of sensitive information in the precincts of the

court is an issue. There has been no resolution or position where we have had to make a determination about costing of that at this stage.

Senator LUDWIG—You have not sought to implement or seek courts to implement new security arrangements, other than what you have outlined?

Mr Bugg—Yes, I think that is fair in the sense that the letter really pointed out that there would be need to consider security arrangements. I could not tell you what feedback we have had in response to that letter. There are two jurisdictions where we are currently conducting litigation, and the security arrangements at the courts in both jurisdictions, as far as I am aware, are satisfactory.

Senator LUDWIG—It seems you have secured a funding boost for the forthcoming year.

Mr Bugg—Yes.

Senator LUDWIG—What did that amount to in total?

Mr Bugg—It is \$17,218,000 all told. I can give you the breakdown of that.

Senator LUDWIG—That would be helpful.

Mr Bugg—There is \$2.4 million for fraud compliance. That is the serious or complex fraud cases being referred to us from Centrelink. There is \$790,000 in relation to the ACCC for the criminal cartel cases. There is \$1.38 million in relation to illegal foreign fishing, and there is \$1.28 million in relation to fraud and compliance in relation to child-care centre compliance. Then for Operation Wickenby, of which I think there was some brief mention at a previous estimates hearing, there is \$11.35 million. That is the well-publicised tax office initiative against offshore tax avoidance, shall we say, where various estimates have been given. I would not buy into that; it is the tax office's domain.

Senator LUDWIG—In terms of those areas, have they been earmarked for likely additional work to be directed—Operation Wickenby being clearly one of them and the others including fraud compliance in child-care centres?

Mr Bugg—Yes, they are responsive to initiatives that are being implemented by those agencies, and we have been given estimates. In the cartel area, for instance, it is anticipated there will be two cases per year at this stage. Some of these things are based on estimates, obviously.

Senator LUDWIG—Is any of the money untied?

Mr Bugg—No.

Senator LUDWIG—In other words, it is specifically for those initiatives.

Mr Bugg—Yes, that is right.

Senator LUDWIG—Are all of those initiatives over four years, or are some of them shorter?

Mr Bugg—Wickenby is over six years and all the others are four-year terms.

Senator LUDWIG—Has there been money additionally for administration that you might have to deal with—additional administration that might go to these—or is that part of it?

Mr Bugg—That would have been factored into it.

Senator LUDWIG—Will that also include recruitment of new staff?

Mr Bugg—Yes.

Senator LUDWIG—Is there any estimate of what that is likely to be?

Mr Bugg—The estimate for this year is 76 new staff.

Senator LUDWIG—For the fraud compliance in child-care centres, will there be additional staff in that area?

Mr Bugg—Yes.

Senator LUDWIG—How many?

Mr Bugg—For the fraud compliance in child-care centres, there will be six extra staff.

Senator LUDWIG—Where will they be located?

Mr Bugg—Our anticipation is on the eastern seaboard: Sydney, Melbourne, Brisbane.

Senator LUDWIG—What is that in relation to? Is that in response to initiative from the family and community services area?

Mr Bugg—Yes.

Senator LUDWIG—Do they tell you what the issue is? I assume they do. Perhaps you could tell me.

Mr Bugg—It is the compliance framework for the child-care sector generally. I suppose one example would be there may be a suspicion that extra non-existent or ghosting places are being claimed for. I just cannot go into any detail at this stage.

Senator LUDWIG—It is significant for it to come to the additional funding for DPP because what we are talking about is not a civil compliance regime; we are talking about criminal compliance or criminal prosecution and prosecutorial action.

Mr Bugg—Yes.

Senator LUDWIG—Do they give you a brief on what they expect you to receive over the ensuing couple of years? In other words, they must have compliance officers who will be able to gather relevant evidence and then present it to you. This is not an area you have received material from before, I take it?

Mr Bugg—No.

Senator LUDWIG—So there is the requirement for them to provide you with briefs of a certain standard that you will then be able to assess, deal with and work with. I take it it is not an area that you have a longstanding relationship with.

Mr Bugg—No. There is an expectation obviously because of the connotations that you may see AFP involvement as well, and of course we have got a longstanding working relationship in relation to fraud matters with the AFP.

Senator LUDWIG—Should I ask you or should I ask Families and Community Services what the initiative is in response to—

Mr Bugg—I think it is better to ask the department.

Senator LUDWIG—Do they tell you it relates to a particular program that they are running and whether they have a compliance unit that started to get up and running, or do they just say—I would imagine they do not—‘Here is some money, and we have got some work coming your way’?

Mr Bugg—I have not been privy to any discussions on that.

Ms Walker—As I understand it FCSIA have been investigating child-care centres for some time now because of the added emphasis the government has placed on child-care centres, and they have discovered alleged fraud in a number of cases where there is ghosting, so that the government rebate paid to the various child-care centres is increased accordingly and therefore there is a fraud on the Commonwealth. That is as we understand it.

Senator LUDWIG—Have you had any matters referred at this point in time?

Ms Walker—As I understand it there has been one.

Senator LUDWIG—What can you tell me about that, Mr Bugg? I will refer it in the reverse if it is a current investigation.

Mr Bugg—I really cannot tell you anything about it. I am aware of the fact that one matter has been referred. It is an operational matter and I really would not like to go into any more detail than that.

Senator LUDWIG—Is there a view as to how many you expect to receive over each year?

Ms Walker—At this stage we expect about six per year—as an estimate.

Senator LUDWIG—You might want to take this on notice but, in terms of the other initiatives or the funding that has been allocated, can you provide the staffing allocation and their probable location?

Mr Bugg—I can give that to you now.

Senator LUDWIG—That would be helpful.

Mr Bugg—For fraud compliance for serious fraud matters for Centrelink there are 17 staff. Actually, there is an apportion of staff, so it is almost 18. That will be generally across the office nationally. For the cartel enforcement, for the ACCC, we anticipate five and at this stage they would be located on the eastern seaboard. For securing the borders against illegal foreign fishing, there are 10. They would be allocated to the Darwin office with, I think, one extra in the Canberra office. With Operation Wickenby, the anticipated staffing increase there is 38. That is across the board nationally. That is obviously a current ongoing investigation and operation, and there are a number of matters that we have been providing initial assistance and advice on but they are operational. There has been some publicity about it. I would not wish to embark upon any comment other than that which has already been reported.

Senator LUDWIG—I was thinking of giving you another press release in this area, but maybe I will not.

Mr Bugg—I get writer’s cramp when you do that!

Senator LUDWIG—Can we ask if any matters have been referred to you from Operation Wickenby and how many they are?

Mr Bugg—Because some of them are in a preliminary stage, we are aware of them and we are involved in them but when you say ‘referred’ I look at that as something that is coming to us in a packaged brief. There are two stages to that as well: there is proceeds of crime and there is the ordinary prosecution process. Currently, I can tell you, for instance, that in the proceeds area I think we have restrained about \$11.5 million in Queensland. I do not have the specific figures elsewhere but we have not got a prosecution on foot at this stage. There have been a number of challenges, which you will have seen, which were recently dealt with by the High Court.

Senator LUDWIG—Was that A2?

Mr Bugg—Yes. They were all given alphabetical identifiers. The High Court dealt with that matter on Friday of last week, so obviously I would expect that there will be some increased movement within the area. But we are really speaking about something that is currently still very much an investigative operation rather than a prosecutorial one.

Senator LUDWIG—I think there has been one matter decided. It might have been against the Commonwealth—it might have been against the ACC from memory, in the High Court.

Mr Bugg—I do not think so. I am unaware of any decision that has gone against the ACC in relation to its powers in this area.

Senator LUDWIG—I will withdraw that.

Senator Ellison—For your information there was in the last week an application for special leave, which was refused, in relation to the Australian Crime Commission. It was brought by some parties, the names of whom have been suppressed.

Senator LUDWIG—That could be the one I was thinking about.

Senator Ellison—There had been an injunction granted in the interim, I think by the High Court, pending the hearing of the application for special leave. That was a challenge to the powers of the Australian Crime Commission. I put out a release on 19 May. That was, in particular, in relation to Operation Wickenby, but in a broader context it could have had some impact on the Australian Crime Commission’s powers. That decision by the High Court, I think it was on 19 May, put to rest that challenge.

Senator LUDWIG—That might have been the one that was in the back of my mind. Just coming back to Operation Wickenby, the fraud in the child-care centres and the cartel, in those areas there are two parts: there is proceeds of crime but there is also the size of the issue. I think we know from media reports the size of the Operation Wickenby. Did FCSIA talk to you about the size of the issue that they want looked at there?

Mr Bugg—Our discussions have been very much anticipatory and when you say the size, are you talking about the monetary size of the problem?

Senator LUDWIG—Yes—how significant is it?

Mr Bugg—No, I could not tell you. I think that is a question better addressed to FCSIA. In fact, I am sure it is.

Senator LUDWIG—All right. In terms of fraud against the Commonwealth more broadly, there was an opportunity yesterday to ask a number of questions about fraud control broadly but it seems to be that when you analyse the 2004-05 fraud against the Commonwealth you have got agency values, then the number of frauds. For Tax, it is 376; Centrelink, 26,188; and Customs, 1,656. They have various totals.

Mr Bugg—That is a number of matters, is it?

Senator LUDWIG—Yes. How many of these reported frauds make it to the prosecutorial end—to you? They are Tax, Centrelink and Customs.

Mr Bugg—It is hard to answer that question simplistically, because some of the minor Customs prosecutions are actually run, through an understanding with my office, by the Australian Government Solicitor for ACS. So the numbers that you are talking about there are, I suspect, dealt with through the Government Solicitor. A number of the Customs prosecutions that we undertake of course relate to drugs. Previously, they would have been prosecuted under the Customs Act. Now, of course, they have been brought under the Criminal Code. So, as an identifier of numbers within my office, it would be very hard to extract those figures. But it is safe to assume that every matter that is referred to us from Centrelink is a fraud. Those numbers are in the annual report and we have provided them to you more recently through questions on notice. It should also be stated that not every instance of fraud of Centrelink actually comes to my office, because obviously there are minor figures which are not dealt with by my office. One would assume quite a number of those figures you have just read out represent an annual figure.

Senator LUDWIG—If you look at Centrelink, you could assume that, with 26,000 cases with a total value of \$41 million, there might be many minor ones. But, if you look at the Department of Employment and Workplace Relations, there are a total number of 32 with a value of \$5,550,194. You cannot come to that conclusion so easily. Even if you divide it by 32 or take the average, there are still large sums of money being reported as the cost of fraud per agency. Of those fraud cases, you would expect some action at the departmental level. With some of the ones at a lower level, you could understand that they would be dealt with internally or—my words—ignored or dealt with in some minor way. But with large ones, when you look at those sorts of figures or ongoing figures, it is like a child-care centre. They have identified an issue. They have then said, ‘We’ll come and talk to you about it.’ It is a matter that they have identified that they need to address. They have come to you and asked for additional money, I presume, in the budget. They have secured it to give to you. Now they want to start a dialogue with you. So they are proactive in that sense. But, looking at some of these figures, has the Department of Employment and Workplace Relations demonstrated the same interest in looking at those matters; and how many of them come through to you? They might be referring all of them to you and you might be prosecuting away, except the person being prosecuted—

Mr Bugg—The first thing is that I do not know. We do not have a direct dialogue with each of those departments on issues such as that where we do not have an ongoing relationship. For instance, DEWR’s first port of call, if it is a suspected criminal fraud, would be the AFP. As I have said on a number of occasions, we do not have an investigative function so, as I say, that would be the first port of call and it may very well be investigated but it

might be determined that there is insufficient evidence to even refer a brief to us. If the AFP refer a matter to us, it would show up in our figures as an AFP referral. So the number of matters referred by the AFP, which I think you also have in the most recent batch of questions on notice, will include frauds, I am sure, on some agencies and departments. But they are not identified as departmental, whereas with the Centrelink issues—they run most of their own investigations because of the nature of the offending—we have a direct relationship with them and they therefore show up as Centrelink matters. But I would find it difficult to respond or even have any useful input into what you have just been speaking about because, as I say, we are not the first port of call.

Probably something that also needs to be looked at is what is actually included under the definition of fraud, because, whereas one agency may say, 'Well, this is what we can show as being attributable to fraud,' there may be a whole range of subsets under that which would not be criminal. I do not mean that in a dismissive sense at all; it may very well be that it is just not identifiable in a form that could be said to be criminal and therefore it may not make its way to the AFP. That is by way of background for you. But I do not think I could add usefully to this discussion, because our referrals would come from the AFP.

Senator LUDWIG—Perhaps we can eliminate you in this sense—if you could provide those figures for cases from Customs, the Taxation Office and Centrelink which do make it directly to you under the heading of 'fraud'. I can then talk to the AFP later today about what they might refer as well from the various agencies. There is no other way that I am going to be able to work through this to understand it. There are significant lumps of money that are being reported as the costs of fraud against the Commonwealth, by agency. I am trying to ascertain what action is being taken in respect of those lumps of money. If the figures are not easily obtainable more broadly, then I will have to do it the hard way, I guess. So I will get what you have got, talk to the AFP and then talk to Mr Cornall as well.

Mr Bugg—We can look at fraud referrals and provide them to you. Whether we can give them to you in the categories you seek may be a little difficult because obviously we may not put them into departmental silos; they may just show up as an AFP referral. But we could certainly try to respond to that question.

Senator LUDWIG—Even if they are directly from those agencies, the ATO would pass them directly to you.

Mr Bugg—Yes. You could be almost 100 per cent certain that any monetary matter referred to us by the ATO is a fraud. They have obviously not dealt with it civilly—and that is the other thing: there are a whole range of remedies that the ATO has.

Senator LUDWIG—But we are pretty confident that 99.9 per cent of the matters the ATO refer to you—

Mr Bugg—Have money involved.

Senator LUDWIG—if they have not done them internally, would likely be associated with fraud.

Mr Bugg—Yes. There may be some extreme cases of failing to lodge returns and issues of that nature. But if there is a monetary component to it then one could safely conclude it is a questioned fraud issue for us to make a decision about.

Senator LUDWIG—They might have been chasing a barrister or not. But in broad terms Centrelink would be almost of the same type, because the matters that they thought serious enough to refer to you would be fraud, by and large, because it is the same: it is a paying agency. Customs might prove a little more tricky, but a lot of it would be related to excise. It is the same. That is why I picked those agencies as a starting point.

Mr Bugg—Yes. What we will do, just to be clear, is check our records for fraud prosecutions and try and distil some information from that. If we cannot, then we will give you a rounded figure and perhaps clarify those agencies which we can identify.

Senator LUDWIG—Thank you very much. I want to talk about referrals from the ATO. There were some questions taken on notice in additional estimates in February this year, where the ATO only had reliable figures on the number of briefs returned to the ATO from the DPP for 2004-05. They relate to a series of questions on the 31 cases returned to the ATO in 2004-05, which is attachment—

Mr Bugg—Sorry, are they questions to my office or to the ATO?

Senator LUDWIG—No. They were from the Treasury, with headings ‘Australian Taxation Office’ and ‘Referrals to DPP’. Senator Sherry asked:

Do you have statistics on an annual basis of the number of cases that you have referred to the DPP, let us say, for an amount over \$1 million, a significant amount?

He was advised in the answer that the figures for DPP over the last five financial years with a quantum of over \$1 million were four in 2000-01, two in 2002, four in 2003, nine in 2004 and six in 2005. The answer also said:

The above numbers of briefs relate to the offence charge amounts. That is, the instances where the Tax Office believes it has established sufficient evidence for criminal charges to be laid against a defendant. These charges relate to either an actual loss, or a prevented loss.

How many briefs of those were returned to the ATO without action?

Mr Bugg—They are a series of answers that have been given by the ATO, are they?

Senator LUDWIG—Yes, but these were briefs referred to the DPP. So then the question is: of those referred, were they all dealt with or were some of them returned without action? In 2001, there were four. Were those four dealt with to conclusion or were any of them returned to the ATO? How many were prosecuted by the DPP—in other words, an action started or commenced? Then, of those actions that were commenced, there is obviously a number of steps. But if we go to the conclusion where there was a judgment, was there then civil forfeiture or criminal forfeiture as well? Obviously, if you lost, you can indicate where that occurred. If you won, you could indicate in dollar terms how much was recovered, if any, in those.

Mr Bugg—So they are matters where the amount was in excess of \$1 million over those—

Senator LUDWIG—Yes. I am happy to provide that.

Mr Bugg—It would be helpful if I had the hard copy of that.

Senator LUDWIG—Yes. I was just thinking that you might want to—

Mr Bugg—I really could not answer that question here today. I would have to take it on notice. So they are referrals direct from the ATO—or do they include matters that have been jointly investigated by the ATO and the AFP or the ACC?

Senator LUDWIG—They are very good questions. The ATO did not seem to provide that depth of analysis.

Mr Bugg—You are asking me to find out, aren't you? If I could, I will take that on notice and see what we can do with it to try and clarify the issue for you.

CHAIR—Thank you, Mr Bugg.

Senator LUDWIG—And then the identities and penalties—only where they are available—in terms of the case files. If they have been prosecuted to conclusion, then you will have the case name and the outcome, insofar as they relate to a public record or even if they are on the public record as 'A' or 'B'—that is, if they have been ascribed an alphanumeric. I can then look at the case itself. That would be helpful. If it requires me to go back and ask the ATO additional questions, can you let the committee know? I will go through that route again too.

Mr Bugg—It sounds a bit unwieldy. Perhaps we can clarify it with the ATO. Mr D'Ascenzo obviously had some figures done because he has answered those—

Senator LUDWIG—Yes, there are figures there.

Mr Bugg—I am sorry I cannot help you any further on that matter.

Senator LUDWIG—It is really only those matters where it is over \$1 million—in other words, significant issues in dispute.

Mr Bugg—I see he refers to my 'bailiwick', which is very friendly of him.

CHAIR—It is always nice to have a friendly bailiwick!

Senator LUDWIG—I turn to Gerard Industries. According to the information provided by the ATO, they have referred a total of 25 briefs to the DPP—to you—over the last five years with a quantum of over \$1 million, which is the number there. They were prosecuted, so I guess it relates to the same issue. Do any of those 25 relate to Robert Gerard industries?

Mr Bugg—I would think not, but I think you have asked a number of questions on notice about that and I think my last answer about it was that obviously I did not feel able to make any further comment about the matter.

Senator LUDWIG—I thought I would give you another opportunity to see whether anything might have changed your position.

CHAIR—It sounds as though Mr Bugg has made his position clear, Senator Ludwig.

Senator LUDWIG—It is still worth a question, Chair.

CHAIR—And you have done that, so that is a good thing.

Senator LUDWIG—Have you instigated any action on your own behalf against Robert Gerard industries?

Mr Bugg—No, I have not.

Senator LUDWIG—Have you considered whether or not you should?

Mr Bugg—Commence a prosecution?

Senator LUDWIG—Yes, to commence a prosecution against Robert Gerard industries.

Mr Bugg—It really comes back to what I said when we were before you in February—that I do not have an investigative function. Without a brief being referred from an investigative agency, there is nothing that I can do about that. I know some people differ in terms of that view, but that is the position I have stated previously.

Senator LUDWIG—You do have the ability to ask for a particular brief, though, don't you?

Mr Bugg—I am sorry?

Senator LUDWIG—You do have the ability to ask for a brief. I think we have gone through some of this before.

Mr Bugg—Yes, we have.

Senator LUDWIG—Your answer last time was yes, you do; but you have not in this respect.

Mr Bugg—Yes.

Senator LUDWIG—That has not changed from the last time I asked you—you still have not asked for one?

Mr Bugg—No.

Senator LUDWIG—In terms of Operation Wickenby, because it is an ongoing operation, I am keen to explore as much as I am able to without stepping over the line too far, but you could help me step over the line as far as I am able. As I understand it, a range of figures have been bandied about in the media. Your involvement to date is significant resourcing for prosecutorial work. How many briefs has that generated to you at this point in time?

Mr Bugg—We do not have a final brief for prosecution for any matter as yet. Obviously, if you understand the advantages of having something like the Proceeds of Crime Act, it has a facilitative process in it that enables you to restrain assets before they can be dissipated or moved offshore. So some of the proceeds action is undertaken very much as a preliminary and a conservatory step to try and preserve property that will be amenable, obviously, if you can substantiate the nature of the allegation and the amount involved. So we do not have a prosecution brief as yet. Our resourcing in terms of the assistance we have been giving in those preliminary matters which I spoke about has been very much operating within our existing structures, anticipating that this substantial additional work, when it comes on stream, will have to be resourced to meet that. So this funding has only just become available.

Senator LUDWIG—It is a big amount of money, with which comes staffing and a whole range of things. Is it directed at only likely prosecution that will result, or is it earmarked for broader application?

Mr Bugg—It is proceeds action and prosecutions.

Senator LUDWIG—Do they separate it out as to how much should go to proceeds? Is that the civil forfeiture regime or the criminal forfeiture regime?

Mr Bugg—We have, as best we can, in terms of anticipating extra resources needed in both areas.

Senator LUDWIG—Has there been broad discussion of the likely size of the civil forfeiture regime quantum?

Mr Bugg—Not really. There is a figure of \$300 million that has been used by the tax office in some of what it said about this matter. Obviously, as I said, we do not have a criminal brief. We have had some proceeds action—not a lot, but we have had some. We really have not seen even what is above the water with the iceberg at this stage. It is a better question for the tax office.

Senator LUDWIG—In terms of those matters in relation to the civil forfeiture regime, how many of those matters have you commenced under Operation Wickenby?

Mr Bugg—There is one action involving three people in Queensland.

Senator LUDWIG—Is there an amount that has been—

Mr Bugg—I gave that to you earlier—about \$11-odd million—

Senator LUDWIG—So it is the one.

Mr Bugg—that has been restrained, yes.

Senator LUDWIG—What point is that up to at the moment?

Mr Bugg—It is under restraint. There has been no resolution of that and obviously no brief in relation to a prosecution.

Senator LUDWIG—That is under the proceeds of crime civil forfeiture regime?

Mr Bugg—Yes.

Senator LUDWIG—Is there a six-month period on that? I do not have the legislation in front of me.

Mr Bugg—No, I do not think that six-month time limit is triggered yet. This money or property is only under restraint.

Senator LUDWIG—So the six months has not been triggered yet, and so it is still in the—

Mr Bugg—It is still in the very early stage.

Senator LUDWIG—More broadly, in the civil forfeiture regime, are you tracking how much you are recovering?

Mr Bugg—Yes, we are—and ‘recovering’ is the right word. You can restrain property but you may not at the end be successful in recovering it. The act was very new and obviously

there was quite a learning process not only for us but for the agencies who would deliver possible opportunities to restrain and ultimately recover property. In the first full year, we recovered \$3.4 million; in the second year, \$6.5 million; and in the year to date, \$11.29 million. So it is a gradually increasing figure, which I would like to think you would expect with something so new and, in a sense, unique.

Senator LUDWIG—In terms of the civil forfeiture regime—they did not turn that one down—it is growing, and it is growing not quite exponentially but certainly significantly. Can you break that down in terms of which agency it is primarily coming from, or is it all AFP or only ACC or is it other agencies also gaining skills in this area to refer briefs on?

Mr Bugg—I think we could break it down. Certainly in this last 12 months there has been quite a lot of work with the tax office represented in those figures. I think agencies are discovering the practicality, shall we say, and the—

Senator LUDWIG—Value.

Mr Bugg—efficacy of this process. Obviously, as people become more comfortable with it, it is being seen as being more useful. Obviously you can see it with the tax office using it.

Senator LUDWIG—Do you employ financial analysts or financial investigators to look at the briefs, or do you expect that work to be done by—

Mr Bugg—We expect that work to be done by the investigating agency, although we do have people who we have used in the past to assist us in that area.

Senator LUDWIG—ITSA act as the fund managers?

Mr Bugg—Yes.

Senator LUDWIG—You then refer the money after there has been a court order?

Mr Bugg—If it is restrained, it becomes the responsibility of ITSA, and if it has been recovered it goes to ITSA.

Senator LUDWIG—Then they look at the disposal. If they are assets, they look at the disposal of the assets?

Mr Bugg—Yes.

Senator LUDWIG—Do you get a feedback from ITSA as to how much has been recovered through the disposal?

Mr Bugg—Yes.

Senator LUDWIG—I should ask ITSA.

Mr Bugg—I think ITSA would have those figures at its fingertips.

Senator LUDWIG—I will ask ITSA. In terms of complex corporate matters under way since the last time we were here, are you able to provide numbers of those? In other words, briefs that are under active prosecutorial work.

Mr Bugg—Complex corporate matters, that is, under the Corporations Act?

Senator LUDWIG—Yes.

Mr Bugg—I could not off the top of my head. Since we last discussed the matter, obviously there have been a number of matters referred to us. I think I said to you last time we have regional liaison meetings where we are given, shall we say, an indication of what is on the horizon so that we can resource or meet it, and so we have obviously been given an indication of some matters that are coming our way or we could expect. I could not give you a list of the matters that we would regard as complex that have come our way since I spoke to you in February, but I could take that on notice.

Senator LUDWIG—Yes, please. More broadly, there was the phase 2 report on the application of the Convention on Combating Bribery of Foreign Public Officials in International Business Actions. It is an OECD report, but the question really goes to whether the DPP can confirm whether or not there has been any referrals or instances of persons convicted or prosecuted of money laundering offences under division 400 of the Criminal Code in relation to a foreign bribery offence?

Mr Bugg—I think off the top of my head—and that is a dangerous thing—the answer would be no, but I could take it on notice and if the answer is different then I will provide you with that detail.

Senator LUDWIG—That would be helpful. The figure at 120 of that report would indicate there were no cases, but now some time has elapsed since then, or if there is not a prosecution whether there is a brief and, if so, from what agency. Thank you. I did not have any further questions here.

CHAIR—Further questions from the DPP from Senator Nettle.

Senator NETTLE—I have questions about the four peace protestors that were arrested whilst they were protesting at the US spy base at Pine Gap in December last year. I understand they have been charged with offences from the Defence Special Undertakings Act of 1952: is that correct?

Mr Bugg—Yes.

Senator NETTLE—When was the last time that anyone was charged under that act?

Mr Bugg—That is the first charges under the act that I am aware of, that the office is aware of, but you see our office has only been operating 20 years and you are talking about legislation that has been around for 53 or 54 years. I do not know about prior to the commencement of my office on 5 March 1984, but certainly we have no record of a prosecution under that provision by my office since its inception, other than these matters.

Senator NETTLE—How would you determine whether or not there had been any prosecution prior to your office existing? How would that be determined? Who would you ask that question to?

Mr Bugg—Could I admit to saying I just do not know? I really do not know, I am sorry, even where you would obtain a record of that. You see, going back to that time, some Commonwealth prosecutions were undertaken by the Deputy Crown Solicitor, which no longer exists. The Australian Government Solicitor's office has replaced that office. But in some states, for instance, like South Australia and I know Tasmania, certainly back at the time you were talking about, prosecutions were undertaken on contract by private law firms for the

Commonwealth Crown Solicitor. So it is really quite difficult, I should imagine, to find out. I cannot assist you, I am afraid.

Senator NETTLE—But as far as you are aware, you do not know of anyone else who has been charged under the act over the 50 years that it has been in?

Mr Bugg—Well, sorry, not since 1984.

CHAIR—Mr Bugg gave evidence in relation to the Office of the DPP's knowledge.

Senator NETTLE—Is it right that in order to charge somebody under this act you need the consent of the Attorney-General?

Mr Bugg—Yes.

Senator NETTLE—Do you know the date on which the Attorney-General gave permission for someone to be charged under this act?

Mr Bugg—On 13 April this year.

Senator NETTLE—What is the process that needs to be undertaken for the Attorney-General to make that decision? Is there a process in place that they need to follow in making that decision?

Mr Bugg—In terms of what the Attorney-General has done in making the decision, I just cannot answer that but I can say that obviously, in terms of being the office responsible for prosecuting, my office could see from the legislation that the Attorney's consent was necessary and an approach was made by my office to obtain the Attorney-General's consent before the prosecution commenced.

Senator NETTLE—So did you make a recommendation to the Attorney-General that they be prosecuted under the act?

Mr Bugg—I made an approach to the Attorney-General's office to obtain the Attorney's consent, and any communications I made to the Attorney-General are privileged.

Senator NETTLE—Is that different to a recommendation?

Mr Bugg—As I said, the approach I made was a communication to the Attorney's office and I regard any communication between the Attorney and me as privileged. I cannot take it any further than that.

Senator NETTLE—So you were asking for consent which you required under the act in order to charge the people with that offence?

Mr Bugg—An approach was made by my office to the Attorney-General under that legislation to obtain his consent for the commencement of the prosecution, and the Attorney consented on 13 April.

Senator NETTLE—Okay. Did the Attorney make any approach to your office about these particular offences or was the approach only one way?

Mr Bugg—In what way are you suggesting?

Senator NETTLE—Well, you have indicated that you have approached the Attorney-General to get permission—

Mr Bugg—To obtain the Attorney's consent.

Senator NETTLE—Did the Attorney approach your office in relation to this matter or did it only go one way—the other way?

Mr Bugg—As I have said, my office approached the Attorney-General's office. The Attorney-General does not refer matters to my office for prosecution. They are referred by various agencies and departments who either have an investigative power or have made a complaint that an offence has been committed under the regulatory responsibilities that they have, so the Attorney does not—certainly in my experience—refer matters to me for prosecution.

Senator NETTLE—Which department referred this matter to you?

Mr Bugg—It was an investigation by the Australian Federal Police.

Senator NETTLE—Can I ask the date that it was referred to you?

Mr Bugg—You can; whether I can answer it is another matter. The incident occurred on 9 December last year, and I do not know when the matter was referred to my office by the AFP.

Senator NETTLE—Could you take that on notice, please?

Mr Bugg—Certainly.

Senator NETTLE—Thank you.

Senator Ellison—The AFP will be appearing later this morning.

Senator NETTLE—What was the date on which you made an approach to the Attorney-General to ask consent for this offence? You said the consent was granted on the thirteenth.

Mr Bugg—Yes.

Senator NETTLE—Do you have the date that you made the approach to the Attorney-General?

Mr Bugg—It would be some time shortly before that.

Senator NETTLE—Can I ask you to take on notice the exact date of that?

Mr Bugg—Certainly.

Senator NETTLE—Thank you. Because it is a joint facility that the offences are involved in, does there need to be any discussion with American authorities about charges that are laid?

Mr Bugg—I do not know.

Senator NETTLE—You are not aware of there having been in this case?

Mr Bugg—I am not prepared to go into the discussions with and the advice that my office gave to any agency about this matter, because it is legal advice about a matter that is currently before the court and I need to be very careful about just what I say beyond what I have said to you already.

CHAIR—Senator Nettle, we are particularly careful about discussing matters of this nature in a public estimates environment and Mr Bugg is being appropriately cautious in that

regard. The committee also endeavours to exercise the same sort of caution, so I would encourage you to do that.

Senator NETTLE—Yes, and I think I am being careful in asking the questions to ask about the process.

Mr Bugg—Mr Bugg will certainly continue to indicate when he cannot answer questions.

Senator NETTLE—Yes, fair enough. Was any part of the Australian government that you are aware of approached by American authorities with regard to these charges?

Senator Ellison—That again is a question to the Australian government—that is, me—and in the circumstances that is a question which cannot be answered, for the reasons that Mr Bugg has outlined

Mr Bugg—If you are suggesting that in some way the decision to prosecute this matter has been influenced by some external consideration, I can tell you that it has not. The decision to prosecute—and I will say this alone and nothing more about the facts of the matter—is based on the evidence that is gathered, and if that evidence is available and admissible and it supports a prosecution to the point where there are reasonable prospects of conviction then obviously a prosecution will be commenced.

Senator NETTLE—It was more because it is a joint facility. I was wondering whether there was any requirement to engage in discussions in relation to those matters. That is the reason I was asking the question.

Senator Ellison—If there is a legislative base for that, I can take that on notice. As to what the arrangements in relation to the commission of an alleged offence on a joint facility are, certainly we can take that on notice. I do not have the answer to hand.

CHAIR—Thank you, Minister.

Senator Ellison—That is a generic question, rather than one relating to this particular case.

Senator NETTLE—Yes, that is how my question was. Minister, are you able to answer—

Mr Bugg—Could I just come back, Senator: 12 April was the date upon which I referred the matter to the Attorney-General.

Senator NETTLE—Thank you.

CHAIR—Senator Nettle, you were about to ask the minister a question.

Senator NETTLE—I was just going to ask the minister if he could shed any light on whether this offence had been used since the act was passed in 1952. It certainly seems a long time, over 50 years, before this offence was used. Could you shed any light on why that might be the case?

Senator Ellison—I understand that Mr Bugg said that to his knowledge it had not been used since 1984. I think that is right. If we go back before that, it will take some time. We would have to take that on notice to see if it had been used prior to that.

Mr Cornall—It might difficult, Minister.

Senator Ellison—Yes, as Mr Cornall has just pointed out to me, that might be very difficult, but we can have a look at that and see if it has or has not. We will take that on notice.

Senator NETTLE—Thank you.

CHAIR—Mr Cornall?

Mr Cornall—Madam Chair, can I just say that I really think that, in terms of using departmental resources to go through the processes that Mr Bugg indicated to try to ascertain whether something was done 45 years ago under this act, the department would be better utilised doing something else. If we had any indication that we could easily find it for Senator Nettle, we would provide it, but I do not think we can undertake to go to police forces or private practitioners around the country to try to ascertain if something happened 45 or 50 years ago.

CHAIR—Or court records, indeed. I think that is useful advice for the committee, and I am sure that, once the department has perhaps had a look at this and decided whether that it is in fact going to be the case, you can indicate that to the committee in response to an answer to question on notice.

Mr Cornall—Thank you, Chair.

Senator NETTLE—It does seem remarkable that it has not been used since 1952, so I was trying to find out before whether we can get a definitive answer.

Senator Ellison—In 1984, I think, isn't it?

CHAIR—The evidence in relation to that which Mr Bugg is able to attest to is 1984.

Senator Ellison—Indeed, and what is taken on notice is to see if we can find out 1952 to 1984.

CHAIR—Indeed.

Senator Ellison—That has been with a caveat that the secretary has indicated.

CHAIR—Depending on the resources demanded to fulfil that task.

Senator NETTLE—I appreciate that.

Mr Cornall—If there is some indication within the department's files or material, we will provide it, but in terms of going around Australia to try to find the answer I think that would be an unproductive use of time.

CHAIR—Indeed.

Mr Bugg—If I could, I will try to be a little helpful on this in terms of where the search may go. When you say it is surprising that it has not been used, the act will be used if an offence has been committed. It may be a much more expeditious search to determine whether there is any record of an offence having been committed rather than a prosecution, because when one says, 'It is the first time it has been used,' it may very well be the first time that there has been an offence for which there is evidence to take it that further step.

CHAIR—Thank you, Mr Bugg.

Senator NETTLE—So, going back to 1989 and 1992, when there were hundreds of arrests out the front of Narangba and Mr Beazley called out the Army, you are able to definitively say that none of those people—those hundreds of people that were arrested—were charged with these particular offences?

CHAIR—It has been taken on notice, Senator Nettle.

Senator NETTLE—Well, it is since the DPP existed: 1989 and 1992.

Mr Bugg—We have no record of a prosecution under this act. Some other public order legislation may have been used if there were arrests. They may have been state offences. That may be something in the purview of the state DPPs. I just do not know. But we have no record of this office, since its inception, prosecuting under this act. But if there were arrests in these incidents about which you speak—and I really have no strong recall of them, although I do have a memory of the incidents—they may have been the subject of state police activity as a result of the offences or whatever conduct it was that was causing trouble occurring on state property rather than Commonwealth property.

Senator NETTLE—I have a question for the minister. In correspondence sent by the Attorney-General to constituents asking about this matter, the Attorney-General commented it would be inappropriate for there to be any political intrusion into the criminal justice system. This was prior to the decision having been made by the Attorney-General that he wanted to proceed with these particular charges. I am wondering whether you would describe the decision by a member of parliament to proceed with these charges as political intrusion in any way?

Senator Ellison—Certainly I do not regard it as political intrusion. It is one which is provided for. There is a process which has been outlined. I think there may be some other cases where the Attorney-General's consent is required for prosecution or action to be taken.

Mr Cornall—Madam Chair, I would simply add that the Attorney-General is a member of the government and a member of the cabinet but he is also the first law officer of the Commonwealth, and he discharges those two functions quite separately and appropriately and, in giving consents to prosecution matters of that nature, he is acting in his first law officer role. I think the two are quite separate and distinct.

CHAIR—There are no further questions for the DPP. I thank you, Mr Bugg, and your officers for appearing this morning.

[10.30 am]

Australian Customs Service

CHAIR—Good morning, Mr Carmody, gentlemen. We will begin with questions from Senator Ludwig.

Senator LUDWIG—Looking more broadly at the pre- and post-budget initiatives, specifically in respect of staffing, and looking at Australia's far and remote north, you have got customs premises at Cairns, Thursday Island, Weipa, Darwin, Dampier and Broome. Have I missed anybody out there?

Mr Jeffery—Gove.

Senator LUDWIG—Is that it?

Mr Carmody—That sounds close to it.

Mr Cornall—Did you include Port Hedland?

Senator LUDWIG—I do not think I went around that far.

Mr Carmody—Dampier.

Senator Ellison—I think you would have to say Dampier and Port Hedland in that, too.

Senator LUDWIG—It would almost be the same.

Senator Ellison—In my state that is certainly regarded as the north. They regard themselves as the north.

Senator LUDWIG—That is more important! How many staff in total cover those sites?

Mr Carmody—I do not know that we have that level of detail, but we could certainly provide it.

Senator LUDWIG—What I was interested in is pre budget—in other words, what staff you have now—and whether or not there is any post-budget initiative which will include additional staff at those locations.

Mr Carmody—I think for Dampier in particular there is a specific initiative to increase the staffing there because of the increased activity at that port.

Senator LUDWIG—I think that was 31, wasn't it? Or 32.

Senator Ellison—Nineteen to 42, I remember—something like that.

Mr Carmody—I suspect that, as part of the foreign fishing initiatives, there may be some additional resourcing, but we can get that detail.

Senator LUDWIG—It would be helpful if you could take that on notice. There was a broader issue. There was an incident in which a Brisbane gun collector was raided by Queensland Police. It seems to me it was a joint operation with Customs. Has a charge eventuated from that incident? Has that been referred to the DPP?

Mr Carmody—I do not have that detail, but certainly we can provide the detail.

Senator LUDWIG—As much information as you are able to provide: what charge was in fact preferred, if any; what was referred to the DPP to look at; and whether there were any other federal charges which might come not from Customs but from the AFP.

Mr Carmody—Whatever detail we can provide.

Senator LUDWIG—And where that is—whether it is still before the court and the like, or whether it relates to a matter that you would do in-house if it related to an importation. More broadly, explain how the individual managed to obtain gun parts through the post. I think that was the import of it, unless I am wrong about that.

Mr Carmody—You are aware that we do X-rays at the post—and, if my memory serves me correctly, this is a case where a matter was examined and then forwarded through to the gentleman. As I understand the detail—speaking generally, because I need to be careful as to what is happening with this case, which makes it difficult—

Senator LUDWIG—It just struck me that you are right and we might be walking on—

Mr Carmody—We need to be careful.

Senator LUDWIG—What we might do is find out where that is up to before we proceed any further, and if it is completed then we can have a look at it. If it is not completed, we might want to maybe take it on notice at that point.

Mr Carmody—Certainly. If it is completed and there are no further issues, the general thrust of your question is how it got through.

Senator LUDWIG—Yes.

Mr Carmody—We will respond to that, if the matter has been completed.

Senator LUDWIG—I guess the point of it is whether it was examined by Customs and whether it was released—the sequence of events.

Mr Carmody—Yes.

Senator LUDWIG—I will find out where it is before I make the next statement, I think. You will be able to find that out in a short while, so we might come back to that issue. With respect to the cargo screening, the air cargo agents, this was an initiative from the aviation transport security amendment bill 2006. In the budget there is an initiative to increase inspection of air cargo. What does that relate to? There is not a lot of detail, as you can appreciate, in the budget sometimes, so this is our opportunity. I am sure the chair would be pleased to know that I am asking a budget related question.

CHAIR—Don't make it a habit!

Mr Carmody—I think this is part of the initiative moving towards the position where cargo carried on passenger aircraft is screened, primarily for explosives. You would be aware that we are looking at trialling a CSIRO neutron scanner facility. There is a range of initiatives included in the budget, which include work with the department of transport in this regard. Customs are involved in providing some of the training for the use of technology. There is provision of resources for increased teams of explosive detector dogs. There is proposed deployment of about 20 additional explosive detector dog teams, and an increase in our intelligence and investigation resources looking at data in relation to export air cargo so that we can target activities. There is the initiative I talked about of continuation of the move towards a trial of the neutron scanner at Brisbane airport. There is security awareness training for industry and Customs staff, and Customs has been provided with an additional six mobile X-ray and explosive trace detector vans. As I said, it is a general move towards screening of cargo on passenger aircraft leaving the country.

Senator LUDWIG—It says 'increased inspection of air cargo'. Those initiatives are what that lump of money is designed to do?

Mr Carmody—That is my understanding of the initiatives. I was speaking in particular about the Customs aspect of that. The department of transport takes responsibility.

Senator LUDWIG—I accept that. Is it a discrete or separate lump from the aviation transport security amendment legislation—in other words, for what the department of transport would have? There is a lump of money; I am just trying to understand which is your share and how does it relate to the initiatives that you will have? Then I will go across to the department of transport and ask them similar questions to understand how they are going to

spend their money. Are there any joint initiatives that you will be dealing with from that lump of money?

Mr Carmody—The particular initiatives, I have explained to you, are the additional funding to Customs. As I said, the department of transport and Customs will be providing training—in particular, Customs will be providing training on explosive trace detection equipment and establishing standards and the like. I think the department of transport are involved in assisting in the supply of that technology.

Senator LUDWIG—With respect to the aviation transport security amendment legislation, regarding air regulated cargo agents and the like, how does that impact upon Customs business at airports, particularly in relation to air cargo screening processes interfaced with Customs clearance procedures?

Mr Carmody—Certainly, DOTARS received some additional funding for audit and compliance activities in relation to the regulated air cargo agents scheme. I think they are part of a series of layers of approaches towards screening, because no one single layer is guaranteed to be 100 per cent effective. So we are seeing here a range of initiatives to increase the overall effectiveness of these things. I think they complement each other.

Senator LUDWIG—More specifically, do you have to change any of your business practices, your cargo screening, your Customs clearance, because of the regulated air cargo agents scheme? Is there any demand to alter your procedures and processes as a consequence of these changes, and have DOTARS spoken to you about that?

Mr Carmody—I do not know whether anybody here can give you the detail of the discussions we have had with DOTARS.

CHAIR—I think Mr Buckpitt is at the other end of the table, Mr Carmody, looking quite eager, as it happens.

Mr Buckpitt—The RACA program, which is administered by DOTARS, does extend to industry participants beyond just the airports. It includes, for example, trucking companies that might be transporting air cargo from depots to the airport. The Department of Transport and Regional Services is looking to strengthen the RACA program. That includes strengthening with respect to the audit activity that it undertakes, and also relates to the requirements of regulated air cargo agents. As part of this round of security measures, DOTARS is looking at additional screening requirements which it would introduce under its regulations. Specifically, the sorts of screening requirements that are under consideration and have been discussed with industry include requirements for cargo terminal operators at airports to undertake screening of all air cargo, using explosive trace detection equipment. That practice at the moment is being undertaken on a voluntary basis by some but not all cargo terminal operators. It is undertaken with varying degrees of thoroughness. The intention is that DOTARS will use the regulation making powers to make it a mandatory requirement for all of those operators and to a set standard across the board, as part of their participation under the RACA program.

Senator LUDWIG—If they did not participate in the RACA program?

Mr Buckpitt—Participation in the RACA program is mandatory, I understand.

Senator LUDWIG—That is what I meant. It would seem that you would not then need to get screened if you were not in the program. But if everyone is in the program then everyone will be screened. Is that how you understand it will work?

Mr Buckpitt—The requirement for additional screening will be imposed upon certain operators within the program, not all. So the terminal operators at airports would be doing the screening. Obviously, with respect to other participants such as transport operators, depots further back in the supply chain, it would not be an option for them necessarily to do similar sorts of screening.

Senator LUDWIG—They will be screening for explosives only?

Mr Buckpitt—Yes.

Senator LUDWIG—With respect to the interface between them and Customs, I will have to talk to DOTARS about particular details, so I appreciate your additional remarks about the air cargo scheme. But what I am interested in is how that affects Customs' business.

Mr Buckpitt—We will be working very closely with DOTARS. One example is the fact that, although DOTARS will be providing the funding for this equipment, Customs will be providing the industry with the training because Customs already has staff who are using similar technologies and therefore it was seen as a sensible use of those same people to offer that expertise to assist industry in getting adequate numbers of staff up to the standard in the operation of this sort of technology.

Senator LUDWIG—Did DOTARS consult with you before they implemented this scheme?

Mr Buckpitt—DOTARS and Customs developed these proposals together. Our ministers took a joint submission to government on the proposals that you are now seeing.

Senator LUDWIG—So I can ask you a little more about it then. In terms of the joint proposal, is it designed to have 100 per cent of air cargo going out of this country screened? Is that the objective?

Mr Buckpitt—No, the objective is not to have 100 per cent screened. First of all, the objective was focused around cargo on passenger aircraft. Given that there is a lot of cargo that is on dedicated aircraft freighters, that was not necessarily seen as part of this proposal. Secondly, there will always be an issue as to what is meant by 100 per cent. In the case of some cargo, it is not practical regarding, for example, fresh produce, meat and animals. How far do you go in that type of screening? So we have not at any point tried to represent this as 100 per cent screening; however, our intention is that there will be a blanket coverage requirement for cargo terminal operators to apply this type of screening wherever it is feasible to do so.

Senator LUDWIG—Will DOTARS be the administrator of this scheme or will it be a joint matter between Customs and DOTARS to ensure compliance of the terminal operators?

Mr Buckpitt—DOTARS will have responsibility for the scheme in as much as it will be a requirement under their regulations and they will have the RACA auditors to monitor compliance.

Senator LUDWIG—So when we are talking about air regulated cargo agents, are there some major companies involved?

Mr Buckpitt—It is probably fair to say that all of the major companies that you can think of that have any involvement with air cargo are participants in this program.

Senator LUDWIG—DHL, FedEx—all of those?

Mr Buckpitt—That is correct. We are talking about in the order of 1,300 or 1,500 companies that are RACAs.

Senator LUDWIG—And they will all have to sign up to the scheme?

Mr Buckpitt—The scheme has been in place for some time, so it is not a new scheme. But we are talking about some tougher requirements associated with the scheme.

Senator LUDWIG—Will that be for domestic and international?

Mr Buckpitt—Correct.

Senator LUDWIG—With international, where it is for export, how does Customs interface at that point? What role do you play? In other words, have you had to alter or change your systems to accommodate the regulated air cargo agents?

Mr Buckpitt—I do not think we have changed our arrangements in view of the regulated air cargo arrangements. What the proposal entails is increased capacity for Customs to respond to incidents and to undertake more activity of its own accord in relation to air cargo that is being carried on passenger aircraft. So with the increased screening that industry will do to complement that, Customs will also have an increased capacity, through mobile X-ray vans and dogs, to undertake its own screening of cargo that might be earlier in the supply chain, before the airports, say, in the case of depots, or it could be as a quality check of the work being undertaken by the cargo terminal operator, or it could even be later. For example, as cargo is just about to go onto the plane, we could have some dogs go across the cargo and take one final check. Again, it is consistent with this concept of layering of the security threat by having several layers of protection. The overall result is a higher degree of confidence that something adverse has not found its way into the cargo.

Senator LUDWIG—Will that include the freighters or just the passenger cargo—

Mr Buckpitt—The resources have been provided specifically in response to the threat about passenger aircraft; however, I would expect that the technologies, the dogs, would be used more broadly as and when they are available. So it will be an issue of prioritisation. The priority will be passenger aircraft, but I would expect that they would be used more broadly in the airport precinct.

Senator LUDWIG—What about incoming air freight or passenger air cargo?

Mr Buckpitt—The measures relate specifically to export air cargo, not incoming. The existing arrangements that you would be aware of in relation to 70 per cent air cargo screening already apply to imports and imported air cargo. No specific change is anticipated by virtue of these announcements.

Senator LUDWIG—So the increase in inspection of air cargo does not relate to the current 100 per cent screening of Australia Post—

Mr Buckpitt—No, Senator.

Senator LUDWIG—Is there any additional screening of DHL, FedEx—the other 1,300 that might be there?

Mr Buckpitt—There will be additional screening that industry will undertake, by virtue of these requirements that will be imposed under the RACA program.

Senator LUDWIG—That is for exports?

Mr Buckpitt—Yes.

Senator LUDWIG—But not for imports?

Mr Buckpitt—Imports, no.

Senator LUDWIG—How does it tie in with the ACP?

Mr Buckpitt—I don't think the two are related. They are really quite independent initiatives.

Senator LUDWIG—If you are an exporter of air freight or air cargo, it is 100 per cent likely that you will be air regulated cargo—in other words, you will be part of the scheme?

Mr Buckpitt—The fact that you are an exporter would not make you necessarily part of the scheme. If you were involved in the movement of air cargo as your core business then you would be part of the scheme.

Senator LUDWIG—Freight forwarders, brokers?

Mr Buckpitt—Freight forwarders, correct; not brokers, because brokers do not always have physical contact with the cargo. Anybody who would have physical contact with the cargo could expect to become a regulated air cargo agent.

Senator LUDWIG—And for export. So the ACP would be distinct; it would be another layer upon that?

Mr Buckpitt—If an ACP participant was involved, that is correct. They could have their own security measures in place that would be another layer.

Senator LUDWIG—Mr Carmody, there was a *Lateline* investigation on 18 April 2006 which reported allegations of corruption in a number of government agencies, including Customs.

Senator Ellison—Is this the Torres Strait matter?

Senator LUDWIG—Yes. The person interviewed on the program claimed that 'the Australian law enforcement agencies are corrupt; the Federal Police, Customs and Australian immigration officers are corrupt and they are part of the network'. What has Customs done in response to those quite serious allegations?

Mr Carmody—It must be noted that these allegations have surfaced in the past and we have been unable to find any evidence of that. It is important to ask how far we can go. We had one gentleman wearing a balaclava and making statements. It is a bit hard to pursue that. I was influenced also by the fact that there were statements made which were patently untrue. For example, I think it was claimed that Customs flies all the time at 10 o'clock in the

morning and two o'clock in the afternoon. That is untrue. It was said that we have no night-time flight coverage at all. That is untrue. So those things influence how far I could go.

In order to pursue the matter, shortly afterwards I wrote to the executive producer of *Lateline* to ask if he could provide assistance so that, if there was something of substance or some lead that we could follow, rather than broad statements being made by masked gentlemen, we would certainly do it. I made it clear that I take issues like this seriously. I have not yet received a reply to that. We look at all of these allegations as far as we can, but we have been unable to pursue such claims too far, as we have been unable to find evidence of these matters. As I said, a number of claims made on the program were factually incorrect.

Senator LUDWIG—Are you able to provide a copy of the letter that you sent to *Lateline*?

Mr Carmody—Yes, I certainly can.

Senator LUDWIG—You have not undertaken any internal investigations at this point?

Mr Carmody—I asked our internal investigators but they said to me, 'Where do we go with this?' It is very difficult as to where you go. I also asked: 'If, as was alleged, there was rampant corruption, what would you expect to see?' You would expect to see people in the area perhaps living above their means, you would expect to see a lot of claims being made about inappropriate behaviour, and none of those things occurred. So we are at a dead end unless we can get some specific detail from the program.

Senator LUDWIG—There were a number of wider issues raised regarding allegations of rampant illegal trade and smuggling over the Torres Strait between Papua New Guinea and Australia. Did you respond to those issues separately?

Mr Carmody—No. I asked specifically, broadly, about allegations of corruption regarding Customs officers. That was the particular thing that I asked regarding that program. I also make the observation that, while this is a very difficult area to patrol—it is a large area and it is in close proximity to borders with a number of islands—it is one that, clearly, through Coastwatch and other operations, is subject to fairly intensive scrutiny within the priorities that we have.

Senator LUDWIG—No separate investigation has been launched in respect of that issue?

Mr Carmody—I think that is part of our ongoing operations. That is why we are there, so we have our activities continuing there.

Senator LUDWIG—Has there been any detection of significant illegal trade or smuggling over the Torres Strait by Customs in the last 12 months between Papua New Guinea and Australia?

Mr Drury—There are always the odd marginal bits of smuggling that you would get in any part of Australia, whether it is at Sydney airport, on the Sydney waterfront or wherever. There are a number of small items that are picked up—small quantities of marijuana and so on. I was in Port Moresby a couple of weeks after that program was aired. I spoke to PNG officials and I also spoke to the Australian High Commission about this matter. One of the allegations made in that program was that PNG authorities were supplying the Australian High Commission with a lot of information about this zone and what was going on. The investigative reporter alleged that these were piling up on a desk in Port Moresby, in the

Australian High Commission. The high commissioner emphatically denied that and said that he had made his own inquiries through authorities in PNG. They could not identify who the person in the balaclava was, but they doubted the veracity of the claim that he was a member of the PNG military. I dug into it from that end as well, and came up with blanks.

Mr Carmody—In the end, there are questions about credibility of statements, factual statements. I believe we have pursued this as far as we can, and there is nothing objectively available to substantiate the claims, either as to trade or as to corruption of officers.

Senator LUDWIG—Given that you have had a look at it from one perspective, would it have been helpful to have had an oversight body such as the new ACLEI to refer the matter to, for the confidence of your staff—for it to inquire into whether or not there was any substance to the allegations? If there were not, then you would have an independent oversight body that said, ‘We have had a look at it as well,’ and you would know there is not.

CHAIR—I am not sure that Mr Carmody can answer questions in the hypothetical like that, Senator Ludwig. Perhaps the minister might want to explore it.

Senator Ellison—The one thing you could say about that show was that the only people it did not include were you and me, because it referred to the Australian Federal Police and the whole grab bag. The government regards the credibility of those allegations as very low indeed. When you have people who make these allegations but do not come forward with anything of substance, you have to question their motive and integrity. Quite frankly, I think Customs did everything it could to ascertain the value of those allegations. But, if our officials are going to get sidetracked by a wild goose chase because some person gets up on national television and makes all sorts of statements, we will be then really wasting taxpayers’ resources.

You have heard what the Customs CEO said and what Mr Drury said: there is nothing to back up what was said. What is more, we have written to the program and they have not come back with anything. It is funny: that very often happens when you have these allegations. It is very easy to sling the mud. For my part, I think we have indicated that ACLEI could have a wider application than just the AFP and the Australian Crime Commission—I am on the record as saying that—and we have indicated that Customs could well be included in that jurisdiction. That is why we have enabled that jurisdiction to be increased by regulation, not necessarily by going back to parliament to amend the bill.

CHAIR—You know the committee’s views on that matter, Minister.

Senator Ellison—Yes, I do—and you could include the ATO. But one thing that does get—

CHAIR—You might want to know Mr Carmody is looking slightly discomfited to your immediate left, Minister!

Senator Ellison—He should not feel discomfited like that.

CHAIR—I think it was the second comment and not the first.

Senator Ellison—We have always said that and we will keep it under review; of course we will. But I just want to put it in context. It does annoy me when these sorts of allegations are made and frequently mud is thrown; you ask them to put up or shut up and it is funny—they

just do not come through with the detail. If we went running off, chasing down every nook and cranny of these allegations, we would have all our people doing that and no-one doing the core duty of looking after Australia's national security and interests. But your question, Senator Ludwig, is a reasonable one about ACLEI. That is the way we are approaching it with ACLEI. I guess my other remarks are targeted to this program.

Senator LUDWIG—I accept that, Minister. But if you had an ACLEI in place oversighting Customs when these allegations are raised, particularly when they are raised in that particular way—as I think you have indicated, Mr Carmody, you can spend a significant amount of time and resources investigating allegations that may not have any substance—ACLEI can then turn their minds to deciding whether those accusations and allegations should in fact be examined. And then they can examine them if they do require it or indicate that they do not. That was the import of the question, Minister.

Senator Ellison—ACLEI has been designed to address matters of greater substance. For instance, when you look at the AFP—and they will be appearing later—you have minor complaints and serious complaints. ACLEI is really targeting that serious end of the market. I am not saying we just dismiss any allegation; of course we do not. But in the first instance, where you make those basic inquiries and come up with the results that Customs has, even tying down an ACLEI to do that is not exactly what we are designing ACLEI to do—to go and investigate patently baseless allegations and tie it up accordingly.

Senator LUDWIG—But that would be a matter for ACLEI to have a look at, to decide those sorts of things. They have a corruption brief.

Senator Ellison—You can sort the wheat from the chaff, in the first instance. By that, I mean that in this case it was pretty evident fairly quickly that these allegations were baseless. In our political lives, we have all seen allegations that have just been stunts and we have seen those with absolute substance that have resulted in action being taken. That needs to be readily ascertained. That is why the AFP, before they commence an investigation, have what they call an evaluation process. They do not want to devote all those human resources to something that is totally baseless. They make an assessment. If an investigation is warranted, you take it further. I believe that that assessment could be made by the agency, in the first instance. But, Madam Chair, the question that Senator Ludwig poses relates to ACLEI. We have made our position clear on that, from a government point of view. We believe that, if appropriate, we would put in place a mechanism to expand its jurisdiction. We do not have a closed mind to that.

Senator LUDWIG—The only point though is that the difference between ACLEI and Customs itself is that, if Customs dismiss it, it might leave a shadow; if ACLEI dismiss it, it certainly brings more import. Certainly, it is a matter about which Customs employees and the like can say with some confidence, 'Well, an oversight body has said that there is no substance to the corruption allegation.'

Senator Ellison—In fairness to Customs, I think it is fair to say that Customs has not objected to being covered by ACLEI. I have taken that up. It has been a government decision that, in the first instance, we deal with those agencies I have mentioned.

Senator LUDWIG—When an importation of explosives comes into the country—I accept that it could be for mines or for a range of other legitimate purposes—does Customs notify the various states, under the relevant legislation, that explosives are being imported by particular firms that might require it for their activities? Under the state explosives acts, only licensed persons can import explosives. As you would appreciate, because of the nature of the substance, the whole area is highly regulated from a state perspective. They only want licensed people to be able to import them and, obviously, they would notify the chief inspector of explosives of the matter. Does Customs have any formal mechanism by which it advises, in this instance, the Queensland authorities—or any other state, for that matter—of these imports?

Ms Pitman—Yes, Customs monitors all importations of ammonium nitrate. I guess we are talking about ammonium nitrate.

Senator LUDWIG—It is more than just ammonium nitrate; it could be a range of other explosives used by mines.

Ms Pitman—I would have to check on other explosives, but I know that we certainly monitor ammonium nitrate and we report to the states on it.

Senator LUDWIG—In what way do you report ammonium nitrate?

Mr Jeffery—Some decisions were made between the Commonwealth and the states—and I might have to confirm that all the state legislation has been put in place—agreeing that we would advise the states of importations, because all importations have to be by-licensed or approved importers into that state. The principal issue was ammonium nitrate; I think—but we will confirm it—it extends to other explosives. We would advise the state there is an importation of ammonium nitrate and make sure it has a permit. If the permit is there, it is approved and away it goes; if not, we operate the normal controls.

Senator LUDWIG—So, if we move away from ammonium nitrate—because more than just ammonium nitrate is used as an explosive and more than those types of commodities are imported—do you track and identify those ships that have explosives on board as part of an importation and then contact the relevant state authority to ensure that they have a licence or at least pass that information on to the state authority through a formal channel so they can advise you whether there is an appropriate permit in place? I am surprised you do not have that information here. It would seem, given the post September 11 environment, would you be doing it as a matter of course. I thought ammonium nitrate, because it was basically a fertiliser, might have escaped that broader brush and you had moved to address that. But I am talking about stuff that goes bang with a detonator.

Mr Jeffery—I think ammonium nitrate was what brought it to our attention, because the other product—and I will take on notice and confirm it—was handled in the way you are describing, but ammonium nitrate as a fertiliser was not, and it could quite easily be used as an explosive under the right conditions.

Senator LUDWIG—Yes, and I understand why you caught up with that. But what I now want to know is what you do with current explosives. My understanding is that you do not. Perhaps you could take it on notice.

Mr Jeffery—My understanding is that they have to be licensed, but we will confirm it.

Senator LUDWIG—They not only have to be licensed to import it, but it is a question of how much you then go back and talk to the state authorities, the chief inspector of explosives, and say: ‘This person in Queensland is importing X amount or X quantity of explosives. Do they have a permit? Are you aware of them? Do you know the intended use?’ that is, a legitimate use could be a mine, a building demolition, and those types of things. That way you are not only being advised by the importer of what the intended use might be, if you ask, but can then confirm with the state licensing regime, particularly as they regulate the storage, use and transport of explosives.

Mr Jeffery—We will confirm that. We will get some further advice, but the specific information we have relates only to ammonium nitrate. We will try and come back before we finish and get you some more information.

Senator LUDWIG—We have been following the issue of SmartGate for a while now, and we have—what? SmartGate roll-out 1, I think?

Mr Carmody—I think we only discussed what we might name it at the last estimates hearing. I think it is still going to be called SmartGate. Yes, we are in the position now where we are moving towards installing the first of the intended models that will read the new electronic passports. The first airport is scheduled for February 2007. We are going through the final development phases now. We are going through the selection of what airport to put it in. We are going through development of how we implement it, and this will require a significant communication campaign and we are going through that. But the first is scheduled to be in the first airport, as I said, in February 2007, a further two major airports during 2007 and then we will progressively roll it out from there.

Senator LUDWIG—Has any decision been made as to what you will call them—SmartGate terminals?

Mr Carmody—SmartGate is certainly part of the name. I do not know whether there is something after it or not.

Senator LUDWIG—It would not seem wise to say SmartGate gate. Which airport and how many are intended?

Mr Carmody—As I have explained, our present planning is to the point of one airport in February 2007 and a further two in 2007.

Senator LUDWIG—Have you determined the location of the first one yet?

Mr Carmody—We are close to that.

Senator LUDWIG—In terms of the design specifications of the International Civil Aviation Organisation, has it gone through an approval process?

Mr Carmody—I will just get one of my officers to get that detail.

Senator LUDWIG—Particularly, ICAO and whether it meets the specifications, if there are any.

Ms Dorrington—The ICAO standard is face recognition. So we do have discussions with ICAO about what that means in terms of technical standards and, yes, so far what we are designing meets their technical standards.

Senator LUDWIG—When you say ‘their technical standards’, do they have other standards other than technical standards that will impact upon this SmartGate?

Ms Dorrington—Not as far as I am aware, but I could check that out for you.

Senator LUDWIG—All right. The technical standard is what ICAO standard number?

Mr Jeffery—If my recollection is correct, we actually provided the committee with a copy of the ICAO—

Senator LUDWIG—So it is the one you have provided.

Mr Jeffery—The one we have provided, yes. It is a document of about an inch and a half of paper, I think, from memory.

Senator LUDWIG—I do recall it. One of the reports that I have seen on it is that it could not cope with ordinary human behaviour like talking and smiling or laughing et cetera. Has it been improved since then to be able to deal with that?

Ms Dorrington—Certainly it is less effective if people are moving their head around, have dark glasses on, have a hat on and so on, but it is not that it is not effective at all.

Mr Carmody—I think that is part of the communication campaign that we are presently developing. I have used the present one, and by and large got through.

Senator LUDWIG—So I take it you were not smiling or laughing!

Mr Carmody—I was smiling. I had my glasses on and I still got through. I think the equipment is proving itself to be valuable and effective, and certainly we will be monitoring it as we roll it out. But, if there are issues like that, that becomes part of how you communicate use. It says to people, ‘Make sure you look here and don’t poke a face,’ or something like that. We can work our way through those issues.

Senator LUDWIG—Do you have a recent analysis of its performance? There was one done by external consultants, I think, some time ago. Has there been any later analysis done of its performance, whether it has false negatives, false positives?

Mr Jeffery—I think the report you are talking about is the old one under the trial.

Senator LUDWIG—Yes, it was the old trial one. I just wondered about the new SmartGate roll-out 1, if we call it that.

Mr Jeffery—We do not actually have a rolled-out one in operation as yet. We have adjusted two of the terminals to take a biometric—and I think we discussed that at the last meeting. But the roll-out that will start in February next year is of the latest and it is no longer a trial; it is rolling it out as an operational system.

Senator LUDWIG—What is the cost of that?

Mr Carmody—We have been provided with \$67.1 million over four years in the 2005-06 budget.

Senator LUDWIG—That is to install or make operational how many SmartGates in total?

Mr Carmody—I have given up the 2007 program. Whether we have settled the final distribution for the following years—I will have to take on notice. I do not think we have settled it. I will have to take on notice the level of progression that we have, unless Jan has it with her.

Ms Dorrington—No, I do not. It is just a progressive roll-out, but obviously we need to see what happens next year with the three significant airports and take it from there.

Senator LUDWIG—There will be, what, a report on each of those?

Ms Dorrington—Yes, there will.

Mr Carmody—We will be doing all the work leading up to February 2007. But the objective of putting it in one airport first is to roll it out in a way that we can make sure that it is working well and, if there are any refinements, you build them into your continuing roll-out.

Senator LUDWIG—I might come back to that.

Mr Carmody—We might give you the first pass through in February—although Minister Ellison might get upset!

Senator LUDWIG—I think I will leave it for him and see whether we can get him to smile and chuckle at the same time.

CHAIR—He might take you on a committee excursion, Senator Ludwig.

Senator Ellison—We are miles too generous with our briefings.

Senator LUDWIG—That would be an experience. There is an air and sea operation. I think its code name is Operation Breakwater. When was that first conceived?

Mr Marshall—We have been looking at the concept of search operations in relation to foreign fishing for some time now. We have already had Operation Clearwater I and Clearwater II, and immediately following Clearwater II we thought about what we might do in relation to the next search operation. We have been planning it virtually since the end of Clearwater II.

Senator LUDWIG—When was that?

Mr Marshall—My recollection is it was in about October last year.

Senator LUDWIG—Who was the lead agency in planning that?

Mr Marshall—It was planned by the Joint Offshore Protection Command with particular help from Customs, from NORCOM, from AFMA and from AQIS.

Senator LUDWIG—Can you give a brief overview of what the operation will entail?

Mr Carmody—It has already been conducted.

Senator LUDWIG—It is finished?

Mr Carmody—It is finished, yes.

Senator LUDWIG—What did it entail then?

Mr Marshall—It involved all of those agencies that I have mentioned working together and coming up with a plan to address activity off our northern coasts, off Arnhem Land. It involved a number of Australian Customs vessels, a number of Defence vessels, the use of the *Oceanic Viking*. We also used a commercial vessel to tow vessels to shore. It went over a two-week period. I have not got the figures with me now, but it involved the apprehension of about 20-plus fishing vessels.

Mr Carmody—It is fair to say that part of that operation, both in the use of *Oceanic Viking* and the towing vessel, was to learn some lessons as we were developing our input into a submission to the government on the measure that got announced on budget night.

Senator LUDWIG—Do those measures include charter boats towing?

Mr Carmody—There was a vessel used to trial the towing of foreign fishing vessels in.

Senator LUDWIG—There is a budget measure now for that?

Mr Carmody—The budget measure now is part of the measures announced by the government in the budget. There is the chartering of a large vessel for a year from January next year, and there is also provision for money to be spent looking at having perhaps a panel of available vessels that would be used to tow in the foreign fishing vessels so that you can leave your primary assets, such as the *Oceanic Viking*, longer out on the water dealing with the apprehension.

Senator LUDWIG—Step me through how that would work. You apprehend an illegal foreign fishing vessel, and then you decide to charter a boat to tow it back. Does it have the illegal fishers on board? How is it secured? I am not sure of the maritime term, but who is it crewed by? Or is it towed as if it is dead in the water?

Mr Carmody—It would probably be crewed as part of the charter, but there would be Customs officers on the towing vessel.

Senator LUDWIG—What about the apprehended illegal fishers, where would they be?

Mr Marshall—There are a number of concepts that we are considering, but certainly the first is one where the towing vessel would just tow the apprehended vessel, and we would use a Navy vessel or a Customs asset to take the fishers to port. We could do that, we could get some economies by having one ACV or one patrol boat take a number of crews to shores, while one towing vessel took the vessels to shore.

Senator LUDWIG—You have not settled on the process yet?

Mr Marshall—No. We are considering a number of options. We are looking at all sorts of commercial options that are available to us, and also the issues about the timeliness of chartering such a vessel. We apprehend things as they occur, and then we would need to have the facilities where we could quickly have a vessel that could come out and assist. Certainly, if we had another search operation like Clearwater or Breakwater, we would be employing those types of vessels within the operation.

Mr Carmody—What has been pointed out is that we are now going to the market to understand better and in more detail what vessels could be available to us, under what terms and how quickly they could be utilised.

Senator LUDWIG—Has there been a follow-up operation after Operation Breakwater?

Mr Carmody—Not of that nature, no.

Senator LUDWIG—When you say ‘of that nature’, how do you distinguish that separately?

Mr Carmody—That one was a concentrated effort that involved, as we said, the use of the larger *Oceanic Viking* from southern waters and the use of towing vessels. What you are seeing is that rather than specific operations like that being built into the budget measures, experience from those will become part of our operating procedures.

Mr Marshall—We are able to concentrate our assets, and we had a concentration of assets recently in the Gulf of Carpentaria that resulted in the apprehension of 17-plus foreign fishing vessels in the last couple of weeks. So as well as a dedicated, long pre-planned operation like Breakwater, we are able to move quickly to something where we can concentrate our assets to particular threats.

Senator LUDWIG—So there is no operation that you have got under way currently?

Mr Carmody—We have got a very large operation; we have got all our vessels and naval vessels and everything out there.

Rear Adm. Goldrick—We are constantly doing operations and we are constantly looking at planning tailored operations to threats as we either believe they are going to emerge or as they are emerging. I would not want to get too much more specific on what we are planning for the future, other than we will be trying to meet the challenge in the most efficient way. Each search operation builds experience, particularly in that balance of resources.

Mr Carmody—I would just like to repeat that the importance of the budget measures is to improve down the chain the facilities for receiving foreign fishers, because that opens up the capacity to apprehend and bring in more, and that is a very, very important part of the initiatives in the budget. Our response capability, building on Clearwater and Breakwater and the rest, has been improved by the fact that we are now able to go out to tender: one, for a larger vessel for the next calendar year that would build on the *Oceanic Viking* experience—and, indeed, we could still use the *Oceanic Viking* in the future—and, two, exploring better utilisation of towing facilities to enable, again, more apprehensions.

Senator LUDWIG—Have you settled on one choice of towing procedure yet?

Mr Carmody—We are going out to the market at the moment; we will go out to the market for the larger vessel. We will put a request for tender out, and we will go out to the market to explore what capabilities for towing are available and where and, as I said, under what sorts of terms could we have that available to us—how quickly could they be available, where would they be available from, what would be their capability.

Senator Ellison—One of the things we have looked at is a pool of vessels being available. I have had discussions with industry on more than one occasion about this. It is a situation where you do not sign a contract with just one commercial vessel; you might well have a pool of them that have all been accredited, because when you do need that vessel, they might be tied up fishing or something like that, so you need to be able to draw on that.

One of the issues that I have pointed out to industry that they need to be aware of is that in towing these vessels back, there are a number of issues that can arise, such as the sinking of a vessel on the way and also the gathering of evidence. When you seize a vessel, you have to have someone who gets statements from people and who does the identification, much like an exhibits officer, like you would in any operation. All of that has to be done when you seize the vessel and during the towing of the vessel back to port. That can be ongoing. We have also got to look at the private sector being able to deliver on that—not taking the evidence, but how we might work in with them on that, the proficiency of the crew, if the vessel does sink, what do they do—and if they are across what is required. It is a bit more complex than just simply saying we will go out and lease some prawning trawlers or charter them for a week because there are a few illegal fishing boats on the horizon. That does not rule out engaging the private sector. All it means is that we have to be aware of these issues, and they have to as well, which I think they are beginning to realise.

Senator LUDWIG—That is the nature of the questions here. There are chain-of-evidence issues. There is the security of the illegal fishers, those people who have been apprehended: how they will be secured; where they will be secured; how they will be fed; how they will be maintained through a journey; if you are going to secure them on a vessel, how you are going to secure the vessel itself; are you going to put personnel on board the ship to help with steerage or maintain the people who have been apprehended; will you then put them on another, larger boat and, if you do, how you then secure them. It is quite a complex issue. You could spend all day asking those questions, but I suspect you are now, through Customs, dealing with some of the finer points. Is there a request for tender document the committee can have a look at?

Mr Carmody—It has not been issued yet, but it is in preparation. There are two levels: one is for the larger vessel, and then there are questions for the towing capability around the country.

Senator LUDWIG—Is there a document where you have at least examined the range of issues the minister and I have canvassed. It seems to me—maybe I am new at this—that you would think about putting either an IDG or a working group within Customs to explore all these issues, to look at it to see whether it was feasible even before you went to the market.

Mr Carmody—First of all, we have a deal of experience now in what is required in transporting illegal fishers, and Customs have demonstrated that they do that effectively, so this is not new territory for us. We have gained experience on towing from Breakwater, the latest operation, and we are feeding that into it. It is not so much a matter of forming task forces. There is a newly established area within one of our divisions that will take control from a Customs perspective, because this involves a lot of other agencies too, as you understand. We have all got a role to play, and I see Customs as taking a lead role in coordinating that activity. Then, of course, we have the operations of the Rear Admiral and Mr Marshall that have been brought together in that. Part of the detail is what will go into the request for tender and specifications as to the capability of these vessels, because they are very important to the issues that you are raising, and so you will see some of that detail being built into that. These are not issues that are new to us; they are issues that we are building on as part of this program.

Senator LUDWIG—How much has been set aside for that?

Mr Carmody—We have a range of funding made available to us as part of the budget. Customs was provided with \$197.3 million—I think it was \$388 million in total—over the next four years, and that is made up of a number of issues.

Senator LUDWIG—I am happy for you to take that on notice, if you could just untangle that. The difficulty sometimes with both initiatives, the portfolio budget statement and the announcements, is it does not quite separate some of the lumps.

Mr Carmody—For example, the larger vessel has been allocated, from 1 January, \$17.7 million. There is coastwatch surveillance—

Senator Ellison—I issued some press releases on the budget which unpack these. There was so much for towing, so much for Dampier, so much for the vessel that Mr Carmody mentioned, and so much for onshore processing.

Senator LUDWIG—I saw those, Minister, as you would expect. It is really a case of whether they have been over four years, five years, three years—

Senator Ellison—I think that was also mentioned in the statements I made.

Senator LUDWIG—And with the towing, will it all be for one contract or will it be for a series of contracts? In other words, how is it going to be split up, and will it be used only for the towing of illegal fishers or will it also be used for the range of other intercepts that you do as well?

Mr Carmody—We have a break-up of the funding which I can go through in broad numbers, if you want that now, or we could provide it to you on notice.

Senator Ellison—With the towing of commercial vessels, Mr Carmody is right, and he has put it in two contracts. One is for the mother vessel, if you like. That is readily identifiable. Then in the commercial towing using other vessels, we are still talking to industry to determine what is there, because to simply say you want one vessel is foolish. You need to have this availability in Broome, Darwin and the Torres Strait. With the very nature of spreading it around, you are going to have the availability of these vessels to be available in those areas. So that is a very different contract to the first, and that will be dealt with separately. We can get the funding for you—which has been mentioned before—which is applicable to each contract in total.

Senator LUDWIG—That would be helpful.

Senator Ellison—We would not be able to give you a breakdown for the second commercial contract—

Senator LUDWIG—No, I will wait for the request for tender.

Senator Ellison—Yes.

Senator LUDWIG—There was an interception of a vessel where there are allegations that personnel were shot at. Can you explain the incident?

Mr Carmody—Who was shot at?

Senator LUDWIG—It is interception of vessels; there was resistance. Has there been a level of resistance?

Mr Carmody—There has been some level of resistance generally to apprehensions.

Rear Adm. Goldrick—Yes, there has been a level of resistance in that there have been passive antiboarding measures by a number of fishing boats and also threatening gestures and things like machetes being carried by a number of crew. But I am not aware of anybody being shot or any firearms being involved at any point.

Senator LUDWIG—What about the reverse? Have Customs had to undertake any action?

Rear Adm. Goldrick—I do not believe we have shot at anyone.

Senator LUDWIG—I did not want to say that, because your standard operating procedures would prohibit that at first instance. It would be across the bow, I think.

Rear Adm. Goldrick—Yes, shots have been fired across the bow, but I am not aware of any shots being fired at.

Senator LUDWIG—What was the nature of the instances of bow shots? Have there been many?

Rear Adm. Goldrick—There have been several. The most recent was in the last couple of weeks. I would have to go and check, but there have been a number over the last year.

Senator LUDWIG—Could you take that on notice and detail the range of incidents, the reasons for the authorisation to shoot across the bow, the type of weapon used and the response. Did you then get the response that you expected?

Rear Adm. Goldrick—It has varied. At times it has not achieved a stopping of the vessel to allow it to be apprehended, but it is certainly my understanding that it has achieved removal of the vessel from the Australian exclusive economic zone.

Mr Carmody—Senator, if you would like a graphic representation, I understand on the first of the new *Border Security* program there was a fair deal of coverage. This was a Navy vessel. There was small arms fire and then whatever you call it—

Rear Adm. Goldrick—0.50 calibre machine guns.

Mr Carmody—machine guns and the time it took and the response that was got. I just illustrate that that is visible presence of it.

Senator LUDWIG—I will try to watch that if I can.

Mr Carmody—We will send you a DVD.

Senator LUDWIG—Is the fisheries patrol vessel *Oceanic Viking* on the public shipping list?

Ms Grant—The *Oceanic Viking* is owned by the P&O company. Customs leases the vessel from P&O, so it is a fully registered vessel via P&O.

Senator LUDWIG—Has it been refitted recently? Is it part of your contract to get it refitted, or is that a separate action taken by P&O and you just lease it for a particular time?

Perhaps you could explain to me the leasing arrangements and how long it has been leased for.

Ms Grant—Yes. We initially leased the vessel from P&O for a two-year period. When the funding for the lease of the *Oceanic Viking* was extended to 2010, we requested as part of our lease some modifications to be undertaken to fit the vessel for the longer term and make it better for the purpose. Customs paid for those modifications through its contract with P&O.

Senator LUDWIG—Would you be able to provide details of those costings?

Ms Grant—Yes. I will take the costings on notice.

Senator LUDWIG—Thank you. When it went to Hobart recently, it did not seem to appear on any public shipping list. Would you be aware of that?

Ms Grant—Could you clarify? Do you mean the arrival of that vessel?

Senator LUDWIG—Yes.

Ms Grant—The vessel is not required to notify its arrival on those public shipping lists because it is in the service of the Commonwealth and, for operational reasons, we do not like to predict its movements.

Senator LUDWIG—In terms of where it is going, where it came from and those sorts of arrangements, because it is a contracted Customs vessel, it does not end up on the public shipping list. Is that right?

Ms Grant—That is correct.

Senator LUDWIG—Are those movements only internally known within Customs? I do not want to go and put on the public record where it is going now and how it is sailing, if it would compromise an ongoing operation. But, if it has ordinary shifting for outfit, refits and things like that, does that appear on the shipping list or does it always remain off the shipping list?

Ms Grant—Whilst it is under contract with Customs, it is considered a Commonwealth vessel for all intents and purposes, so its movement are not published on those shipping lists in the same way that our Australian Customs vessel movements and the naval patrol vessel movements are not published.

Senator LUDWIG—I might come back to you on notice if I want any further questions answered in that area.

Senator SCULLION—I am not sure who will answer these questions. They are in relation to the survey of Customs vessels, particularly Customs vessels that are less than seven metres in length. I will couch my question in the context of AMSA's review of marine order 62. Who would be able to answer? Ms Grant?

Ms Grant—I think I am the most likely candidate.

CHAIR—You are certainly the only volunteer.

Senator SCULLION—Perhaps you would be able to take these on notice. The context of my questions relates to the incident of the *Malu Sara*, the Immigration vessel which was under seven metres in length. I spoke to AMSA on this matter. As I understand it, after 1

March 2003, because of amendments to standing order 62, part 6.2, all vessels under seven metres in length—effectively the interpretation was that they no longer require USL survey and they simply require a planning and maintenance and inspection system. I assume that Customs vessels are seen as Commonwealth vessels. I wonder whether, on notice or now, you can confirm whether or not you have any vessels in that category of under seven metres in length that are not covered by the USL Code and the appropriate surveys and certificates and inspections.

Secondly, but perhaps more importantly, do you require the skippers or masters of those seven-metre or under vessels to operate under a certificate of competency or in fact do they enjoy the same degree of leave that was provided to the master of the vessel *Malu Sara*?

Ms Grant—I will comment generally now. Customs maritime operations are in accordance with all of the AMSA requirements, which by and large cover our marine unit patrol vessels. We do have what we call our tactical response vessels located in ports around Australia. We operate those under the requirements of the respective state legislation, which can vary, as you would be aware, in the different states and territories around Australia. But, where a coxswain's certificate is required, anybody from Customs who operates the vessel must have the required level of qualification under the respective state law.

Senator SCULLION—Perhaps you can take this on notice. I am just indicating that that is not the case. The AMSA regulations clearly say that the senior Commonwealth surveyor can issue an exemption for a certificate of competency for vessels under seven metres in length. Before 1 March 2003, that was not the case. I am asking: are you aware of any exemptions that have been offered to Customs—obviously you might need to take this on notice—since that date or is it simply a convention within Customs that you can continue to provide a level of competency appropriate to the USL code?

Ms Grant—We do not have any exemptions from AMSA, because we have chosen to adhere to the standard of qualification from an OH&S point of view.

Senator SCULLION—I assume then that policy would reflect an adherence to the USL Code on vessels under seven metres in length as well.

Ms Grant—It does.

Senator SCULLION—Thank you very much.

CHAIR—Thank you very much, Senator Scullion.

Senator LUDWIG—I have gone to a press release by the minister for authoritative source now. It is dated 27 April 2006. There was a lift in the threshold for the self-assessed clearance charge—that is the SACC. What was the shortfall in the revenue collection as opposed to the projection that was made in the explanatory memorandum to the bill?

Mr Brocklehurst—A decision was made late last year to increase the thresholds from \$250 to \$1,000. That had the effect of removing a lot of entries that we were previously collecting with the import processing charge; about 600,000 was the number that now fell below the threshold that we would no longer collect the charge on per year. That gave rise to the shortfall in revenue.

Senator LUDWIG—How much was the shortfall?

Mr Brocklehurst—Over a four-year period it was about \$77 million.

Senator LUDWIG—And that is projected?

Mr Brocklehurst—Yes, that was the projection.

Senator LUDWIG—For the 600,000, was there any work done prior to the change to understand the numbers that would be involved, whether it would be 600,000 or more or less?

Mr Brocklehurst—A range of options were being considered in relation to the threshold, and work was done in respect of each of those options to assess the impact of a revision to the threshold.

Senator LUDWIG—Do you have the work that led to the new threshold being adopted? Did that predict 600,000?

Mr Brocklehurst—Sorry, can I just understand the question?

Senator LUDWIG—I will use a different phrase. Did you do any modelling to determine that, when you lifted the threshold to \$2,000 from the lower base, it would have the effect of removing 600,000 entries?

Mr Brocklehurst—We did do modelling work to determine that number, yes.

Senator LUDWIG—Is that available to the committee?

Mr Brocklehurst—That could be made available.

Senator LUDWIG—Did it predict that it would remove 600,000?

Mr Brocklehurst—Yes, it did.

Senator LUDWIG—In other words, has your modelling come true?

Mr Brocklehurst—We are still very much in the early days of those, but the indication so far is that what is actually occurring is relatively consistent with that forecast, yes.

Senator LUDWIG—Is that growing or reducing? In other words, does your statistical analysis tell you that the 600,000 removed entries are now growing or, in other words, the number that you have then forgone?

Mr Brocklehurst—Yes. I think the actual outcomes seem to be—because we are only six months into this—indicating that the 600,000 is about right. But you have to remember that it is in the context that the volume of import entries in total is growing as well. So there are some underlying effects that impact it as well.

Senator LUDWIG—How much is that growing by the volume?

Mr Brocklehurst—I do not have that readily available, but I can provide that information.

Senator LUDWIG—Thank you. The shortfall which is GST: how much is duty? In other words, how much is GST, how much is duty and how much are import charges and are there any other charges? In other words, what makes up the total amount?

Mr Brocklehurst—In terms of the revenue impact on duty collections and GST collections?

Senator LUDWIG—Yes.

Mr Brocklehurst—Again I do not have that with me at the moment, but we can provide that information to you.

Senator LUDWIG—So there is \$77 million.

Mr Brocklehurst—Sorry; to be clear: the \$77 million number that I mentioned before was purely in relation to the import processing charge collections; that does not relate to duty or GST.

Senator LUDWIG—Will that be impacted upon with the introduction of that program?

Mr Brocklehurst—Yes, the import duty and GST collections were reduced because the effect of increasing the threshold to \$1,000 is that anything below \$1,000 comes in without duty, GST or an import processing charge being charged on it.

Senator LUDWIG—So was there modelling done on that?

Mr Brocklehurst—Yes, there was.

Senator LUDWIG—How much was that?

Mr Brocklehurst—I am sorry; I do not have those numbers here with me, but we can provide that information for you.

Senator LUDWIG—That would be helpful. How did it compare between what actually happened and what your modelling showed would happen? Did it show a plus or a minus and have you gone back and had a look at that? In other words, was it expected or has it come in under or over?

Mr Brocklehurst—Again, we would have to provide that information for you.

Senator LUDWIG—All right. Do you have a total of what the shortfall is? There is the \$77 million, which is import processing charge. Is there only duty and only GST?

Mr Brocklehurst—Duty and GST as well.

Senator LUDWIG—Are there others?

Mr Brocklehurst—No.

Senator LUDWIG—So there is GST, duty and import processing charge.

Mr Brocklehurst—That is right.

Senator LUDWIG—Are the import processing charges broken down into separate components, or is there only the one?

Mr Brocklehurst—You can break it down into the impact on the import declarations coming through the air environment versus import declarations coming through the sea environment. But the vast majority of it relates to entries that come through air.

Senator LUDWIG—It would be helpful if you could break it down.

Mr Brocklehurst—We can do that.

Senator LUDWIG—So the majority is air.

Mr Brocklehurst—That is right.

Senator LUDWIG—Was that modelled?

Mr Brocklehurst—Yes, it was.

Senator LUDWIG—And was that predicted?

Mr Brocklehurst—Yes, it was.

Senator LUDWIG—So is it plus or minus the prediction?

Mr Brocklehurst—In terms of the impact on the volume of declarations, my recollection is that that would be fairly close at the moment to what the prediction was.

Senator LUDWIG—Was Treasury advised that this would have this impact; in other words, that there would be forgone revenue—you will tell me the figures—in excess of \$77 million over four years?

Mr Brocklehurst—Yes, that advice has been provided.

Senator LUDWIG—Was that at the point of modelling what the impact would be and then Treasury's input was sought for it or Treasury was advised that this would be the impact of this new measure?

Mr Brocklehurst—Yes. At the time of the consideration of the change of the threshold, various options were being considered, and the modelling was done for each of those options.

Senator LUDWIG—What did Treasury say about that? Did they give a response? I am not sure of the process, so the nature of my questions goes to, effectively: is there a requirement to notify Treasury that there will be this type of impact on your bottom line and, if so, how do you then advise Treasury? Do you need their tick-off or do you simply advise them that you are going to take a \$77 million forgone revenue—

Mr Carmody—At the end of the day, this would be decided by government and, in the process of putting a submission to government, Treasury and Finance would be involved. That is the nature of how it would work.

Senator LUDWIG—What did Treasury say about it?

Mr Carmody—I do not know that, in the formulation of submissions going to government, discussions about who says what is appropriate material for to us release.

Senator LUDWIG—They could provide a negative report or advice not to. Can they stop it?

Mr Carmody—Ultimately this decision is taken by government. The broad nature of these things is that a submission is put to government, a range of departments will put their comments—typically in the submission—and government makes up its mind.

Senator LUDWIG—Was there also WET in that input processing charge? It has just struck me that there is another one there.

Mr Jeffery—Alcohol and tobacco are excluded from those provisions.

Senator LUDWIG—So there is no excise or WET. Did that then, as a consequence, require lifting of the declaration charge for imports?

Mr Brocklehurst—Yes. That is correct.

Senator LUDWIG—By how much?

Mr Brocklehurst—The air charge was increased from \$30.10 to \$40.20 and the sea charge was increased from \$49.50 to \$50.

Senator LUDWIG—So, as a consequence of the loss in revenue, you then lifted the charges.

Mr Brocklehurst—That is correct.

Senator LUDWIG—Are there further increases scheduled or is it fixed for a given time? How do you determine that?

Mr Brocklehurst—There are no plans at the moment to change those charges. However, the charges are subject to annual review with industry representatives through the Customs National Consultative Committee.

Senator LUDWIG—How was the size of the increase determined?

Mr Brocklehurst—That was determined relative to the 600,000 and where the reduction would occur, also taking into account the total amounts of costs that were assessed as needing to be recovered through those charges.

Senator LUDWIG—So more broadly you looked at what your revenue forgone was going to be and then raised the import processing charge to cover that.

Mr Brocklehurst—That is correct, and then obviously the charges and where the increase fell reflect the fact that the majority of the impact is in the air environment.

Senator LUDWIG—I am just curious. Now it means that an importer getting his supplies could break them up to come in underneath the threshold. What would be to stop a supplier breaking up a \$5,000 order into five \$1,000 lots and then importing them by air using different consignments? They could do them on different days or they could do them in the morning and the night. In other words, although they require five shipments and they would normally have brought them in in one shipment, which is one consignment, they might then say: 'The better way to do it would be to split it up into five. We know that Customs might be looking so we will do one today, one the next day and two the following day.'

Mr Jeffery—Just a little bit of history on this: prior to this decision, the \$1,000 threshold applied to imports through the post, so that had been in existence for quite a long time. The \$250 applied to imports by couriers and others. I think you will recall this was as a result of a Productivity Commission inquiry. So we have equated the treatment irrespective of the way goods are imported, so that the issue that you have raised is not one that has been brought into effect by this measure. Of course, that could occur—

Senator LUDWIG—That could already occur now.

Mr Jeffery—It could have already occurred prior to that and it could continue to occur. If it is an issue that becomes quite apparent, we would have to look at it, but there has been no evidence under the previous arrangements—although there were suggestions—that people were doing it. If the evidence has emerged, we would have to go back to government and say this has been misused.

Senator LUDWIG—You will have to remind me, the Productivity Commission report was—

Mr Jeffery—It was in 2000 if my recollection serves me correctly.

Senator LUDWIG—And it related to the air—

Mr Jeffery—It related to a position put by a couple of the courier companies on competitive neutrality. They considered competitive neutrality issues, and my recollection is that it was put by a couple of major courier companies that it was a non-competitive environment that they were involved with Australia Post.

Senator LUDWIG—This now applies, so now you have equalised it, in the sense that you have brought this measure in. Was it anticipated that that type of behaviour might go on?

Mr Jeffery—As I said, we were aware that that behaviour was possible under the previous arrangements, because quite a volume of goods under that value is imported by post—quite considerably more, probably, than was coming under courier arrangements—so it was an issue that we were aware of and was understood, but there was no evidence to suggest that the measure would exacerbate that.

Senator LUDWIG—Now it is available for both air and couriers?

Mr Jeffery—The same measure is available irrespective of the way in which the goods are imported, including by sea, but, as Mr Brocklehurst said, it is highly unlikely that there is much under \$1,000 coming by sea.

Senator LUDWIG—Have you looked at the scheme as to how it would be impacted by the ACP? You are reducing fees and charges for a limited number. You are going to provide a benefit for very large importers who make multiple large declarations through the ACP. You are reducing fees and charges for a range of international couriers—I will not name them but there are a range of them—who carry a large number of low-value consignments.

Mr Jeffery—The reduction essentially applies to the way we put at risk quite often mum and dad importers, single one-off importers and small businesses who import small volumes at various times, so it is an area of the market that is essentially not continuous. There may be continuous people involved, but the bulk of them, as we understand it, were smaller end of the market, and the benefit applies to them not paying and their not having to take out the formal entry processes and the consequent costs of getting a broker or a freight forwarder to do that.

Senator LUDWIG—You have changed the way the market operates—you have brought the \$1,000 up and you have used the ACP at the top end, which is designed to have \$1,295 and \$9-something per transaction. So at the top end you have had an effect and at the bottom end you have had an effect. You have removed 600,000 entries from the pool, you have necessitated an increase in the import processing charge and the revenue forgone is then being dragged back through. I would like to look at the middle group. At the bottom end you have given the mums and dads a break, and the top end get an advantage with the ACP, if they join that program. So the middle group then gets the whole of the direction placed upon them. They have now suffered an increase of, I think, about 34 per cent as an import processing charge. Have you looked at or done any modelling about that and how long that group can sustain the import processing charge, and whether or not they will then change their behaviour and move to try to mitigate by moving their smaller medium sized businesses into the lower end—in other words, try to come under the threshold by breaking up their consignments—or

the higher end groups moving into the ACP; in other words, getting themselves out of that centre group? As to how then it will impact—

Mr Jeffery—I understand what you are saying, Senator.

Senator LUDWIG—The result can be another increase in the import processing charge for that middle group as the revenue might drop off.

Mr Jeffery—Or it could be a reapportioning of the charges across the three groups in a different way.

Senator LUDWIG—Yes.

Mr Jeffery—As we discussed earlier, when the government made this decision we looked at the way in which we would recover those costs, which are the basic underlying costs on which the system was premised. Given that the predominant users of this facility were in the air industry, that is where the costs lie. If the behaviour you are suggesting may occur—we are aware of it and we have looked at it but, to my knowledge, we have not done the modelling you are suggesting, but I will confirm that—and if those trends were starting to appear, yes, we would have to revisit it. There are segments of importing communities that really will not be able to take advantage of splitting consignments to the extent you are talking about. They have had the facility for many years, and that behaviour has not been apparent. The other behaviour from the top end of the market is not apparent yet because that is not operating.

Senator LUDWIG—If you look at the current charges which were brought in in 2005, that is not that long ago, so why was it anticipated that it would need a significant increase of 34 per cent within 12 months?

Mr Jeffery—It was not anticipated because there was no decision taken that there would be a change in the threshold and that they would not be charged. If we had continued under the previous arrangement—and Mr Brocklehurst will correct me if I am wrong—we would have gained revenue significantly in excess of what we are gaining under this proposal, because there are some benefits under this. I think there is a savings of about \$2 million a year across the total revenue pool as a result of this. It was a consequence of a decision taken, and the decision was taken very close to the time the new system came into operation. It was not something you could anticipate in that sense.

Senator LUDWIG—You changed the legislation in 2005.

Mr Jeffery—We changed the legislation to enable us to construct charges in a similar way to the charges that had applied in the pre-existing legislation. You will recall we moved away from the air-post split, and we changed the charges in 2005 to reintroduce the air-post split to apply under the ICS arrangements. That was significantly—

Senator LUDWIG—The threshold change was part of that, wasn't it?

Mr Jeffery—No. The threshold change decision was taken after that. The threshold change decision was taken in September 2005, if my recollection serves me correctly. The legislation had been changed—I would have to get the date—and the effective charges were publicised considerably before that. The legislation changed—

Senator LUDWIG—Sorry to interrupt. You were saying the legislation changed the—

Mr Jeffery—The original legislation imposed charges on the basis of an air-sea split, and so there was a differential between the modes of transport. There was a change in 2002 or 2001—

Mr Brocklehurst—2001, I think.

Mr Jeffery—that changed the basis on which fees and charges would be collected prospectively from implementation of ICS. As a result of industry consultation and discussion, they preferred to see an arrangement that still had the air-sea split—which, in their view, and I think we agree with them, significantly removes cross-subsidisation. That change was made in, I think—I would have to confirm the date—early 2005, and the prospective charges under that arrangement based on expected declarations at that time were set, and they would have raised a certain amount going forward. The effect of changing the threshold was to remove quite a considerable number of declarations out of that 600,000 and to change the balance of the way in which the charges would fall.

We consulted with industry because our original proposal to industry was just to apportion the base costs across both modes; and, quite rightly, they said to us that they thought that was introducing a lot more cross-subsidisation from the sea component rather than from the air component. The air component was the beneficiary, so the charges would lie on that side. As a result of that consultation, we put a proposal to government on the level of charges. That was accepted and industry agreed with it—in terms of the charges, not necessarily the regime.

Senator LUDWIG—That was post the legislative change in 2005?

Mr Jeffery—That is my recollection.

Senator LUDWIG—Perhaps you could just pull together some of those dates. It might be helpful to understand the process.

Mr Jeffery—I will confirm the dates.

Senator LUDWIG—Then it was as a consequence of the new regime and industry input that you had a post change to the import processing—

Mr Jeffery—We then changed the actual charges as they fell between the modes.

Senator LUDWIG—Did you do any modelling about the impact?

Mr Jeffery—As Mr Brocklehurst said, we did quite a lot of modelling in going to government with options to address the thresholds, which looked at both the impact on charges and the impact on duty and GST collections.

Senator LUDWIG—You did not predict that you would need—within 12 months, or less than that—a 34 per cent increase in import processing charges?

Mr Jeffery—I am sorry, I have misconstrued the timing of the modelling. At the time we put the original charges forward, it was not believed that there would be a change of this nature in the thresholds, and there had been continual representations from industry and other areas to change this, and we took that forward to government. It was under consideration through the whole period, but effectively it was taken to government pretty late in the piece.

Senator LUDWIG—Was modelling done of that?

Mr Jeffery—Of the options?

Senator LUDWIG—Yes.

Mr Jeffery—As Mr Brocklehurst said, yes, we have done the modelling and we will provide you with the break-ups that we have.

Mr Carmody—Senator, you asked earlier about the importer in Queensland. The matter is still ongoing. A decision is yet to be taken on prosecution, so I think we are in a position where we cannot continue a discussion on that.

Senator LUDWIG—No. I thought that. It struck me then.

Senator Ellison—Madam Chair, I have also got a release here about the unpacking of the money over the period of time. There is another release, which deals with specifically with the tendering for that vessel, which I will provide to the committee later, but I provide this now.

CHAIR—Thank you. I will ask the secretariat to collect that.

Senator LUDWIG—Just so that we have got it plain, if you have available modelling that relates to both the 2005 legislation and the subsequent relook at the import processing charge post that, and what proposals then concluded the eventual result, it would be good if you could provide that to the committee.

Mr Brocklehurst—Yes.

Mr Jeffery—One other thing: the advice we have now got on explosives is that, for every import of explosives for the mining industry, we, Customs, advise the relevant state authority, and if the importer does not have the required licence we do not release the goods. That is the advice we have received.

Senator LUDWIG—Well that is helpful; that is not the advice that I have been told.

Mr Jeffery—We just got it but we will double-check it. It does seem to be the case.

Senator LUDWIG—I will follow that up with a question on notice, just in case there is a change in that, but what effectively you are saying is that, for all explosives that are imported, you advise—who is the relevant state authority?

Mr Jeffery—I do not have that, senator. It will be either the mining industry or their safety—we can find out who that is.

Senator LUDWIG—It would be helpful. There is obviously a disconnect going on. It is either me or the industry—

Mr Jeffery—Or us.

Senator LUDWIG—or us.

Mr Jeffery—We will make sure that it is clear, but we went and checked the advice.

Senator LUDWIG—Thank you. There is a difference in the customs duty payable on bunker or shipping fields between ships engaged on coastal voyages and those engaged on international voyages. Is that right?

Mr Carmody—It is beyond me, Senator!

Senator LUDWIG—That is why I am asking the questions!

CHAIR—Mr Jeffery sounded like he was just about to volunteer.

Mr Jeffery—I will get some advice, but normally ships on international voyages do not pay the domestic fuel prices. Because they are on an international voyage they will bunker and not be liable. I am just trying to get some advice on it.

Senator LUDWIG—I am happy for you to take it on notice if you are not sure.

Mr Jeffery—It might be the easiest way to do it.

Senator LUDWIG—What is the differential? If there is a differential, then, if a single voyage permit is issued to a coastal vessel and they can then obtain bunkered fuel at a differential or cheaper rate, it means they can then factor that into their competitiveness. Those single voyage permits are of course issued under the Navigation Act 1912.

Mr Jeffery—It is a complex area. I will confirm it but my understanding is that ships on international voyages get free bunkers. Ships that are under a coastal voyage permit would be required to pay the same fuel prices as a domestic vessel, but what the rate of duty is I cannot tell you, so I cannot tell you what the differential is.

Senator LUDWIG—That would be helpful, thank you. More broadly, the regulation taskforce made regulations relating to the accredited client program, the ACP. Recommendation 5.54 of the recent *Rethinking regulation* report called on the government to implement a Customs proposal to broaden the ACP program to a wider group of importers. I take it you have read that task force report.

Mr Buckpitt—Yes, senator.

Senator LUDWIG—And you have had a look at 5.54?

Mr Buckpitt—Yes.

Senator LUDWIG—And have any commitments been made or given by the government on this aspect?

Mr Carmody—No, senator. I think the government is still to respond to that, so there is not much more that we can say at this point.

Senator LUDWIG—What do you think of that suggestion?

Mr Carmody—I think this is a matter that is being considered as a policy issue by government and they will give their response in the appropriate time.

Senator LUDWIG—Minister, have you had a look at this?

Senator Ellison—Look, I cannot pre-empt the outcome. I think I cannot take it further than what the CEO said.

Mr Buckpitt—Senator, the government has undertaken to respond by the end of July to all of the recommendations in that report.

Senator LUDWIG—So I could probably follow that up with a couple of questions on notice to see how you are going, Minister.

Senator Ellison—I am sure you could.

Senator LUDWIG—You will not take that away from me yet, will you?

Senator Ellison—We would never do that. We have broken all records, I think, in answering questions on notice—more than ever before.

Senator LUDWIG—In terms of recommendations more broadly, is that the only one dealing with Customs?

Mr Carmody—No, there are recommendations, for example, dealing with standardised data.

Senator LUDWIG—You have a working group on that, haven't you?

Mr Carmody—There is a recommendation in the Banks report on that.

Senator LUDWIG—At what stage has that reached?

Mr Buckpitt—I think 5.55 is the standardised dataset recommendation. There is also another recommendation either just before or after those two, which relates to anti-dumping. So there are three recommendations specific to Customs.

Senator LUDWIG—Will they be under active consideration by the end of July?

Mr Carmody—The government will be responding.

Senator LUDWIG—In terms of the ACP, the PricewaterhouseCoopers cost-benefit analysis put five conditions on the success of the CMR. Do you recall that?

Mr Buckpitt—Only in very general terms, given that it occurred in 1999.

Senator LUDWIG—The document stated that the successful implementation of CMR would require certain things—and it went through the alignment of dates for periodic submission of ACS information and duty and the deferment of GST. Do you have that?

Mr Buckpitt—Do I have a copy of the document?

Senator LUDWIG—Yes, and do you have a copy of the five successful implementation points for CMR that it will require?

Mr Buckpitt—We would have to take that question on notice. It is quite a detailed set of five points that would take some consideration.

Senator LUDWIG—But with respect to the first one, 'the alignment of the dates for periodic submission of ACS information and duty and the deferment of GST', you understand what that means, don't you?

Mr Carmody—I think that was under a particular model which is not necessarily the model that has come out in the proposal now before parliament.

Senator LUDWIG—But we do not have the alignment of the dates for periodic submission of ACS information, do we?

Mr Buckpitt—That is correct.

Senator LUDWIG—You have a system where the periodic declaration is made on the 7th of each month and the duty deferment takes place on the 15th, so there are now two dates and then a—

Mr Carmody—As has been pointed out, that was a different model.

Senator LUDWIG—Did you do a cost-benefit analysis of this model—the current model that you have implemented? You went to all the trouble of getting PricewaterhouseCoopers to look at the model, do a cost-benefit analysis of it, give you five points and provide you with their view of what a successful implementation of CMR will require—not what it could or should look like but what it will require. One of those, significantly, in the proposal is the alignment of dates for periodic submissions. There are only four others. So they are the five key points that will make or break the program. Your model now does not have the top point; in fact, it has broken it down into two dates, so it does not meet that point, which is the first point of five, required for the successful implementation of CMR. What do you have to say about that?

Mr Buckpitt—The alignment of dates was more important when duty deferral was taking place inasmuch as alignment ensured that you were not having double administrative effort in having to report at one point in time, pay at another point in time and have two processes going on. The model that we now have is one in which there is an alignment but not in the sense that it was originally intended. The current model is that an estimate will be paid in the middle of one month and reconciliation plus an estimate done for the following month at one point in time, being the middle of the second month. So there is still an alignment but it is not in the fashion that was originally talked about here, because we no longer have the deferral of duty as was intended in 1999 when this document was generated.

Senator LUDWIG—But that is the ACP. We are talking about the CMR as well. It is conditional upon the implementation of that, because you have to align it. But the CMR does not have that now if you are using the ACP model.

Mr Carmody—Correct me if I am wrong, but the discussion there was about that particular model that relied on deferral. The success factors were in the context of that model. It did not mean that if we did not do that, CMR was a failure.

Senator LUDWIG—Are you sure? It says that for successful implementation—

Mr Carmody—There were proposed benefits from an accredited client program that was part of the general approach. That was one element that could stand discrete. The model now before parliament is a different model, but I do not think that changes the CMR in itself.

Senator LUDWIG—I am only going on what the document says. It says that one of the requirements for successful implementation of CMR is an alignment of the dates for periodic submission of ACS information on duty and deferment of GST. There has been no subsequent document—unless you can provide it—which goes back to Price Waterhouse and says, ‘We know you made this statement that a successful implementation of CMR will require an alignment of dates. Because of a range of factors’—which we might go to shortly—‘that model no longer went forward. We changed the model. Does it impact on what you think is successful implementation of CMR?’

Mr Carmody—It was in the context that that particular accredited client program had particular benefits available for it, which were said to be part of the total re-engineering. That has been excised, and we have a new one. But I do not think you can say that because that part of the total re-engineering did not go forward in that form the totality of CMR falls.

Senator LUDWIG—It sits on five legs, according to the Price Waterhouse advice. One of them is now missing.

Mr Carmody—Again, I think that was in the context that they were examining that particular initiative, not the CMR in totality.

Senator LUDWIG—What was wrong with the old model?

Mr Carmody—A decision was taken by government that it would not go forward on that basis.

Senator LUDWIG—So there was nothing wrong with it; it was just a decision by government not to pursue it?

Mr Carmody—Government have a range of factors in front of them, including budgetary impact and other measures, that they have to take into account whenever any proposal is put forward.

Senator LUDWIG—There has been no subsequent analysis to see whether the new model, compared to the old model, which fits into CMR has made any significant change?

Mr Carmody—My understanding is that there have been a range of discussions with industry. Some in industry see value in it, so it has been put forward on that basis, short of the duty deferral.

Senator LUDWIG—There was no reason advanced by government as to why they did not want the old model?

Mr Carmody—I do not know the position with regard to that.

Mr Buckpitt—Senator, you will recall that I indicated in previous hearings in relation to the border measures bill that the key issue related to the financial impact for the budget.

Senator LUDWIG—So it amounted to the cost of it?

Mr Buckpitt—Correct.

Senator LUDWIG—Was there a cost-benefit analysis done of the new model?

Mr Buckpitt—No.

Senator LUDWIG—How do you know then? You have one group, presumably Treasury, making a statement: ‘There is a significant impact on the budget; we’re not going to go forward.’ Why? Is it too significant a cost—too dear?

Mr Buckpitt—It is a relatively simple costing exercise to determine the amendment of duty that would have been pushed from, say, the month of June to the month of July for those clients who would have joined the program. That was done over a four-year period to determine what the financial impact would be on the budget.

Senator LUDWIG—All right. So you did that work, to see?

Mr Jeffery—That would have been part of the submission.

Mr Buckpitt—That costing—

Mr Carmody—The work was done in putting the matter to government.

Senator LUDWIG—Is that available to the committee?

Mr Carmody—I think that is part of the process of cabinet deliberations and would not normally be provided.

Senator LUDWIG—It is always worth asking!

Mr Carmody—Yes.

Senator LUDWIG—Forgive me: I do ask, and it is your job to say no.

Mr Carmody—Okay.

Senator LUDWIG—It is not my job to second-guess my question!

Mr Carmody—Remind me if I dishonour that on occasions!

Senator Ellison—You could ask Treasury, though, in other estimates committees.

Senator LUDWIG—I had it in mind to go and ask Treasury, depending on when they are on. I will put those questions on notice to Treasury.

Senator Ellison—I have stressed with Peter that this has not been a Customs decision on its own. It is quite the reverse. Treasury has the policy.

Senator LUDWIG—I have heard you have been questioned on it.

Senator Ellison—Yes.

Senator LUDWIG—I would like to run through some of the costings of the simple duty deferral proposal, if we can call it that, and the complicated ACP proposal, which involves some deferral and some payments in advance, and which was the model finally chosen. Going back to your testimony on 27 April, Mr Buckpitt, you informed us:

Treasury costed that as potentially being \$89 million over a four-year period ...

I take it that what I call the complicated model—I struggle for a name for it—is revenue neutral? That is correct, isn't it?

Mr Buckpitt—Correct.

Senator LUDWIG—So, in effect, we can take it that the government's decision to support the latter model, the complicated ACP model, was based on the cost difference and nothing else. Was there any other consideration?

Mr Buckpitt—I think the only other consideration was industry support for the model.

Senator LUDWIG—I thought they preferred the simple model.

Mr Buckpitt—They preferred the simple model but they were still supportive of the complicated model.

Senator LUDWIG—Really a Hobson's choice, but I won't go there. In explaining this cost difference, is it forgone interest from the full duty deferral under the simple model which is the key piece?

Mr Buckpitt—No, it is the timing, essentially, in that duty that would have been collected in the month of June is pushed over to the following financial year.

Senator LUDWIG—Can you expand on that a little bit?

Mr Buckpitt—Under the current arrangements, duty is payable at the time that the goods are released into home consumption. Under the original model with the accredited client program, duty would be payable on the seventh day of the following month. So, in the case of an accredited client, the duty in respect of their cargo for the month of June would not be paid until 7 July. So, in effect, the impact for the budget is all of the duty for the month of June for all of the accredited clients.

Senator LUDWIG—And the interest on the money?

Mr Buckpitt—It is true that there would be a much smaller impact associated with the interest, but it is nowhere in the order of \$89 million over a four-year period.

Senator LUDWIG—So the \$89 million comprises—

Mr Carmody—It is a movement from one budget year to another budget year—a deferral from one budget year to the next budget year.

Senator LUDWIG—You have indicated that the assumption behind the Treasury model was based on 200 participating companies over a four-year period.

Mr Buckpitt—Correct.

Senator LUDWIG—What about the value of the duties on those consignments and the total number of consignments that were likely to be converted? You gave the example of a retailer who lodged between 4,000 and 10,000 entries every month. What figure did Treasury or you use in coming to the \$89 million?

Mr Buckpitt—I am not sure which figure you are referring to, Senator. My recollection is that, if you were to look at the \$89 million figure, it was roughly \$20 million per year that was being pushed from June to July, and when you total that you end up with the \$89 million figure. Is that what you were seeking?

Senator LUDWIG—Yes. What was the value of the duty on those consignments? In other words, what value did you place on it?

Mr Buckpitt—\$20 million in one month.

Senator LUDWIG—Is that a percentage of what the duty is expected to be?

Mr Buckpitt—That would be the full duty payable in the month of June.

Senator LUDWIG—By 200 participating—

Mr Buckpitt—Yes.

Senator LUDWIG—Is it based on a basket of goods or an average?

Mr Buckpitt—It is based upon our experience with the top 200 companies currently importing into Australia.

Senator LUDWIG—Did you also take into account whether they would be diverted into the ACP, because the duty would then change, wouldn't it?

Mr Buckpitt—The assumption was that the cost of duty would be the same as it is now for the top 200 companies.

Senator LUDWIG—Was the interest taken into account?

Mr Buckpitt—Not in that calculation of the \$89 million.

Senator LUDWIG—It would not have been a significant part of it?

Mr Buckpitt—The interest cost associated with \$89 million would be the normal bond rate, applied to \$89 million over a period of one month.

Senator LUDWIG—But with the \$89 million, the savings are not in interest; they are in the deferral?

Mr Buckpitt—That is correct.

Senator LUDWIG—Do you know whether Treasury made any assumptions, or whether you did when you provided the information to Treasury, about the spread of the consignments in value terms within each month—whether it was just a monthly lump or whether it was the spread of values within that month?

Mr Buckpitt—I am not sure about the Treasury assumptions.

Senator LUDWIG—In terms of the alternative cost recovery system, could you take us through how that would operate?

Mr Buckpitt—Is this the original model?

Senator LUDWIG—Yes.

Mr Buckpitt—In the original model that was discussed in the late nineties, duty would not need to be paid in order for cargo to be released into home consumption; an importer would provide a modified, shortened report called a ‘request for cargo release’ and, on the basis of the information contained in that report, cargo would be risk assessed and released in the event that there was no reason for it to be held. The same company would then provide a more detailed report at the end of that month, which would provide all the financial data to enable matters such as duty and GST to be calculated. The intention was that the duty payable would be paid on the seventh day of the second month.

Senator LUDWIG—The accredited clients under the current model would not be subject to the regular import processing charge—in other words, the \$40.20 per declaration by air and \$50 for those arriving by sea? With respect to the lost revenue from diverting clients into this alternative cost recovery system, was that modelled as well?

Mr Buckpitt—That was modelled in the late nineties. Instead of the normal import processing charge, whether it be by sea or by air, an accredited client would pay a charge associated with each request for cargo release, which from recollection was of the order of \$9.40 per request, and a payment in relation to periodic declaration, which was \$1,250 per declaration.

Senator LUDWIG—Was that part of the original proposal as well for what I call the simple model?

Mr Buckpitt—Yes.

Senator LUDWIG—Did that undergo a change when it went into the more complicated model?

Mr Buckpitt—No, the charges are still as proposed in early 2001 or thereabouts. So the figures that I have mentioned have remained unchanged.

Senator LUDWIG—Minister, when you took it to cabinet, did you provide the arguments for the duty deferral? What were they, Minister?

Senator Ellison—It is a nice try!

CHAIR—I do not think that is a question the minister is going to respond to!

Senator Ellison—I will just get out my notes I took on the day and relate them to you in detail!

CHAIR—That would be lovely, Minister; thank you!

Senator LUDWIG—I thought it might have been on the tip of your tongue after last week.

Senator Ellison—It is.

CHAIR—I think I would call that wishful thinking, Senator.

Senator Ellison—It is an issue on which I have met with industry on occasions, we have pursued it and government have made a decision, and that is it. However, there is the Senate report, of course, and we are looking at that. I indicated that last week; I said that we would look at ACP again. I do think, if you have any further questions, that we have really reached the limit of Customs involvement. It is really now for you to ask Treasury.

Senator LUDWIG—I am building up to that, Minister, let me tell you!

Senator Ellison—I will be watching the answers more closely than anyone, I can tell you!

Senator LUDWIG—I am just making sure I have not missed anything here.

Senator Ellison—I think you have just about run the rag dry.

Senator LUDWIG—There are a couple more, not many.

Senator Ellison—Not that we do not want to. It is just the fact that Treasury has the policy direction on this.

Senator LUDWIG—No, I understand the signpost, Minister. The second, more complicated model—was that provided to Treasury, and did Treasury then seek to look into its revenue implications?

Mr Buckpitt—Treasury would have had the opportunity to advise government in the normal course of the decision making process.

Senator LUDWIG—Did they provide any feedback to Customs?

Mr Carmody—I think you are again into what has gone to government, Senator.

Senator LUDWIG—Was there an estimate of lost revenue for the alternative cost recovery system?

Mr Buckpitt—The basis of the revised model is that it is cost neutral.

Senator LUDWIG—The cost in lost revenue for duty-free tobacco—do you keep those figures?

Mr Jeffery—You are talking about the passenger concessions?

Senator LUDWIG—Yes.

Mr Jeffery—I would have to take that on notice. I do not think so, because—

Mr Carmody—I think that would be rather hard to calculate, because when people come in they do not have to declare it because it is under the level, and we would not inspect everyone to check the value of something they do not need to declare. So it is probably fairly difficult to give a precise answer to that.

Senator LUDWIG—I am trying to understand the revenue lost from the exemptions that apply to both tobacco and alcohol. Have any studies been done on revenue forgone; in other words, how much does that actually amount to?

Mr Carmody—I do not know. We can take that on notice to determine whether there have been.

Senator LUDWIG—And has any work been done on the lost revenue from the tourist refund scheme?

Mr Carmody—I assume that when the legislation was introduced there was a figure put on it, so presumably that would be available.

Mr Jeffery—There were estimates made at the time, Senator, and we can go back and look at them, because the uptake of those schemes has grown.

Senator LUDWIG—Yes. And that is what I was looking at: whether or not more recent modelling has been done.

Mr Jeffrey—We will take it on notice and have a look at it. Certainly in relation to the passenger concessions, it is highly unlikely because, as the CEO said, people declare it. If they are within the allowance they are allowed to proceed.

Senator LUDWIG—What are you doing with the alcohol that is being forfeited? Is that still being stored in safes?

Mr Carmody—For Christmas parties!

Mr Jeffrey—If it meets the health and other requirements, it goes up for auction; if it does not, it is destroyed.

Senator LUDWIG—Has the forfeited amount been increasing?

Mr Jeffrey—I think it has settled down now. I would have to check.

Senator LUDWIG—Could you take that on notice.

Mr Jeffrey—There was the original hiatus, but I think as people have become aware it has settled down quite a lot. I will check and take it on notice.

Senator LUDWIG—Is the tobacco disposed of?

Mr Carmody—It is disposed of.

Mr Jeffrey—We do not sell the tobacco.

Senator LUDWIG—When it is seized, I guess it is tagged and labelled. Is it then kept in a secure place?

Mr Carmody—There are quite secure arrangements. It is completely traceable through to destruction.

Mr Jeffrey—We provide the individual with a notice. For alcohol and tobacco they have the option of coming back and paying the duty and getting the good, if they choose to do so. Then we store it and it is accountable. After a period of time, which I cannot recall, it then goes for auction or destruction.

Senator LUDWIG—Are you familiar with the Wu case and the allegations that \$2.7 million was lost in excise through the fraudulent use of duty free shops?

Mr Carmody—I am not personally familiar with that.

Mr Jeffrey—If it is an excise case, it is probably one that is with the ATO. It depends when it started as to our involvement. I am not familiar with it off the top of my head.

Senator Ellison—I think the ACC had some involvement.

Senator LUDWIG—Yes. It is a question of whether they come back and tell you what the consequences and results were and whether you get an opportunity to express satisfaction or just content.

Senator Ellison—I think court proceedings might still be pending. We will find out in the meantime.

Senator LUDWIG—Why do you say it is revenue neutral? I am struggling with that. How is it revenue neutral?

Mr Buckpitt—The company is required to provide an estimate of the full month payment on the 15th day of the month. In the case of the June payment, we would expect to receive the full month's payment on 15 June. It would not be rolled over to July.

Senator LUDWIG—Do you have an example of how you calculated it to demonstrate that it was revenue neutral? I am happy for you to take it on notice.

Mr Buckpitt—I am happy to give an example now. If a company is currently paying \$1 million per month in duty, under the revised arrangement, rather than having that \$1 million split up over a large number of consignments, they would provide a payment on the 15th day of the month. It would be based on the estimate of, say, one month. In the middle of the following month there is a reconciliation as to the actual duty that is payable in relation to the goods that they actually brought in during that month. That would be a fairly small adjustment. Sometimes it might be an increase; sometimes it might be a decrease. The expectation, though, is that across the entire program, you would have a zero result: no deferral from one month to the next for the government; no impact on the budget.

Senator LUDWIG—Do they still pay the \$40 and \$50 import processing charge?

Mr Buckpitt—No. That charge is replaced by the two charges: the periodic declaration and the request for cargo release.

Senator LUDWIG—Is that calculated based on the \$1,295?

Mr Buckpitt—\$1,250 for periodic declaration and I think it was \$9.40 for the RCR.

Senator LUDWIG—How much does that cost the government in forgone revenue? Is it the difference between the \$40.20 and the \$9.40 plus the base fee?

Mr Buckpitt—It is impossible to answer that in general terms, because it would depend upon how many companies were to join up and what their current volumes were.

Senator LUDWIG—Have you done any modelling on that?

Mr Buckpitt—Yes. Modelling was done back in the nineties.

Senator LUDWIG—Is that available?

Mr Buckpitt—We could try and find it.

Senator LUDWIG—Perhaps that might be too much to ask. What about the Coles Myer example that you gave? How you done any modelling on that?

Mr Buckpitt—In the late nineties modelling was done on some companies. I do not know whether Coles Myer was one of them.

Senator LUDWIG—At the hearing you used Coles Myer as an example. They were doing 4,000, I think?

Mr Buckpitt—It was 4,000 to 10,000 consignments per month.

Senator LUDWIG—Based on those, how much would be forgone?

Mr Buckpitt—My recollection is that the savings for a company of that size were of the order of a quarter of a million dollars per year.

Senator LUDWIG—That would be the import processing charge revenues that they would save?

Mr Buckpitt—Yes.

Senator LUDWIG—It would be a quarter of a million dollars. Is it between 10,000 and 4,000? Is that the average? Or is it 4,000 or 10,000?

Mr Buckpitt—The figures of 4,000 to 10,000 are the range for a company such as Coles Myer.

Senator LUDWIG—There would be about a quarter-of-a-million-dollar saving in import processing charges.

Mr Buckpitt—Over a full year.

Senator LUDWIG—Over a full year?

Mr Buckpitt—That was based upon the calculations that were done in the late nineties. Import processing charges have increased since then. We would need to have another look at those figures to confirm that that number is still valid. As I say, there has been no further modelling in the last five years.

Senator LUDWIG—Can you have a look at that—providing it is not too complex—to be able to see what that forgone revenue would be on a monthly basis?

Mr Buckpitt—Yes.

Senator LUDWIG—Could you do that to validate the revenue forgone during that period and the impact on your business? Then could you go to the expected number of ACP participants?

Mr Carmody—I think this does go to the committee's recommendation of a cost-benefit analysis, which I am sure the government will be responding to.

Senator LUDWIG—If they will not do it, I guess I will do it while we sit here, if I can! I think I asked about this matter a while ago now. The CMR—or it might have been the ICS—program was sending out thousands of spam messages and the like some time ago now. Has that been rectified?

Mr Carmody—There was an incident of, and I am not sure whether you would call it spam, multiple messages. Yes, that has been rectified.

Senator LUDWIG—What was it? What was causing it exactly?

Mr Carmody—I am sure Murray here will give us a fine technical description.

Mr Harrison—I am just trying to remember, Senator. It only occurred for a small number of reporters for a short period of time, from memory, back in about February or March. There was a loop that was caused by what was essentially an inadequate piece of code that had not been exposed, because messages had not got to that point in the process prior to that time. We discovered that inadequate piece of code and corrected it during the course of a few days, after we discovered it.

Senator LUDWIG—Was that in one software?

Mr Harrison—In ICS.

Senator LUDWIG—Only in ICS?

Mr Harrison—Yes.

Senator LUDWIG—Has it happened again?

Mr Harrison—No.

Senator LUDWIG—Mr Harrison, while you are there, I refer to question No. 84. You told me in evidence before the committee on 31 October that the ICS had full functionality at turn-on. To remind you, I asked:

Was the integrated cargo system fully functional and operational without a requirement to have any manual systems, without workarounds or without anything?

I must have been persistent:

Was it fully functional and operational as at 12 October when the switch was thrown?

You said:

The answer is yes. With regard to the functionality of the system itself in relation to whether it performed the functions that it was being asked to perform, we stated consistently through the months prior to 12 October that there would be no critical incidents outstanding on 12 October and we achieved that. We had what we would term trivial incidents outstanding, as you would with any software package you buy off the shelf, particularly some of the more common ones, as we did with exports when it went

live last year. Those trivial incidents were numerous, but they are the sort of bugs whereby you expect to get an answer by pressing this button ...

When you look at that answer and the question on notice that I received back, there seems to be a significant difference. You told me that there was full functionality, but look at the answer:

On 31 October there were 41 critical incidents on a document known as the ICS incident log, critical incidents, as of October 12, 2005.

This log was thoughtfully attached to the answer to question No. 48. It showed—as I am sure you would know, Mr Harrison—‘ICS incident log, critical incidents’. I am confused, or angry—one or the other. It will depend upon your answer. If you recall, back in October I was keen to understand what happened. I am sure Mr Carmody can recall that as well. The answer that you gave me seemed to indicate clearly that it was fully functional, but the later document seems to indicate that clearly it was not, and that there were a significant number of critical incidents outstanding. Which is right?

Senator Ellison—I wish to correct the record, Madam Chair. In October Mr Carmody was not—

Senator LUDWIG—Sorry about that. I think we dealt with it subsequently, where I might have asked you the same question.

Mr Carmody—I think you raised questions about the former CEO’s comments.

Mr Harrison—Hopefully we have not tried to pull the wool over anybody’s eyes in relation to the functionality, but I think we have probably not hit the same base in terms of the definition of what we mean by ‘fully functional’ or otherwise. What we have said, and what we said at the time, and hopefully what we have said consistently since is that ICS would go live with a number of outstanding incidents, critical and otherwise. In the lead-up to 12 October, we guaranteed, if you like, that there would be no what we called ‘show stopper’ incidents—in other words, incidents that meant that the ICS did not work. Again, definitionally we could argue about what that means, but what we said was that we would not go live with any show stopper incidents outstanding. There were a number of those that we had been working on up until 12 October.

As you appreciate, Senator, the last version of the ICS was put into production as late as 5 October. It was dealing with some of these incidents that had been worked up to that stage. We had agreed with the people whom we were working with, both internally and externally, that prior to 12 October there were no show stopper incidents outstanding. The critical incidents—again, it is a matter of definition to some extent—or any incident that we considered would affect the movement of cargo, as opposed to perhaps a reporting incident or some other component of the system, we only went forward with on 12 October if there was an acceptable workaround in place. But there were certainly those incidents that were outstanding on 12 October.

Senator LUDWIG—Mr Harrison, we have a problem, and I think it is a serious problem, quite frankly. I will go back to your answer again—and I might have to do that again. I asked was the integrated cargo system fully functional and operational. There is no confusion in my mind and there was no request for clarification from you at that time either. You understand

what I am talking about. You understand what I asked for. In fact, you understood so well that your answer included the issue at hand. You said:

With regard to the functionality of the system itself in relation to whether it performed the functions that it was being asked to perform, we stated consistently through the months prior to 12 October that there would be no critical incidents outstanding on 12 October and we achieved that.

But that is not the truth. The document attached to No. 84 says there were critical incidents—in fact 41 critical incidents. We can argue about ‘trivial’ but I do not know whether we can argue about the definitional issue of critical. Those are your words. If you had told me that back on 12 October there were 41 outstanding critical incidents, I would have asked you different questions to the ones I did at that time. I would have asked about those 41 critical incidents and I would have got you to explain back then the import of those critical incidents—what impact they would have and how long they were going to take. A whole range of issues would have flowed from that. I can only assume you lied to me. I do not know. I do not want to make that allegation—but I think I am, Chair—that you have provided false evidence to this committee.

CHAIR—I cannot allow that to stand, Senator Ludwig.

Senator LUDWIG—I withdraw.

CHAIR—Thank you. Senator Ludwig, I am not intending to interrupt the flow of this discussion, but it is one o’clock and the committee is due to break. However, having made those comments, I think I should offer the officers at the table an opportunity to respond if they wish to do so now. Other than that, we will resume until 2 pm.

Mr Harrison—At the time, my explanation of critical incidents was based on my understanding that critical incidents equalled those instances that effectively meant the ICS did not work. The definition of ‘critical incidents’ that we have given you in the answer to your question is not the same. I regret, give what you are saying here, that the word ‘critical’ has been used in two different contexts, I believe, in my answer at the time and our answers at question 84. But my point is that I think they were used in different contexts.

CHAIR—Senator Ludwig, having enabled Mr Harrison to respond to your initial remarks, I would like to suspend the committee for the lunch period. We will resume with Customs after lunch.

Proceedings suspended from 1.03 pm to 2.02 pm

CHAIR—I indicate to agencies who have advised us of travel commitments that may be impacted by the timing of procedures here that wherever possible the committee will try and shift the agencies for whom there is a small number of questions so that they can achieve their flight targets. Good luck. It is Canberra. Enjoy the afternoon! Where there are agencies for whom there is a significant number of questions and a multiplicity of senators wishing to pursue issues, that will be harder to do, frankly, so you will just have to bear with us. I understand most agencies realise the estimates hearing goes till 11 o’clock at night. Sometimes you are here till 11 and sometimes you are not. We, on the other hand, are always here till 11. Just to make sure that is the case, I will go back to Senator Ludwig to continue with questions in Customs, unless either the minister or the secretary have any comments or documents they wish to place before the committee at this stage.

Senator LUDWIG—It is true we will be here till 11.

Senator Ellison—I will hand up a further press release that I did which dealt with the tender and the \$17 million for the particular vessel which would act as, more or less, a mother ship, which we talked about earlier. I hand up that press release, which was from 11 May 2006 and was not with the budget package.

CHAIR—Thanks.

Senator LUDWIG—Before the break we were referring to a matter. It was ended in the sense that I finished the questioning on it. In terms of the matter there was not, or at least I was not aware of, any correction. But I do request that the matter be formally investigated as to whether the behaviour constitutes a contempt of the Senate. Perhaps for ease's sake I will also include question No. 84 with the attachments. That might help in that deliberation.

CHAIR—Thank you, Senator Ludwig. Under standing order 25(2)(b), a committee such as this is in a position to do that. We will consider the request through this process and advise the minister and officers when the committee has deliberated upon it.

Senator Ellison—I think you should be seized of perhaps some further facts, as I understand them, in relation to question on notice 84 and the heading 'ICS incident log: critical incidents'. What Senator Ludwig refers to in this is a description given to that log by the software developer, I understand.

Mr Carmody—By the software system.

Senator Ellison—Yes, by the software system. In question No. 84, paragraph (c) says: 'Incidents still outstanding from 12 October 2005 are non-critical and are continually assessed against other priorities.' That is saying that, as at 12 October, the incidents which were left unresolved or outstanding were non-critical. When you look at the annexure, it refers to resolved incidents and unresolved incidents. You can see from that Customs answer that Customs is regarding the unresolved incidents as definitely non-critical. It says 'Incidents still outstanding from the date of the question'—

Mr Carmody—Sorry, the question was if any remained at the date—

CHAIR—Minister, I particularly do not want to handle this on the run.

Senator Ellison—I think we should have an opportunity to fully address this now. You are going to have a look at it. This distinction should be on the record. This distinction was not made by Mr Harrison earlier. It was made to me afterwards. I am going to make it—that is, the description of critical incidents, so I am told, was one given by the software system and not Customs. The question that that was still outstanding and non-critical is something I think you need to take into account. The point the officer just made to me is a good one. We have to look at the date of the answer to the question on notice—that is, those that are still outstanding from 12 October were non-critical. However, that is still a contradiction in terms—because we are talking in terms—to what is headed as critical in this chart. All those incidents under that heading, as I see it, are either resolved or unresolved. If some of those are still unresolved, the answer says that they are not critical. The cover sheet answer is at odds with the heading of that chart.

CHAIR—Thank you, Minister. Mr Harrison made some reference to the question of terminology before the lunch break. I am more than happy to undertake that the committee will examine this in the most open and transparent manner possible. We will seek appropriate information from Customs. We will examine the records that the committee has already received in terms of evidence on the transcript and evidence provided in answers to questions on notice and whatever other material is relevant. We undertake to you, Mr Carmody, and to your officers that all appropriate information will be sought from you and every opportunity given to you to make available whatever you believe needs to be made available. Every opportunity will be given to senators who are members of this committee to pursue the issues that they think are relevant. I can say no more than that. I hope that suits both sides of the table.

Senator LUDWIG—Yes. I want to go on with antidumping.

CHAIR—Thank you.

Senator LUDWIG—There is a current review—perhaps it is more of an administrative review—of antidumping arrangements that is presently being proceeded with.

Mr Carmody—It is administrative procedures.

Senator LUDWIG—Will the submissions be made public?

Mr Rice—They are already on the Customs website, so they are available.

Senator LUDWIG—Is that all of them, except any that have been asked to be held back as confidential?

Mr Rice—None of them has been asked to be held back as confidential. They have all been submitted on the basis that they would be put on the website. As I said, we have received 27 in total, which are on the website.

Senator LUDWIG—There was an article that indicated that Rio Tinto had called for a widening of the review of the antidumping system. They stated, in brief, that better administration of a bad policy still leaves bad policy. Are there any plans to widen the terms of inquiry?

Mr Carmody—We are responsible for the administrative side. Questions of whether the policy should be reviewed are matters for government.

Senator LUDWIG—So there are no current plans to widen the inquiry, Minister?

Senator Ellison—No.

Senator LUDWIG—One case that was raised was the Windsor Farm Foods case. Has that been completed?

Mr Rice—That related to a mushrooms case.

Senator LUDWIG—This was an antidumping case from February 2003.

Mr Rice—That is correct. The minister's decision was advised in January this year. That decision was the subject of an application for review to the trade measures review officer. The trade measures review officer has completed his investigation and, as a consequence of his recommendations, it has been referred back to Customs for reinvestigation. We are

undertaking that reinvestigation at the present moment and expect to have our recommendations to the minister on 13 August.

Senator LUDWIG—So that is still a live matter?

Mr Rice—It is, in so far as we are doing a reinvestigation.

Senator LUDWIG—Why are you doing a reinvestigation?

Mr Rice—Under the legislation, when the minister imposes measures—in this case, it was an application for new measures—interested parties are entitled to apply for a review. If they apply to the trade measures review officer, they receive what is effectively a merits review. In this case, two interested parties involved in the mushrooms case did make that application to the trade measures review officer, and he accepted their application and commenced a review.

Senator LUDWIG—What is the cost of the matter to date? Is it done internally, or in house?

Mr Rice—It is a staff resources issue for us. I would have to go back and check. I know that, at one point during the initial part of the investigation, we sought some external assistance. I would have to take that on notice.

Senator LUDWIG—Yes, if you would not mind. In effect, it was later—do you use the phrase ‘overturned’?

Mr Rice—The way the legislation works is that the trade measures review officer may recommend to the minister that certain matters be reinvestigated. It is then up to the minister whether he accepts those recommendations and, in this case, the minister has. The minister then directs us to reinvestigate those matters.

Senator LUDWIG—Are you able to say what those matters are?

Mr Rice—Yes, I can. They were the issue of like goods—whether we were talking about the same kinds of mushrooms. There was also the issue of normal values—the price of mushrooms as sold in China. That is about it.

Senator LUDWIG—That matter was first brought before the antidumping section in February 2003. Is that right—or was it before then?

Mr Rice—It has certainly been around for quite some time. This most recent application was submitted in March 2005. My understanding was that it had previously been seen by the branch.

Senator LUDWIG—Could you check on that date as to when it had previously been with the branch?

Mr Rice—Certainly.

Senator LUDWIG—It was not finalised until September 2005, the first time around?

Mr Rice—It was finalised when the minister imposed measures. I am sorry, I said January earlier. It was 29 December 2005.

Senator LUDWIG—Is that a long time? It seems to be a long time to take for an examination and then to come to a conclusion.

Mr Rice—Under the legislation, we are allowed 155 days for our investigation. Prior to those 155 days, there is what we call a 20-day screening process where we make our decision on whether to initiate or reject the application, so it can effectively add up to 175 days for consideration. My understanding is that we sought an extension, which is possible under the legislation, of 20 days in this case. So those times are probably the normal process plus 20 days.

Senator LUDWIG—If it started back in 2003, September 2004 is more than 155 days plus 20.

Mr Rice—Yes, it is. In the first instance, my understanding is that an application was lodged but was not accepted as it did not meet the grounds for initiation. That does happen with a number of the cases that we have brought to us. The time line I am talking about here is the most recent case that was initiated and then investigated. I should clarify that we provided our recommendations to the minister on 27 September, which is what we were supposed to do under that legislation. It is then for the minister to make his decision on our recommendations.

Senator LUDWIG—When was the application lodged and accepted?

Mr Rice—It was lodged on 10 March 2005 and initiated—that is our terminology; you would say accepted—on 5 April 2005.

Senator LUDWIG—And the 155 days ran from 10 March?

Mr Rice—No; from 5 April. We provided our report and recommendations to the minister on 27 September 2005.

Senator LUDWIG—And that was 155 days plus 20?

Mr Rice—That is my understanding, yes.

Senator LUDWIG—And then it sat on the minister's desk until a decision in December 2005?

Mr Rice—Yes. The date of 29 December, which I indicated is the date that it was notified in the paper.

Senator LUDWIG—When did the minister make the decision? Is that effectively the 29th?

Mr Rice—Effectively, yes. The notice in the paper is the decision.

Senator LUDWIG—For the minister to make a decision, that leaves October, November and most of December, which is almost three months. Is it usual for that period to elapse?

Mr Rice—There is no time frame in the legislation for the minister to make a decision; it is just not in the legislation. Under the World Trade Organisation Anti-dumping Agreement rules, an administration has up to 12 months to make its decision.

Senator LUDWIG—So, in terms of 12 months, three months is not too bad.

Mr Carmody—I think you will find that the Australian Customs Service is much quicker in these decisions than standards applied around the world.

Mr Rice—That is correct.

Senator LUDWIG—That seems to be what the branch is suggesting.

Mr Rice—We take the 155 days; the EU takes about 260 and the US takes about 420.

Senator Ellison—We are way in front of most others.

Senator LUDWIG—Is there money in the budget for the review of the antidumping legislation, or is the administration being dealt with in house?

Mr Rice—It is being done in house. At the present moment, we are halfway through the review. One of the exercises we will be doing is costing any potential enhancements, but it has been resourced in house. We are doing this with the Department of Industry, Tourism and Resources, the Department of Foreign Affairs and Trade and the Trade Measures Review Officer. The department of industry in particular is contributing some resources to the exercise.

Senator LUDWIG—With regard to the time lines of this case and other cases, have you done any analysis as to whether you are still up amongst the top internationally in terms of being able to process those applications speedily? It seems to me that the article in the *Financial Review* on Monday, 22 February 2006 was, in my words, critical of the time line in that case.

Mr Rice—Yes. Did you say in comparison internationally?

Senator LUDWIG—Yes.

Mr Rice—I think we are still well ahead. We do monitor the time it takes us to conduct our investigations and we are still well ahead of decision-making in other jurisdictions.

Senator LUDWIG—I have no further questions. Thank you.

CHAIR—Mr Carmody, I thank you and your officers.

[2.22 pm]

Australian Security Intelligence Organisation

CHAIR—I welcome the next witnesses and thank them for their patience.

Mr O'Sullivan—I have an opening statement that might assist the committee's deliberations.

CHAIR—That would be helpful. It is not compulsory, but we are always grateful for your opening comments.

Mr O'Sullivan—I thank the committee for the opportunity to make some brief opening remarks. The committee may be aware that on 11 May 2006, the Intelligence and Security Committee of the British parliament tabled its report into the London terrorist attacks of 7 July 2005. In my view, it is a balanced and useful report containing some salient points that are instructive for our own experience in the context of considering resource issues in connection with the counter-terrorism mandate that we have. Firstly, the committee noted the sheer scale of the problem that the British security and intelligence agencies face and their comparatively small capacity to cover it. Secondly, if more resources had been in place sooner, the chance of preventing the 7 July attacks could have increased, but of course there are no guarantees that it would be possible to stop all attacks. The British report also

underlines the risks associated with focusing just on the known sources of threat and not pursuing the unknowns, without downplaying the very real impact that has on resources. It is a stark reminder that our own risk management decisions and prioritisation of investigative tasks can have life and death consequences. That is a substantial responsibility that the people in our intelligence community carry on a daily basis.

Like our British counterparts, ASIO continues to grow at what I consider to be the maximum sustainable rate against the background of a complex and demanding operating environment. As part of the federal budget, the government has allocated a range of additional funding measures totalling \$642 million for the organisation over the next five years. As has been said publicly, the additional resources will allow us to address both known and unknown sources of terrorist threat to Australia. In addition, they will allow us to respond appropriately to the threat of espionage, sabotage, the promotion of communal violence, attacks on Australia's defence system and acts of foreign interference.

Recruitment of staff is well under way, and I am confident that we will be able to attract and retain the high-calibre people we need. ASIO today have a staff of around 1,070, up from 955 at 30 June last year. We expect to have 1,095 staff by 30 June this year. Previous government initiatives would have seen ASIO grow to around 1,200 by the end of 2006-07. In line with the recommendations of the Taylor review, ASIO now have been funded to grow to 1,860 by 2010-11. We have strengthened our recruitment area. There continue to be a high level of quality applications across the range of recruitment campaigns, and we have a strong recruitment program in place to start the 2006-07 year. We are confident we will meet the targets endorsed by government and we are on track to grow by 170 net next year, if not more. Our separation rate remains in the range of six to seven per cent. ASIO is seeking a broad range of staff—including intelligence officers, analysts, linguists, data entry staff, IT specialists, technical specialists, human resources staff, surveillance officers and administrative staff.

In addition, the government has given in-principle approval for a new building in Canberra to accommodate an expanded ASIO central office and the Office of National Assessments. We have adopted a careful and sequenced approach to managing growth, developing capabilities and maintaining accountabilities to government both financially and operationally. I am confident we will be able to deliver on our commitments to the government. I am happy to respond to your questions as best I am, within the obvious limitations of this public forum on matters concerning intelligence and security.

CHAIR—Indeed, Mr O'Sullivan. We always work with that in mind.

Senator LUDWIG—Good afternoon. There is an advisory group that has been established by ASIO, and I think it is called the business liaison unit or the business advisory group. I understand that you have recently established that within ASIO in order to improve links with the business community. Are you able to say this: is it an internal body or unit within ASIO or does it have external links into business? Are you able to say whether or what business groups are on that and how they have been selected?

Mr O'Sullivan—It is an internal group and it has been staffed by people with appropriate backgrounds. It is an ASIO unit within ASIO.

Senator LUDWIG—Does it meet for, I guess, organisational reasons of ASIO or does it have a wider remit to deal with liaising with business about a whole range of issues?

Mr O’Sullivan—It is the second. It is a continuous part of our organisation. It is a part of the establishment, and its remit is to continuously develop the links with the business community and the non-government sector generally on issues of concern, such as to do with protective security, counter-terrorism and so on.

Senator LUDWIG—Is it also designed to share with business intelligence that you might gather about issues such as critical infrastructure and the like or does it have a narrower cast than that?

Mr O’Sullivan—If we have credible and specific intelligence of people trying to do us harm, we will pass that information on promptly and directly. More generally, however, what we aim to do is to work with the Australian community through the business liaison unit in developing structures that allow industry to have access to information relevant to their judgments about how to manage the risks that we help them identify. There will be an announcement not too far down the track, I think, by the Attorney-General about the methods by which that process can be advanced.

Senator LUDWIG—We might come back a little bit. On the new money that you have been allocated and then the staff tracking—and I think you had some remarks on this in your opening address—have you filled all the positions?

Mr O’Sullivan—Certainly not. As I said in my opening, I believe that we can grow at around net 170 per year, but perhaps slightly more. We have to be careful, of course, because of the very elaborate processes we go through for vetting people. In addition to that we also have to manage that growth in a way that is sequenced so that the processes of growing do not just affect one area but suffuse themselves through the whole organisation in an organised way. That gets you into a complex discussion about issues to do with finance, accommodation and other aspects of how to grow an organisation. We have a team working on that and we have quite a developed plan to grow, as I say, in a sequenced and organised way.

Senator LUDWIG—Have you identified in the recruitment strategy that you have adopted any skill shortages that you might have to search a bit longer and harder to meet or meet in house in terms of entry level recruitment of people who might be attracted to your organisation but find there is better, greener grass on the other side?

Mr O’Sullivan—The broad answer to the question is that the total number of applicants is up. There is an upward trend in the total number of applicants. That is not to say that in very specific job categories or very particular areas we do not have the same challenges that other parts of the Australian community have in finding enough people. The broad answer to your question is that trend lines and applicants are up and even in the areas where there are narrower specifications, if you like, narrower specialties, we are still finding that the numbers of applicants are sufficient for us to attract good quality staff.

Senator LUDWIG—I know you gave a broad overview of the big picture or the security environment which Australia faces. But you have made a couple of recent statements, I think, regarding ASIO assisting state and federal police, particularly in matters such as the recent Cronulla riots and also subsequent arrests. You indicated there were 19 men who had been

arrested and charged on terrorism charges arising out of raids in Sydney and Melbourne last year. With this in mind, has the current picture in Australia changed significantly over the last 12 months, since the last time we had the opportunity of exploring this in depth with you?

Mr O'Sullivan—The threat level in Australia remains the same, which is medium. That means that the threat from terrorism remains the same and is set at that level. We judge a terrorist threat as one that is feasible and could well occur. That is what the terminology means. I think, frankly, the fact that 22 people have been arrested on terrorism related charges—19 in November, as you correctly pointed out, and three in March—is evidence that the threat is still viable and still serious.

Senator LUDWIG—I know it is always difficult to go into some of the specifics, but are you able to say where the 19 are at, or is it simply that they have been arrested and—

Mr O'Sullivan—They are detained and the legal processes are ongoing.

Senator LUDWIG—Have any of them been finalised?

Mr O'Sullivan—No.

Senator LUDWIG—So they are all still currently on foot?

Mr O'Sullivan—Yes.

Senator LUDWIG—Have charges been preferred against all of them?

Mr O'Sullivan—I believe the answer is yes.

Mr Cornall—Yes, I believe so.

Senator LUDWIG—Perhaps you could take on notice whether that differs and whether or not they are on bail.

CHAIR—Will you take that on notice, Mr O'Sullivan?

Mr O'Sullivan—As far as I am aware, none are on bail.

CHAIR—Take it on notice, please.

Mr O'Sullivan—Yes.

CHAIR—Thank you.

Senator LUDWIG—It is just a catch-all in the end. I did not think so, but I thought I would ask. On the issue of ASICs, which were part of the security measures introduced last year, have all the background checks—and I think this is a matter that we keep having to ask you about now and again—for pilots who applied for aviation security identification cards before 31 December 2005 now been finalised?

Mr O'Sullivan—Between 1 January and 31 March this year, ASIO completed 11,445 security checks for CASA, bringing the total number of checks completed by ASIO for CASA to 21,926. I understand that this is an ongoing process.

Senator LUDWIG—What about those people who applied before 31 December 2005? Has that cohort been completed or are there some that remain outstanding prior to that date?

Mr O'Sullivan—I would like to take that on notice. My memory of that question is that all have been completed but I would like to confirm that for accuracy.

Senator LUDWIG—If they have not, could you also take on notice how many are still outstanding and when they are expected to be completed. It goes on to a new question that might also be relevant to that cohort. Are you able to say how many checks have resulted in refusals?

Mr O’Sullivan—Yes, the answer is none.

Senator LUDWIG—What is the average time taken to process a background check? Is there a target time? That may be a moving target too.

Mr O’Sullivan—I think when I last saw that statistic it was seven days, but I would like to get back to you with up-to-date information.

Senator LUDWIG—Is there a target you are working towards? Is it a seven-day turnaround?

Mr O’Sullivan—We would do it as promptly as possible. I do not know that there is a need for us to set a particular timetable.

Senator LUDWIG—In terms of your recruitment campaign, which I went through earlier, are you seeking to draw from people with ethnic backgrounds as well? In other words, are you widening your base?

Mr O’Sullivan—We are certainly aiming to widen the range of skill sets we have that fit into the overall program approved by the government. Those skill sets are the ones I mentioned in my opening statement. It depends how you want to characterise the cohort or cut the issue, but in a sense one way of thinking about it is the assemblage of skill sets. Another way is to say that ASIO wants to be seen as representative of the broader Australian community as well.

Senator LUDWIG—In terms of the advertisements for recruiting staff, are you able to say if you placed those in non-English-speaking media—other than in major metropolitan newspapers is a broader way of putting it.

Mr O’Sullivan—I think the answer is that we take advice from recruiting agents. We hire consultants to advise us about how to run a campaign. They then help us place the advertisements in the areas most likely to hit the widest catchment. We do not specify to them that it has to be in one newspaper and not another.

Senator LUDWIG—Are you able to say how many of your staff in the latest recruitment have foreign language skills?

Mr O’Sullivan—I will have to get that statistic for you.

Senator LUDWIG—Do you require them to be accredited or to have certain accreditation standards in terms of the foreign languages they might have?

Mr O’Sullivan—It depends on the function. There are linguists who work in ASIO, and they are accredited appropriately. There are other people at ASIO who have less developed skills than at translator or what we call linguist level but who nevertheless use language skills as part of their work daily. We have people based outside Australia who are often required to have foreign language skills. So the answer is that we put them through appropriate language training depending on the level of the work required.

Senator LUDWIG—I am happy for you to take this on notice: could you break that figure down as to how many of those might be accredited at interpreter standard and translator standard? There are a couple of different standards in there. I am sure you have done an analysis of your work force.

Mr O’Sullivan—I may have some hesitations in answering that question fully on a public basis, because it gets close to telling people what skills we have or do not have. The fact is that, if we do not have them in house, we have other methods of achieving them. But I will look at the question and see what I can usefully say, if that is okay with you.

CHAIR—Within the constraints, Mr O’Sullivan. Thank you very much.

Senator LUDWIG—It is a public record. Otherwise we will leave it for another time. Thank you.

Senator NETTLE—I might start by asking you whether a military attack on Iran would increase the likelihood of a terrorist attack in Australia.

Mr O’Sullivan—That is a very hypothetical question. I think that is a question you should redirect towards the Minister for Foreign Affairs.

Senator NETTLE—Has ASIO done any assessment of the likely consequences of a military attack on Iran?

Mr O’Sullivan—We do not discuss in public the advice we provide to the government about those sorts of issues.

Senator NETTLE—When John Negroponte, US Director of National Intelligence, was here in December last year, did ASIO have meetings with him?

Mr O’Sullivan—I certainly met with Mr Negroponte, yes.

Senator NETTLE—How many other officials from ASIO would have also been involved in meetings with him?

Mr O’Sullivan—There would be a small number. I cannot remember precisely, whether it be two or three, but there was a small group of other people with me when I met Ambassador Negroponte. It was a small number. He had a program which was organised in an ordinary way for a foreign visitor. I just cannot remember if other people were in the room with me when I met Ambassador Negroponte.

Senator NETTLE—Are you able to say broadly what issues were discussed?

Mr O’Sullivan—Very broadly, the issues were the range of intelligence relationships we have with the United States. As you know, he is the Director of National Intelligence of the United States, so it encompassed, in the case of ASIO, the areas where we intersect with the United States.

Senator NETTLE—He did a visit to Pine Gap. Is that right?

Mr O’Sullivan—The program for Mr Negroponte has not been publicly outlined, and I do not think it is appropriate for me to divulge that information. It was a classified program and I think it remains so—as far as I am aware.

CHAIR—Thank you, Mr O’Sullivan.

Senator NETTLE—The question comes from media reports, so I suppose it is about—

Mr O’Sullivan—There may have been media reports, but I do not think it is appropriate for me to confirm or deny that.

Senator NETTLE—I want to ask you about the arrangements you have with the Department of Immigration and Multicultural Affairs for security assessment of immigration detainees. I note it is done on a cost recovery basis. I am just wondering if you know the amount of money that ASIO received from the department of immigration for that process in the last financial year.

Mr O’Sullivan—We think the amount was about \$900,000.

Senator NETTLE—Do you know how many individual assessments that would have involved?

Mr O’Sullivan—I think we will have to get the answer for you.

Senator NETTLE—Is there a target time for security assessments?

Mr O’Sullivan—I think the answer is no. The reason the answer is no is that it depends on the complexity of the case. There will be some people who can very quickly be processed because there is no reason for us to have any interest in them and there will be cases where there are quite complex matters that have to be judged and where matters have to be referred outside Australia or information has to be sourced outside Australia. It is impossible to have a target that covers every category of applicant.

Senator NETTLE—I want to ask about the two immigration detainees on Nauru, who I understand have been assessed by the department of immigration to be refugees but have had an adverse security assessment made against them. I note the letter that was sent by one of the detainees to you in October 2005 in which they indicated that they had not been advised of the details of the decision. I wonder whether that remains the case and whether they have been advised of the details of why there has been an adverse assessment against them? Is that a process that you follow or not?

Mr O’Sullivan—The situation as I understand it is that two people currently on Nauru have commenced proceedings in the Federal Court. It may be the case that I or one of the ASIO officers would be involved in such action, so for the reasons Mr Bugg outlined this morning I do not wish to get into any comment on that case.

Senator NETTLE—Unrelated to their cases, would it be normal for ASIO to inform a particular detainee of the reasons for an adverse security assessment by ASIO?

Mr O’Sullivan—I think the answer to the question broadly speaking would be no. The reason is that ASIO makes its assessments on the basis of confidential information and sources and does not divulge those.

Senator NETTLE—At the time the interviews are conducted, do the detainees have any legal representative with them?

Mr O’Sullivan—I am not aware of the particulars of this case and even if I were I would have trouble answering it because of the explanation I just gave.

Senator NETTLE—That is why I thought I would ask the question more generally.

Mr O’Sullivan—Do you mean do we have a view about whether they should have?

Senator NETTLE—No. Is it standard practice that people are offered the opportunity to have a legal representative with them whilst they are undertaking an ASIO assessment?

Mr O’Sullivan—There is only a small number of instances where that would have occurred, for a start. Broadly speaking—and it is hard to hypothesise—it is not the case that legal representation of the kind that you are referring to would often be available. The short answer to your question is no.

Senator NETTLE—When you said there is only a small number of instances where that would occur, do you mean instances where they would have an advocate or where you would be conducting a face-to-face interview?

Mr O’Sullivan—No, where we would interview people whom you call detainees.

Senator NETTLE—There are only a small number of cases where there would be an actual face-to-face interview—is that correct? I am making sure I understand what you meant when you said a small number of cases.

Mr O’Sullivan—Of the cases that are broadly called detainees, of the kind that I assume you are alluding to.

Senator NETTLE—There are only a small number of face-to-face interviews—is that right?

Mr O’Sullivan—That is correct. By the way, our annual report contains the details on an annual basis of the number of questioning warrants that have been exercised.

Senator NETTLE—Does that show those people who would fall into the category of immigration detainees?

Mr O’Sullivan—No, it is not broken down.

Senator NETTLE—Is it possible to get that?

Mr O’Sullivan—I would have to consider that question. Prima facie, there could be a reason for not divulging that information because it could lead to divulging about how we went about our work and who went on behalf of ASIO to do particular work. Your questions have the problem for me that they could lead to the divulging of sources and methods and people who work in ASIO, and that is precluded by the way we operate.

Senator NETTLE—I was just asking about the number of assessments that are done of detainees.

Mr O’Sullivan—And I undertook to have a look at that question.

Senator NETTLE—We have talked about legal support. Where the people who are being interviewed are known to have mental health issues, do they have any health professionals with them at the time of such an interview?

Mr O’Sullivan—Part of the answer to that question is that it gets into a matter that does not bear specifically on ASIO’s work. That is a question that you might want to take up with the immigration department generally—how people who have health problems are assisted, for instance—but it is not a specific responsibility that devolves to ASIO.

Senator NETTLE—I have asked those questions in relation to their general interaction. I asked them of you to find out whether the fact that somebody has a mental illness is something that you need to take into consideration when making decisions based on the information that they provide you at such an interview. That is why I was asking whether you require or want to have that assistance there to ensure that you can get the accurate information.

Mr O’Sullivan—That could be true, but you also have to factor in—to use your phrase—the reality that we collect information not necessarily, or perhaps not specifically, for use as evidence. I suppose the answer to your question is that it partly depends on the purposes for conducting the interview.

Senator NETTLE—So on some occasions it may be appropriate and on some it would not?

Mr O’Sullivan—It is hard to disagree with that sort of proposition, but it is hard to go from that general proposition to specific undertakings, if I can put it that way.

Senator NETTLE—I am confused. I do not understand your last answer.

CHAIR—Do you want Mr O’Sullivan to repeat his response.

Senator NETTLE—If possible.

Mr O’Sullivan—I am trying to address the hypothetical instance that you were arguing. I think you were putting to me this question: would ASIO get psychological or physiological assistance for a third party if we thought that they had problems that needed such appropriate assistance? My response was to say: in broad terms, that is not an ASIO issue, because, if they are in detention—for argument’s sake, as we were alluding to—the conditions of their detention are not something that is determined by ASIO, so it is hard for me to answer your question because it falls, broadly speaking, outside the ambit of what this organisation does.

Senator NETTLE—Simply for the purpose of what ASIO is seeking to achieve in those discussions with detainees, are there instances where it would assist ASIO to have those medical professionals present?

Mr O’Sullivan—If the people we had an interest in and wished to interview were physically or psychologically needing assistance or unable to participate, we would not proceed with the interview at that point. We would then go and seek other advice or make sure they were given, if it were within our remit to do so, whatever assistance they needed, but I am putting to you broadly that the sort of general condition that you are describing is not something that ASIO normally gets into.

Senator NETTLE—Are the people you interview for the department of immigration the subject of a questioning warrant? Is that the process that you require, or would some of them be interviewed under that process and others not require a questioning warrant?

Mr O’Sullivan—The people who are referred to us by the department of immigration are people who need to be given a security assessment or who are applying for visas, or whatever the immigration department activity is, and we process those in the normal way. That is one set of issues. Our internal processing, by the way, is separate from the DIMA process; the two

processes are separate for separate reasons. The issue of the questioning warrant is completely different to the question of security assessment.

Senator NETTLE—I thought when you were saying I could look at the annual report to see the numbers that you were referring me to the numbers in the annual report of the questioning warrant. I wasn't sure whether they would fall into the category of people that I am asking about.

Mr O'Sullivan—If the question is the number of people in respect of whom we provide assessments to the department of immigration—

Senator NETTLE—Yes.

Mr O'Sullivan—the answer is that in 2004-05 we conducted 48,194 visa security assessments and in the period from 1 July 2005 to 31 March this year we have conducted 36,547 visa security assessments.

Senator NETTLE—In the budget portfolio statement it refers to unauthorised arrivals. I presume in all those visa assessments there is not that number of unauthorised arrivals. Is there a number you have for the assessments you are doing of unauthorised arrivals?

Mr O'Sullivan—Yes. In 2004-05 the number of unauthorised arrivals was 5,046. In the period from 1 July 2005 to 31 March 2006 the number is 1,890.

Senator NETTLE—Would only a small number of those involve face-to-face interviews?

Mr O'Sullivan—When we decide to interview people we do so because we have reasons to do with counter-terrorism, for arguments sake, or one of the other issues that we have a mandate to pursue under the act setting up our organisation. We might interview people for a whole series of reasons to gather information and intelligence and so on. So it is impossible to say we would only interview them if there was a concern, for argument's sake, about their application for a security assessment. We might interview people who can help us investigate other activities in the community more broadly. It does not have to be about a visa issue.

Senator NETTLE—Are those numbers you gave assessments or interviews?

Mr O'Sullivan—They were the numbers of unauthorised arrivals. If you want to know the number of assessments—is that the question you are asking?

Senator NETTLE—Is the 5,046 in 2006 assessments of unauthorised arrivals or face-to-face interviews? I presume there would be a larger number of assessments. If you do not face-to-face interview anyone, then there would be a small number for those. I was just trying to find out which number this was.

Mr O'Sullivan—The answer to the question about assessments for the 2004-05 year is 4,223.

Senator NETTLE—What was the 5,046?

Mr O'Sullivan—The number of unauthorised arrivals.

Senator NETTLE—That is the pure numbers and not those that ASIO interviewed?

Mr O'Sullivan—That is correct.

Senator NETTLE—I thought I asked the number you had assessed. Is the 4,223 the number you assessed or interviewed?

Mr O’Sullivan—The assessment does not necessarily have to involve an interview. That is the difference that I am trying to get to you. If you want to break down the number of assessments that involved an interview, I can see if I can find that information for you.

Senator NETTLE—Yes, that would be helpful. So the 4,223 was assessments—is that right?

Mr O’Sullivan—Yes, that is correct.

Senator NETTLE—Is there a figure for 1 July to 31 March?

Mr O’Sullivan—Yes, in the period 1 July 2005 to 31 March 2006 the number of assessments is 2,660.

Senator NETTLE—I had down 1,890.

Mr O’Sullivan—That is correct. That was the number for the unauthorised arrivals.

Senator NETTLE—So the 2,660 includes unauthorised arrivals and others?

Mr O’Sullivan—Well, it is rolled over. The reason it is higher than the number of arrivals is that there would have been a carryover. You see, not all the assessments are done instantly. They take some time.

Senator NETTLE—They were done in the period of time—

Mr O’Sullivan—That is correct.

Senator NETTLE—Some of those people interviewed post July would have been—

Mr O’Sullivan—They could have been. If they were interviewed, it could have been post July.

Senator NETTLE—in the previous figures.

Mr O’Sullivan—That is correct.

Senator NETTLE—The bit that you are taking on notice is—

Mr O’Sullivan—It is how many of the assessments involved an interview. I thought that was the question you wanted answered.

Senator NETTLE—Yes.

Mr O’Sullivan—I will see if I can find that information.

Senator NETTLE—I want to ask about another asylum seeker, a West Papuan asylum seeker. This person is not one of the 43 but has been here for some years. They, I understand from the department of immigration, have been assessed as a refugee and as requiring protection but has been waiting for over eight months to get a clearance from ASIO. I suppose I just want to try to get some sort of understanding of why they might be waiting for such a long period of time for assessment. Does that period of time seem unusual?

Mr O’Sullivan—I would rather avoid getting into too much detail in public about particular cases.

CHAIR—I think Mr O’Sullivan is really precluded from commenting on individual cases like that, Senator Nettle.

Senator NETTLE—All right. Does ASIO monitor the activities of West Papuans in Australia?

Senator Ellison—Madam Chair, that—

Senator NETTLE—It is not going to relate to that case.

Senator Ellison—No, but look: who ASIO monitors is core business which it cannot talk about.

CHAIR—I do not think that is the point of the minister’s concern, Senator Nettle.

Senator Ellison—Sorry. That question is inappropriate, Madam Chair. ASIO is not in the business of telling public forums who it monitors. Sorry.

Senator NETTLE—Perhaps I could live up the afternoon, then. I could ask the government whether they have given any consideration to banning the Free Papua Movement in Australia.

CHAIR—Minister, I will seek your response.

Senator Ellison—Are you saying it is banned, that it is listed as a terrorist organisation or what?

Senator NETTLE—No. I am asking: has the government given any consideration to banning it?

Senator Ellison—It has not been banned, and that is the end of the matter. It has not been. There you are.

Senator NETTLE—Has the Attorney-General’s Department received any requests by the Indonesian government for it to do so?

Senator Ellison—That is a government-to-government matter. Madam Chair, I do not want my answer to be construed that there necessarily has or has not been a request, but it is inappropriate for that question to be answered. We have on many occasions before said that we do not comment on government-to-government communications, for obvious reasons. On that basis, I believe that question is one which cannot be answered, for the reasons I have outlined. But I do not want anybody to run around saying that, because I did not answer it, obviously I was trying to cover up the fact that there had been communications. That answer is given because the question is inappropriate.

CHAIR—Thank you, Minister.

Senator NETTLE—I have, in attending demonstrations with members of the Free Papua Movement in Sydney, identified Indonesian officials from the Indonesian embassy taking video footage and photographs of West Papuans—some of whom are in the process of going through refugee assessments. I am wondering if that sort of activity is of concern to ASIO—that is, having foreign personnel, whether they be intelligence officers, surveying public meetings and demonstrations of particular members of the Australian community in Australia?

Senator Ellison—I bow to the intelligence network that Senator Nettle has access to, to have all that knowledge.

Senator NETTLE—It has been passed on to the Department of Foreign Affairs.

Senator Ellison—You are presenting it to the committee as a given—that is, that this is a fact. You have not mentioned what you rely on for that. Quite apart from that, it is a question which is inappropriate and not one which requires an answer—for obvious reasons. Mr O’Sullivan has gone through it very carefully to outline that he can answer questions, which he is able to in a public forum. Quite obviously, matters of security and intelligence cannot be canvassed in a public forum. So there are two things I am saying here: firstly, the premise of the question being put as a fact and, secondly, Mr O’Sullivan being asked to comment on matters of security and intelligence.

Senator NETTLE—Perhaps I could ask the government whether it is of concern to the government.

Senator Ellison—The same applies to myself as a minister. I am not in the business of divulging anything which deals with intelligence or security. You put a question as a fact—that this is happening. At least Senator Ludwig refers to the article he is relying on, that he has read. The same applies for me, Madam Chair.

Senator NETTLE—Okay. If such activities are occurring, is that of concern to the government?

Senator Ellison—It is again the same answer, on the second ground, and that is that you are still asking me to comment on matters of intelligence and security.

Senator NETTLE—Going back to the question about whether or not the government monitors the activities of the Free West Papua movement in Australia, previously the government and ASIO have admitted to monitoring people involved in the Cronulla riots, for example, that we were talking about before. So I am wondering why that distinction is being made.

Mr O’Sullivan—If you are referring to the reports in the *Sydney Morning Herald* after my appearance at the Sydney Institute, what I said then was that we had assisted our federal and state police colleagues in the investigations about that matter.

Senator NETTLE—So you are saying you are not involved in monitoring those activities?

Mr O’Sullivan—For reasons that the minister just explained, I cannot and must not get into a discussion in public about the core activities of ASIO. So I cannot answer that question. But I want to correct what I actually said at the Sydney Institute meeting.

Senator Ellison—It is very different to the detail that Senator Nettle has attached to it because what Senator Nettle is saying is that ASIO had these people under surveillance, and stated that again as a premise to the question—a given, if you like. Mr O’Sullivan has clearly made the point that all he said was assistance had been given. The form of that assistance is a matter which is confidential, and that cannot be answered in this forum.

Senator NETTLE—I will just go back to the figures for the unauthorised arrivals. The 5,000 was for unauthorised arrivals, and then there was a 4,000 figure for those people who

had security assessment. Can you explain the discrepancy between those two figures? Does that mean there are 1,000 people who were considered not to require being assessed by ASIO? Why is there that discrepancy?

Mr O'Sullivan—I will have to check that answer, but I think broadly the answer is that there could be unauthorised arrivals who were not needing assessment by ASIO—some proportion.

Senator NETTLE—Would that decision be made by ASIO or by the department of immigration?

Mr O'Sullivan—I would have to check, but my understanding is that we depend on the department of immigration for the referral that then triggers our assessment.

Senator NETTLE—So the 4,000 would be ones who had been referred to you by the department.

Mr O'Sullivan—That is my understanding. If there is a problem, I will correct it.

Senator NETTLE—I want to go to questions in relation to the Sheller report—in particular, the banning of organisations by the Attorney-General. What would be the effect, if any, on ASIO's operations of a senior judicial officer rather than the Attorney-General having the power to ban organisations?

Mr O'Sullivan—Firstly, my understanding is that the report by Justice Sheller is still being considered by the government and has not yet been tabled. If I am correct, it would be inappropriate for me to comment on a report that has not even been tabled. I would have to consider the second part of the question, but that is a hypothetical proposition.

Senator NETTLE—I will move on to the question of the listing and banning of the PKK and whether the recommendations of the intelligence committee review of the PKK listing have been considered—in particular, the possibility of listing the military wing of the PKK rather than the whole organisation.

Mr O'Sullivan—This was a matter that was very fully canvassed with the PJC in camera and on the basis of a fairly highly classified discussion. That question you have posed about our view of possible distinctions and so on was a question that was canvassed. I believe the PJC got a very full explanation from ASIO and from other departments if they asked about the basis of that approach.

Senator NETTLE—As you will appreciate, there are none but the two major parties represented on the PJC, so the capacity for people beyond that to understand the circumstances is limited to what is available in the report, which I have read. That is why I am asking whether one of the recommendations in that is something that was considered.

Mr O'Sullivan—I do not have anything to add to my answer.

Senator NETTLE—Thank you.

Mr Cornall—With regard to the question Senator Ludwig asked about whether 22 people were charged with offences and whether they were detained, all 22 have been charged and all 22 are detained in custody. Senator, you may recall that one of them was allowed out for a short period of time to visit his brother, who was very ill, but he is now back in custody.

Senator LUDWIG—Thank you.

CHAIR—I thank the witnesses.

[3.12 p.m.]

National Native Title Tribunal

Senator SCULLION—I would like to ask some questions about the amount of ILUAs that you have been dealing with and for a comparative analysis of some of the Indigenous land use agreements that have been completed in the last reporting year.

Mr Doepel—I will make a start on that.

Senator SCULLION—In general terms, are we increasing the numbers of ILUAs and the speed with which they are dealt with?

Mr Doepel—I will make a couple of points. The uptake of facility under the act, which was part of the 98 amendments, has been increasing steadily over the last year or so. My summary statistical report indicates that, as of Monday of this week—that is, 22 May—there were 247 Indigenous land use agreements on the register of agreements. We reached the 200 mark only in the last half of the last calendar year, so we have effectively done almost another 50 in the space of six months.

The nature of the agreements continues to be varied. I think there are broadly two initial categories that I can speak about. One is a category that is what we would call the stand-alone Indigenous land use agreement, which is usually a larger agreement negotiated outside the context of a specific native title claim and application. It is an application for determination, usually involving multiple parties and multiple or large commercial interests. That is a group of its own. The other group is smaller ones which are for specific projects or developments or—and this is very important—agreements that have actually been negotiated as part of an overall process for resolving a native title application.

So the outcome is really two things: a determination, usually by consent, which goes to the Federal Court to be dealt with by the judges and the determination made, and usually one, two, three—it depends on the number of interests and types of things being covered—associated Indigenous land use agreements. When you think of the logic of that, it is fairly straightforward. The determination declares the rights and interests but the Indigenous land use agreements deal with the practicalities of who can do what in relation to the land and waters in question. I might ask Mr Chevis to give us some clarification of some examples of agreements that we have seen in the last few months.

Mr Chevis—There are certainly a range of Indigenous land use agreements that get negotiated. Many of them are associated with infrastructure or with development of mining proposals. There would be a range of others of various types—probably not so many in those other categories. Indigenous land use agreements can in general terms be used for a variety of purposes. It would not be possible to say that there is any limitation really on the types of projects or proposals that could be addressed.

Mr Doepel—There can be marinas, for example, pipelines, government establishments for communications, for defence—there is a very broad range. Some of the areas that can be the subject of the ILUA are actually quite small relative to, say, claim areas. Some of them are

unique in their shape because, if they are on a larger scale, a major project may encompass quite an area or it may see infrastructure needing to be developed through a number of traditional owners' areas and so there can be a number of responses. The ILUA legislation is a framework, as you know, and many variations are possible within that.

Senator SCULLION—Could you give me a comparison with the speed of the native title claims, which are not the land use agreements, as you know. We know—we have spoken over the last couple of years—that there have been some concerns about the continuing backlog and the speed with which the backlog of claims are heard, to do with whether they are a claim that can be heard and when they are actually heard. How are we going with that?

Mr Doepel—I think it would be fair to say that native title claims and applications are still taking some time to resolve. We do have some that go back to the earlier days, before the 1998 amendments, but, as you would recall, after 1998 most of those claims had to come back through the registration process and many of them effectively started again. We are beginning to see claims coming through that were lodged in the 1995-96-97 period which are beginning to come through to resolution.

The process of dealing with a claim is a continuum really and, unlike other court or tribunal proceedings, you can have many things happening over several years. We have analysed the processes involved in resolution of claims and we have seen, on one analysis, up to six distinct stages that claims go through in their resolution. You talk about when they come on for hearing. We would respond to that by saying: there are a series of mediations throughout the lifetime of the management of a claim, where the parties with interests are invited to try and settle the issues in the claim.

It would be fair to say that the periods are shorter where two or three conditions precedent are evident—the first is that the connection and historical information in relation to the claimant group is complete and ready to be presented; the second is that the first respondent, the state or territory government in question, is in a position to assess and respond to that information; and the third, again coming back to state and territory governments, relates to the overall policy position at that time. But the claims overall are still taking a number of years to work their way through the system.

Senator SCULLION—You will recall that in recent times a Senate committee deliberated on the capacity of the representative bodies to deliver their particular role in the native title process. We looked at the adequacy of funding and the consistency of approach in terms of the remuneration paid to the CEOs, which I have a particular interest in. There were a number of recommendations. Have you considered the way the representative bodies are funded and have you given much consideration to looking at how we can bring some consistency to the availability of staff and the sort of remuneration that they receive?

Mr Doepel—The overall level of funding for native title representative bodies is a matter for the government through the minister for Indigenous affairs. We of course have stated in public forums and to the former parliamentary joint committee that the existence of well resourced and capable native title representative bodies assists us and, we believe, the system as a whole. We are involved in broader consultation about ebbs and flows of work and general

allocation of resources, but that is not for us to decide. What we do is take concrete action in and around the rep bodies, usually at their request.

We have offered over the last few years our expertise and advice on a number of things—for example, around the overall rights and interests affected under particular claim areas. We have provided through our legal offices seminars called bundle of rights seminars, where we go into an area and we take the staff of the rep body through the legal dimensions of the claim, looking at what has been extinguished, what the leasehold interests are and what could properly be the subject of the eventual determination. We have supported projects in the past where we have provided mentoring by more senior anthropologists of more junior anthropological staff in rep bodies so that they can get a feel for the connection and historical work required on the claims. This we have done in the past under the general area of assistance and specific capacity building that we have discussed with the rep body network and with the Office of Indigenous Policy Coordination. We look for opportunities to assist where we can, but overall funding levels do remain a matter for the government.

Senator SCULLION—The last issue is close to my heart. You may or may not be able to give me a comprehensive answer. You might take some of it on notice. You would be aware that last year the Northern Territory government decided to hand back 49 of the parks in the Northern Territory. They claimed that that was based on the Ward decision, and that filtered down to a question of whether or not it was lawful in the declarations of the parks in the first instance. We understand that for 11 of the 49 parks there is some sort of question about that.

If this proceeds, will the legislation have an impact to the extent that no other native title claim will be able to be placed upon those parks in the future? I understand that the legislation cannot be enacted by the Territory government to extinguish the right to make a native title claim because such legislation would enact the discrimination act of 1975. I am not asking for a legal opinion. Obviously it is something you have looked into. The Territory government have decided that they are taking this action to make clear that there is a certain security of tenure. That is what they have put to me. In light of the lack of capacity to extinguish the right for people to make a native title claim under the discrimination act of 1975, that would not seem to be the case. Would you be able to comment on that or, obviously, take it on notice?

Mr Doepel—I will put two brief propositions. I am not fully familiar with the context you have given. Firstly, matters of extinguishment would be matters for the Commonwealth parliament as a matter of basic principle behind the legislation. Secondly, with reference to another part of your comments, the effect of later claims, a determination over part of an area within an Indigenous land use agreement, under the terms of the Native Title Act, can be fatal to that ILUA. In fact, there are express provisions in the act that say that a later claim is determined and it intersects with that area if those traditional owners are not recognised within the ILUA originally; that can extinguish the ILUA by statutory force.

The act, though, has a scheme by which all possible persons affected by an ILUA can be identified on notification of the ILUA so that, if possible, you can avoid the situation where a later claim can be made and determined that would have that negative effect. Among my statutory obligations is the obligation to notify in prescribed form the extent and broad nature of the ILUA so that these interests can be identified. So far, in the 247 I have placed on the register, we have had no sign of this later complication emerging. So it is incumbent upon us

and, in particular, if a native title representative body is involved, incumbent upon the representative body to make sure that all traditional owners identified within the ILUA area are part of the process. Otherwise a later claim can affect an earlier ILUA.

Senator SCULLION—The reason I asked the question was that, because of the speed with which the administrative process has had to take place over quite a considerable number of parks—involving two representative bodies over quite a short period of time—it has been asserted to me that there are a number of individuals who believe that they are legitimate claimants who have been left out of the process, and they have indicated that they would make some sort of claim in the future. I was just clarifying the impact of that claim.

Mr Doepel—I have effectively given you a cook's tour of the law. This is the first I have heard of that. It is very interesting information.

Senator SCULLION—Indeed. Thank you very much.

CHAIR—I do not believe there are any other questions. Mr Doepel, I thank you and your officers for attending.

Mr Doepel—Madam Chair, thank you for accommodating us within the schedule, which allows our party to return.

CHAIR—Thank you for coming from Perth. We will move on to the Australian Federal Police.

[3.29 pm]

Australian Federal Police

Senator LUDWIG—On a matter I was following yesterday, Minister, in respect of the AWB and allegations about bribes being paid to Indian government officials, I think we had agreed that I would ask it again when the Australian Federal Police appeared. Good afternoon, Commissioner Keelty. Yesterday we were broadly discussing an issue that had arisen in respect of a letter rogatory from India involving allegations of corruption or bribery of officials in the Indian government. It was a matter that received some airing in local media in India and in Australia. It also achieved some notice in the parliament of India—in the Rajya Sabha—where there was a request for a letter rogatory for mutual assistance to the Australian government. The committee was further informed that the case was closed for lack of evidence, particularly on account of the noncooperation from concerned Australian authorities to whom the letter was sent. Did the matter get raised with the Australian Federal Police back in around September 2001?

Senator Ellison—Chair, I just want to make clear that the issue regarding India that Senator Ludwig has raised is, as I understood yesterday from the advice that I had, a matter for which documents relating to it are before the Cole inquiry. The government's stand in that regard is very clear at this estimates, as it was in the estimates before: we will not answer questions in relation to that.

In relation to whether the AFP is assisting the Cole inquiry, we have answered questions as to AGD and AUSTRAC in the Cole inquiry, and that is certainly a legitimate question. In relation to the Indian matter as to whether there has been a referral to the Australian Federal Police, that can be answered. The commissioner can answer that.

Senator LUDWIG—The only comment I would make is that this is not part of the Cole commission and is not, as I understand it, within their terms of reference. That was in respect of the oil for food program for Iraq; this is in relation to an allegation of foreign bribery in respect of the AWB for Indian officials in India. It is a separate matter.

Senator Ellison—I do understand the documents are before the Cole commission of inquiry. In any event, I did say that matters of mutual assistance are ones which we do not discuss in the normal course of events. That is something that would not be a question to the AFP in any event. The AFP deals with investigation.

Senator LUDWIG—I accept that, Minister. That was mere background.

Senator Ellison—The mutual assistance is to the government. Yesterday we were talking about whether the matter had been referred to the AFP. That is something that the AFP can answer, so perhaps we should start with that one.

Senator LUDWIG—The question goes to whether the AFP had received or investigated allegations of bribery of Indian officials. I quote:

Australia's wheat exporter has been implicated in another scandal in light of revelations it paid a \$3.8 million commission to a Cayman Islands bank account in 1998, as part of a wheat deal with India.

Senator Ellison—I advise the committee that the advice I have from the AFP is that it did not receive such a referral. So that is the end of it as far as the AFP is concerned.

Senator LUDWIG—Were you going to refer it, given that allegations have now arisen? You indicated that they are matters that have also been raised in the Cole commission. I am sure you will get advice as to whether they are in or out of the Cole commission's remit but if they are outside it may be a matter you might want to consider referring yourself.

Senator Ellison—As I understand it, this is with regard to an allegation of corruption in the Indian bureaucracy.

Senator LUDWIG—Bribery of officials by an Australian company. That is the allegation.

Senator Ellison—What they were looking at and what you are saying are in reference to parliamentary transcripts—

Senator LUDWIG—It also related to mutual assistance, which you indicated you were not going to acknowledge. And I accept that.

Senator Ellison—From the Indian point of view, they are interested in the alleged corruption in the Indian bureaucracy. In relation to other matters of any possible Australian involvement, as I understand it, the allegation concerned Indian officials and there was no evidence to warrant a domestic investigation into possible Australian offences. I must say that we cooperated fully with the Indian government.

Senator LUDWIG—The Australian government cooperated fully with the Indian government.

Senator Ellison—Yes.

Senator LUDWIG—But the matter was never referred to the Australian Federal Police for investigation.

Senator Ellison—No. As I said, the allegations concerned Indian officials and there was no evidence to warrant a domestic investigation into possible Australian offences.

Senator LUDWIG—So there was no offence or crime that could be looked at.

Senator Ellison—I cannot put it more simply than that. There was no evidence to warrant a domestic investigation into possible Australian offences.

CHAIR—Thank you for that clarification, Minister.

Senator LUDWIG—I do hear your words in respect of the terms of the Cole inquiry, but have there been any referrals to the Australian Federal Police from that?

Mr Keelty—Not as yet. I have a meeting with the royal commissioner on 1 June.

Senator LUDWIG—I do not suppose he has indicated what that meeting is about?

Senator Ellison—I do not think that is an appropriate question to ask the commissioner in any event—

CHAIR—It really needs to be on the estimates docket, Senator.

Senator Ellison—even if he knew. So brazen!

Senator LUDWIG—The other matter I have been following for some time relates to freedom of information. In recent media reports there are allegations that a significant number of FOI requests have been rejected by the AFP. They have more than quadrupled since 1996-97. At that time, only eight per cent of those requests were rejected as opposed to over 36 per cent now, as I understand it. Can you explain the rise in the increase in rejections of FOI requests and indicate whether or not guidelines have changed?

Mr Keelty—We monitor, and I personally closely monitor, all the FOI applications and the process in which they are dealt with to minimise delays in their turnaround. As to the rejections, without having the data in front of me, I would need to look into whether or not the level of rejection is higher over previous years. I can say that the level of applications is higher than in previous years and I suspect that is more to do with the broad involvement of the AFP across a whole raft of issues now, and it reflects the growth in the work of the AFP and the growth of the organisation. Anything in any greater detail I would have to take on notice.

Senator LUDWIG—If you would not mind having a look at that, I accept that you will take it on notice. The other area is the ACLEI. As I understand it, that will be a matter that will come up shortly. It is certainly a matter that this committee has been following closely. As I understand it, in this budget Customs are going to receive additional firearms. I think in the order of 600 officers are going to be armed. The minister can correct that if it is not right. There is also access to other firearms as well by Customs. Customs do a number of joint operations with the AFP and ACC. ACLEI will be charged with oversighting, and obviously investigating, allegations of corruption occurring in the AFP and ACC. Do you have a view as to whether, when you do joint operations with Customs or other law enforcement agencies, it would be more appropriate for ACLEI also to oversight the whole of the operation? If there are allegations made in the current model, only the AFP officers would be subject to the

ACLEI oversight—for argument's sake, in a joint operation with Customs dealing with a drug or a controlled operation.

Mr Keelty—I think that is a matter of policy for the minister.

Senator Ellison—Again, you are talking about the ACLEI legislation and the extent of it?

Senator LUDWIG—Yes.

Senator Ellison—I think we have covered that in previous questions and answers.

Senator LUDWIG—I know your view, Minister, and I accept that. I did not want to cut you short; I am happy for you to state it again. I was looking to see whether the commissioner had a view.

Senator Ellison—As the commissioner correctly says, it is a matter of government policy in relation to the ACLEI legislation. We took advice from agencies in relation to the formulation of that policy and it has been developed in consultation with the AFP and others. It is not really appropriate to ask the commissioner for his views on the policy.

Senator LUDWIG—I accept that—

Senator Ellison—Maybe how it works—the machinery of it.

Senator LUDWIG—I am pointing not so much to the policy but to how the oversight of the Australian Federal Police will work. The Australian Federal Police Commissioner might like to shed some light on how that will work where you have a controlled operation involving the Australian Customs Service and the Australian Federal Police, and there is an allegation of corruption against multiple officers in that controlled operation.

Senator Ellison—I see what you are getting at now.

Senator LUDWIG—Under the oversighting by ACLEI, it will only be able, as a consequence, to look at the AFP. If I were the AFP commissioner or the police in that operation, you are protected to the extent that you have an oversight body and Customs do not. It is a question of what happens at the border, in the sense of the border between the AFP and Customs? How will the Australian Federal Police regard that when they talk to their own officials? They point at Customs and say, 'Customs don't have an oversight but we do.'

Senator Ellison—Senator Ludwig, put that way I see the question in a different light now. It is a valid one and it deals with this: how will it apply when you have a joint operation of Customs and AFP working side by side, with one subject to ACLEI and one not? A similar situation arose, I would suggest, in relation to the Australian Crime Commission. You had police officers who were seconded from other jurisdictions and, indeed, police officers who were working side by side ACC staff and who really had not even been seconded. They had not been put on the payroll; they were still from, say, a state police service and were working on a joint operation. In that case, each person would be dealt with according to their own jurisdictional purview. There were two officers from the ACC—one from Victoria and one from New South Wales—who were being dealt with under state provisions, albeit they were working with the ACC.

I would see it working on the basis that ACLEI would govern the ACC and the AFP where they were in a situation where there was an allegation. If there were other officials, the state

jurisdiction would deal with them. If there were another Commonwealth official, they would be dealt with separately to that. In the normal course of events, Customs would have an internal investigation, as I understand it, and then it would be referred further if needs be. We, of course, are keeping an eye on that to see how that does work, because it is possible that you could have three people being looked at by three different bodies. It is inescapable that it is the states and territories versus the Commonwealth, because where you have a state police officer in an operation with Commonwealth law enforcement, naturally they—or the Police Integrity Commission or whoever is the home body—are going to have their pick in looking at them. It is not without precedent, but we will monitor it carefully to ensure that there is nothing which detracts from the ability of ACLEI or from the efficiency of the situation.

Senator LUDWIG—All right. Commissioner Keelty, on Thursday, 27 April, you made—

Senator Ellison—Madam Chair, I might just make a call to see whether Commissioner Keelty is required elsewhere.

CHAIR—I understand.

Senator LUDWIG—I will ask the question anyway.

CHAIR—Then we will indicate that the commissioner cannot answer it and then we will wait until later! Let us do that. That is a good plan.

Senator LUDWIG—You indicated this to the committee on Thursday, 27 April. You said:

There is a gap here—and I do not want to name agencies—if you look at the powers, such as access to search warrants, access to the use of firearms and access to detention.

I will end the quote at that point. I am sure you recollect it. Are you resiling from that comment or is it the case that you still might have that personal view but are bound by policy?

Mr Keelty—I think, in fairness to me, I did say—

CHAIR—Indeed.

Mr Keelty—in response that I accept the government's policy on the issue, and I gave candid evidence before the committee. I do not make the policy. I adhere to the policy and I made those comments known to the committee.

CHAIR—Thank you, Commissioner.

Senator LUDWIG—In fairness, I did reflect upon the circumstances. In terms of officer training, or more generally the Australian Federal Police, there seems to have been—and these are my words—a focus go from traditional crimes to the terrorist related issues and crimes. The Australian Federal Police has significant new budget initiatives for that. Regarding the basic training of AFP recruits, are you able to indicate whether there is additional training or training modules which relate to the new threats of terrorism or terrorism related incidents? Commissioner Keelty, do you have to go?

Mr Keelty—Yes. Madam Chair, I have just been called down to—

CHAIR—Thank you very much, Commissioner. The committee will have a brief private meeting to determine how to deal with this. We will come back in a moment.

Proceedings suspended from 3.49 pm to 3.50 pm

CHAIR—Although we thought about examining operations with Mr Van Dam at great length, we will not do that. We will rely on information being brought back to the committee about the availability of the commissioner this evening, at which stage we will resume with the AFP. Mr Colvin and Mr Van Dam, I seek your assistance in that process—

Mr Colvin—Absolutely.

CHAIR—although I understand it is not a matter within the control of anyone in this room. We will move to the Australian Law Reform Commission, who have indicated that that would be helpful, and we will come back to the program as we can. I ask officers from all of the organisations represented here this afternoon to please bear with the committee in view of the circumstances. We usually try and follow the scheduled order as closely as possible, but I suspect that will not prove possible today.

[3.52 pm]

Australian Law Reform Commission

CHAIR—I welcome Professor Weisbrot and Mr Kirkland. Professor, I wonder whether you could update the committee on the status of the reference on sedition and its current situation.

Prof. Weisbrot—The issues paper was released on 20 March. We have finished consultation on that. We have finished the discussion paper in electronic form and we are sending it to the printers today and hoping to launch the discussion paper on Monday, 29 May.

CHAIR—That is speedy printing. I predict that you do not want to pre-empt the release of the discussion paper on Monday, but is there anything that you can tell the committee in relation to the consultation process?

Prof. Weisbrot—We received about 70 written submissions and we had about 20-odd meetings, primarily in Sydney, Melbourne and Canberra, which we noticed was also the pattern of the Senate inquiry into the Anti-Terrorism Bill (No. 2) 2005. We also set up an expert advisory committee of about 15 people who represent a range of different perspectives—prosecutors, defence counsel, civil libertarians, DPP, people from the Sydney and Melbourne bars and so on.

CHAIR—Did you say reference committee or expert committee? I am not sure what terminology you used.

Prof. Weisbrot—It was our normal advisory committee that we set up for every project—a reference group.

CHAIR—Can you provide the committee with a list of the members of that?

Prof. Weisbrot—Certainly.

CHAIR—Thank you very much. The discussion paper will be released on Monday. What is the process envisaged from there?

Prof. Weisbrot—I know the reporting date is Tuesday, but I do not think we are going to get it in on time—and we have alerted the Attorney's office to that—but we are proposing that there should be about five weeks for people to make written submissions to us, because we know this is a matter of public interest, and so we have set a deadline for receiving

submissions of Monday, 3 July. I think we make 25 proposals of varying degrees of importance, but if there is not too much alteration to that we should be able to give the final report to the Attorney by the end of July.

Senator LUDWIG—Is there any precedent for such a short inquiry? It seems relatively short. I know you have done a mammoth task in meeting those short time lines, but have those types of time lines been imposed upon you before?

Prof. Weisbrot—No. We tend to work in one- or two-year blocks. In this particular case, when the Attorney contacted me and asked if we were willing to do the project, I said that we certainly were. He said, and we appreciated, that he would like it done quickly. This is a more targeted project than many of the ones we do. For example, when we are reviewing privacy law, as we currently are, or genetic privacy and discrimination, it is huge. Also we had the benefit of the Senate committee's own report and the 300 submissions, I think, that were made to that inquiry. So we were able to do it in a much more truncated time frame than we would normally like to do. We are doing it as quickly as we can. We received the terms of reference on 1 March and we will be completing it within five months, I think. We have been able to do that. I would not like to do it too often, but it has not been a particular problem in this case.

Senator LUDWIG—Did you indicate how many submissions you had received?

Prof. Weisbrot—About 70—68 or 69 or something like that, I think.

Senator LUDWIG—Will they be put on the web if they are not already there?

Prof. Weisbrot—What we normally do is make them available upon request. We have an open inquiry policy, so that all submissions are available unless people have especially requested confidentiality. But we do not, as a normal course, put them on the web. If you wish to see any of them, though, you can make a request and we would provide them.

Senator LUDWIG—I understand that now. Could you provide a list of those submissions to the committee and then we can look at whether we want to seek some of them—except those where confidentiality might apply.

Prof. Weisbrot—When the discussion paper is released on Monday, it will have a list of participants, which includes the members of the advisory committee that Senator Payne asked about a moment ago. There is also an appendix to the discussion paper that lists all of the submissions.

Senator LUDWIG—Thank you very much. Have there been as many submissions as you thought there would have been, or more or less, given the short time frame? In other words, is that what you expected?

Prof. Weisbrot—More or less. We received them from the groups that you would expect: the Law Council of Australia, the Attorney-General's Department—we did not receive a submission but we had extensive meetings with both the AFP and the DPP—various human rights NGOs, the organised profession. There were quite a few submissions made from media organisations, sometimes individually or in tandem, and also from quite a number of community groups, community legal centres. It was the range of submissions that we expected, broadly.

Senator LUDWIG—Were there any late submissions?

Prof. Weisbrot—No. We had a lot of people asking for extensions—it reminded me of my days at the university—but we were able to accommodate all of those. In the end every submission was received and read that was promised as a result of the issues paper.

Senator LUDWIG—How many requests were there for extensions?

Prof. Weisbrot—Ten or a dozen.

Senator LUDWIG—It is really a qualitative issue, but do you feel that, given the short time frame, the quality of the report is compromised in any way because you may not have had sufficient time or research capabilities or a draft or a discussion paper or a background paper to inform people of?

Prof. Weisbrot—I do not think so. My sleep has been compromised, but we are quite happy with the discussion paper as it reads. I will leave the feedback to others, but we are happy we found what we think are quite good solutions to common concerns that have been expressed about the existing legislation and also that we have been quite thorough. The bigger problem would be in terms of having to do this over and over again because, of course, staff are accumulating a lot of flexitime and people wear out if you do these things in too short a time. So for the odd one-off project like this it is fine, but if you back them up you would start to have problems with staffing arrangements and burnout.

Senator LUDWIG—I think the secretariat here understands that. In terms of the staff working on the reference itself, did you have to bring temporary staff in or did you, as you indicated, use staff a little bit longer in their hours of work?

Prof. Weisbrot—The latter. We did not bring in anybody else. We started off with a rather small group and then, as the other projects concluded, we were able to bring several staff across—for example, the project we have on sentencing is now complete and awaiting tabling. Previous to that, we were able to take a few people from evidence. So we have used the existing staffing complement to do it, but in stages.

Senator LUDWIG—Would you call the hours the staff have had to work unusually long hours? Perhaps I should not ask you to reflect upon it. Perhaps I should ask the staff with you to reflect upon that.

Prof. Weisbrot—We put in some substantial hours to do it but we work to the patterns of research. There are times when our papers are out in the community and we can relax a little bit. We are also used to facing publication deadlines regularly so staff are accustomed to working in that way. In fact our certified agreement with staff recognises that. It is quite good about flexitime arrangements and those sorts of things.

Senator LUDWIG—In terms of precedents of this type, like sedition law, where the government legislated on the matter and then sent it to the ALRC to look at post the enactment, can you recall if that is something that has happened during your tenure?

Prof. Weisbrot—Certainly not in my tenure. We have quite regularly reviewed existing laws but they have tended to be significantly older than these provisions.

Senator LUDWIG—Have you had the opportunity to look at the record to see whether or not this is a first for such a short turnaround to the ALRC?

Prof. Weisbrot—In terms of the short turnaround, I think they are—

Senator LUDWIG—From enactment to reference for review. As you said, they can sometimes hang around for a couple of years, three or four years or even longer, before someone might say, ‘This might need a good look at.’

Prof. Weisbrot—It is fairly common for legislation to have a built-in review period of two or three years, but this was shorter than that. It was not a part of our research to focus on that, but it is unusual.

Senator LUDWIG—Of course, the more common way would be for the government to ask the ALRC to look at a particular area and then legislate post that.

Prof. Weisbrot—Or to not ask us at all.

Senator LUDWIG—Yes. The privacy review itself had the opposite problem, as I understand it. It seemed to have a very long deadline. This reference was made on 30 January and the report date is not until March 2008, which is over two years. Is that a particularly long time frame?

Prof. Weisbrot—It is towards the outer limit for the kinds of projects that we do. It is about the same as we had for genetic privacy and discrimination. We suggested that time frame to the Attorney for exactly that reason: we thought it was a project of about similar scope. We were pleased that that was accepted.

Senator LUDWIG—Is there a range of big issues that need a relatively long period to examine?

Prof. Weisbrot—There are a lot of issues in relation to the Privacy Act and also quite a few ancillary matters. The Privacy Act is really a data protection, information privacy act. Many of the concerns that we are hearing from the community in our consultations thus far relate to information, privacy and security but also matters of, for example, workplace surveillance or community surveillance and a whole range of other issues. So we are trying to come to grips first with how broad we cast the net.

Partly that extends to what other initiatives are being undertaken. For example, it is not within this portfolio, but in Communications they are looking at the Do Not Call Register. If that matter seems to be well in hand then we will not make that a part of our inquiry. The range of issues is pretty broad and it is moving quickly because of the technology in particular, which enables much greater information matching, data matching and the extension of surveillance so on.

Senator LUDWIG—Will the issue of the smartcard from Human Services be included in the examination?

Prof. Weisbrot—It is not expressly part of our terms of reference. I understand a separate advisory committee has been set up, headed by Professor Fels, to advise on privacy issues. I have only just read that in a newspaper while flying up this morning. We are not anticipating that we would be the review body for the project of the smartcard. On the other hand, what we

will be doing is trying to set down privacy principles that we certainly hope will be taken into account in the design and implementation of that card, if it happens.

Senator LUDWIG—So you are not considering an interim report in respect of the smartcard from Human Services?

Prof. Weisbrot—Not particularly, unless we are asked to do that, although I imagine that the issues papers and discussion papers that we release prior to the final report will contain some material that either directly or indirectly bears on that.

CHAIR—Thank you very much, Professor.

Mr Kirkland—I just want to add one point of clarification to avoid any confusion. In relation to the earlier questions about the availability of submissions in relation to sedition, in general, they are only available upon request following completion of an inquiry. That would generally be after the report has been tabled in parliament.

CHAIR—I see. Thank you very much for clarifying that, Mr Kirkland. But I think it was agreed that you can provide us with a list of submitters?

Mr Kirkland—Yes, absolutely.

CHAIR—Thank you.

[4.08 pm]

Australian Crime Commission

Senator LUDWIG—I have a question that I have been following up with all of the relevant agencies. Australia had a phase 2 report on the application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In it there were recommendations on combating bribery in international business transactions. The report, approved and adopted by the Working Group on Bribery in International Business Transactions on 4 January 2006, went to a range of matters. Is the Australian Crime Commission aware of any instances of bribery of foreign public officials as a result of your ongoing intelligence and investigation of organised crime that you are able to advise the committee of?

Mr Milroy—I think we need to take that on notice so that we can check our records.

Senator LUDWIG—Whilst taking that on notice, if you have examined any intelligence that has come your way, could you indicate whether or not it has been passed on to the Australian Federal Police. I suspect that would be part of your ordinary course of operational procedures. Item 72 of that report stated:

... there is no requirement for a MOU between state law enforcement bodies and the AFP for the referral of Commonwealth offences by the state agencies to the AFP.

Is there any intention, though, to develop an MOU between the ACC and the state counterparts—or, because of your structure, wouldn't there be any need to do so? I ask this primarily because, although there is no AFP MOU, it seems that either there was a misunderstanding within the OECD, when they dealt with this, about the ACC structure and the way the AFP operate—in other words, they can have joint operations with the state—or, alternatively, it may not have been explained to them by the Australian officials; I am not

sure. I wanted to examine whether the ACC has had a look at that report and, if it has had a look at it, whether or not it sees that any remedial action is needed by, for argument's sake, picking up an MOU between the ACC and the various state bodies to deal with issues that might arise.

Mr Milroy—I will take that question on notice, Senator.

Senator LUDWIG—There is a matter that I have been following in the media—and I know that brings a groan from everyone on this side of the table but it is new to you. There have been a number of media reports about an article that was in the *Sunday Mail* of 5 March titled 'Ex-bikie fights crime body'. It outlines the issue of an Adelaide businessman, and there are allegations about a whole range of issues. Are you able to say whether that matter has concluded or is it still under investigation? I ask that because it will determine what questions I can and cannot ask next.

Mr Milroy—You would probably have to give me a little bit more information in relation to the media article on the 5th that you are talking about.

CHAIR—Bear in mind that this is on the public record, Senator Ludwig.

Senator LUDWIG—Yes.

Mr Milroy—I do not have a copy of the relevant article.

Senator LUDWIG—Because we are on the record, I usually rely on, at least for the primary document, whatever might be in the paper. It was in the *Sunday Mail* on 5 March 2006 and it was titled 'Ex-bikie fights crime body'. It outlines the issue of an Adelaide businessman who is allegedly a target in a top-level Australian Crime Commission investigation into bikie related crime in South Australia, and who is challenging its powers in the High Court. Is that enough information?

Mr Milroy—If you bear with me I can check, but I think I will need to take it on notice—if it is a challenge in the High Court in relation to the powers. As you will recall, we provided on notice a list of the relevant cases, I believe, as a result of the February estimates.

Senator LUDWIG—Yes. Has that number changed?

Mr Milroy—The only thing that would have changed would be the result on 19 May with the High Court, which dismissed certain matters. I think it would be far better if we had a little bit more information and we had the opportunity to look at the relevant article you refer to. We will provide that answer on notice.

Senator LUDWIG—I will seek to make the article available to you some time today. In terms of the matters in the High Court, how many in total are there? I just wanted to follow up on a couple of issues.

Mr Milroy—Since I was last here in February, on 19 May the High Court refused to grant special leave to appeal in a matter which relates to seven injunctions. So that decision was in the ACC's favour. At present, there are three matters where there are principal legal challenges on foot. I can provide the committee with the details, if you so desire.

Senator LUDWIG—How many are outstanding?

Mr Milroy—There are three principal legal challenges.

Senator LUDWIG—And they are still on foot?

Mr Milroy—That is correct, yes.

Senator LUDWIG—Does that slow down your ability to investigate these matters?

Mr Milroy—No.

Senator LUDWIG—In other words, are there matters hinging upon the resolution of those challenges, or are they collateral issues?

Mr Milroy—No, it does not slow down the investigation. The High Court decision of 19 May I referred to related to the use of the coercive powers in examining certain individuals, but that did not stop general investigations both here and overseas in the matter referred to. These current principal legal challenges are not delaying or hindering our current investigations.

Senator LUDWIG—Have any of them been decided adversely, against the ACC?

Mr Milroy—Yes. There was a matter that went against the ACC, but that was then overruled on ACC appeal. All those challenges, of which there were quite a significant number, were set out in the submission that we provided out of session as a result of the February 2006 Senate estimates hearings. There are a total of seven challenges but, as I say, the three that I referred to are the principal legal challenges and we can provide you with details of those to update the previous detailed schedule that we provided to the committee following the February estimates.

Senator LUDWIG—That would be appreciated; thank you very much. Do any of the new budget initiatives relate to additional resources to combat the use of MDMA—ecstasy—amphetamines or other drugs in Australia? I note that you have produced a comprehensive public report which details illicit drug use in Australia, and you can be commended for the standard of work that has gone into it.

Mr Milroy—The additional funding for 2006-07 relates to national security telephone interception, identity crime strike teams and national document verification systems. When one looks at the activities of organised crime, there is the issue of the use of false identities and some other factors, so there is a relevant benefit to some of the funding and the subsequent additional staffing that will be applied across our offices. It increases our capability and, where a high percentage of our operations with partner agencies is in the area of illicit drugs, this additional funding will improve our capability.

Senator LUDWIG—Is it correct to say that there is no new dedicated money to assist in those operations to fight MDMA or amphetamine use in the Australian market?

Mr Milroy—Our current role in that area is subject to a board approved determination. It is not due for full board consideration until the end of the year, but the board will receive a preliminary briefing report from the ACC at the board meeting on 7 June. The work that we are currently undertaking in the amphetamine and synthetic drug area is quite comprehensive and very proactive. In those activities, we are doing a lot of the proactive work with a lot of the partner agencies in detecting clan labs and importations and distributions of precursor chemicals. On a day-to-day basis, operational activity can be quite widespread, depending on

the intelligence that we are gathering, a lot of the data-mining work that we are doing and other operational activities.

I think that there is quite a concentrated attack at the present moment under the determination by us, our partner agencies and a number of various strike teams that have been established in the jurisdictions, and there is also the work we are doing with the Federal Police and Customs. At the present moment a significant amount of work is being undertaken.

Senator LUDWIG—I accept that there might be a significant amount of work being undertaken, but the figures do not demonstrate there is a decline in usage. So there are both demand and supply issues. It seems that Australia is now right up there in terms of high usage of MDMA or amphetamines. So, although the work, as you say, is being undertaken, it does not seem to be being reflected in the document or the figures.

Mr Milroy—No, but I think one needs to look at the fluctuating results that you can have at times, particularly when you are tackling organised crime. They change their methodologies to avoid detection. You find that the seizure rates and arrest rates are not constant on a week-to-week basis; they fluctuate. If you are working on major organised crime syndicates who are involved in alleged importation and distribution, sometimes they need to be worked on over a specified period and you do not see the results in as even a flow as you might be suggesting.

Senator LUDWIG—Are we hopeful that we might see a decline when the next report comes down?

Mr Milroy—Do you mean the *Illicit drug data report*?

Senator LUDWIG—Yes.

Mr Milroy—It is a global problem at the present moment. We are fairly confident we will start to see some results from a lot of the proactive measures that we have been undertaking. This was addressed by the IGC on drugs recently in relation to some proactive measures that they were undertaken following some of the work that the ACC had been doing which the ACC board had referred for the IGC's attention. There are quite a lot of activities going on with the private sector—that is, the pharmaceutical companies—and there is other work we are doing with the Attorney-General's Department in relation to some law reform in relation to tablet presses and some other areas that we feel can be strengthened.

Senator LUDWIG—Do you have a current board reference for this which means that you can use your coercive powers?

Mr Milroy—That is correct.

Senator LUDWIG—Are you experiencing any problems in the use of the coercive powers? Are people not cooperating, in the sense that you have had to prosecute them for a range of offences which are usually referred to in some jurisdictions as contempt, which can go to refusing to answer and the like?

Mr Milroy—Yes. I can provide you with an indication of the successful use of the coercive powers in the specific area you referred to. We have conducted over 440 examinations in all states and territories in relation to the amphetamine issue. That is of course work we do with all agencies, including the industry and various areas in academia. In relation to the

challenges, I think we provided some details following the February estimates hearing and I can indicate the challenges to our powers during the hearings. We have had a number of people who have been prosecuted for failing to comply with the examiners' requirements, and that has led to a number of people receiving prison sentences of up to 18 months. I can provide an update to the previous schedule that we provided to you following the September estimates if you require it.

Senator LUDWIG—That would be helpful.

Mr Milroy—I can advise the chair that 35 have been prosecuted for offences under the ACC Act and 10 have been successfully prosecuted under the Commonwealth act. I indicated the number of people who have been convicted and sentenced to prison sentences. We are progressing quite well in relation to the use of the powers across all the determinations that have been approved by the board.

Senator LUDWIG—Is there a document which reflects the number of board references that you currently have on foot and the due expiry date?

Mr Milroy—Yes. We can provide that to the committee. I can advise that, at its meeting on 7 June, the board will be considering probably 70 or 80 per cent of the current determinations that have been approved by the board for the use of the powers. So we may be able to update the committee following the board's decision.

Senator LUDWIG—I will table the 'ex-bikie fights crime body' document, for your assistance in examining that matter.

Senator PARRY—Mr Milroy, you indicated the global trend with MDMA, with western Europe being a major source. With respect to the relationship with Europol, could you enlighten the committee as to how deep that is and how important that strategic alliance would be?

Mr Milroy—The director of investigations, Kevin Kitson, who is here today, and I attended Europol in 2004 for some very detailed discussions. We brought an expert from Europol over here at our invitation and cost, to brief the law enforcement agencies in Australia as to what Europol is doing in relation to the global amphetamine problem. That person spent some considerable time with our experts exchanging views and ideas in the developing of appropriate proactive strategies. So we have a very good working relationship with them. Of course, they also have a very good working relationship with the Australian Federal Police, who have officers based in the Hague, which is near the Europol headquarters. Our ongoing relationship with them is very important, and both agencies are benefiting from that interaction.

Senator PARRY—What about strategic alliances with other agencies? Is there international police cooperation in other areas?

Mr Milroy—Yes. In relation to looking at new and emerging trends and also looking at issues over the horizon, we use the various Australian organisations—the Federal Police and Customs, who have liaison officers around the world and who are, you might say, our eyes and ears in relation to some of those areas that we are interested in. I recently returned from a fairly detailed trip to Singapore and Hong Kong for discussions at a senior level, looking at

new and emerging crime trends and the shape of organised crime in those regions which could impact on Australia. The AFP, Customs and ourselves have developed a very good international network and relationship that is working very well.

CHAIR—Mr Kitson, did you want to add anything?

Mr Kitson—The visit by Europol was in April 2005. During that visit we used the Europol guest to brief a number of jurisdictions, a number of Commonwealth agencies, but perhaps most significantly we engaged in very detailed conversations with a number of the people within the Australian Crime Commission, working both operationally and in intelligence, on the issue of illicit drugs worldwide, and not just MDMA or amphetamines.

Senator LUDWIG—I refer to another media clip. I am happy to make it available as well. The heading is ‘Fraud war turns into a taxing nightmare’. It is from the *Sydney Morning Herald* of Thursday, 30 March 2006. I raise these matters to give you an opportunity to look at them; I do not take it as a given regarding what might be reflected there. Sometimes it is; sometimes it may be part of the overall picture. When you look at that issue and at the content of the article, is it correct that the ACC has stated that its tax fraud and money laundering investigations are being ‘seriously impaired’ by legal challenges?

Mr Milroy—That is what the article is saying.

Senator LUDWIG—Yes. Is that your view?

Mr Milroy—No. It is not correct.

Senator LUDWIG—Do you say they are unimpeded by legal challenges?

Mr Milroy—As I indicated to you, the media are probably picking up on the challenge to the use of coercive powers. That is the matter I referred to, but the High Court has dismissed it. One should understand that you can still carry out investigations within the terms of reference of the investigation both here and overseas, but this challenge was against the coercive powers, and has now been defeated. We now can use the powers, although during this challenge we were still carrying out investigations. So it is what one’s definition of ‘impaired’ is. It is words used by the media more than what we would consider was right at the time.

Senator LUDWIG—Are there any restraining orders currently in place that might prohibit you doing an investigation into any matters that you are able to talk about.

Mr Milroy—Other than the seven challenges I have referred to—and there are three principal legal challenges, which we—

Senator LUDWIG—There is a restraining order in place on those, is there?

Mr Milroy—A restraining order in relation to us carrying out the work?

Senator LUDWIG—On those three matters.

Mr Milroy—No. I think they are mainly matters, as I indicated, where we are waiting for a decision in relation to certain challenges to the use of a search warrant or specific challenges related to a specific case, whereas the matter referred to the High Court on the 19th was a constitutional challenge. More of the challenges are against legal professional privilege and

the seizure of documents, so they are more specific to cases than they are across the totality of the investigation.

Senator LUDWIG—There was still, more broadly, Operation Wickenby—I will not go to the article; I am not having much luck with those of late.

CHAIR—Not for the want of trying, I might say, Senator.

Senator LUDWIG—Thank you. I can tell you the title but I do not think you will need to see it: ‘Tax fraud probe hit by legal challenge’. It looked like it was about outstanding challenges in respect of Operation Wickenby. Are those the three we are talking about?

Mr Milroy—When was that dated?

Senator LUDWIG—24 April.

Mr Milroy—That is preceding the High Court decision because that affected seven cases. I think the media were building up to the High Court challenge as, in their view—quite rightly, I suppose—they felt that, if the High Court challenge went in favour of those seeking leave to appeal, then it could have had some impact. But it did not.

Senator LUDWIG—There seem to have been a significant number of cases that have been challenged. Have you sought a review of this area, sought to develop a paper or sought to consult with the Attorney-General about ways that you might—I will not say necessarily address it—streamline the process or make available additional powers to deal with the issue or particularly address Operation Wickenby?

Mr Milroy—Whenever there is a challenge, it is normally a consequence of carrying out investigations. As I indicated, some of them are very relevant to the relevant cases, but we consult virtually daily with the Attorney-General’s Department and the Australian Government Solicitor. In constitutional matters, such as in this instance, the Solicitor-General becomes involved. Of all the challenges—there have been 20—we have been successful in all but one. All of those issues are reviewed very thoroughly by ACC lawyers and the ACC consults with the Australian Government Solicitor and the Attorney-General’s Department. That would be a matter for the Attorney-General’s Department to comment on if they felt that there were matters that were deserving of further attention as it relates to the act.

Senator LUDWIG—Mr Cornall, has Attorney-General’s put its mind to the number of cases that are currently being sought to be appealed in the ACC area, specifically, it appears, on a narrow range of issues? Has Attorney-General’s turned its mind to whether there is a need to have a look at that area more closely?

Mr Cornall—I would have to make some inquiries of other officers. I am aware of the general problem. The issue seems to me to be that, while people are refusing to answer questions, they are being appropriately treated and a number of them are being convicted, some people appear to prefer the penalty of an 18-month imprisonment term to giving evidence under the coercive powers of the ACC. That is a dilemma. I do not think Mr Milroy or any officer of the department has a clear answer as to how to deal with that. The fact is that it is a criminal offence to fail to answer, people are being prosecuted and people are being convicted and imprisoned.

Senator LUDWIG—Short of Mr Milroy putting on a particular nasty face, I think we are faced with this problem for while, whilst they make that choice.

Mr Milroy—The ongoing work that we are doing with the Attorney-General's Department and the Australian Government Solicitor in any of these legal challenges or anything to do with the act is to look at the robustness of the act. That is an ongoing process. As far as the committee is concerned, it is something that we are doing on a regular basis. As you appreciate, some of the issues were raised during the parliamentary joint committee's review of the act. The Attorney's office made a submission in relation to certain matters. It is not only the Wickenby matter; there has been quite a lot of media publicity in relation to these challenges because of the high-profile persons allegedly involved. I am fairly confident that the work that has been done with various departments of the Commonwealth to look at the robustness of the act is adequate.

Senator IAN MACDONALD—I want to question Senator Ludwig first.

CHAIR—I am not sure that we are set up for that, actually.

Senator LUDWIG—Maybe after 2007!

CHAIR—Let's get you a glass half-full of water!

Senator IAN MACDONALD—Was this the issue of the contempt provisions that we were discussing recently?

Senator LUDWIG—Yes. I have to put in Chinese walls, Senator Macdonald, in respect of this. Obviously I do sit on another committee, that you ably chair, so I ask them cold in that sense. But yes.

Senator IAN MACDONALD—Again, it is a matter for Senator Ellison, who is not here, unfortunately. If recall correctly, there is a problem in the Queensland legislation where the matters are dealt with that afternoon for some refusals, as a contempt of court.

Senator LUDWIG—It depends on the jurisdiction. They can be in contempt of court, they can be refusing to answer questions, depending on the particular area. The Attorney-General's made a significant submission on this to the earlier ACC inquiry. I did invite, indirectly, Mr Cornell to go there, but he chose not to, so I was not going to pursue it any further.

Senator IAN MACDONALD—The minister has returned now. It is really a question for the minister rather than Mr Milroy. Is the government giving any thought to looking at the act to provide the courts with ways to deal more speedily with those who are refusing to cooperate with the ACC?

Senator Ellison—That was a point that was raised during the course of these challenges and it is a very good question that Senator Macdonald raises. We explored the way the High Court was dealing with it in order to expedite these hearings. This, of course, was rather at the end of the proceedings when we were trying to bring them to a swift conclusion. I think there is merit in looking at that, where you have issues which go to law enforcement and security and where there is to be a challenge. You cannot take away people's access to the courts, but we do want to take away the situation where things can be tied up for a very long period of time with an interim injunction which stops you from carrying out lawful activities. So, yes, it

is of concern to me. I asked Attorney-General's to look at it at that point, but now that it is behind us, I think we should visit that again and look at it.

Senator IAN MACDONALD—I might be getting this wrong, but wasn't the issue that a refusal to answer had to be dealt with as a criminal prosecution and it had to sit in the criminal lists of the various courts that would deal with it? Whereas in Queensland, I understand that their legislation provides that it is a contempt of court and can be dealt with by a court that afternoon.

Senator Ellison—That is true: contempt is dealt with very much more quickly, and a refusal to answer is dealt with as a criminal matter. What we were facing here, though, were challenges to the validity of the actions of the ACC; and that is another issue as well. What I am saying is that where you have a law enforcement security issue—whether it is a refusal to answer, a challenge to its validity, a contempt or whatever—we need to speed up the process. I am agreeing with that. We need to look at how we do it, and the contempt is not a bad idea because that is a very quick way of dealing with things.

Senator IAN MACDONALD—Perhaps this is not the right forum for it—

CHAIR—Perhaps not, but it is interesting, I agree.

Senator Ellison—Senator Macdonald chairs a committee which could well look into the issue.

CHAIR—He does, and we are very grateful for his input here.

Senator LUDWIG—I think I have asked this question a couple of times, but the ACC operate a number of law enforcement databases serving LEAs across Australia. I do not know whether I have asked this more recently—I am sure I have asked in the past: is there an available list of the LEAs that have access to both ALEIN and ACID, and are there some restrictions placed on them? The types of organisations I am referring to generally include ATO, ASIC, APRA perhaps and Customs particularly. Can they access the criminal databases? I am happy for you to take the question on notice. In the answer could you include the type of level of information that is broadly held on each of those databases.

Mr Phelan—We can provide that list and indicate what you have just asked.

Senator LUDWIG—Thank you. It does include Customs that accesses both ACID and ALEIN?

Mr Phelan—Yes.

Senator LUDWIG—Do they have unfettered access to it?

Mr Phelan—We have a framework for providing security of access. We rely on a partnership relationship with various agencies, but once they comply with the security requirements it is essentially a self-registering system. They do have good access to the system. Whether it is automated or manual processing, in terms of accessing it or uploading information, can vary according to various jurisdictions.

Senator LUDWIG—In terms of Customs, can you indicate whether they are automated and how they might engage ACID and ALEIN. Perhaps also if you have a list of how much activity, if it is available, if it is not confidential.

Mr Phelan—We will need to consider that. I can indicate that since the roll-out of the improved tools and the improvements to the Australian criminal intelligence database under the Commonwealth's ALERT project, we are now seeing a 16 per cent increase in intelligence upload and an over 30 per cent increase in intelligence searching across those databases by all agencies between this year and last year.

Senator LUDWIG—That is interesting. Just between the two years there has been a 30 per cent upsurge?

Mr Phelan—Yes. As you would recall from previous questions, the ALERT initiative matures at the end of this financial year, so a number of the very impressive analytical and other tools are now being delivered to law enforcement agencies. As part of the information sharing working group, which I chair, which is the ACC's board initiative to improve the sharing of intelligence, there is a lot of marketing and training going on amongst the law enforcement agencies in terms of these new analytical tools. We are now starting to see a significant synergy between the two. There will be further improvements, we anticipate, with additional funding that came through, largely at additional estimates, to improve the automation particularly of connections between the law enforcement agencies. That is in connection with the Wheeler funding initiative at additional estimates.

Senator LUDWIG—Is there a limit or capacity constraint that you might meet in terms of ACID or ALEIN?

Mr Phelan—We do not believe so. We have put in place, as part of the ALERT initiative, very significant enhancements to storage. Obviously we monitor the situation and the communications links. I mentioned a few seconds ago the limitations which might occur in terms of traffic between the database and law enforcement agencies, and we are addressing that, but at this stage we are not seeing significant issues, or any issues, for the foreseeable future in terms of capacity.

Senator LUDWIG—Is there any work on upgrading or updating those two databases?

Mr Phelan—Yes. With ACID in particular, the improved analytical tools are now being released or have been released over the last couple of months. These are very sophisticated conceptual analytical tools—networking analysis tools, charting tools, searching tools.

Senator LUDWIG—I noticed Mr Milroy was talking about data mining as well earlier. New words have now entered our language, I see.

Mr Milroy—That is right.

Mr Phelan—Under the Wheeler initiative particularly there are further analytical tools to be acquired and, as I say, further improvements to the communications links and therefore the usability of the database by the law enforcement agencies. The communications links are also improving what we call ALEIN, which is the Australian Law Enforcement Intelligence Network or information net. Its purpose is to speed highly protected information between law enforcement agencies in Australia. Those communications links as well have been improved in recent times to improve that security and also its usability.

Senator LUDWIG—Have you had the ability to talk to AUSTRAC about their expertise in data mining and the use of analytical tools?

Mr Phelan—Yes. The discussions are ongoing.

Senator LUDWIG—It seems to me you are using the same language that I hear from them, so I assume you have.

Mr Phelan—I do not necessarily use the term data mining in connection with ACID, the Australian criminal intelligence database, but in terms of analytical tools we liaise as appropriate with all law enforcement agencies to try and derive synergies and leverage off any technological governments that we can share in improving intelligence sharing in Australia.

Senator FIERRAVANTI-WELLS—I have one question, in relation to the Centre for Transnational Crime Prevention at Wollongong university. Do you do any work with them and, following on from the comments about synergy, do you see any scope there for interaction and cooperation with the work they are doing down there?

Mr Milroy—I will ask Kevin, because Kevin spends quite a lot of time, in his role as director of intelligence, engaging with academia and other research bodies.

Mr Kitson—We noticed the recent funding announcement for that and were interested in essentially re-establishing contacts that may have existed in the past. I think there are some significant opportunities for working with that particular institution, that centre, but also across to academia more widely. We have broached some of that territory in the last 12 to 18 months and continue to have some fairly active programs.

Senator FIERRAVANTI-WELLS—What sort of work do you do?

Mr Kitson—The kinds of things we are looking at are areas that are, I suppose, arguably beyond conventional law enforcement focus. We need to understand environmental factors as much as we understand criminal exploitation, so we would look to work in partnership with academia to understand simply how things work—the socioeconomic and political factors that create a circumstance in which organised crime can operate. We can bring to the table an understanding of how crime does operate and where it seeks to exploit opportunities. It is really broadening our base of knowledge so that, when we are providing advice in intelligence product or other briefing material, it captures the widest constituency of advice.

Senator FIERRAVANTI-WELLS—Thank you.

Senator IAN MACDONALD—Again, I was not here but I saw on the TV some discussion about ACLEI when the commissioner had to leave. I am not sure if this is an appropriate time to raise that.

CHAIR—Do you mean the police commissioner?

Senator IAN MACDONALD—Sorry?

CHAIR—Are you talking about when Commissioner Keelty left?

Senator IAN MACDONALD—Yes. Again, it is more a matter for the minister. It is a matter I raised with you privately, Minister, and I do not really want a substantive answer now. Where is the bill at the moment? Is it in the House of Representatives?

Senator Ellison—We are going to be bringing it in shortly. All the processes have been ticked off. I was looking at it, I think, to be introduced in the next sitting fortnight.

Senator IAN MACDONALD—Again, I do not want you to give a substantive answer to this now. I simply ask: are you still considering the recommendations that I understand were made by the Senate committee?

CHAIR—We are hoping.

Senator IAN MACDONALD—I do not need you to say whether you agree with it at this stage. I am just really asking whether you are still considering the recommendation of the Senate committee that looked into the bill. It must have been introduced into the Senate, because it has been to the Senate committee.

Senator Ellison—Yes.

Senator IAN MACDONALD—It is the same recommendation that I understand the committee on the National Crime Commission made in its review of the act last year. It relates to which committee oversights—

CHAIR—The operation of the ACLEI and the ACC.

Senator Ellison—I see.

Senator IAN MACDONALD—As I say, I do not want you to give a substantive answer, but are you still thinking about that?

Senator Ellison—Yes, we are. I was confusing debating passage with introduction.

CHAIR—It has been introduced into the Senate?

Senator Ellison—Yes, it has been introduced into the Senate, but we need to see if we can get it knocked off in that fortnight sitting that we have left in the Senate. That is problematical because of other competing legislation.

CHAIR—You mean dealt with comprehensively, Minister, in the normal way of the Senate?

Senator Ellison—Yes, that is right.

Senator IAN MACDONALD—I am asking about the issue of whether you will pick up the recommendation of the committee. As I say, I do not want you to say today whether or not you are going to.

Senator Ellison—That is the other question, which we are working on at the moment.

CHAIR—Thanks, Senator Macdonald. Thank you very much, Mr Milroy. The committee, in its legislation incarnation, may take up with you in due course an opportunity to visit the ACC and get a more refined briefing on ACC activities, if that is acceptable.

Mr Milroy—That would be a pleasure.

CHAIR—Thank you very much.

[4.53 pm]

Australian Federal Police

CHAIR—It is the committee's intention, Minister, subject to your advice on timing matters, to recall the AFP if you believe that we can engage in a fruitful discussion, to the best of your knowledge.

Senator Ellison—Madam Chair, I am sorry for our departure.

CHAIR—No, no. We understand the circumstances.

Senator Ellison—I think you appreciate the circumstances.

CHAIR—Indeed.

Senator Ellison—Yes, we can continue with the AFP. I think we will be able to conclude AFP without interruption unless we go beyond the dinner break at 6.30.

CHAIR—Thank you. I make no undertakings in relation to the dinner break! I welcome back the AFP.

Senator HEFFERNAN—Madam Chair, you will be pleased that I will only be about a minute. I have put on notice some questions for the AFP. Can I thank them for their answer. I note that basically the answer is that the matters are under evaluation. Obviously, Minister, you have a very strong view about matters that fall between the floorboards of criminality and other places in terms of why we should have a federal judicial commission. With all of that in mind, I think I will take the opportunity to have a private briefing that has been offered by the AFP and leave my questions to another time.

CHAIR—Thank you very much. The committee also thanks the AFP for their offer of the private briefing for Senator Heffernan and their assistance in that process.

Senator LUDWIG—Where I last left you, Minister—and if it had been longer I might have been saying that that spill-over on the Friday would have been helpful—

Senator Ellison—You have plenty of time left.

Senator LUDWIG—There may be for the AFP, but by the end of the night I am sure whoever is last on the list is not going to feel that way. The issue where I left you was to do with the training for AFP recruits, particularly structured training for terrorist related incidents. Can you indicate what that involves and how it fits into the overall training that they might receive in this area?

Mr Keelty—In terms of new recruits, the training they receive in terrorism is over two days and is part of their overall program. Those two days includes training in the legislation and training in cultural awareness and a background in the actual subject matter. There are other courses that are provided. There is a three-week course that is an advanced course in terrorism investigations, and we are currently developing a one-week intermediate course between the two-day program that the recruits get and the three-week advanced course for those who are actually working in the counter-terrorism investigations area. In addition to that, we are currently conducting a leadership in counter-terrorism course along with the United States, New Zealand and the United Kingdom. That is under way as I speak and finishes tomorrow. That is a two-week program for managers in counter-terrorism in law enforcement and that is much more of an international and management type training arrangement.

Senator LUDWIG—The recruit training is for the basic entry level. Do you have separate officer training, if there is entry at officer level? Do they all enter as recruits or are there bridging courses if they come from other services?

Mr Keelty—There are bridging courses depending on the background of the individual. There are courses for people who are in the senior executive service who come from outside into the AFP as an introductory course to the AFP. For lateral entries, we have special lateral courses from time to time which are an abbreviation of the normal recruit class. So there is a variety of courses depending on the skills and the ability of the people who are coming into the organisation, and we tend to group those up so that we get a critical mass to operate the training courses.

Senator LUDWIG—Are you able to provide a breakdown of the training modules they might receive for counter-terrorism type work—financial crime, drug crime or other types that I perhaps have not mentioned? I am happy for you to take that on notice. I do not want to compromise your other operations. I want to know broadly what training the recruits and officers receive.

Mr Keelty—I am sure I can provide you with a copy of the recruit training program. I do not know that that breaches any security—

Senator LUDWIG—That would be helpful; I suspect that would be out there. I note that you made a number of television announcements—or interviews, more correctly—regarding the deprogramming of terrorists. I really wanted to give you an opportunity to comment on it again. It seemed to me that you were suggesting that it was a good idea and it was a policy option that should be pursued. I know that you have a view about policy in that it remains a preserve of the government. In this issue it seemed to be that the comments went to policy—or at least to policy issues—about those matters. So, in relation to comments that you made considering the deprogramming of terrorists, can you confirm that I am right—that that is what you were referring to, and what would be the conditions of eligibility for that type of program or deprogramming?

Mr Keelty—As you quite rightly pointed out, it is a question of policy. The area where it was introduced was in an academic environment to begin with, in terms of solutions for dealing with not only terrorism but how to change the behaviour of people, given that the consensus now is that to deal with terrorism is to deal with an idea that people might grasp. Several countries have tried rehabilitation. There is the more well-known case in Indonesia of the use of a former, very senior JI operative whose behaviour was turned around and he was used to both assist the Indonesian National Police in their investigations and to speak to people who were taken into custody to try and change their behaviours and beliefs.

There are other models in Malaysia, for example. As recently as yesterday I spoke to the head of the Special Branch in the Royal Malaysian Police about the success or otherwise of reprogramming. They have had mixed success. The Singapore national police, who I have engaged on the topic, have had mixed success as well, so the issue was more of an academic one, and that is: what do we do with people after they are incarcerated? The analogy I used was of people who are incarcerated for drug offences—often their behaviour is not rehabilitated while they are incarcerated and, if we had an opportunity to do that, then perhaps the problem might not be as broad as it is. But it was a part of an academic and general interest discussion rather than one of the AFP making the policy.

Senator LUDWIG—Just on that: would it be, in your view, voluntary? How is it envisaged, given your experience of the Royal Malaysian Police?

Mr Keelty—It is hypothetical. In some places it is not voluntary, but again that is why I used the drug analogy, because that is one of the accepted issues about drug rehabilitation, I think—because it is voluntary it has been a program that has had fewer people enter into it. It was a hypothetical discussion about whether the success rate would be any higher if you made it non-voluntary. It really is about trying to alter people's behaviour so that you have a circuit breaker and you are not continually dealing with the same people and the same issues over and over again—that you are actually rehabilitating and changing behaviour.

Senator LUDWIG—I think I might have mentioned it during the passage of this particular bill, but the Anti-Terrorism Bill (No. 2) gave reference to education programs for those who are under terrorist detention. Is that the type of program that you were referring to, or is that something distinct again?

Mr Keelty—It is possible that it might be applied while people are under detention. We are in discussion with state and territory police as well as with the state and territory correctional services about people who are incarcerated but, again, it is a matter of policy and the application of the policy. The area that was being explored is that the window of opportunity while you have somebody whose behaviour you are controlling might be the best available time to do something to change their behaviour.

Senator LUDWIG—So, in your view, the education programs and deprogramming, although they could be distinct, could overlap or be the same?

Mr Keelty—There could certainly be some overlap, even in the sense of control orders, but that would be a matter for the application of the policy that the government has created.

Senator LUDWIG—Would it be at specific locations, in your view? Would it be a separate stream considered to take place at a detention facility, a purpose built facility, a university or a TAFE? Do you have a view as to how it might work? You have indicated that some parts of it could be during detention or during part of a control order, which could then mean that it could be broader than simply at a detention facility. The control order might say they have to attend a TAFE. Is that the type of issue that you were exploring?

Mr Keelty—It is under discussion, so it has not been set in concrete by any stretch of the imagination, but the variety of methods used would be up to the individuals involved as to the best way to apply that methodology if it was thought to be acceptable in the circumstances. Obviously, the best methodology would be where somebody volunteers to undergo reprogramming. Certainly, the international experience is that that is where the greatest level of success is. Indeed, certainly the briefings I have received from some countries say that, where people are fixated and are not volunteering to undergo reprogramming, it has not had any degree of success. It is early days for us in Australia. We have not got people in large numbers that we would need to apply this to at this point in time but, with regard to the global addressing of the issues of terrorism, it is but one way that was being examined as part of the debate about the possibilities to change people's behaviour.

Senator LUDWIG—Were there any papers on this issue that you had read or that had been made available to you during those briefings, or was it more discussion in an academic circle?

Mr Keelty—There are a variety of briefings on the degrees of success that various agencies have had. Of course, there is the practical experience that we have had with the more well-known case out of Indonesia, where we have been working with the Indonesian National Police. There are texts on it. There are research papers on it out of Nanyang Technological University in Singapore as well as out of some of the academic institutions in Europe. I daresay there will be a lot more about it in the future.

Senator LUDWIG—Have you had the opportunity to look at any of those papers, or have you only heard about them?

Mr Keelty—I have read papers on the topic.

Senator LUDWIG—If there are any that might help the committee understand that process—and I do not want you to go to any trouble as we can ask the committee secretariat to have a look—those links might be helpful.

Mr Keelty—We will certainly make anything that is open source available to you.

Senator LUDWIG—I should have prefaced my remarks by asking for open-source documents or that which is available to the committee in a public forum. As I understand it—and I am open to correction—Foreign Minister Downer has indicated some support for the deprogramming. From the Attorney-General's point of view, Mr Cornall or Minister, have you had an opportunity to look at that?

Mr Cornall—There is reference in the antiterrorism legislation to education programs, but I do not recall the detail of it instantly and I would not want to comment on the extent of it. I would perhaps be inaccurate in what I say.

CHAIR—Take the question on notice, Mr Cornall.

Mr Cornall—My recollection is that it was voluntary education in relation to the legislative provisions, but I will take it on notice. The other thought that comes to mind is that, in a recent visit to the United Kingdom, we met with Lord Nazir Ahmed, who had been one of the mentors of a review undertaken in the United Kingdom about what to do about home-grown terrorism. They produced a report which had seven parts. I cannot remember the overall title. Part of that was the need to have education programs to try to ensure that the Muslim population in England had a more traditional view of the role and responsibilities of Muslims in the community. I have written a little bit about that in a speech I gave recently that is on our website. I refer to it in a little bit more detail there.

Senator LUDWIG—I turn to another issue—the funding for the AFP deployment to PNG and receivables. This is a matter I have raised a couple of times, given that the PNG deployment ceased prematurely and then there was the matter of accounting for the money. This is something I come back to occasionally. I was exploring the receivables line in the AFP's portfolio budget statements, just to see where that went. I was really seeking your assistance in this. There are a couple of areas that I wanted to draw together. I refer specifically to question No 89, which was taken on notice from the budget estimates hearing

last year, Senator Buckland was helpful in exploring this issue with the Australian Federal Police. The answer given was as follows:

The AFP will return surplus funding from the PNG ECP program for 2004-05 to the Government Budget. The out years funding currently remains in the forward estimates pending the outcome of negotiations between the governments of Australia and PNG on the future of the ECP.

It seems now, unless I am advised to the contrary, that we are not going back to PNG in the short to medium term. Indeed, it seems to have been reflected in the removal of the PNG deployment funding from the forward estimates of the budget. Is that right?

Mr Keelty—That is correct. That has been accounted for in the budget figures.

Senator LUDWIG—What I am trying to establish is the money allocated to the PNG deployment for that program, the money expended for the PNG deployment and the money returned to the government. They would seem to be the three ways it has occurred. Does the answer to Senator Buckland's question explain why the receivable line in 2005-06—the portfolio additional estimates statements—was projected to grow by an average of more than \$100 million in a year to \$701 million in 2008-09, compared to a total of just \$84 million in the 2005-06 portfolio budget statements? So you have a portfolio budget statement figure that sat at \$84 million and it was then expected to be \$701 million in 2008-09. It is a pretty huge jump. Is that all related to PNG?

Mr Keelty—My only answer to that, without having what you are referring to in front of me, is that that may have been the total over the four years of funding. In terms of this financial year, there is a return of funding to the government of \$2.4 million in respect of the PNG comcover premium and \$121.5 million in respect of the PNG deployment funding.

In terms of the answers to Senator Buckland, the thrust of those answers was that the funding available for the PNG deployment was on a no-win, no-loss basis. As you quite rightly pointed out, we are not there in the numbers that were anticipated at the time that the funding was made available and, quite appropriately, that funding has been returned to Treasury. The issue of the future of that deployment is a matter for the minister.

Senator LUDWIG—I accept that. It is really the money—

Mr Keelty—That is, except to say that the difficulty we have is that the negotiations are continuing. As recently as last week, I was with the PNG foreign minister, Deputy Prime Minister, Minister for Internal Security and police minister discussing how we may go about returning. We have had a number of ministerial forums addressing the same issues.

Senator LUDWIG—I accept that. I think we have canvassed the issue of PNG before. I understand the position we are in and I think the government and the ALP are at one on the issue; it is just a matter of dealing with it. What I am really trying to do is work through and understand the PBS on it. You might want to have in front you what I have, which is the 2005-06 PBS, table 3.2 at page 103. Under 'Assets receivable', you can see from 2004-05 the figure of \$286,819,000. If you look along to the forward estimate to 2008-09, you see it is \$701 million to \$407 million and there is significant growth in the cash receivables. I am assuming that it is the PNG funding, but I am hoping you can tell me how much of it relates to PNG or whether it relates to some other amount. It is not what I would expect to see in a forward

estimate to have something in the order of \$701 million sitting in your cash account as an asset.

Mr Keelty—I will ask the Chief Operating Officer, who has that PBS.

Mr Van Dam—I think I understand your question, Senator.

Senator LUDWIG—It goes on, though. It does not stop at that. That is part of it, but if we go back to the 2003-04 PBS—and you might want to find someone to dig it up—the budget estimate then was \$32 million. In the annual report, the actual figure ended up as \$176 million. You can see what I am doing: I am having a look at your annual report and I am then having a look at your PBS. They do not add up. I can see that they may not necessarily add up, but the discrepancies seem to be a bit bigger than I appreciated at the time. So I thought: ‘Here is the opportunity,’ because the 2004-05 budget estimate was \$76 million and the final figure was \$287 million. There are significant discrepancies when you look at that, and I am wondering what would explain those discrepancies, which are quite large. The only thing I could think of was that the PNG deployment was having an impact in that area, because that would have been a cash receivable that you would have had and then would have had to carry forward. It having ended, you would then have to have given it back to the Commonwealth and made the necessary adjustments at that time.

Mr Keelty—We have last year’s PBS, but we do not have the PBS for the year before. If it is acceptable, could we—

Senator LUDWIG—Does the committee have the 2003-04 PBS?

CHAIR—I would be surprised. The secretariat is exceptionally efficient, and we can get one. We do not have it on our trolley, though.

Mr Keelty—In the absence of having the figures in front of me, one thing I do recall is that we did have some false starts with the ECP, as it was called, and the start-up costs were quite sizeable. There were discrepancies in trying to get the program up and running. We had a small number of police initially deployed, and that was soon overtaken by a much larger number of police. More importantly, in the development of the international deployment group, and in taking on the contractual arrangements for logistics in the Solomon Islands, that continued over into Papua New Guinea. So in the absence of being able to look at the PBS over three years, part of the discrepancy, I suspect, represents the fact that the AFP took on significant contractual responsibilities in respect of logistics and other supporting infrastructure for the ECP. So part of our early estimates, in terms of putting forward estimates, would have been about AFP staffing and AFP resourcing. But what was quickly added to that, and I suspect then reflected in subsequent annual reports and subsequent movements of money between us and Treasury, was the actual cost to the AFP because we took on this unforeseen work of the contractual arrangements, which clearly bound us in such a way that we suddenly then became responsible for something we were not responsible for at the time we put forward the estimates.

Senator LUDWIG—If we look at the 2005-06 portfolio additional estimates statement, it shows actual receivables of \$286,819,000. The forward estimate was \$701,407,000, which is a significant jump. If you then go to the 2005-06 PBS, it shows an actual figure of \$59,695,000, and the forward estimate for 2008-09 was \$83,885,000—about \$84 million. The

forward estimate from the budget indicated that there was \$84 million to be there by 2008-09, but when you then look at the portfolio additional estimates statements for 2005-06, which we usually look at in February, we see that it has jumped to \$701 million. So in a very short space of time you have revised your figure for the out years significantly from \$84 million to \$701 million, and I wanted to understand what that amount actually is. It is a lot of cash.

Mr Van Dam—It might be opportune to come back to this. We are having somebody try to source the earlier documentation and be in a position to compare that information. So if you were prepared to bear with us, we may be able to come back and give you a more fulsome explanation of the jump to the \$701 million figure. The \$84 million figure does reflect a number of the new measures in the current budget which will ramp up over the course of the next three to four years. So the bulk of the funding for those occurs in that 2008-09/2009-10 period. That may in part explain the higher figure in 2008-09.

Senator LUDWIG—That is one area. I have noticed it jumping around, and I don't know whether I am the only one to do so. I expect that the AFP might have noticed these figures jumping around.

Mr Van Dam—The principal significant change in AFP funding in terms of forward estimates has been Papua New Guinea. We originally were budgeted somewhere in the order of \$180 million for Papua New Guinea. Last year I think we returned around \$120 million; this year we will be returning around \$135 million. You will see in the out years that that higher figure is no longer maintained in the out year budget. We have agreed—and the commissioner is better placed to talk about the prospects of going back into Papua New Guinea—there is an allowance in our out year budget that maintains an anticipation of resources supporting Papua New Guinea into the future. The only downward trend of any consequence in the AFP's forward budgets has been as a consequence of Papua New Guinea. The upward trend has essentially been through the introduction of the new measures over the period we are considering.

Senator LUDWIG—It is not only upward. It has gone back twice. It is fluctuating. It seemed to have jumped, gone back and jumped again and then gone back. One of our jobs is to look at these things and sometimes they are hard to understand, let me tell you, unless you are an accountant, and I am not. But I do notice when they fluctuate around by such a large amount.

Mr Van Dam—An example of that is this year's situation where at the moment our current budget still incorporates that \$180 million or so for Papua New Guinea, of which we will be returning \$135 million. So when you are comparing the estimates to then the actuals, our actual spend this year will be that \$135 million less what our budgeted figure was. That in part explains that up and down and then up and down, if you are looking at estimates versus actuals.

Senator LUDWIG—But even between the portfolio budget statement and the portfolio additional budget estimates, which is literally within a very short time, is that all PNG? I am happy for you to take it on notice just to have a look at it. The issue I would then come back to is, if it is PNG, I want to look at how much—we know where we started with PNG and what the figure was. We know what you have told us before, how much has been spent. When

I put those figures in, give or take \$2 million or \$3 million, I still do not get close. There is still an amount of money that I cannot understand what it is for or where it goes or what it relates to.

Mr Van Dam—I can confirm that our budget for this year incorporates around that \$180 million figure for Papua New Guinea, of which we will be returning a substantial amount at the close of the financial year, subject to the minister and the Minister for Finance agreeing. Next year the actual budget allocation to the AFP will be in the order of \$53 million or \$54 million for Papua New Guinea as opposed to \$180 million. So next year's budget drop takes account of that fluctuation that we have been seeing now in estimates budgets and then actuals and should smooth that out. Certainly that contributes the largest amount of any fluctuation that I am aware of in our year on year budget and forward estimates. But, as you offered, we are happy to take that on notice and give you an explanation in some detail of that up and down fluctuation.

Senator LUDWIG—We might have time tonight to have a look at it, because now you have the documents there is the 2003-04 PBS and, if you look at that, table 3.2, it is actual 29,519, budget estimate for 2003-04 is 34,200 and then the forward estimate 2006-07 is in the order of 34,380.

Mr Keelty—Excuse me, Madam Chair. The senator is just reading out figures.

Senator LUDWIG—I thought I had provided them.

Mr Keelty—We now have the 2003-04 PBS in front of us. If we could have a page reference so the witnesses can actually follow—

Senator LUDWIG—I indicated table 3.2.

Mr Van Dam—Table 3.2 in document A.

Senator LUDWIG—Page 205. I did not know that reading out your accounts would be such a challenge to your own accountants.

CHAIR—I think it is hard, Senator Ludwig—I agree with the commissioner—as you are reading figures off, when you do not have the material in front of you it is very difficult to follow.

Senator LUDWIG—You implore me to ask questions on PBS and I do, but they are so hard.

Senator Ellison—We just need to have the reference.

CHAIR—We are just asking for the reference. I do not think that is an unreasonable request for the witnesses.

Senator LUDWIG—I had given it at the start.

CHAIR—I understand that. But Mr Van Dam is now I think juggling probably three sets of PBS figures.

Mr Van Dam—Indeed.

Senator Ellison—I wonder whether there is something else we could go on with in the meantime while that is looked at.

Senator LUDWIG—People asked me to ask about PBS—

CHAIR—Actually I think the minister was asking me as the chair, so I might just entertain the minister's suggestion and respond to him.

Senator Ellison—We are going back two years ago.

CHAIR—We should see where we can move on. I think this is an area of questioning which we need to conclude, Minister, actually rather than postpone. So, if we could deal with it, I would be grateful.

Senator LUDWIG—They are difficult and complex areas; I know that. But I am entitled to try to understand how it works.

CHAIR—No question about that.

Senator LUDWIG—We have identified one as the PNG issue, but I am curious as to whether there are any others that might explain it as well and want to give you an opportunity to comment on that.

CHAIR—Mr Van Dam.

Mr Van Dam—I apologise. I was just trying to get some clarity on that, Madam Chair. Our chief finance officer, if we do have the indulgence of the committee, will examine those figures and we will attempt to give you a response perhaps later in the hearing.

Senator Ellison—Or take it on notice.

Mr Van Dam—Or take it on notice.

Senator Ellison—We will take it on notice and try to get back to you. But, while we are looking at this, these are budget estimates from a couple of years ago and the chief financial officer is poring through those documents, which is quite reasonable.

CHAIR—I see that, I understand that.

Senator Ellison—We really cannot go much further until we have done that. I think it would be useful for us to perhaps deal with another area and we can come back to that. We might have an answer then for you, and we can move on.

Senator LUDWIG—There is a range of questions that surrounds this whole area. As I indicated earlier, the figures fluctuate, and I do not understand why they fluctuate. You have indicated one, which is PNG. But the PNG on the figures you have given me today do not add up to the totals either. I can do short arithmetic and there are still shortfalls of significant lumps of money. I will rephrase 'shortfalls'. There is money where I do not know what it accounts for and part of the opportunity of budget estimates is to work out what that actually is for.

CHAIR—That is right. The officers have undertaken across I think the three financial years that you are seeking a response on to try and reconcile those figures and bring an answer back for you. I do not actually think that it will be done in the next minute. So, subject to waiting for those to come back, perhaps we can go into another area, Senator Ludwig, or I can ask some questions or whatever you think is—

Senator LUDWIG—Just so that they have a complete figure, because I do not want to make any claims. I just want to understand what the figures are.

CHAIR—If there are more figures, please put them forward.

Senator LUDWIG—If you look at, as I indicated, the 2003-04 PBS where the estimate was—I will go to the page.

Mr Keelty—Excuse me, Madam Chair. I have the chief financial officer looking at the last question out of the 2003-04 financial year. If we are going to have to answer another question out of the same year, then we will stop that work and start looking at—

CHAIR—Sorry to interrupt, Commissioner—and I know this is difficult for your officers—what Senator Ludwig was trying to do was to indicate that he had, I thought, as he began that statement, one further set of figures that he thought it appropriate to provide the officers so they had the full picture of what he was seeking to determine and he would give that set of figures. I thought what would then happen is that Mr Van Dam or another officer would take that to your chief financial officer so that he could continue what he was doing.

Senator Ellison—If that is the situation—

CHAIR—That was my understanding of the situation.

Senator Ellison—that is a workable suggestion. If that is the way, then we can do that and then go away and have a look at that as a package.

Senator LUDWIG—I was not trying to add another layer. I was simply trying to help the process along a little by giving you the areas, the figures and then you could look at it from there. If you look at the 2003-04 PBS, page 205 on table 3.2, there is 32,400 budget estimate there. If you look at the annual report, the actual figure ended up 176.

CHAIR—For which year?

Senator LUDWIG—For the 2004-05 year.

CHAIR—And the figure ended up as what?

Senator LUDWIG—If you look at that financial statement attached to your annual report at page 138, assets, financial assets, cash, cash receivables, there is a note 7B, but the 2004-05 was 286,819. But the 2003-04, which is the same year as the 2003-04, because remember in your annual report you do the two years to compare, that says 176,058. So when you look at the 2003-04 PBS, the budget estimate for that year, as I said, on the 2003 was 32, but your annual report says 176. One you are reporting as an annual report, one you are reporting as a budget portfolio statement in the same year within a matter of months of one another and they have a significant difference. I do not understand why, but I am sure there is an easy explanation of why the portfolio budget statement would report 32 the annual report would report 176.

Mr Keelty—I will stand corrected on this one—

Senator LUDWIG—But I have not finished. Then, when you look at the 2004-05, the budget estimate was 76. So if you look at the PBS for 2004-05, page 163, table 3.2, cash receivables there were at 76,359 and the final figure, as I indicated, on the annual report was

286,819. That is in the same short period. So the figure went from 76 to 286,819. Maybe you do not reconcile them; I am just trying to understand why they differ.

Mr Van Dam—Thank you for that. We will take those away and have a look. I will stand corrected on this, but I think the difference between receivables and cash here may reflect the first year of Papua New Guinea withdrawal where I think we were anticipating a cash at bank position and, following the withdrawal of Papua New Guinea, the AFP had a surplus at the end of that first year which in fact then would have been at bank against the prospect that we were going to have to ramp or escalate our activities the following year. That may explain the jump between the estimate and the actual cash holdings. But I do say cautiously that I may be incorrect on that and we will take this away now and have a look.

CHAIR—Thank you, Mr Van Dam.

Senator LUDWIG—Just on that, I had a look at that because I had asked before about PNG and that is why I thought I would come back a little better armed. The notes on the PNG appropriations for the 2003-04 portfolio additional estimates statement showed that the total spending for the first year was \$96 million and that really accounts for about 65 per cent. If I thought it was close, within 80 or 90 or 95, I probably would not be asking you. But when it accounts for about 65 per cent of the discrepancy for that year, the question then is: is there anything else that might be there other than PNG that I have missed or is there a better explanation?

CHAIR—The officers have the figures, Senator Ludwig. I understand that the information they need to distil in a relatively short period of time if it is to happen now is not inconsiderable. So the committee would I think understand, if the matter were not able to be resolved in this time, if it is taken on notice and to come back to the committee as soon as possible.

Senator LUDWIG—That is all right, Chair. I do not want to be difficult about it. I thought it was a relatively simple matter, quite frankly.

CHAIR—Senator Ludwig, you have the advantage of having, I might say, with enormous respect, a prepared set of questions with all the information in front of you, with the time to understand what it is that you intend to put forward. You are asking officers who are here prepared for the 2006-07 portfolio budget statements to go back over three years worth of material on the run armed with six separate documents, as far as I can see from where I am sitting, and I think it is a difficult position to put them in. It may be a simple question but it is a difficult position in which to place the officers. So we will continue in another area.

Mr Keelty—Madam Chair, if I could just answer the question without the detail. The answer to the question is, if there are any other discrepancies—and I am not sure that there are—

Senator LUDWIG—I did not want to call them discrepancies; I just do not understand what the amounts are. Sorry, I withdraw that, then.

Mr Keelty—I am sure that is the word that you used.

Senator LUDWIG—I withdraw that then.

Mr Keelty—You used the word ‘discrepancies’.

Senator LUDWIG—As I said, I withdraw that.

Mr Keelty—The inference from that is that there is something not being accounted for here that ought to be. I just want to point out that Papua New Guinea as well as Solomon Islands are not programs that were anticipated by the AFP. It was a decision by the government to put us in there and we responded to that decision. Obviously we cannot go there without the resourcing, and because they are such movable feasts and because, as I mentioned before in the case of Papua New Guinea, we were asked to withdraw without notice, there are obviously over periods of time discrepancies in terms of start-up costs, in terms of actual costs recorded in the annual report and in terms of forward estimates. I mentioned before as well that the AFP in engaging in the first part of these deployments had no understanding that it would be then called upon to take over the contractual arrangements that were hitherto handled by the Defence department. For that reason, there are discrepancies in terms of what we predicted would be the start-up costs, what we predicted to be the forward estimates and what the actual costs were. So the answer to your question is if there are other discrepancies, I suspect it will reflect the movement to and from those countries and the imprecise nature of the actual work that was being undertaken by the organisation. In terms of the actual accounting, the acting chief financial officer I am sure will do his utmost to give the committee an answer.

CHAIR—Thank you. Shall we agree that the word is in fact ‘differences’?

Senator Ellison—It is not a discrepancy unless it has been established as such.

Senator LUDWIG—I am not going to step back in the sense that they are accounting terms. There is no inference. They are accounting terms that I use. If the inference is taken, I withdraw that, if you can withdraw an inference. I am just trying to understand how the figures fit together.

CHAIR—And the commissioner has given us an outline and we will come back to the—

Senator LUDWIG—If it is so hard to ask portfolio budget questions, I will go back to the—

CHAIR—No. No more press clippings, thank you.

Senator Ellison—Not these, but those of three years ago.

CHAIR—I have indicated that, Minister.

Senator Ellison—But anyway we are working on that and we will come back with that.

CHAIR—Indeed.

Senator LUDWIG—What I want to look at are the staffing numbers. This is an area I have been following as well for some time. If we look at the staffing numbers at pages 10 to 30 of Budget Paper No. 1—do you have those available? It is table A5.

Mr Van Dam—No, we do not have it with us.

Senator LUDWIG—Do we have the budget papers, Chair? I am sure we do. They are current.

CHAIR—Yes, they will be there somewhere.

Mr Van Dam—If I could help you, Senator, you may wish to refer to the figures in the PBS document. I suspect they could be the same. They are on page 167. There are some staffing figures, which are average staffing level numbers. Are they the same figures that you were wanting to examine—on the bottom of that page?

Senator LUDWIG—I have the figure listed next to the AFP as 4,770.

Mr Van Dam—They are the ones. Are they the same figures that you were hoping to rely on?

Senator LUDWIG—Yes. They should all carry through. If there were a discrepancy there, I would be talking to the Treasury. Next to the AFP are 4,770 for 2005-06 and 4,793 for 2006-07. That is an expected increase of 23. Is that right?

Mr Van Dam—The simple answer is that it is correct in that those are the figures in the PBS. Are those the figures that we expect? The answer is no. These figures are a very high level budget breakdown from our finance area. Our workforce planning group that takes the budget outcomes and converts those into affordable staffing has now concluded that work. I can tell you that 4,793 is nowhere near the figure that we in fact believe we will be employing in the AFP in 2006-07. If it would help you, I could take you through broadly what we think our staffing position will be.

Senator LUDWIG—So shouldn't I look at those budget papers?

Mr Van Dam—I am advising you that those figures are not accurate when compared to the advice that the workforce planners in the organisation give me now as to what we can actually achieve and afford in the organisation.

Senator LUDWIG—So the figure is not 4,770 for 2005-06.

Mr Van Dam—The figure of 4,770 is pretty close. It is the forward figure that is not accurate. It is the figure of 4,793 for 2006-07. We predict a lot more than an increase of 23 out of the budget outcomes.

Senator LUDWIG—When the budget papers are prepared do you advise them of that? Where do they get their figure from? Do they get it from you in the first place?

Mr Van Dam—That was the best available figure at the time that the budget material was put in. As I said, it was calculated on the basis of the high-level financial analysis. At the time that was the best available figure. That is why I say our workforce planners have now taken the actual outcomes and converted them into affordable staff. We will address that in the additional estimates process.

Senator LUDWIG—So what is the figure, then? That shows an expected increase of 23. What should the figure be for 2006-07?

Mr Van Dam—Excluding ACT policing and state police that we will be bringing on for airport policing—those two combined will reflect about 1,000 staff—we think the figure will be around 5,022.

Senator LUDWIG—That is an estimate.

Mr Van Dam—Yes.

Senator LUDWIG—For what date?

Mr Van Dam—That would be close to our end year figure.

Senator LUDWIG—End of December, 31 December.

Mr Van Dam—No, 30 June 2006. It will be around 5,022 excluding ACT policing—

CHAIR—You mean 2007.

Mr Van Dam—2007—my apologies; thank you, Chair. That is excluding ACT policing and those police we bring on as part of the united policing model.

Senator LUDWIG—So that is an increase in total of—

Mr Van Dam—It will be around 250.

Senator LUDWIG—A figure was bandied about of 550 extra agents. It was reported—is that not right?

Mr Van Dam—I do not know where the figure of 550 comes from.

Senator LUDWIG—The table in the 2005 budget papers estimated an average staffing level of 4,865 for 2004-05 and 5,191 for 2005-06, showing an increase of 326—but I should discount those.

Mr Van Dam—I do not have those figures in front of me; I apologise.

Senator LUDWIG—You would have provided those to the Treasury.

Mr Van Dam—Yes, we would have.

Senator LUDWIG—So I can understand the process—at some point you provide the figures to Treasury upon their request and that is the best estimate you have at the time. Circumstances change and you update them.

Mr Van Dam—As I indicated, they were the best available figures at the time. Now that we have the budget outcomes, we have been able to convert those into what we think are achievable staffing outcomes, and so I am more confident giving you that estimated figure of around 5,022—I know it is a precise figure but it will be around that at the end of this budget cycle.

Senator LUDWIG—It shows that the increase of 326 was in excess of the actual. So your estimate for this year was to be, if you look at those figures, 326 but you have achieved 253 or thereabouts.

Mr Van Dam—I apologise, Senator: those figures being—

Senator LUDWIG—The staffing levels.

Mr Van Dam—Which document?

Senator LUDWIG—The table in the 2005-06—and I am happy for you to look at this—budget papers estimated average staffing levels of 4,865 for 2004-05 and 5,191 for 2005-06. It showed an increase of 326.

Mr Van Dam—I do not have those budget papers in front of me. The first thing I will suggest to you is—

Senator LUDWIG—The budget papers, which up till now were reasonably reliable figures, show that there was going to be an increase of 326. In that year, when you take your figures into account, it looks like you have gone backwards. You have not achieved what was shown to be an increase of 326; you have achieved 90 or so under that.

Mr Van Dam—If we are looking at the same figures, we had an average staffing level in 2004-05 of 4,078, and I think we were predicting a staffing level of 4,397 in the 2005-06 portfolio budget statements. Our actual estimated is 4,770 for 2005-06, which is in fact higher than predicted.

Senator LUDWIG—How much higher?

Mr Van Dam—The figure I have in front of me in the portfolio budget statement of 2005-06 on page 150 is a 2005-06 budget estimate of 4,397.

Senator LUDWIG—Why is there a discrepancy then between the budget papers and the portfolio budget statement?

Mr Van Dam—I think there is—

Senator LUDWIG—I am sure they can make that available to you if you do not have it.

CHAIR—Somebody has Budget Paper No. 1 from 2005-06, and it is not me.

Mr Van Dam—We do not have a copy.

CHAIR—We only have 2006-07. We do not have the material in the room, Senator Ludwig, which does make this difficult. Mr Van Dam is quite appropriately working from the PBS. He has two years worth there in terms of the figures, but he does not have Budget Paper No 1. Neither do I, and I think that is making life fairly difficult.

Senator LUDWIG—It is. I might leave that for the moment.

CHAIR—Okay.

Senator Ellison—I might point out that accrual accounting was brought in some years ago—but, then again, I think we might have done away with that along the way. Accrual accounting took contingencies into account, as I recall, which the other method did not. In dealing with the Solomons and PNG, you really have some contingencies there, but I just offer that up as a—

CHAIR—We are talking about staffing figures in a slightly different way now, Minister.

Senator Ellison—I think that is squarely on point, because a contingency would be just that.

CHAIR—That is right.

Senator Ellison—Exactly. So it was to deal with a potential liability—accrual accounting takes that into account—which a PNG deployment would be. And then, when it does not occur, that is not reflected. Anyway, we will take that on notice. We will need the papers.

CHAIR—I think Senator Ludwig said he would leave this area at this point.

Senator Ellison—We will definitely answer the questions. There is no question of that.

CHAIR—I understand that; of course you will.

Senator Ellison—It is just a question of time and how to do all the figures.

Senator LUDWIG—If you take me through at least the PBS figures on staffing, then we can start to see whether they are accurate in terms of your forward planning and what you say is there. If you take me to those first, at least we can start with somewhere that we agree first.

Mr Van Dam—I think we start then at page 167 of the current PBS, which has an estimated actual level for 2005-06 of 4,770. One of the things that strikes me here, which is always difficult when talking about staffing numbers, is that you have differences which go from headcount to full-time equivalent, to full-time equivalent at the time that you counted, through to full-time equivalent over the period of the entire year. The figures in here represent an average full-time equivalent staffing over the period of the entire year, so you are only ever in a position to estimate against the backdrop of what you think you can afford, how long you might take to recruit personnel to your outcome and what impact that will have on your full-time equivalent. Consequently, it is not until you get into your actual workforce plan, which goes to the precise delivery strategies against the budget outcomes, that you can start to get somewhat more accurate in your figures.

If it would be helpful to you, I will talk you through some of our recruitment planning. In short, between now and Christmas, we believe that we will recruit about 450 staff into what you would call the core AFP and about 201 staff into the Protective Service. That figure includes recruitment for the Australian Capital Territory policing, which does not appear in the PBS documents because these are only about AFP outcome 1 activity. We are currently sitting at a staffing headcount figure of about 5,396 AFP staff, of which the Australian Capital Territory policing component accounts for about 810. We are envisaging that that 5,396 will in fact go up, including around 150 state police in the airports, to around 6,000. So there will be around 5,850 staff towards the end of this year. I do not know if that assists you in any way.

Senator LUDWIG—What is the split between agents and what you might call sworn or unsworn?

Mr Van Dam—It depends on what you want to call ‘sworn’ and ‘unsworn’. If you want to look at federal agent sworn numbers, the headcount of that at the moment is 2,387 sworn federal agents in the organisation.

Senator LUDWIG—I have got Budget Paper No. 1, so I will provide that if it helps. That is the current position where you say you are at, and I accept that, as the figures that you are providing to the committee. What I do not quite understand is what is in those documents. If you look at the portfolio budget paper at page 30 of No. 1, which is Table A5—

Mr Van Dam—I beg your pardon, Senator. What is the page reference?

Senator LUDWIG—It is chapter 10, page 30, table A5, where it says, estimates of average staffing level of agencies. The figure listed next to the AFP.

Mr Van Dam—I apologise. I am just looking for the AFP figure. We are looking at 10-30. I cannot find the AFP on that table; my apologies. Oh, here we are. This is actually on 10-27.

Senator LUDWIG—Do you see the figures there for the AFP?

Mr Van Dam—Yes, 48,655,191.

Senator LUDWIG—And then for 05 to 06?

Mr Van Dam—5,191.

Senator LUDWIG—That shows an increase of 326, and that deals with the AFP, including, I think, the ACT. That, they said, projected an increase of 326.

Mr Van Dam—I suspect that ACT policing is included in that figure.

Senator LUDWIG—Yes. I think that is right. But how does that match up with the figures you have just given me?

Mr Van Dam—I would need to take that on notice and examine that question. I cannot tell you at this point the direct relationship between the two documents.

CHAIR—Thanks, Mr Van Dam.

Senator LUDWIG—While we are dealing with the PBS, the figure shows a rise in external providers. Could you provide to the committee a figure for the expenditure since on external providers?

Mr Van Dam—Could you possibly point me to the page and the table you are now referring to?

Senator LUDWIG—It is more to do with external providers. You are required, obviously, to provide a list of those external providers.

CHAIR—Are you suggesting Mr Van Dam take this question on notice, Senator?

Senator LUDWIG—Yes.

CHAIR—Thank you, Mr Van Dam; would you take that on notice?

Mr Van Dam—I would be happy to.

CHAIR—I am not sure that you need all the books anymore, but we will see how we go.

Senator LUDWIG—The other area I was looking at was foreign deployments. I know that there is significant sensitivity surrounding this, so, rather than start the questioning, I was really looking for an update on—as far as you are able to tell the committee—where we are at with both Operation RAMSI and the other that it seems is afoot at the moment, to the north.

CHAIR—Commissioner, Senator Ludwig has indicated he is aware of the sensitivities in this area. We understand there may be some constraints in what you are able to place on the public record, but we would appreciate your assistance with the question as far as possible.

Mr Keelty—In relation to RAMSI, the figure is a fluctuating one, changing daily because of rotation of staff and because of the current exigencies, but the figure for RAMSI is 282. The figure in relation to East Timor is affected by current events.

Senator LUDWIG—Minister, are you able to say anything about the current events, on the record?

Senator Ellison—I am not sure what the Prime Minister has said in the last few hours. I am aware of what he said at question time, so I think it is wise that I leave that—

Senator LUDWIG—We might leave that until after the break.

Senator Ellison—Yes. Leave it until after the break, if you would. I will take it on notice.

Senator LUDWIG—That would be appreciated; thank you.

Senator Ellison—On RAMSI, we can provide a briefing in relation to the Solomons situation in order to save time, but there are some aspects to the operation which are somewhat sensitive, so we can do it that way and still accommodate your queries.

CHAIR—The committee will take you up on that; thank you.

Senator LUDWIG—There is one issue that I want to explore, though, and we will see how we go. There was an incident in April 2006 and there were, as I understand it, a couple of matters that occurred, but were any Australian Federal Police officers injured during that period?

Mr Keelty—That is the rioting that occurred on 18 and 19 April. Something like 30 officers were injured. Two of those were serious enough to be repatriated to Australia and they are both recovering from their injuries.

Senator LUDWIG—I wish those officers and their families best wishes and a speedy recovery. They can be very difficult circumstances. What did the protective equipment they were issued with consist of?

Mr Keelty—Some of them had access to helmets and riot shields. Importantly, the Royal Solomon Islands Police did not have access to that sort of protective equipment, but part of the difficulty on the day was having to access all the available equipment at the one time. There has obviously been some learning out of that about the total equipment that we need to have available over there for emergency situations. The other part of that was that there was no indication that that level of violence was going to be reached, which involved so many of the people who were on duty that day.

Senator LUDWIG—Is there an inquiry into the adequacy and availability of protective equipment in relation to that incident?

Mr Keelty—Yes, there is. The equipment available to the police over there has been the subject of a previous review after the shooting murder of Adam Dunning, so there is a variety of equipment available. The difficulty on this occasion was the suddenness and size of the disturbance, the numbers of rioters and the size of the rocks and missiles that were thrown at the police. A review has commenced and that will come up with recommendations for further equipment, but the best available information to us at the time provided the best available equipment.

The injuries received by those who were injured were largely because, even with the protective equipment that was available, they were still being penetrated by the missiles that were being thrown at them. Even with the benefit of hindsight, I do not know that we would do too much differently, except to perhaps have sufficient equipment available to deploy the entire numbers that we had on the ground over there. Obviously we had equipment available for the shifts that were being worked, and some additional equipment over and above those shifts, but now equipment will be made available for the entire number of personnel who are there in case they are called to duty at the one time.

Senator LUDWIG—Has there been an examination of how much gear was not available and of the available officers who were not provided with all the available gear?

Mr Keelty—That will form part of the review. But I want to stress that I asked the people who were injured whether there was anything we could do differently to what we had done and it appears that it was the speed at which the incident took place as well as the unprecedented size of it. Nobody had seen rioting like that in Honiara for the entire duration of RAMSI. I would not want it to be thought that there was a lack of equipment through any misjudgment; this was unprecedented and unforeseen. As I said, we had already been through a review after the shooting murder of Adam Dunning. The best available equipment based on the best available information we had at the time was made available, but we are reviewing that again and we will be providing further equipment.

Senator LUDWIG—You understand I have asked similar questions before in relation to this matter. It did bring back some pretty sad memories, I have to say, in respect of Mr Dunning. I did want to canvass the issue again, so I am trying to do it as sensitively as I can. As I understand it, not all officers at the scene were wearing helmets or full protective gear. You have indicated that was in part due to the escalation of the matter, which was not foreseen. You have an inquiry under way. They were obviously faced with a pretty rapidly deteriorating situation. Is there a plan for that? Those circumstances are what I imagine you would plan for in terms of type, size or scale, given the deployment by RAMSI to the Solomons. Was there a plan in place to deal with this type of incident?

Mr Keelty—Yes, there are plans in place for that type of incident. In terms of the sheer volume of numbers, in some cases, there were almost 2,000 rioters and 100 or so police. They were totally outnumbered. With the benefit of hindsight we can learn a lot of things, but let me say that we even have this sort of situation in Australia. I do not want to point to any particular jurisdiction but we do not necessarily foresee the type of incident that is about to unfold. There is a group dynamic that takes place when such large numbers gather for a common purpose. The advice I have been given by the RSIP commissioner and the PPF commander is that even those responsible appear to have been shocked by the level of violence that took place. Whilst they might have been happy for it to occur that way, they did not foresee that it actually was going to take place the way it did.

As I mentioned to you before, one of the problems is that on the best available intelligence, on the basis of nearly three years experience with RAMSI and on the back of the shooting of Adam Dunning, additional equipment was made available but it was never anticipated that every available police officer would have to be on duty at the one precise time. That was an unforeseen circumstance. If you said to me that every available police officer in the ACT had to be out there tonight doing exactly the same thing, I imagine that we would be faced with the same situation. It was a totally unprecedented situation and one where the adversary, if you like, had everything in their favour because they had not only the high ground but also huge numbers. Everywhere you went, whether it was Parliament House or some of the targeted areas in the city, the people who knew what they were about to do obviously had an enormous advantage over the police who were trying to deal with an unprecedented situation.

Senator LUDWIG—Thank you, Commissioner. That was helpful. In terms of the situation in the Sudan, are there still 10 AFP volunteer officers on the UN peacekeeping mission?

Mr Keelty—That is correct.

Senator LUDWIG—Are they deployed in the Sudan or are they elsewhere?

Mr Keelty—No. They are in the Sudan as part of the United Nations deployment. There are restrictions on their movement around the Sudan based on security advice.

Senator LUDWIG—Are they close to the capital? Without giving away operational issues, are they in the Darfur region or are they closer to the capital?

Mr Keelty—They are in different places as part of the UN policy of deploying personnel in multinational groups. There are areas that I am aware of that are no-go zones for us. That is part of the security advice that we have taken on board with the United Nations, but I do not think it is appropriate for me to go into the details of that here.

Senator LUDWIG—All right. I accept that, which is why I prefaced my remarks with that caveat. The same thing goes for this question as well, which relates to the search for the Bali bombers. I was wondering if you could provide the committee with an update as far as you are able. I guess that includes Noordin Top and where those matters are at.

Mr Keelty—The joint operations centre in Jakarta maintains its operations. It was working in a joint team with the Indonesian National Police who, a short time ago, made the major arrests and, in fact, captured a number of terrorists in the area between Yogyakarta and Semarang. Those operations have continued. As recently as yesterday, I met with the chief of the Indonesian National Police and we are continuing the joint operations. We had a meeting with the Malaysians. We are doing the best we can to find the people responsible for both of the Bali bombings. I am confident that that work is taking a positive direction. It has gone on unabated.

Senator LUDWIG—I think you recently announced, Minister, that an agreement is being signed with the national police agency in Japan. Is it between the AFP and the Japanese national police or a national police agency in Japan?

Senator Ellison—Can you direct me to the statement that announced that?

Senator LUDWIG—I will have to go on the web. I will ask that question again later after I get it off the web. You have been signing—

Senator Ellison—There was not one that I signed, no.

CHAIR—Was it one the minister signed or the commissioner?

Senator Ellison—I do not think it was the commissioner either.

Mr Keelty—I signed a letter of intent yesterday with the Royal Malaysian Police but not the Japanese.

Senator LUDWIG—No, it is not that one. I was going to ask another question about that.

Senator Ellison—Not the Japanese. It could have been AUSTRAC—no, we have got one with them already.

Senator LUDWIG—I will come back to it. It is not that important.

Senator Ellison—Give it to us and we will have a look at it.

Senator LUDWIG—I have just written a note to myself but I will get the reference and come back if it still looks important. The other one is an update. We have been following the issue of community policing at airports. Is that still an area with you, Commissioner?

Mr Keelty—Yes, it is.

Senator LUDWIG—The budget measure labelled national security, which is improving community policing at airports, provided \$354.6 million over five years to deploy community police at airports. Can you provide an update of where the deployment is at?

Mr Keelty—The 11 airport police commanders were put in place in their new roles from 9 February this year. The budget allocation agreed to over the five years will resource a number of positions: one at SES band 2, which is a national manager position; four at band 1 SES, which are at Sydney, Brisbane, Melbourne and Perth; eight coordinators; one headquarters operations person; three in operations team headquarters; and 12 band 3 executive assistants—that is the administrative side. The protective security liaison network deploys 17 federal agents at 11 designated airports. They are in position. In terms of the community policing role at airports, members of the Tasmania Police commenced a five-week aviation induction training course, which has just concluded. They will commence their duties straight after that.

Senator LUDWIG—When is the total number of allocated staff or the full complement going to be deployed at airports?

Mr Keelty—Approximately half of the total—and the total is 378 doing airport policing—will be in place by the end of 2006 and the other half some time during 2007. There have been some issues with state police recruiting and training police to backfill for those that have been deployed to the community policing role.

Senator LUDWIG—I am trying to get an understanding of how many are there now and at which airports. When you say half will be deployed by 2006, how many will be at each of the relevant places? Will they be distributed or will they be in one area—in other words, will they be dispersed evenly throughout?

I am happy for you to take that on notice and have a look at it in terms of then showing us what the ramp-up figures for each place will be. As you have indicated, there is a mix regarding how many it is intended will be drawn from the state police from that particular region and how many AFP will be then located at those airports. When will the training, if there is envisaged to be training, to make them mesh as a team start? Obviously if they are drawn from various areas into a new location such as an airport, systems will have to get under way for training, exercises and the like to get them to work in a cohesive way. That is the broad issue that I want to explore with you, Commissioner.

Mr Keelty—I mentioned the airport commanders having already been deployed. The joint airport investigation teams have been deployed. The hold-up has been with the airport uniformed community policing component, which is the area in which I think you have some interest. The answer to your question on training and exercising is: during the appointment of the airport commanders, part of their training included persons from various state jurisdictions being trained and exercising together. In fact, they went through some programs at Sydney airport before deployment to their individual airports. In terms of the deployments at the

moment, I can give you a summary as at May 2006. I can either give you those figures now or I can present you—which would perhaps make more sense to you—with a completed table.

Senator LUDWIG—I am happy for you to take that on notice and present a completed table.

Mr Keelty—The only reason why I am hesitating is that the negotiations with each of the states are at a different point in the program.

Senator LUDWIG—I thought that was so. That is partly what I want to have a look at and see how that is occurring and how the distribution is affected.

CHAIR—That would be helpful. How much longer do you think you will want to talk to the AFP for, Senator Ludwig?

Senator LUDWIG—I know the commissioner has had an extremely busy week. It might only be another half an hour. I apologise for that. I was trying to finish it in the time available, but then we got caught up doing an earlier matter.

Senator Ellison—I have one point on East Timor. The Prime Minister will be giving a press conference at 6.40 tonight. In that statement he could well deal with the issues that Senator Ludwig is interested in. I will see what else I can add to it when we resume after dinner, but I suggest the Prime Minister's press conference might be a good start.

CHAIR—Indeed. Thank you very much, Minister.

Proceedings suspended from 6.33 pm to 7.37 pm

CHAIR—I welcome back Commissioner Keelty and federal agents.

Senator Ellison—We have some answers to questions taken on notice earlier on.

CHAIR—Thank you very much.

Mr Keelty—A statement of intent on combating transnational crime and developing police cooperation was signed with the deputy director of the National Police Agency of Japan on 21 February 2006, which clarifies the question from Senator Ludwig. Work was done during the break in relation to the fluctuations in figures in the portfolio budget statements and in the additional estimates. I can honestly say to the committee that Senator Ludwig is right—there are significant fluctuations. We need access to our own data and also Department of Finance and Administration data to explain in detail the fluctuations, but in essence it appears to be related to, as I said in my answer to the question, the situation in Papua New Guinea and the difficulty in trying to predict forward revenue and actual revenue. It is complicated by the fact that some of that forward revenue included capital. If the committee would allow us to go into the detail of that, we will. I think in essence the answer to Senator Ludwig's question is yes, he is right—there are significant fluctuations. But, secondly, the detail of those fluctuations appears to be consistent with my answer in that it looks like it is limited to PNG. We would need the detail to give the actual records of that.

CHAIR—So you will respond to the committee on notice in relation to those details.

Mr Keelty—Yes. I undertake that, even outside the usual processes, as soon as that answer is available we will make it available to the committee.

Senator LUDWIG—Thank you very much.

CHAIR—Thank you very much for that information.

Senator LUDWIG—More broadly, in terms of the role in developing the ASIC system, was the Australian Federal Police involved in the development, overseeing, issuing or checking of the ASIC—the aviation security identification card?

Mr Keelty—Yes, Senator. My recollection is that we were part of a working group with the department of transport and other agencies, including ASIO.

Senator LUDWIG—Is your role continuing or was it only during the development of the card? Do you have an ongoing role in respect of the card?

Mr Keelty—We have an ongoing role with the department of transport and other agencies on aviation security reviewing the security measures that are in place and those that are being implemented. That does include access to the ASIC and the underpinning databases in terms of who is going to get access to ASICs.

Senator LUDWIG—Is that through the committee or is that a separate function that the AFP undertake?

Mr Keelty—There is a working group that is working on aviation security. We contribute to that working group. Quite separate to that, we do the criminal record checks on those people who are applying for ASICs, and ASIO and other agencies make their own contribution regarding those people who are applying for the cards.

Senator LUDWIG—So you do the criminal records history checks. Is that right?

Mr Keelty—That is correct.

Senator LUDWIG—Are those up to date? I suspect there has been a significant number. I was hearing from ASIO the number of ASICs that have been approved. I am trying to get an understanding of the turnaround time, the number of cards that you have approved up to 31 December and those ones that the criminal history check has been completed on. I am happy for those to be taken on notice, unless you have those figures there.

Mr Keelty—I do have those with me. During the period June 2005 to March 2006, 79,163 ASIC related criminal history checks were conducted by the AFP. There was a significant peak in applications for criminal history checks experienced from December 2005 to February 2006, causing some delays. However, this backlog was eliminated by the end of February this year. There were 40,334 checks conducted during that period. In summary, over half of the total from June last year to March this year were done in that very short period. Since that time, there have been no delays in processing the initial check for ASICs by the AFP. These are generally conducted and completed within 48 hours of receiving the application.

Senator LUDWIG—There is no backlog at the moment?

Mr Keelty—Not with the AFP.

Senator LUDWIG—On the matter that we sought to ask the minister about prior to the dinner break, is the minister able to provide an update in respect of the matters that are now occurring in East Timor and the AFP's response in East Timor?

Senator Ellison—The answer is that the response by the Australian government is a military one involving the ADF, as outlined by the Prime Minister. We do have AFP in East Timor. We have 16 involved with a police development program, which is with the PNTL; we have four with the United Nations; and we have one liaison officer, making a total of 21 AFP who are in country and have been there for other reasons. There is no AFP component to the government's response at this stage. The request has been for Australia to render assistance to stabilise East Timor, particularly Dili. At this stage it is only ADF, but the Australian Federal Police remain ready to deploy should that become necessary or requested. I really think we cannot go much further than that.

CHAIR—Thank you, Minister.

Senator LUDWIG—That is all I was seeking. Thank you, Minister. I understood that from the news reports that I managed to catch. I just wanted to clarify whether the AFP had a presence there and whether they had an ongoing role or whether they had only the existing role that they had been playing there.

There is really only one last matter on the AFP. In terms of the advertising and market research that is currently being undertaken—and I think I have asked a number of questions about this in the past—the last figures I have are from the annual report at page 120 in the appendices, where 'Advertising and market research' highlights HMA Blaze, for recruitment and advertising; Hudson Global Resources, recruitment; Patriot Alliance, recruitment; Spherion Group, I presume for recruitment; and Canberra Mailing and Envelopes, for magazine mailing of *Platypus Magazine*. Is an update of those figures available? Are there any additional in the advertising and market research area?

Mr Keelty—The figures would be different for the current financial year.

Senator LUDWIG—Yes.

Mr Keelty—Obviously, that is what was reported in last year's annual report. I do not have those figures with me tonight, but I can provide them.

Senator LUDWIG—It is not so much the figures. They will be reflected in the next annual report. I was just curious as to whether additional bodies have been added to the advertising and market research as a requirement in table 13. The matter that might go on from that is whether any additional money has been earmarked out of this budget for advertising and marketing.

Mr Keelty—There will be a proportion of the HR budget allocated for advertising and market research, but I cannot give you that figure right now.

Senator LUDWIG—All right.

Mr Keelty—But we can give you the budgeted figure, if we can take that on notice.

Senator LUDWIG—That would be fine. Thank you very much. I appreciate your turning up today. I know it was a long journey back from Indonesia. Through the chair, we arranged our times, but it has gone longer than I thought it would have. Unfortunately, that is estimates.

CHAIR—Commissioner and officers, thank you very much, and thank you for taking those questions on notice.

[7.51 pm]

Federal Magistrates Service

CHAIR—Senator Kirk is going to start questions on the Federal Magistrates Service. I welcome Mr Mathieson and Ms Stockwell.

Senator KIRK—I want to start with some questions as to how the court has compared with its performance criteria, beginning with the percentage of litigated cases or divorces that were subject to complaint. I understand the target is one per cent. What has been achieved?

Mr Mathieson—The complaints received in the current year to 31 March total 105 against a total number of applications of over 70,000—so we are well within the one per cent.

Senator KIRK—What percentage does that work out to be?

Mr Mathieson—My guess is—and it is just a guess—it would probably be 0.2 of a per cent. Perhaps if I could indicate from the last annual report that there were 140 complaints and that represented 0.2 of a per cent.

Senator KIRK—So it is similar at this stage. The next criterion is what percentage of cases took less than six months from filing to disposition.

Mr Mathieson—There were 54,352 matters filed as at 31 March 2006—that is in the current financial year—with 55,031 matters finalised. In other words, in terms of the stock-take we had, we were finalising more matters than we were receiving, and 89 per cent of those were finalised in less than six months, with only a further eight per cent finalised within 12 months. We are certainly not meeting the target but we are getting close.

Senator KIRK—Yes, it is only a little short. And the percentage of cases that were resolved before trial?

Mr Mathieson—Yes. We cannot do that on our current data. We will have to wait for that to be picked up in our annual report statistics, unfortunately.

Senator KIRK—Why is that—because you do not keep stats that you have at hand?

Mr Mathieson—It is because of the difficulties in manipulating the data we have within our case management systems. We have separate case management systems for the general federal law, as opposed to family law.

Senator KIRK—Would it be possible to take that on notice and provide us with those figures when you have a chance to?

Mr Mathieson—Yes.

Senator KIRK—Thanks. The next item is: how many cases litigated and divorce cases were processed? This is the second part—78,000, I think, is your target.

Mr Mathieson—Yes. That was very much a speculative figure. I will give you some more precise figures. The figures I gave you before were the family law figures, which are, of course, in terms of volume, the greater number of the court's workload. As I indicated, there were 54,352 family law matters filed in the current financial year to 31 March. In terms of general federal law, there were an additional 5,895 matters filed over that same period.

Senator KIRK—That is through to the end of March.

Mr Mathieson—In fact, in my earlier answer I misled you, in that I quoted only the family law figures. However, in terms of the timeliness, the general federal law figures are of the same order—in fact marginally less, for reasons I can expand on if you want me to. But 67 per cent of those matters that were finalised in the year were done in less than six months and 82 per cent were finalised within 12 months. So the picture is the same. We are doing less than our target but certainly approaching the target in both areas.

Senator KIRK—Sixty-seven per cent is quite a lot less, though, than 90 per cent, isn't it?

Mr Mathieson—Yes. The reason I was hinting at a moment ago is that, in the general federal law matters, there are a large number that are migration cases. They are, because of the way they have come to our court, longer. Some of them have a long history before we even get them. And we are working our way through those. I am happy to report—and will go into that in more detail later, if you like; probably now is not the time—that we are now making significant inroads into those matters.

Senator KIRK—I was thinking that it is likely that, at the end of the year, you are not going to make that 90 per cent target overall.

Mr Mathieson—We will not.

Senator KIRK—I can see what you are saying, and the reasons why. Has any thought been given to reducing the target or, alternatively, of course, trying to process the cases more quickly?

Mr Mathieson—Certainly thought has been given to that. Those targets are intended to be just that—targets. The feeling thus far has been that it has been better to set ambitious targets that we believe we can meet, even if that does put us under some pressure, rather than setting targets that could easily be met and really would not force us to be more efficient in our work.

Senator KIRK—I will come in a moment to pressure generally on the court, but I will just finish with a final item here in your performance information. That is the number of counselling, mediation, conciliation and other primary dispute resolution services delivered. Your target is 7,400.

Mr Mathieson—Again, we do have some difficulties in relation to the primary dispute resolution in being able to quickly extract data. I would ask that we take that one on notice.

Senator KIRK—Okay. I understand that the figures that you have given me are just through to 31 March. Just on my quick calculation, you dealt with about 60,000 matters to 31 March. Is that right?

Mr Mathieson—That is approximately right.

Senator KIRK—So is it fair to say that, by the end of the financial year, there would have been approximately 80,000 filings? Are they the sorts of figures that you work on, or would it be a greater number than that?

Mr Mathieson—My mental arithmetic is not that good. That sounds about right to me. It is certainly in that order.

Senator KIRK—This is a question I asked earlier in relation to an article that was published in the *Australian* last Friday. It talked about the pressure on the Federal Magistrates

Court because of the number of filings that are occurring, and the figure of 80,000 was cited. Also there were some breakdowns such that a calculation was done that there is only about \$384 spent on each case. Then of course it mentioned the increasing jurisdiction that the court is getting—in particular, most recently, the industrial relations legislation. Could you comment on the claims that were made in that article? How would you respond to those claims?

Mr Mathieson—Firstly, I will deal with the issue of the figure of \$383, as I recall it. That was drawn from a report published by the Productivity Commission. You may recall that, on the last occasion of Senate estimates, Mr Warwick Soden of the Federal Court gave some evidence in relation to the figure that was published in respect of the Federal Court. The figure in respect of the Federal Magistrates Court is infected, if I can put it in those terms, by the same difficulties that Mr Soden gave evidence about on that occasion. It is, in my humble opinion, indicative of nothing, and comparisons as between the court using that figure really will not be useful.

In the case of the Federal Magistrates Court, if you compared over time an equivalent figure, you would see a vastly reduced cost per case. The reason for that is that, over time, the Federal Magistrates Court has received the majority of the divorce applications, which prior to its creation were dealt with in the Family Court, and creditors' petitions in bankruptcy, which formerly were dealt with in the Federal Court. It is a pure mathematical calculation which takes into account the number of cases. So, if your case load is going upwards, then your resultant figure will come down. It assumes that, because of the nature of the way the Federal Court, the Family Court and the Federal Magistrates Court provide services amongst themselves, the calculation of the services provided by one court to the other free of charge is accurate. I think Mr Soden said on that occasion that he doubted the accuracy of the figure as between the Federal Court and the Federal Magistrates Court—and I agree with him. I would be extremely doubtful of the accuracy of the figure for that calculation as between the Family Court and the Federal Magistrates Court.

Since that particular report was published, all of the courts have been talking about the particular difficulties in the evaluation of those services. Given time, we will be able to have a much more accurate valuation of those amounts, and that will improve somewhat that figure and the comparatives that could be made. But I would have to say that I doubt even then that it will be truly indicative of anything.

Senator KIRK—Thank you for that. As I recall, I think the cost per finalisation in the Federal Court was \$16,000.

Mr Mathieson—Correct.

Senator KIRK—Nevertheless, whether it is \$16,000, \$11,000 or thereabouts, there is a huge discrepancy when comparing that to \$384.

Mr Mathieson—Yes.

Senator KIRK—Surely there must be some way that you people keep track of approximately how much on average it costs to process a case in the Federal Magistrates Court. I understand what you are saying about the \$384, but is it the case that you do have some figure that is kept as an average or a figure that you work with?

Mr Mathieson—No. I am sure it can be done, but it is not done. You would have to define what cases you are trying to measure the cost of. In the case of the large-volume and low-cost areas, that work, in the case of the divorces, it is almost exclusively dealt with by registrars. I would say that the figure would be 99.99 per cent dealt with by registrars.

Senator KIRK—And that is of the 55,000-odd cases that you deal with.

Mr Mathieson—Yes.

Senator KIRK—In that case, wouldn't you be able to calculate a figure relatively easily?

Mr Mathieson—How do you calculate or compare the case that goes for two days in a family law matter or five days in a general federal law matter against a case that is filed and settled? There are too many variables in there to get any accuracy whatsoever.

Senator KIRK—But if you just dealt with the family law cases with the divorce matters, which is by far the vast bulk of your jurisdiction, I would have thought that you would be able to come up with some figure. I suppose that when there is a figure out there, like the one that has been put out by the Productivity Commission, it would seem to me that the court would want to say, 'Well, in fact it's closer to this cost, rather than \$384.'

Mr Mathieson—It may be possible to do that, but we do not do it at this stage.

Senator KIRK—As for the other claims that were made in that article, how would you respond to them? I do not have it in front of me, but there was the suggestion that the Federal Magistrates Court is in crisis, for example.

Mr Mathieson—I would say that the position is quite contrary to that report. The judicial officers and staff of the Federal Magistrates Court remain enthusiastic and dedicated. The court continues to manage a huge workload. Again, contrary to what is suggested in the article, I would suggest that the court is held in high regard by the legal profession—

Senator KIRK—I recall that Mr Cornall read me a message yesterday.

Mr Mathieson—Yes. I am sorry, I have been told of that. Unfortunately, I have not been able to get hold of and read the transcript of what was said, so perhaps I will not go into too much detail. I would simply remind you that the court has now conducted a number of surveys of the legal profession and those surveys overwhelmingly indicate support for what the court has done.

Senator KIRK—Are those surveys available for the committee?

Mr Mathieson—They are published on the court's website, yes.

Senator KIRK—Thank you; I will have a look. Have you done surveys of clients as well? What kind of feedback are you getting from the client population?

Mr Mathieson—No, we have not at this stage done feedback from litigants—the parties themselves, be they represented or not.

Senator KIRK—Has any thought been given to that?

Mr Mathieson—Thought is being given to that.

Senator KIRK—How much thought?

Mr Mathieson—Quite serious thought. I met with our survey provider, if I can describe the firm in those terms, only a matter of a couple of months ago to explore what we might need to think about to do that sort of exercise seriously. I am not going to pretend that we are going to be doing it in the current financial year. If we are going to do it, then we need to do quite a bit of preparation before it is done. I hope it is something that we will have over the next year or so.

Senator KIRK—I notice that one of your performance measures is feedback from clients as to whether they are satisfied that their disputes have been handled quickly and simply, feedback from clients regarding the simplicity and effectiveness of the court rules and feedback from clients regarding the availability of information about the court. I do not see how you can measure those kinds of things unless you conduct some sort of survey.

Mr Mathieson—To date we have measured that by surveying the legal profession, and we have not gone beyond that.

Senator KIRK—Perhaps when I ask next time, in November, it might be under way. The claims that are made in that article are quite serious, and there have been some issues regarding magistrates in the Federal Court which I do not want to go to the specific details of, but is it the case that morale is high amongst the magistrates?

Mr Mathieson—As I said before, the federal magistrates and their staff are very enthusiastic about their work. They are dealing with some very difficult issues and at times difficult people, not because they are difficult but because they find themselves in difficult situations. The magistrates could not do that day in and day out, as they do, and deal with relatively high workloads in a duty list—it is not uncommon to have 50 matters before a federal magistrate in family law—if they were not enthusiastic, if they did not have high morale.

Senator KIRK—Are there 41 or 42 magistrates currently?

Mr Mathieson—Currently there are 35 federal magistrates appointed. There is funding for a total of 42 federal magistrates. One of those is as a result of the former federal magistrate Victoria Bennett having been appointed as a Family Court judge. I am not aware of what the current position is in relation to the appointment of six additional federal magistrates, which was announced following the passage of the workplace relations amendments, or a replacement for federal magistrate Bennett, but I would hope in the latter case that we will be receiving a replacement.

Senator KIRK—So presently there are 35 and there is funding for 42. We heard yesterday that the process for the appointment of those additional magistrates is in train, although it has taken some time. Clearly, this has to impact on your work. As you said, you have a significant workload and 35 magistrates to do it. Having 50 cases on the list is quite significant.

Mr Mathieson—Yes.

Senator KIRK—Would you like to comment in relation to that? Is the Magistrates Court very anxious for these individuals to come on board?

Mr Mathieson—Clearly, we are keen for those additional federal magistrates to be appointed. We are also keen for the five additional federal magistrates announced in the

budget to be appointed. In the meantime we are of course continuing to manage our workload as best we can. Perhaps while we are talking about the article in the *Australian*, I could remind you of the comments made by Justice Sackville in his capacity as Chair, I think is the correct description, of the Judicial Conference of Australia, when he spoke of the Federal Magistrates Court not being in an unusual situation, that all courts in Australia maintain a heavy workload but that the particular pressures that the Federal Magistrates Court suffers from at this point in time result from its rapid growth, the increase in jurisdiction that it has received and the fact that it is a relatively new court. It has only been in existence for some six years. There are certainly pressures there, but those pressures are being managed.

Senator KIRK—In your view, given the amount of work that the court has presently and assuming there will be no increases in jurisdiction, is 35 about the right number of magistrates?

Mr Mathieson—I think that a much higher number would be the right number.

Senator KIRK—How much higher?

Mr Mathieson—That is where we are moving to in terms of the appointments that have been announced.

Senator KIRK—So, 42 plus the six? Is that what you are saying?

Mr Mathieson—Forty-two plus the five. We can expect that there will be an additional workload that will come as a result of the industrial relations legislation and we will need the judicial resources to be able to manage that.

Senator KIRK—You mentioned the industrial relations jurisdiction. What impact has that had so far, given that the legislation has only been in effect for a couple of months?

Mr Mathieson—The legislation, as you would recall, commenced from 27 March. I cannot say whether something may have happened today that has not been passed on to me, but as at yesterday afternoon there had only been four cases filed in the Federal Magistrates Court under the new amendments. Perhaps I could also mention in relation to your concerns about workload that it is important to remember that the court is, with the Family Court, looking at a combined registry model to meet the concerns raised by the parliament and the community and to establish a more seamless route by which family law matters can come in. One of the key elements in relation to that will be developing an appropriate streaming of cases between the two courts and we are continuing with discussions and some piloting of different approaches which will help us put that in place.

Senator KIRK—How far have you got with the pilots?

Mr Mathieson—The pilots I was referring to are of registrar resources to essentially assist the Federal Magistrates Court in the workload that we anticipate it will end up with. Currently, in family law, the Federal Magistrates Court is dealing with about 50 per cent of the total workload. We expect that in time that will probably rise to about 75 per cent. It is important that if the federal magistrates are going to be able to handle that volume—and of course part of the additional appointments announced in the budget were to give the Federal Magistrates Court greater capacity to deal with family law—we realise that the federal magistrates will be able to handle that increased volume only if they can get some additional

support. We are looking at ways that registrars might be able to deal with that. We have been spending a fair bit of time trying to get right what we should be experimenting with, what we should be piloting. We are at a point now where I would expect that within the next month the first of those pilots will start, with the remainder probably starting in early July.

Senator KIRK—So that is piloting the shift of jurisdiction to the registrars. Is that what you are saying?

Mr Mathieson—No. It is about different ways in which the registrars might be able to assist federal magistrates in their work.

Senator KIRK—Is that assistance in terms of hearing cases or in terms of their preparation?

Mr Mathieson—No. It is such things as the duty lists that I spoke of before—taking consents that have been agreed between the parties out of the list that are within the registrars' powers and dealing with those to free up the time of federal magistrates to concentrate on things that are in dispute and interlocutory issues that might need to be determined.

Senator KIRK—You mentioned that 50 per cent of family law cases are currently handled by the Federal Magistrates Court and that you think that figure will increase to about 75 per cent. Over what period of time do you see that increase occurring?

Mr Mathieson—It is very difficult to predict that at the moment. It will occur at different rates in different locations, largely driven by the available judicial resources in those locations. If I could give you some simple examples of that. Today there is a resident federal magistrate in Darwin. I do not have in front of me the percentage of matters in the totality that are dealt with by that federal magistrate, but I expect that it is something like 90 per cent. Against that, in Hobart there is a resident Family Court judge. Again, I do not know the percentage figure that goes to that judge out of the total mix, but in the case of the Federal Magistrates Court it would be relatively low. It will only be over time, as we balance the judicial resources so that there are the people available to actually hear them in the way that we expect the model to work, that the model will fully work. It may happen earlier in some places. In Darwin and in Launceston, where there are only resident federal magistrates, I expect it is happening now, but in other places it will take time.

Senator KIRK—I take it that throughout the various jurisdictions there is quite a discrepancy in the balance, as you put it, in judicial resources.

Mr Mathieson—Yes. However, overall, the trend is upwards towards that 75 per cent in the case of the Federal Magistrates Court.

Senator KIRK—Essentially, you seem to be suggesting that federal magistrates generally will be increasing and federal Family Court judges decreasing, relatively speaking.

Mr Mathieson—That will be a matter for government.

Senator KIRK—That is the way it sounds like it is going. What is the cost of employing a new magistrate, apart from their remuneration but including the support that they need?

Mr Mathieson—It very much depends on what you want to include in the calculation—and that is not my way of avoiding the question.

Senator KIRK—Do you have some formula that use?

Mr Mathieson—I do. The direct costs, as best I can give them to you, are about \$436,000. However, as I indicated to you, it depends on what you count. I could equally come up with a figure of about \$550,000, if I want to include other things such as interpreting costs and family reports.

Senator KIRK—Just tell me what is included in that \$436,000.

Mr Mathieson—I had better take that one on notice.

Senator KIRK—I assume it is salary plus benefits.

Mr Mathieson—Yes. The remuneration for the federal magistrate, the staffing for the federal magistrate and direct on-costs such as computers. I have a piece of paper here that will tell me. I will start again. The remuneration, a component towards long service leave, the salaries and superannuation costs of the staff, Comcare expenses, a casual staffing cost to cover periods when staff may be on leave, general costs such as postage and freight, court recording and transcription, a component for expected videoconference costs, vehicle costs, occupational health and safety costs, telephone expenses and other non-direct cost items such as depreciation.

Senator KIRK—That is in the \$436,000 figure?

Mr Mathieson—Yes.

Senator KIRK—Are there any retirements expected from the FMC in the next couple of years?

Mr Mathieson—I am not expecting any retirements at this stage.

Senator KIRK—Is the retirement age 70?

Mr Mathieson—Seventy is correct.

Senator KIRK—There has been a lot of talk, particularly in Queensland, as I understand it, that the registries are overburdened. Can you comment on whether there are certain registries throughout the country that are more burdened with work than some of the other registries?

Mr Mathieson—Certainly the Brisbane registry of the court is under pressure.

Senator KIRK—In what respect—because of the number of cases?

Mr Mathieson—Yes, it is the pure volume of cases that are filed with the court.

Senator KIRK—How many federal magistrates are in the Brisbane registry?

Mr Mathieson—There are four federal magistrates in Brisbane.

Ms Stockwell—Did you want to know how many federal magistrates there are in each registry?

Senator KIRK—No, not throughout the country; I am focusing on Queensland at this point. So there are four in Brisbane. How many are there in Townsville?

Ms Stockwell—One.

Senator KIRK—Has any thought been given to locating either an additional federal magistrate in Townsville or in Cairns?

Mr Mathieson—That would be a matter for government.

Senator KIRK—Could you take it on notice to provide a list of the magistrates throughout the country and the various jurisdictions. If you could provide that, that would be helpful.

Mr Mathieson—We could table that now. It indicates where each federal magistrate is located. Unfortunately, it does not break the list down by location.

Senator KIRK—That is fine. Finally, could you provide us with a copy of your schedule of fees for 2006-07?

Mr Mathieson—We will have to take that on notice.

Senator KIRK—I am also interested in how much the fees have changed over the last two years.

Mr Mathieson—As you may be aware, the regulations provide for an automatic increase in fees every second year. The next of those automatic increases, from my recollection, is 1 July this year, so fees, just by the pure operation of the regulation, will increase from 1 July 2006. Are you asking us to provide the current fees—the fees in place as of today—or the fees that will be in place after the automatic increase?

Senator KIRK—After the automatic increase from 1 July and then for the two preceding years so there is some comparison.

Mr Mathieson—Yes.

Senator KIRK—By what percentage is the automatic increase?

Ms Leigh—The automatic increase from 1 July will be 5.4 per cent.

Senator KIRK—Is that just for the Federal Magistrates Court under the regulations?

Ms Leigh—That is for each of the federal courts.

Senator KIRK—That is all the questions I have for the Federal Magistrates Court. Thank you.

CHAIR—Senator Kirk, would you want to conclude with the other courts while we are here?

Senator KIRK—Yes, I would.

[8.31 pm]

Federal Court of Australia

Senator KIRK—Last time you were here we discussed the figures for finalisation of cases, and the increase was meant to be from 11,000 to 16,000, as assessed by the Productivity Commission. You told us last time that this is something that would be discussed with the department at your next meeting, and we heard from Ms Leigh yesterday that such a discussion took place. She also told us that we should ask you what the outcome was, so that is what I am doing.

Mr Soden—There have been a number of discussions with people from the department about those figures. There was one formal meeting, which was the court's forum, which involved all of the CEOs. There was a discussion at that meeting, but there have been a number of discussions with different officers and me and some of my staff about those figures. In order to explain, from our perspective, how they are calculated and to discuss how they are likely to be different in the near future, I can say on record that we have achieved a 35 per cent increase in the efficiency of the court since I was last before this committee.

Senator KIRK—How did you manage that? That is quite significant.

Mr Soden—I mention that because it is an indication of how these figures can be used. On the last occasion, I tabled a document which set out how the figures were calculated, and basically its cost to finalisation. The critical factors are, of course, the number of cases finalised and the amount that you calculate as the total cost. We have always treated these Productivity Commission figures very seriously. I would be prepared to say that we got caught on the hop a little bit on the last occasion. In the past, we have been focusing not only on cost per case but on what we describe as efficiency—timeliness and processing. What has happened is this: all of the costs associated with the work we do for the Federal Magistrates Court were included in the figures we provided to the Productivity Commission. What was not included was all of the cases that the Magistrates Court disposes where we incur the costs. We have worked very closely on looking at how we can reduce the costs that we provide to the Productivity Commission—the true costs of our cases. That reduces the amount into which the number goes. At the same time, we have had a large increase in the number of cases finalised.

Senator KIRK—That is how you get your 35 per cent increase in productivity?

Mr Soden—That is how we got a 35 per cent increase in the last few months. So, for example, the figure we talked about last February was 16,700 per case. We are now down to a projected 10,800 per case by the end of the year. I think that is an underestimate. I think there are some extra costs that we will reduce out of the total and there are extra increases and dispositions. I would be disappointed if we did not have a 50 per cent increase in efficiency by the end of the financial year on the figures used by the Productivity Commission. I have brought the document with me that shows how that is calculated. While we are on the subject, when you come to the total cost it is the appropriation less revenue. You have just heard that the revenue will increase. That will also reduce the cost per case.

CHAIR—Did you want to give us that document?

Senator KIRK—If you wanted to table it, that would be helpful.

Mr Soden—To save copying, I have brought enough copies for everyone to see.

CHAIR—Thank you, Mr Soden; that is very helpful.

Mr Soden—You will see that there are three rows on the bottom of that document which make it clear that the table numbers referred to in that document are the tables in the last Productivity Commission report. I should also say—seeing as Mr Mathieson mentioned what I said on the last occasion here—that that reduction in our cost will increase their costs.

Senator KIRK—I was just about to ask that, but I was aware that you probably would not be able to comment on their costs. But I suppose it is an obvious outcome that, if your costs are decreasing, their costs are going to increase.

Mr Soden—And I have discussed that issue with them and they are aware of that. What I cannot tell you is by how much it will increase their costs. It will be, I think, quite a substantial increase.

Senator KIRK—If you have improved by 35 per cent, or even 50 per cent, then is it fair to say that perhaps theirs will increase by a similar amount, if we are just talking about that cost-shift?

Mr Soden—I do not know. Their total includes the family law cases as well.

Senator KIRK—True. I was going to ask you about how you are making your operations more efficient, but I note what you have said. Through what exactly has the increase in productivity come about?

Mr Soden—Just using those figures. I could talk about a number of initiatives that we have undertaken—as we do, as a court, continually—to try and strive for efficiencies in terms of costs or timeliness. That is something we do all the time. I am usually asked questions here about the migration jurisdiction—about migration work.

Senator KIRK—If you would like to talk about that, I would like to hear about it.

Mr Soden—I am just anticipating what might come up.

CHAIR—Thank you for volunteering, Mr Soden. That is lovely.

Mr Soden—I have talked here, as you might recall, about the problem of four judges of the Federal Court dealing with migration cases, one at first instance and three on appeal. We were very supportive of the reforms that put all the migration work at first instance in the Magistrates Court and the initiative that enabled a single judge of our court to deal with appeals. So we are now in a situation where, instead of having four judges dealing with the one migration case, we have one of our judges dealing with migration cases. In order to make sure that that is done in a very timely way—because they are appeals—and in order to reduce the incentive for people to delay proceedings, we list all pending migration appeals in each of the four court sittings to make sure that they are dealt with in a very expeditious manner. That is one achievement.

Senator KIRK—So, from what you are saying, that increase in efficiency—if that is the way you can describe it—really came about as a consequence of shifting the first-instance hearing of cases into the FMC?

Mr Soden—Yes, Senator, and I think I have said here before that we can see that is a much more desirable solution than our court seeking extra resources to deal with that workload. But I should make it clear that we do all of the registry work, still, for all of those cases. So we do all of the registry work for the Magistrates Court in the migration jurisdiction, as well as the appeals, and the only assistance we sought was a small amount—I think it was only a few hundred thousand dollars, from memory—in relation to the extra burden on the registry. So that, for us, is an example of an efficiency.

Senator KIRK—Did you have any increase in your budget this year?

Mr Soden—Yes, we did.

Senator KIRK—By how much?

Mr Soden—There were three components. I will ask Mr Foster to just mention the three components that were included.

Mr G Foster—The two main issues in the new measures related to the conferring of the indictable criminal jurisdiction and a one-off funding for the coming financial year for implementing some of the measures of the Anti-Terrorism Act.

Senator KIRK—With the IR legislation coming into effect a couple of months ago, have you seen very many cases come into your court arising out of that legislation?

Mr Soden—No. There have only been a handful. We have the figures here. There is an inevitable lag time before circumstances arise and a case comes before the court, but I think one of the reasons why people might be waiting and seeing is the matter pending in the High Court.

Senator KIRK—What is a handful? Is it less than five? How many?

Mr Kellow—We have had a slight increase in the filings under the Workplace Relations Act in this current financial year but it has been fairly minimal since the new legislation came into effect at the end of March. It may be that some matters were pushed through under the old regime if someone wanted to commence before the new legislation came in. But, as the registrar said, it is early days yet to see what the consequences will be on the Federal Court and, for that matter, the Federal Magistrates Court under the new regime.

Senator KIRK—Thanks. Finally, I wanted to ask you about an advertisement that appeared in the *Sydney Morning Herald* last weekend, I think it was, advertising for a change manager. According to what I have been told, there is a suggestion that it does not give any indication as to where this position is located, but it has been suggested that perhaps it is an advertisement for a job with the Federal Court. Is that the case?

Mr Soden—I do not know. I am sorry. It is not an ad that I initiated. I do know, however, that we are undertaking what we describe as a transformation process in our main, largest registry in New South Wales. There is a change manager position required there.

Senator KIRK—Who would authorise putting this advertisement into the paper if that were the case?

Mr Soden—Each of the district registrars across the Federal Court—who are the state managers, I suppose, of our operations—have a number of delegations from me. One of those would be to initiate recruitment action, settle advertisements and place advertisements of, I presume, that kind in newspapers.

Senator KIRK—Can you find out for us what this was in relation to?

Mr Soden—If the ad which you are referring to is ours, yes, I can.

CHAIR—Perhaps Senator Kirk has a copy.

Mr Soden—Yes. If I could have a copy of it—

Senator KIRK—I am more than happy to provide a copy.

CHAIR—That might facilitate the process.

Mr Soden—Yes.

Senator KIRK—Would it be common for the Federal Court when placing an advertisement—assuming this is a Federal Court advertisement—to place such an anonymous job advertisement, if I can describe it that way? You can see there is no indication as to where the job is located or to any connection with the Federal Court.

CHAIR—I think it is a difficult question for Mr Soden to answer, given that he is not sure to what the advertisement pertains.

Senator KIRK—You said that you delegate that kind of responsibility to other officers.

Mr Soden—But I do know generally what is done in that regard. It is not uncommon for what I would describe as a blind advertisement to be undertaken. It all depends what market, from my experience, you are trying to attract. Sometimes we would make it clear that it is a position in the Federal Court if it is a position we know will attract a certain person. On the other hand, sometimes we will blind advertise if we want to attract a wider pool than would ordinarily be attracted to a position in the Federal Court.

Senator KIRK—It does not really read like a Federal Court job. It says that it gives the opportunity to place your mark on the segments of business—

Mr Soden—I am not sure whether it is ours.

Senator KIRK—If you could find out for me, that would be helpful.

CHAIR—Then we can move out of the realm of the hypothetical. As there are no further questions, we thank you, Mr Soden. Thank you to your officers and thank you for your patience, particularly.

[8.45 p.m.]

Family Court of Australia

Senator KIRK—I noticed in the budget that you are losing \$1.6 million, and I understand that that is the amount that is being transferred across to the Federal Magistrates Court to pay for the two new magistrates. Is it the case that that \$1.6 million did represent the cost of two Family Court judges—the two positions that are currently vacant—or does that not relate to that?

Mr Hunter—We have had a transfer to the Magistrates Court of \$1.1 million in this financial year, and that is effectively pro rata for three magistrates that have replaced judges. On that basis, the \$1.6 million shows the full-year effect for the next financial year.

Senator KIRK—That represents the shift of judicial resources from the Family Court to the Federal Court?

Mr Hunter—To the Federal Magistrates Court, yes.

Senator KIRK—What effect is the loss of that \$1.6 million going to have on your court?

Mr R Foster—We currently have 41 judges and two vacancies in relation to Justice Rowlands and Justice Morgan, who have recently retired.

Senator KIRK—Are they included in the 41?

Mr R Foster—No, there are currently 41 judges and two vacancies. Since March 2002, 13 judges have retired from the court. Six have been replaced by judges and five have been replaced by federal magistrates. We currently have two vacancies.

Senator KIRK—Essentially, your judges are being replaced by federal magistrates.

Mr R Foster—They are. In fact, just supporting what Mr Mathieson said in relation to the shifting workload, at the moment the filings across the country are at about fifty-fifty. It does vary from registry to registry. In some registries, depending on what sort of judicial resources are available, it would be quite different to that. For example, in Launceston, where there is a federal magistrate, the filings might be 90 per cent for the FMC and 10 per cent for us. In Hobart, where we have a judge and there is no federal magistrate, the position could be reversed. We believe that the work the Family Court should be doing, which would be the most complex and difficult Family Court work, would represent about 25 per cent of the filings across the country. That figure of 75 per cent of filings for the FMC and 25 per cent for the Family Court would, in our view, represent a reasonable break-up of the filings. Filings are not necessarily work. It is 25 per cent of the filings, yes, but it is not necessarily only 25 per cent of the work. To that end, I think it is an appropriate shift of work from the Family Court—work that judges should be doing—to work that is more properly done by federal magistrates.

Senator KIRK—Over what period of time do you think that more accurate split will emerge?

Mr R Foster—It is pretty difficult to predict. I would think it would be within the next two to three years as further retirements take place and decisions are made by government in relation to reappointing judges or federal magistrates.

Senator KIRK—So you agree the way it ends up being divvied up depends very much on the nature of the judicial resources in a particular location.

Mr R Foster—At the moment, because judges are a fixed resource, they can only be replaced when they retire. I think it will take two to three years with our current experience on retirement rates. We would expect probably two or three judges might retire each year for the next several years.

Senator KIRK—Are you expecting retirements in the next couple of years?

Mr R Foster—It is a bit difficult to say. A judge is entitled to retire or might consider retirement once they turn 60 and they have served as a judge for 10 years because then they are entitled to the judicial pension, but they are actually appointed until age 70. Sometime between the ages of 60 and 70 they make a decision about what they want to do.

Senator KIRK—But we know those who are approaching 70 have to retire. Are there any of those?

Mr R Foster—I have to take that on notice. There might be one but not next financial year.

Senator KIRK—I asked—you would have heard—the Federal Magistrates Court before about the approximate cost of employing a new federal magistrate. I would also like to know what it costs approximately to appoint each Family Court judge. You probably would have heard the earlier witness say that it depends on what you include, but then he listed the items that were included in that calculation. Could you provide us with a similar kind of comparison for a Family Court judge?

Mr R Foster—Taking aside the judicial pension, which is not something that we contribute, we have agreed as between ourselves—that is, the Family Court and the Federal Magistrates Court—a sum of money which would be transferred when a federal magistrate replaces a judge. It would include things such as Mr Mathieson outlined: the judge's salary; a component for long service leave; a component for the judge's support staff; and the various operational things that a judge would need such as interpreting fees, court recordings, security costs et cetera. That figure is in the order of \$550,000-odd.

Senator KIRK—So that is where we get the \$1.6 million from.

Mr R Foster—That is right. The difference in the cost is that the Judges Pension Scheme is not taken into account. We are not funded for the scheme, so we cannot transfer money which we do not have.

Senator KIRK—Are the salary component and the benefits individually to the judge or magistrate comparable or is there a difference in the salary component?

Mr R Foster—There is a difference in the salary but that is set by the Remuneration Tribunal. The operational costs differ because it reflects the different type of work that we do.

Mr Cornall—Are you interested in the comparative salaries?

Senator KIRK—Yes. I am trying to do some sort of comparison to see what the savings are.

Mr Cornall—As at 1 July 2005, a Family Court judge's base salary was \$294,060 and for a federal magistrate it was \$229,330 as per the Remuneration Tribunal determination.

Senator KIRK—How is the combined registry project going?

Mr R Foster—The combined registry project is largely coming to an end. It has many components to it. If I put aside two of the major components, which are rules harmonisation and the streaming model that Mr Mathieson talked about, both of those things depend on, firstly, the impact of legislation that is about to commence on 1 July. It has been difficult to harmonise rules without knowing some certainty about the legislation. That is one thing that has been delayed. Secondly, the streaming model depends on where the judicial resources are located. I think there will probably be a period of two to three years before the system settles down in terms of judicial appointments.

With regard to those two aspects of the combined registry model, further time needs to occur. There are a whole range of other aspects of the combined registry model as well as a single file, a single form, new signage, establishment of a national inquiry centre, a new internet-intranet site, which is combined. There are about 13 or 14 different projects, which both courts have been working on for the last 12 months or so and putting resources into.

Largely, that project comes to an end on 30 June and, primarily, the work will have been completed by that date.

Senator KIRK—So all of the work on all of those projects you just referred to?

Mr R Foster—Yes. Now, there are things like the internet and intranet where the technical aspects have been established but of course there needs to be population. But we are in such a state of flux in family law at the moment, there is so much reform happening, that we just need to wait a reasonable amount of time till we know what to actually populate these sites with.

Senator KIRK—If you could perhaps provide us—you might like to take this on notice—with a schedule of the projects that you have undertaken and how far down the track you are with each of them, that would be helpful.

Mr R Foster—I can probably table that now.

Senator KIRK—That would be great, thank you.

Mr R Foster—Yes, we can.

Senator KIRK—I wanted to go through the performance criteria as listed in the PBS for the Family Court, starting with divorces. The target, for finalisation within three months of filing, is 90 per cent. How are you going with that this financial year?

Mr R Foster—Quite frankly, we no longer do any divorce work at all. All divorce is now done in the Federal Magistrates Court.

Senator KIRK—Why is it still in your section of the PBS then?

Mr R Foster—Because we cannot change the portfolio budget statement until we get the approval of the department of finance, and we need to work with the department of finance. Because of the shifting workload, the performance standards really need adjustment. The work that we are doing now is of a much more complex nature—and, when you are dealing in percentiles, if you have large numbers of matters that are less complex then the targets are probably a little more realistic. With the work we are doing now, all these performance standards need to be revisited because, quite frankly, we are not meeting them. I think the benchmark has been set too high for the sort of work that we are now doing.

Senator KIRK—Something to raise with Treasury, then.

Mr R Foster—The department of finance, yes.

Senator KIRK—The department of finance. The next one is consent orders. That probably does not apply either, does it, if you are not doing divorces? I guess they could be different types of orders.

Mr R Foster—For consent orders, the target is 90 per cent. For the 2005-06 year to date, we are actually running at about 85 per cent, so we are getting pretty near that target. That is a pretty straightforward process.

Senator KIRK—What about the other ones, such as mediated agreements, at the top of table 3.2 in the PBS?

Mr R Foster—The performance target for mediated agreements is that 90 per cent will be resolved within six months. We are running short of that target. For the financial year to date, we are running at about 70 per cent, compared to a 2004-05 figure of about 64 per cent. So there has been some improvement in that regard.

Senator KIRK—How many mediations were handled by Family Court mediators?

Mr R Foster—I can actually give you, if you like, tables of all the filings and details if that would be helpful and accelerate the process a bit for you.

Senator KIRK—Yes.

Mr R Foster—So all that information about filings and numbers will be on these tables, which we can provide for you.

Senator KIRK—How are you going with the target for interim orders of finalisation within three months?

Mr R Foster—The target in the PBS is 90 per cent within three months. We are currently running, year to date, at about 67 per cent, compared to a rate at the end of last financial year of about 65 per cent. So there has been some very marginal improvement in that regard.

Senator KIRK—Okay. And in relation to appeals, where the target is for 75 per cent being finalised within six months, how is that going?

Mr R Foster—Could I take that on notice, please?

Senator KIRK—Yes. I was thinking it might be helpful if you were to go through each of the outputs.

Mr R Foster—We will do that for you. We will give you a table for the lot—

Senator KIRK—Yes, exactly. More accurate figures would be helpful.

Mr R Foster—if that would be helpful, certainly.

Senator KIRK—It would be indeed. Thank you. Finally, how do you determine levels of client satisfaction? Do you do surveys of either the clients themselves or the practitioners in the court?

Mr R Foster—We commenced a major client survey in the middle of 2004. We surveyed something like 5½ thousand litigants across the various areas of work that we do, which at that stage included divorce, interim orders and final orders. We got a response rate from clients, by memory, of around 16 or 17 per cent, which made the survey credible. A detailed report came out of that survey. The consultant which did the survey for us then workshopped a number of legal practitioners in the absence of any staff members or judges of the Family Court from around the country to receive feedback from the legal profession. They similarly workshopped a number of litigants who had responded to the survey and who agreed to attend workshops. So we have quite detailed information about what the profession and the litigants think of our processes.

Senator KIRK—Was it a worthwhile exercise?

Mr R Foster—Absolutely. It identified a whole range of important things, such as that the longer a person stays in the system the more disgruntled and unhappier they are going to be,

no matter what the outcome. There was feedback about unnecessary court events—that people wanted an event that had a purpose and an outcome. There was very positive feedback about staff of the court, about how extremely helpful they were. Some of the processes might not be quite so helpful, but the staff themselves are very helpful. So there was a whole range of extensive feedback from that process. Subsequent to that, we have also had an evaluation of the children's cases program by Dr Jennifer McIntosh. I can certainly table a copy of that report.

Senator KIRK—What date was that one?

Mr R Foster—This was only in March this year.

Senator KIRK—Yes, that would be helpful.

Mr R Foster—It is very current. As part of Dr McIntosh's evaluation, she interviewed clients of the court. She sought feedback about the process, the outcome, whether it was sustainable, a whole range of issues. That report is being circulated and discussed while we go through the training program for the judges on the new way of dealing with parenting cases from 1 July. So if that would be useful we could table that report.

Senator KIRK—That would be helpful. I was thinking that perhaps you might be able to discuss with the Federal Magistrates Court the surveys you have conducted. They said it is something that they are considering. It sounds like it was a worthwhile process.

Mr R Foster—It was an extremely worthwhile process. We are still dealing with the outcomes some 18 months later. It is informing us as to how to change our processes. It was certainly one of the reasons we established the national inquiry centre.

Senator PARRY—Is the issue of violence or threats of violence to Family Court judges still a prevalent issue?

Mr R Foster—I am not quite sure how I would define prevalent.

Senator PARRY—Is it greater than for other judicial officers in the country?

Mr R Foster—Based on my experience working in court systems in South Australia and Western Australia, I would say that threats of violence against Family Court judges and staff of the Family Court would occur more frequently than in other jurisdictions. But that is just based on personal observations.

Senator PARRY—My follow-up question, relating to estimates is: is there a contingency or provision within the budget for security measures for Family Court judges?

Mr R Foster—Certainly. We are spending out of our recurrent budget now something like—

Senator PARRY—And is that solely from your agency or do other agencies contribute?

Mr R Foster—We are currently spending nearly \$3 million on court security out of our current budget. But we are also rolling out security screening through all the registries around the country for Commonwealth law courts, working with the Federal Magistrates Court, the Federal Court and the High Court. We are also providing screening and other security at non-Commonwealth law courts locations—in other words, where it is just us and the Federal Magistrates Court. We also provide security through our marshal area, home security for

judges. The marshal has developed very good and very extensive relationships with the AFP. We have great support from the AFP if there is a threat against a judge. Also the state police are very supportive and cooperative if we have any difficulties.

CHAIR—Thank you. Mr Cornall, I think from what I can ascertain, it is the case that there are no specific questions for the Family Law Council, in the form of the very patient Mr Duggan.

[9.05 pm]

Administrative Appeals Tribunal

CHAIR—We will start with questions from Senator Kirk.

Senator KIRK—I see that the AAT has received an extra \$1.7 million for the next five years ‘to assist it in dealing with a greater number of appeals and to determine matters more promptly’. Can you explain what that means and why you have been given this \$1.7 million?

Mr Humphreys—The situation is that we had been receiving an influx of taxation matters. I discussed this at the last meeting. Money that we are receiving will enable us to spend additional funds on taxation matters to enable us to process them within a reasonable time frame. That is \$5.75 million over five years, and it terminates at the end of that period. There is a general funding increase of \$1.1 million ongoing. This funding will provide additional resources to the tribunal to ensure that we can continue to perform our overall workload where there has been a steady increase in listings and matters. Prior to the receipt of this money, we were in a deficit funding situation. Had we not received this funding, we would have been required to cut back significantly in our activity levels in order to operate in a budget neutral situation.

Up until this year, we had an approved deficit for this coming financial year, 2006-07. Last year there was a forward estimate of a \$957,00 deficit, and we are now back to a \$50,000 surplus for the 2006-07 year. It is addressing a deficit situation so that we do not have to cut back, and we have also got additional funds so that we can deal with the ongoing taxation matters.

Senator KIRK—Thank you. This quote does not suggest in any way that your timeliness in dealing with matters has been diminishing.

Mr Humphreys—In fact, I can hand out the usual statistics.

Senator KIRK—Please do.

Mr Humphreys—If you have a look on page 1, it sets out the applications lodged, finalised and current. It shows the last three years and where we have projected to go until the end of this current financial year. It breaks it down as it goes through. If you turn to page 6 of the document, you will see that table 5 sets out the time standards and the percentage finalised within 365 days. You will see there that, whilst there has been a small decrease in the workers compensation and social security areas, there has been an eight per cent increase and a five per cent increase in our target in terms of our percentage targets within 365 days within those two jurisdictions. The one per cent decrease in social security—which is neither here nor there because we are meeting our target anyway—and a small decrease in compensation is a matter that we are looking at. What I am saying is that there has been a reasonably good increase in

our time frames over the jurisdictions. We would like to try to improve on that over the coming 12 months, particularly having these funds.

Senator KIRK—Do you have any figures that reflect the number of appeals that go from the AAT to the Federal Court and the areas in which they occur?

Mr Humphreys—We do. They are provided on an annual basis within the annual report. However, Senator Bartlett asked in question No. 60 on 14 February 2006 how these figures compared with previous years, and there was a comprehensive reply provided for 2002-03, 2003-04 and 2004-05 as to the numbers that went up. I do not have the numbers for this year because we only do it on an annual basis, but that sets it out.

Senator KIRK—I will have a look at that. Does the answer that he was given break down into the various jurisdictions, or is that just a comparison?

Mr Humphreys—Yes, it does. If you like, I can hand my copy up to you.

Senator KIRK—I can follow that up; that is okay.

Mr Humphreys—It deals with general administrative, veterans, compensation, social security, veterans, other. It shows taxation, small claims taxation, and it talks about ‘allowed’, ‘remitted’, ‘dismissed’, ‘discontinued’ and ‘other’.

Senator KIRK—Does it also indicate whether or not the appeals were successful?

Mr Humphreys—Yes, it has that down at the bottom.

Senator KIRK—Okay, that is all very comprehensive.

Mr Humphreys—It has ‘allowed’ or ‘remitted’ as the success.

Senator KIRK—And that is over the past three years, you said?

Mr Humphreys—That shows the past three years. It does not show this year. As I said, we will complete that for the end of the year, and it will be included in our annual report.

Senator KIRK—You said that, from this year, you are going to have approximately \$50,000 in surplus?

Mr Humphreys—That is what we are anticipating. That is breaking even.

Senator KIRK—Is that going to be enough for you to do all the activities that you need to undertake?

Mr Humphreys—We are satisfied. We are very happy—

Senator KIRK—To be out of a deficit situation?

Mr Humphreys—with the additional funding that we have received. We have enough money to get us out of our deficit, and we have additional funds to ramp up our activity levels to meet targets, particularly in the taxation area.

Senator KIRK—So what will the money go towards? You say the taxation jurisdiction primarily, and—

Mr Humphreys—It is going to go overall. We are looking at putting on two half conference registrar positions, one in Sydney and one in Melbourne. We are looking at ramping up the amount of time that our part-time members are spending with us, particularly

in the taxation area, and there are other activities there. Because we have part-time members, we are in a situation where we can actually surge the amount of activity that is available, but we have to get cases prepared. There are also some additional staff resources in the registry to support the additional part-time work. So that should allow us, as I said, to push more matters on for hearing, and then to be able to allocate hearing time for them. In these sorts of matters, we find that if you can actually allocate a hearing time to them, they either go on for hearing or, more likely, they will settle, because they have to look each other in the whites of the eyes!

CHAIR—Thank you very much, Mr Humphreys, and thank you to your officers.

[9.14 pm]

Human Rights and Equal Opportunity Commission

CHAIR—I welcome the officers to table. Thank you very much for your patience. Mr Innes, welcome to your first meeting as the new Human Rights Commissioner. We are very pleased to have you here.

Mr Innes—Thank you.

Senator KIRK—In the budget, HREOC is going to receive an additional \$1.8 million over two years. The budget paper indicates that is to meet expected additional workload increases anticipated to arise from changes to the Workplace Relations Act 1996. What is the nature of the additional workload that you expect as a consequence of these changes to the Workplace Relations Act?

Ms Toohey—The funds were granted to meet an expected increase in complaints under the legislation that we administer. Given the change in the jurisdiction, the expectation is that matters that perhaps used to be lodged in the IRC that raised issues of discrimination may move over into our jurisdiction.

Senator KIRK—Have you done any research on that increase in the workload by looking at the complaints that used to be considered by the IRC and now will potentially be considered by HREOC?

Ms Toohey—We did do some research into that. The information that was available from the IRC was somewhat limited because they were not specifically reporting on those issues. We took what we thought was a fairly conservative approach in looking at the overall numbers of applications to the IRC, which over the last few years have been between 7,000 and 8,000. We could not find statistics at the time we put in the proposal for numbers to do with organisations specifically affected by Work Choices. I think we did take a fairly conservative approach on the numbers that we anticipated coming over.

Senator KIRK—What numbers did you come up with?

Ms Toohey—We came up with an estimate of about 500 complaints and an equivalent increase of about 25 per cent in inquiries to our complaints information line.

Senator KIRK—How many complaints do you have currently across the board?

Ms Toohey—Received or opened?

Senator KIRK—Received annually. I am trying to work out the percentage increase an additional 500 would be.

Ms Toohey—It is estimated to be a 30 per cent increase on the complaint numbers that we currently have.

Senator KIRK—That is very significant. Is \$1.8 million going to cover a 30 per cent increase in your workload?

Ms Toohey—Based on the current staffing numbers and the number of complaints that staff currently handle, yes. That is essentially what the money was provided for.

Senator KIRK—Have you considered which parts of the Work Choices package are likely to give rise to new work? Is it simply what you described at the outset—that is, claims that would otherwise have been heard in the IRC in relation to discrimination? Is that the only aspect that you see increasing?

Ms Roberts—One of the reasons why there will be a flow-on of complaints to the commission as a result of the changes is that employees of employers who have fewer than 100 employees can no longer go to the IRC. That is how quite a few of the complaints will now come to HREOC—raising those grounds.

Senator KIRK—When they otherwise would have been unfair dismissal claims—is that right?

Ms Roberts—Yes.

Senator KIRK—I have asked this question a few times today—and I understand that the Work Choices legislation only came into effect at the end of March: have you seen any increase in the number of complaints coming to HREOC arising out of these changes?

Ms Toohey—We have seen an increase in the number of inquiries, which are telephone and email based inquiries, which raise issues around employment and dismissal. The complaint numbers are a bit harder to isolate in terms of whether they are directly related to Work Choices. There is a small increase in the number of complaints that we have year to date versus last year, yes.

Senator KIRK—Do you have those figures?

Ms Toohey—I do not have the year-to-date figures compared to last year. I can provide those.

Senator KIRK—If you could, thank you. You said that you have had more inquiries to your telephone hotline. What is the percentage increase?

Ms Toohey—I could not tell you offhand. I report quarterly rather than month to month. We do not look at trends over those shorter periods. I am happy to provide those.

Senator KIRK—When your officers take calls, do they record the nature of the inquiry and break it down not only into jurisdictions but also by the nature of the inquiry? Is that kind of detail kept?

Ms Toohey—We keep information about inquiries at a very high level. Information about the way we record it is certainly in the annual report. It is broken down broadly across our jurisdiction but also across other areas that people tend to ring us about. Employment related matters is one of those.

Senator KIRK—I am wondering about this \$1.8 million in that it seems relatively low if you are going to have an almost 30 per cent increase in your workload. Did you ask for more money than that from the government? Or was \$1.8 million seen to be enough?

Senator Ellison—We do not normally go into that. It is a budgetary matter as to what the bids are.

Senator KIRK—In that case, I will ask how the \$1.8 million will be spent. How many additional officers will be able to be employed as a consequence of this increase in workload and the extra money that you have?

Ms Roberts—Six additional staff will be employed to deal with that increase.

Senator KIRK—Are they legal officers, support staff or both?

Ms Roberts—They are mainly complaint handlers. Obviously, when I say six extra staff I am also referring to some of the resources that are needed to get across the new jurisdiction. One of those staff might be an existing legal officer, for instance, but they are going to be spending quite a bit of their time getting across a new jurisdiction.

Senator KIRK—Is there additional training and the like that is going to have to occur as a consequence of this increase in workload?

Ms Toohey—We undertake quite a lot of internal training. We have consulted already with Legal and we have certainly attended a range of information sessions on the legislation and run internal training on that already. Obviously we do not purport to be experts in the legislation but we do need to understand some of those distinctions so that we can be sure we are providing appropriate advice to people on the complaints line.

Senator KIRK—The other matter that I wanted to raise with you was some what I thought to be discrepancies in the budget statements. You might need to have a look at this yourself, because it is a little tricky. Looking first at page 126 of Budget Paper No. 2, in relation to ‘Workplace participation—countering age discrimination’, the amount allocated for your organisation is \$0.3 million. What I am trying to reconcile that with is page 360 of the PBS.

Mr Richards—I think that \$0.3 million has been rounded up.

Senator KIRK—This is where I am getting confused. I wanted you to explain this rounding up process. How does that work?

Mr Richards—We have shown it in the lower level document as \$273,000. But, because this is a high-level document and it has much bigger numbers in it, things have been rounded up. They are only dealing there with one decimal place. So it is the same figure but it is subject to rounding.

Senator KIRK—I see. So the \$273,000 has been rounded up to \$0.3 million.

Mr Richards—Yes, \$0.3 million—which is \$300,000, nominally.

Senator KIRK—But, even if you do round it up from there to \$300,000, isn’t it the case that you still get a shortfall?

Mr Richards—I do not think it is changing the actual figure that HREOC receives; it is just the way it is reported at this level in this document.

Senator KIRK—So that is the actual figure, then.

Mr Richards—The actual figure that we are getting is the one that is shown in the PBS, which in 2006-07 is \$273,000, plus some capital funding of \$44,000.

Senator KIRK—I am just trying to add this up. So it is the \$273,000 plus \$44,000—that is additional, isn't it?

Mr Richards—The \$44,000 is coming in as an equity injection, so it is not hitting the revenue. The revenue line is \$273,000, and I think what we are talking about in this document is that figure in its rounded presentation.

Senator KIRK—This time rounded down or rounded up?

Mr Richards—It has been rounded up. So \$273,000, rounded up to figures of \$1 million, would be \$0.3 million—as I read it.

Senator KIRK—So you are happy with that. It just seemed to me that—

Mr Richards—I do not think we are being stitched up there.

Senator KIRK—However, if you add up those amounts, does it not add up to only \$1.15 million rather than the \$1.6 million that is referred to in the notes that I was looking at here? It says:

The Government will provide \$1.6 million over four years (including \$0.1 million in capital funding ...) to reduce age discrimination and assist older Australians to join and remain in the workforce.

So where does the \$1.6 million come from?

Mr Richards—If you add the amounts shown on page 360 in the row referring to age discrimination, which is the first lot of figures there, that should come out to be \$1.6 million over four years.

Senator KIRK—Is that what it adds up to, though?

Mr Cornall—I think that only part of this money goes to HREOC.

Senator KIRK—Where does the rest go?

Mr Cornall—HREOC receives \$1.15 million over four years to develop education and policy materials relating to age discrimination, and the department will receive \$460,000 over four years to develop strategic partnerships with other government agencies that have policy interests relevant to age discrimination, such as the impacts of Australia's ageing population. I think that, if we add those two figures together, we get \$1.6 million.

Senator KIRK—Okay. Where were you reading that from, Mr Cornall?

Mr Cornall—Our briefing notes.

Senator KIRK—I was going to say, I could not find it in here. Good, that has clarified it, because it looked to me as though HREOC was \$450,000 short. You probably would have noticed that.

Ms Roberts—I think we would have.

Senator KIRK—I think you would have, indeed. The rest is just allocated to the department, is it, Mr Cornall?

Mr Cornall—Yes.

Senator KIRK—I am glad we have clarified that.

Mr Cornall—Senator, the amount is on page 27 of the PBS. I cannot reconcile the figures to the last dollar, but you will see it is in the middle just above the number 27.

Senator KIRK—Under which heading?

Mr Cornall—‘Workforce participating—countering age discrimination’.

Senator KIRK—Thank you. I am glad we clarified that. That is all I have for HREOC.

CHAIR—Before we wrap up with HREOC, I would like to ask about the development of the international human rights convention on disability. Where are we up to on that process?

Mr Innes—The ad hoc committee has met on seven occasions preparing a draft of that convention. It is due to meet for the eighth time in August this year. The draft is close to finalisation. There are two or three somewhat complex issues as well as some other less complex issues which will need to be worked out during that two-week session. They relate to a definition of ‘discrimination’, some other issues around substituted decision making, some finalisation of the definition of ‘disability’ and some of the principles for the convention yet to be finalised. The expectation of the chair of the committee, Don MacKay, the New Zealand Ambassador to the UN, is that the work of the ad hoc working group should be completed at the August session. There will then be a drafting group chosen to go through the draft and find any inconsistencies and fix up the typos. That will come back to a formal final meeting of the group in January next year—probably just a one-day meeting. After that it would go through to the general assembly.

That is the expected time frame. Of course that could blow out, but it has been a process that has had a lot of positive support from many countries around the world and I am reasonably confident that that time frame will hold. The commission has been part of the Australian delegation for all those sessions and has worked very cooperatively and effectively with the government on the issues relating to the convention.

CHAIR—So hopefully this will all come together in calendar year 2007, Mr Innes?

Mr Innes—That is the hoped-for result, yes.

CHAIR—It is a long process.

Mr Innes—In fact, in terms of UN processes, it is not.

CHAIR—That is reassuring!

Mr Innes—It has taken about four to five years to develop this UN instrument, which is very fast relative to other UN processes. I think that is indicative of the positive support for the development of this proposed instrument that there has been from countries around the world. It is a complex process negotiating with a whole range of linguistic and cultural differences. The issues impacting on people with disabilities are in themselves complex and vary a great deal from country to country. Taking all those factors into account, it is not a bad result.

CHAIR—Is the commission the lead Australian agency involved in this from Australia's perspective?

Mr Innes—No, the lead Australian agency has been the Attorney-General's Department in conjunction with the Department of Family and Community Services. The commission has played a role in the delegation, as has a representative of non-government organisations.

CHAIR—In another capacity—that is, relating to the parliament's human rights subcommittee—we may seek a briefing from the associated agencies, the commission, A-G's and whoever else is relevant in due course. If there are no further questions for HREOC, I thank you, Mr Innes, your officers and the departmental officers for your attendance and your patience.

[9.36 pm]

Office of Film and Literature Classification

CHAIR—Mr Clark, thank you very much for your patience today.

Senator KIRK—I want to ask some questions following up from questions that we asked the department yesterday about the absorption of OFLC into the department. I am interested in what effect the closure of the office will have on the day-to-day functions of the director of the classification board.

Mr Clark—I cannot answer the details of that, because we are in negotiation with the department about the operational issues, but, as I perceive it, there will not be any particular change in the way in which the classification board, and for that matter the review board, conduct their business and make their decisions.

Senator KIRK—So you are in the process of negotiation at present with the department?

Mr Clark—That is correct.

Senator KIRK—How far down the track are you? What sorts of matters are you discussing?

Mr Clark—We are talking about governance models and what it might look like as people are absorbed into the department. We do not have a final decision yet but I would hope that some time next week we may come to something that we can work with.

Senator KIRK—I understand that this is meant to take place from 1 July. Is that correct? It is not a very long time frame.

Mr Clark—From 1 July is the policy function, until 1 July next year when it is the final integration. I hope it would happen well before that, but that is the final date.

Senator KIRK—Under current arrangements, when you are giving policy advice, do you always produce a joint advice with the Attorney-General's Department?

Mr Clark—We produce a joint advice with the department, yes. It has been a joint operation with a memorandum of understanding in relation to the provision of that advice.

Senator KIRK—So you have not actually provided separate advice as a matter of course?

Mr Clark—No, we have not.

Senator KIRK—In that sense, the shift of policy function is not going to make a very big difference. Is that correct?

Mr Clark—It will not make a radical difference. Certainly, the intent is that there is a reference back to the practical application of policy decisions in relation to board decision making, and that is the critical thing that we are looking at now.

Senator KIRK—Does your office currently provide policy advice directly to the council of ministers?

Mr Clark—No. Papers are developed by the SCAG censorship secretariat but, once again, that is jointly prepared with the department.

Senator KIRK—From 1 July 2007, the secretariat functions are going to reside in the Attorney-General's Department, as I understand it.

Mr Clark—The secretariat officers will be departmental officers reporting to the department, but they will be located in Sydney.

Senator KIRK—Shifting from Canberra?

Mr Clark—No. The secretariat function will be formed out of the existing officers in Sydney. The people who receive and process applications will continue to do that work after the new arrangements are in place and will remain in Sydney co-located with the board.

Senator KIRK—Okay. So there will not be a significant change in that respect?

Mr Clark—I expect not.

Senator KIRK—So what is going to change? I keep going through all these matters which appear not to be changing.

Mr Clark—I hope very little change, in the sense that I won't have some of the day-to-day chief executive functions that I currently perform. They will be performed by departmental officers. But, apart from that, getting on with the business of making classification decisions will be much as it is.

Senator KIRK—Is it proposed that there will be any staff redundancies as a consequence of the change?

Mr Clark—It is not proposed to have staff redundancies. It is possible that a small number of people who may be offered a position in Canberra who may not wish to take that up might wish to take some sort of departure package. But, at this stage, that is not seen as being anything of a major part and certainly not one targeted at people losing jobs.

Senator KIRK—How many jobs will be shifting to Canberra from Sydney?

Mr Clark—We have not made any final decision on that yet. That is part of the discussions we are having.

Senator KIRK—It is all part of the negotiations.

Mr Clark—Yes.

Senator KIRK—It sounds like it is something I need to ask more detail about next time round, when you have completed the negotiations.

Mr Clark—I am very happy to provide the detail when we have it.

Senator KIRK—Perhaps it would be helpful, because you said it would be in the next month or so, didn't you?

Mr Clark—I expect so, yes.

Senator KIRK—Perhaps you could take some of these questions that I have raised on notice and answer them for me.

Mr Clark—I am certainly very happy to.

Senator KIRK—What involvement did your office have in the decision to make this change—to absorb the office into the department?

Mr Clark—That was a decision made by government, so we were not involved in that decision.

Senator KIRK—Not consulted, not asked about it?

Mr Clark—No.

Senator KIRK—When did you become aware of the decision?

Mr Clark—The Attorney-General spoke to me on 21 February and informed me of the decision. A letter came after that conversation.

Senator KIRK—You said that was on the 21st.

Mr Clark—On Tuesday the 21st.

Senator KIRK—Then the public announcement was made on the 24th.

Mr Clark—That is correct.

Senator KIRK—If you had been consulted, what would you have said?

CHAIR—I think that is asking the officers to engage in hypotheticals. If someone offers me a million dollars, what am I going to say?

Senator KIRK—No. It is a matter of fact.

CHAIR—Unfortunately, that is not the business of estimates.

Senator KIRK—No. My question was whether or not these changes are going to impact upon the work. It is not hypothetical.

CHAIR—No. Your question was, 'If you had been, what would you have said?' That is not a question the officer can answer. If you would ask a question the officer can answer, that would be good.

Senator Ellison—It is hypothetical; it is policy.

Senator KIRK—It is policy, rather than hypothetical.

CHAIR—It is hypothetical and it is policy. The minister has confirmed that is the case.

Senator KIRK—I would be happy to receive the information you give me so I can find out more detail. Thank you.

Mr Clark—It is a pleasure, Senator.

CHAIR—Thank you. That seems to conclude the questions. Thank you, Mr Clark, gentlemen.

[9.44 pm]

Office of the Privacy Commissioner

CHAIR—Welcome, Ms Curtis.

Senator KIRK—Could you give us your compliance section statistics for the year?

Ms Curtis—We have got up until about 12 or 16 May.

Senator KIRK—That is fine.

Ms Curtis—To date we are running on about the same as last year. Do you want the exact figures? We can table them.

Senator KIRK—Yes, I would like you to table them. Thank you. I take it that covers a number of complaints—waiting list types of complaints. Is it broken down into that detail?

Ms Curtis—Those are not the statistics we normally put on our website but we can provide you with some of those.

Senator KIRK—Yes, I would like that, thank you. What about hotline statistics—do you have them as well?

Ms Curtis—We have those as well as telephone inquiries and written inquiries.

Senator KIRK—Are they able to be provided tonight?

Ms Curtis—Yes.

Senator KIRK—Do you have a comparison of how the calls and complaints compare with previous years?

Ms Curtis—They are roughly the same as previous years; for the last three years they have been very similar.

Senator KIRK—I am interested to see the figures. Do you have the actual figures?

Ms Curtis—Yes, we can go through them with you now.

Senator KIRK—If you could table them that would be helpful.

CHAIR—Thank you, we will take those documents.

Senator KIRK—From just a quick look, it seems that the main increase in complaints received was between 2002 and 2003; that was when the big jump happened.

Ms Curtis—That coincides with the introduction of the private sector provisions.

Senator KIRK—Yes, I think we have discussed this before, but in the last couple of years it has been quite similar.

Ms Curtis—Almost identical.

Senator KIRK—Yes, it is surprising. Have you conducted any major investigations this year?

Ms Curtis—We have undertaken a few ‘own motion’ investigations. They are things that come to our attention either through the media or someone calls us to let us know. We have a few of those on track and some that we have closed.

Senator KIRK—Are those investigations reported and if so, whereabouts?

Ms Curtis—Generally speaking we do not report the detail of investigations. One of the provisions in the act says we conduct those investigations in private. But some of them we do report as a case note if we end up turning them into a formal investigation. We have been placing some case notes on our website at the rate of 20-odd last year and this year, to date, we have done about 10. Hopefully we will meet the commitment of about two a month for the rest of the year.

Senator KIRK—You said that you only report a certain number of them so, of the 20 last year that appeared on the website as case notes, what kind of percentage of the total investigations does that represent?

Ms Curtis—Twenty case notes out of 1,276 complaints. When we decide to do a case note it is usually because there is some new interpretation or issue that we have not had to consider before or it relates to an industry that we have not provided commentary on before, so we make a decision about whether we think it is worth while putting up a case note.

Senator KIRK—How is your funding going? How are you operating within the current funding that you have received?

Ms Curtis—In the recent budget we have received an increase in funding.

Senator KIRK—By what percentage?

Ms Curtis—Roughly it is about a 40 per cent increase. We have gone from \$5 million to \$7.1 million for the next financial year—they are rounded figures, obviously.

Senator KIRK—Where is that additional funding going to go?

Ms Curtis—We received \$6.5 million over four years and \$1.6 million for this coming financial year to address the concerns that business raised, in the review of the private sector provisions, about the need for more advice and assistance. It is also to expedite complaints and to generally assist with the community understanding their rights. Businesses said that if individuals understand their rights a bit better it means that business does not have to explain to them. So we have received \$1.6 million for that.

We have also received, over a four-year period, about \$1.3 million for our contribution to the document verification service. For the next financial year that is \$285,000. We have also received, as a one-off for the financial year, \$250,000 to work with the Australian Federal Police and the Attorney-General’s Department to develop guidelines for the AFP, under I think schedules 5, 6 and 8 of the Anti-Terrorism Act 2002, for optical surveillance, gathering information and also the search power.

Senator KIRK—Has the government consulted you in relation to the Human Services smartcard?

Ms Curtis—Yes, we have been involved in that process for some period of time, going back to when the original proposal was mooted, I think, in June 2004. Last year, when the

Department of Human Services was developing the notion of smartcards or smart technologies, we were part of the IDC that examined that. I also had a staff member seconded for three months to the Department of Human Services to help provide the secretariat to the IDC. After the decision was made that it would proceed to developing the business case, we also provided advice to the department on that process as well.

Senator KIRK—So what is your current involvement? Since it has been announced, I mean.

Ms Curtis—I met with Professor Allan Fels yesterday afternoon. We have also had discussions with the acting head of the access office. We are also in discussions about our possible ongoing relationship and how we can ensure that that works best.

Senator KIRK—Are you likely to be involved in the design of the system, in order to ensure that privacy concerns are protected?

Ms Curtis—I expect to be involved in the design to the extent of providing advice on the best way to ensure that Australians' privacy is protected.

Senator KIRK—But you are not clear as to that role yet—is that correct?

Ms Curtis—We are having discussions about a possible memorandum of understanding between our organisations and how we best can do that.

Senator LUDWIG—I asked a question of AG's yesterday in relation to the anti money laundering legislation more generally. I asked about whether the Office of the Privacy Commissioner had indicated whether they were going to do a privacy impact assessment. The answer seemed to be that it was not a matter that you were going to do; it was a matter that they were then going to provide an outsourced firm to do. Is it something that your organisation can do, or do you have a list of preferred outsourced agents that are capable of doing privacy impact assessments?

Ms Curtis—We do not generally undertake privacy impact assessments ourselves. We recommend that it is probably best done by someone independent of the agency. We do not have a list per se of those who can undertake privacy impact assessments; however, we do have a list on our website of businesses and other areas that may provide expertise on privacy matters. No doubt some of those are actually capable of undertaking privacy impact assessments as well.

CHAIR—Thank you. I think that concludes questions. Ms Curtis, Mr Pilgrim, thank you and the officers from the department.

[9.54 pm]

Office of Parliamentary Counsel

Senator KIRK—I want to ask you about the OECD report entitled *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Do you know the one I mean?

Mr Quiggin—I am not aware of the report.

Senator KIRK—It was approved and adopted by the Working Group on Bribery in International Business Transactions on 4 January this year. I raise the issue of that report

because I wondered to what extent drafts have been developed of the Anti-Money Laundering and Counter-Terrorism Financing Bill and whether or not this report has been referred to—but obviously not if you are unaware of it.

Mr Quiggin—We have been working on the anti-money laundering legislation. One of our drafters has been working on it; I have not worked on it personally.

Senator KIRK—How many drafts have there been of the anti-money laundering legislation?

Mr Quiggin—I would need to take that on notice. We have been working on the Anti-Money Laundering and Counter-Terrorism Financing Bill for a considerable period. An exposure draft was released in December last year. I understand that the exposure draft period finished on 13 April and that there is likely to be a second exposure draft of that bill.

Senator KIRK—Is the process for the second exposure draft being done at the moment?

Mr Quiggin—Work is being done to prepare that.

Senator KIRK—Is there an end date for the completion of that?

Mr Quiggin—I do not have that information.

Senator LUDWIG—Is it a T document?

Senator Ellison—We do not normally divulge that. That is a cabinet-in-confidence matter for the parliamentary business committee that deals with it. It places that designation on it; that is a cabinet committee.

Senator LUDWIG—It was worth a try, Minister. I have got it sometimes before. In terms of the workload, were there any new initiatives or new funding of your section in the budget?

Mr Quiggin—There was no new funding this year. As you may remember, last budget we received additional funding. That is additional funding across four years but there were no new policy proposals this budget.

Senator LUDWIG—What about staff turnover in your section?

Mr Quiggin—We have had a number of retirements early this year. We have been recruiting drafters and we have hired five new drafters, three of whom are fairly inexperienced and two of whom are from other drafting offices and more experienced. The turnover of drafters has remained fairly constant over numerous years.

Senator LUDWIG—What about the full complement of staff you currently have?

Mr Quiggin—We have 42 staff at the moment.

Senator LUDWIG—What has been the percentage of turnover in the last 12 months?

Mr Quiggin—I would have to take that on notice.

Senator LUDWIG—If you would not mind, please. In terms of the workload, has there been increased—do you have overtime or are they on flexitime? Do they use that?

Mr Quiggin—Our non-legal staff are mostly on flexitime and our legal staff are on what we call flexible working hours, under which they keep records of hours and we generally take some time off after sittings when additional hours have been worked through the sittings.

Senator LUDWIG—Can you have a look just on a monthly basis? Do you keep a tally of the accrued hours.

Mr Quiggin—No, we do not.

Senator LUDWIG—The flexible hours that you owe them?

Mr Quiggin—Not for drafters on flexible working hours, no.

Senator LUDWIG—Who keeps that? Do they keep that themselves?

Mr Quiggin—They have been keeping a record themselves of their working hours.

Senator LUDWIG—I wish I could do that! How do you acquit that? How do you account for it?

Mr Quiggin—We do not directly acquit it. At the end of each sittings, drafters speak to their supervisor and agree with their supervisor whether they have worked sufficient additional hours to get one or two days off.

Senator LUDWIG—In terms of the current documents, there are three types. There are those that are urgent that you are working on. How many currently are urgent or in that category that are you currently working on to bring forward within a short period of time?

Mr Quiggin—There are four categories that bills are allocated to.

Senator LUDWIG—Sorry, four.

Mr Quiggin—Category T, category A, category B and category C. As the minister said, we do not usually reveal the numbers in those categories during a sittings.

Senator LUDWIG—I thought the numbers were okay. You just would not reveal whether a particular bill was within that area.

Senator Ellison—We certainly have not revealed which bill has that—

Senator LUDWIG—I accept that—well, I don't accept it.

Mr Cornall—Mr Quiggin has said before that at the conclusion of sittings the details are provided, but not during the sittings.

Senator LUDWIG—Take it on notice, anyway, if you would not mind, Minister, in the sense of just how many are in those categories.

Senator Ellison—I will take it on notice. That has been our precedent, but I will have another look at it as to the number. Certainly, as to the designation, that is a decision of the cabinet committee.

CHAIR—We have discussed that before.

Senator Ellison—Yes, we have.

Senator LUDWIG—I keep trying, but I accept your point.

Senator Ellison—There will not be any movement on that one. As to number, I will have a look at it.

Senator LUDWIG—Thank you. I do not have any further questions.

CHAIR—Thank you, Mr Quiggin and Ms Francis. Mr Cornall, I have just been consulting with my colleagues, trying to make six agencies go into 56 minutes. Senator Ludwig has indicated to me that, as far as questions for ITSA, the Institute of Criminology and the AGS are concerned, he will place those questions on notice. I apologise for detaining the officers. Do we have the ARC here?

Senator Ellison—Yes, we do.

CHAIR—Then we will do those and then we will do CrimTrac and AUSTRAC.

[10.04 pm]

Administrative Review Council

CHAIR—Is the president here?

Ms Harrison-Smith—She could not come, unfortunately.

CHAIR—I had not been advised of that.

Senator LUDWIG—With your current work, I know that report No. 47 to the Attorney-General, *The scope of judicial review* report, has been released, and it is in my briefcase to read post estimates. In terms of the referencing of the work, who determines what work you will undertake?

Ms Harrison-Smith—That is largely a matter for the council to determine at its meetings. Alternatively, the Attorney-General can also give references to the council, but the scope of judicial review report was instigated by the council of its own volition.

Senator LUDWIG—In terms of references from the Attorney-General, how many of those have you received in the last 12 months?

Ms Harrison-Smith—None.

Senator LUDWIG—Going back a bit further, what about in the last two years?

Ms Harrison-Smith—None.

Senator LUDWIG—Let us go back a year before that, in the last three years.

Ms Harrison-Smith—We have not received any for some time. But there is no obligation for that to happen.

Senator LUDWIG—No, I accept that. Does the council inquire of the Attorney-General as to whether there is scope for work to be undertaken by the Administrative Review Council?

Mr Cornall—Yes. The council seeks to meet with the Attorney-General from time to time to discuss the issues that the council is interested in and to also ascertain areas of interest that the Attorney-General may have. Those meetings have been helpful in the council forming its own agenda. That is consistent with section 51 of the act, which states that the functions of the council are various ones, but the first one is to keep the Commonwealth administrative law system under review, monitor developments in administrative law and recommend to the minister improvements that might be made. That is the principal function of the council and that is what it does.

Senator LUDWIG—When was the last meeting of the council?

Mr Cornall—Last Friday.

Senator LUDWIG—How many meetings a year does it have?

Mr Cornall—Four meetings.

Senator LUDWIG—What is the budget that has been allocated for the Administrative Review Council?

Mr Cornall—The budget for the council for the current year is \$358,000, but that basically is the cost of staff and supply costs, such as printing costs for the scope of judicial review, because the council is housed within the department's building and the department supplies to the council all IT services, capital, computers, HR services—all the other administrative services that the council needs. It also includes travel costs of members of the council, sitting fees and the fee for the president of the council.

Senator LUDWIG—*The scope of judicial review* report has now been provided. You determine as a council the type of work you will undertake. Do you then contract some of that research work out or do you call for submissions more generally?

Ms Harrison-Smith—It can be either. Sometimes we contract work out. We contracted some of the work on the judicial review project out to a Sydney barrister. Other matters we do not contract out and we do produce discussion papers. In the case of judicial review we did both; we produced a discussion paper and contracted out some of the report on the report.

Senator LUDWIG—That is helpful to understand. Do you then have a schedule or a decision about the type of work that you might inquire into next?

Mr Cornall—Yes. We are looking at a particular project at the moment which was the subject of quite a lot of discussion last Friday as to how to scope the project. It is quite an ambitious project and we are still not completely crystal clear in our own minds exactly how the project might finally shape up. Ms Harrison-Smith has been asked to do a scoping paper to outline the sort of work that could be undertaken so that we can better define the project before it commences.

Senator LUDWIG—Are you able to say what that work is?

Ms Harrison-Smith—It relates to the administrative law principles and complex business regulation, but the detail of the project is still under consideration, as Mr Cornall has said.

Senator LUDWIG—Have you looked at the red tape task force's report?

Mr Cornall—Yes, we have.

Ms Harrison-Smith—There are synergies with that one.

Senator LUDWIG—No doubt that has given you a spark-along. I wish you well in that endeavour. I do not have any further questions. I appreciate your time. Thank you very much.

Mr Cornall—Are you aware of the membership of the council? It is very diverse.

Senator LUDWIG—I am not sure whether I had asked that before. It is usual that I ask those more general questions.

Mr Cornall—I will table the current membership in case it is of interest to you.

Senator LUDWIG—That would be helpful.

Mr Cornall—It has a lot of people you would recognise, including Professor Weisbrot, Ian Carnell, Richard Humphry, Professor Creyke, John McMillan and Garry Downes.

Senator LUDWIG—The business one interests me. I have an interest in personal property securities, but don't tell anyone!

CHAIR—Thank you, Ms Harrison-Smith.

[10.10 pm]

CrimTrac

CHAIR—Welcome, Mr McDevitt.

Mr McDevitt—Thank you.

Senator LUDWIG—I have an admission to make, Mr McDevitt: I know your brother and he has told me all about you.

Mr McDevitt—I do not know whether that is going to be good news or bad news!

Senator LUDWIG—That is what he said too! I want to get an understanding of where some of the work of CrimTrac is at. There is a range of databases—I guess you could call them that—beginning with NAFIS, EAMS and TDS and then there is CPRS which functions more broadly. What I am trying to ascertain—and I know it is an ambitious project this late at night—is in regard to a range of work undertaken by CrimTrac, particularly around databases such as ANCOR and a couple of others. It has been a while since I asked for snapshot of where CrimTrac is at with getting those projects up and running. Some of them have been running now for a while and are obviously working well; some of them, as I understand it, are still in the developmental stage; and some of them still require states to come on board to finalise them. In the short time available, could we run through where CrimTrac is at with some of them, then I want to talk about your funding arrangements.

Mr McDevitt—It is timely that you ask. I actually spoke with the minister not long ago and we issued an invitation to madam chair and the members of the committee to come to CrimTrac, and we would bring the systems up and show you through each one. Ideally, you may be available to do that. However, in lieu of that I will do my best to give you a snapshot of where we are at.

CHAIR—We will consider that as soon as we have a chance to hold a private meeting. I have not had a private meeting since we have received Mr McDevitt's correspondence.

Mr McDevitt—I will start with NAFIS. NAFIS is fully up and operational and was the first system to come on line. That was in 2001. NAFIS is a real success story. It holds about 3.1 million fingerprint records and on average there are about 270,000 person-to-person searches completed on NAFIS each year. There is also on average about 18,000 person-to-crime scene identifications made each year on NAFIS. In fact, NAFIS houses the largest palm-print database in the world. We actually have a bigger database of palm prints than, say, the US, the UK or Canada. It is a significant success and it is well recognised by police jurisdictions around the country as being highly successful. Is that enough on NAFIS?

Senator LUDWIG—Yes, thank you. I am familiar with NAFIS and understand that it is quite a success story.

Mr McDevitt—I will turn now to NCIDD. The NCIDD system of course contains digital DNA profiles which are provided by the police services. No identity details relating to the individual who provided the sample are actually stored on the national DNA database itself. So when a digital DNA sample matches against a digital DNA data profile that is stored on the database, the matching details are referred back to the police service that supplied the sample, where it can be identified.

Samples are matched in accordance with the requirements laid down in the appropriate legislation that is in effect in the state or territory of the jurisdiction that provided the sample. It is a very complex system and is used to differing extents by each of the jurisdictions. For example, some of the jurisdictions use the NCIDD system for intrajurisdictional matching only. So they are just matching within their own jurisdiction. An example of that is New South Wales, the Commonwealth, the ACT and Tasmania.

Other jurisdictions use the system for both intrajurisdictional matching and interjurisdictional matching. An example of that is the Northern Territory and Queensland. To be able to match on an interjurisdictional basis requires four conditions to be met. Firstly, both jurisdictions have to have an endorsed MOU with CrimTrac. Secondly, they need to provide CrimTrac with the relevant interjurisdictional matching table. Thirdly, they need to be able to notify us of their ability to commence interjurisdictional matching via the NCIDD, which requires an endorsed bilateral MA. Fourthly, they need to have entered all of their data onto the NCIDD.

At the moment we have a number of jurisdictions which have started interjurisdictional matching: Queensland with Western Australia, Queensland with the Northern Territory and the Northern Territory with Western Australia. Ideally, we would like to see interjurisdictional matching occurring between all jurisdictions. However, there are some legislative and policy hurdles that need to be got over before that can be fully implemented. I am pleased to say that there is a lot of progress occurring in this regard. As recently as last week I attended a users advisory group meeting which comprised representatives from all jurisdictions. A lot of effort and energy is going into trying to deal with the legislative and policy constraints that at the moment are inhibiting the sort of cross-Australian matching that we would like to see.

Senator LUDWIG—Has that been referred to the Police Ministers Council or COAG?

Mr McDevitt—The matter has been before the APMC and is before the APMC again next month. It is back on the agenda there. It is also before SCAG, as I understand it.

Senator LUDWIG—Are there some legislative undertakings that need to be honoured in the states or are there some jurisdictional difficulties?

Mr McDevitt—As I understand it, one of the major issues is the legal status of NCIDD—of the database—itself. The question is: is NCIDD itself a Commonwealth database or is it at law recognised as an amalgam of a whole set of jurisdictional databases? My understanding from speaking to some of the legal minds involved in trying to work through these issues is that the situation will be enhanced through passage of legislation to recognise the NCIDD database as being an amalgam at law.

Senator Ellison—I would add, though, that the Commonwealth has said that it does not believe legislation is necessary—that, legally, NCIDD is okay. We have a difference of opinion with New South Wales on that, as I recall, but, in the interests of moving it along, we are willing to go down that path. Quite apart from that, South Australia is yet to introduce its legislation, I think. Tasmania has introduced its legislation, but not yet passed it—I think that is correct. All other states and jurisdictions of the Commonwealth have passed the necessary legislation. The two which are lagging are Tasmania and South Australia. I have written to South Australia on several occasions. I understand that there is now some movement. So, quite apart from what New South Wales thinks, Tasmania and South Australia are behind. Some of the states are well advanced; I am on the record as saying that Queensland, the Northern Territory and Western Australia are leading the way. They are doing well. That is the position in relation to the different jurisdictions.

Senator LUDWIG—And when is a bill likely to be introduced into the federal parliament to deal with it? I did not see it on the forward program.

Senator Ellison—I think that instructions and drafting have gone for that, but I will have to see if AGD—

Senator LUDWIG—We had the drafters, but—

Senator Ellison—Yes, I know; we had better ask them. We will take that question on notice and let you know, but we stress that we do not believe it is necessary; our legal advice is that it is not necessary.

Senator LUDWIG—I accept your view. I probably also accept New South Wales's view. Sometimes a belt-and-braces approach is the best way forward.

Senator Ellison—In any event, some of the jurisdictions have been slow in coming on board. You can see it with some of those states that are well advanced—and some of them are not contesting the legality, either. The point that is made by New South Wales is not shared by all the states.

Senator LUDWIG—You will forgive me if I do not comment. Mr McDevitt, the next database?

Mr McDevitt—The next database is the CPRS database, which is the CrimTrac Police Reference System. In fact, this is possibly the most exciting of all the databases in terms of what it can deliver operationally in bringing information immediately to operational police across the country. The first element of the CrimTrac Police Reference System is known as the minimum nationwide policing profile, or MNPP, and the MNPP has the capability to provide Australian police agencies with instant access to comprehensive and correlated national information on persons of interest. So you have a system that revolves around a person being on it because they are of interest. That does not necessarily mean that they are a criminal. For example, an involvement could be something like being a missing person, which is one of the 11 involvements that we have at the moment; an individual could be recorded on the system for that particular involvement. We had a trial of the MNPP involving New South Wales and Victoria which ended on 30 June 2005. The evaluation of the trial was enormously successful, and drew some fantastic praise from the operational police who were using the system during the trial period.

In October 2005 the APMC agreed to support a national roll-out of a production-strength system of the MNPP. We have now put together a comprehensive business case and recommended a cost-sharing arrangement for nationwide completion of the project. That cost-sharing arrangement will go before the next APMC and then, hopefully, upon its approval, we will start the process of rolling out MNPP across the jurisdictions.

The reality is that that will need to happen progressively. There is a lot of work in terms of connectivity to make that occur—to actually get MNPP linked in with the current systems that various jurisdictions have. So what it means in reality is that probably the most likely scenario is that Victoria and Tasmania will come on board first, possibly by the end of this calendar year, and then progressively the other jurisdictions will come on, finishing with New South Wales, the Northern Territory and Queensland by mid-2008.

As I say, and just to confirm the value of this system, it is light-years in front of the current mainframe systems in terms of the national names index system that operational police had been reliant on until the evolution of this system. So it gives considerably richer information to operational police. Again, as an example, if we turn back to the issue of missing persons, say, at the moment on the NNI system, operational police officers will just get a record which indicates that a person is recorded as missing. They would then have to go back to the relevant jurisdiction to get the details. On the new system of MNPP, that will be immediately available for operational police: when and where the person went missing, the possibility of a photograph of the missing person being downloaded, access to full details of the missing persons report and so on. So much richer information across a whole series of involvements will be available.

Senator LUDWIG—Will it be able to be searched other than by name—in other words, can it use other indicia?

Mr McDevitt—My understanding is that it can. You can drill down on a whole range of search criteria within the system. So it is actually a very flexible system. For example, you could drill down on issues of warrants, warnings, bail conditions, names, aliases, physical descriptions—you could use all those sorts of things to search the system. The other elements of the CPRS, outside of MNPP, will be things such as vehicles, firearms and so on. Ultimately we are hoping that, under the CPRS umbrella, you will get linkages between a person of interest and a vehicle of interest or a firearm of interest and so on. But of course that work will require business cases to be prepared and go through the board of management and then be prioritised before they go to APMC for endorsement.

Senator LUDWIG—And the national criminal history record checking?

Mr McDevitt—The use of the national criminal history record checking system has grown quite significantly in recent times. I can get you some statistics—

Senator LUDWIG—I am happy for you to take these on notice. While I understand the basic operation, I was more keen to understand how many checks were performed per year, broken down by agency and/or the private sector, and the total revenue from those agencies and the private sector. One of the other matters I was interested in was the cross-jurisdictional matching and whether it is still occurring. My understanding is that some states do not as yet have cross-jurisdictional matching, but I would be happy to be apprised of that.

Mr McDevitt—I will turn to the first part of your question first. The numbers of checks processed by CrimTrac and the police agencies for the 2004-05 financial year were 1.55 million checks. Up until March of the 2005-06 financial year, there were 1.51 million checks, and there is a forecast to the end of this financial year in the order of 1.81 million checks. For the 2006-07 financial year, we have forecast in the order of 1.79 million checks.

Obviously, all of the police agencies can access the system. There are also a number of non-police law enforcement agencies which we conduct checks for. There is an accreditation process that an agency needs to go through before it can become accredited to do checks. If they do 500 or more checks a year, they can apply to be accredited with CrimTrac and come directly to us to do their checks. We have organisations such as Australia Post, the Sports Commission, the Taxation Office, Child Support Agency, DOFA, DIMA, Department of Treasury, Customs Service and a whole series of state and territory agencies, primarily education and community development departments and so on. Then there are three non-government entities that are also accredited, which all happen to be in South Australia. The number of agencies seeking accreditation is growing.

The last part of your question was in relation to—

Senator LUDWIG—Cross-jurisdictional matching.

Mr McDevitt—I am not sure what you mean by that.

Senator LUDWIG—I will come back a bit, then. The last time I looked at the criminal histories database—it might have changed since then—there was a difference between the states as to how criminal histories, spent convictions and the like are regarded. Now you have all the states sharing that information; is that right? But it may not necessarily be uniform, because some states have different views about whether a conviction is spent. There are some definitional problems. Has any of that been resolved? If you are in Queensland, for argument's sake, can I search the criminal histories database for Victoria or Tasmania?

Mr McDevitt—You are right; there is different spent conviction legislation across the country at the moment, although there is some work occurring, as I understand it, looking into the possibility of moving to a single system or agreement on spent conviction legislation. At the moment, agencies and third parties that hold the information are responsible, obviously, for storing it securely and in accordance with applicable legislation and standards. We are basically just an information broker. If a check is conducted from one jurisdiction and there is a match on the name or the details that we are given with another jurisdiction, the request or the check goes to that jurisdiction and the rules, spent conviction legislation and constraints of that jurisdiction then apply. So a reply that comes back from, say, New South Wales will contain only the information that can be released under the New South Wales spent conviction legislation, and that is then married up with other jurisdictions and so on. That sort of vetting process, as I understand it, occurs in each of the jurisdictions according to their particular rules and constraints around spent convictions.

Senator LUDWIG—Are you conducting currently a review of the DNA database?

Mr McDevitt—This issue came up, I think, in questions on notice. As you know, I have only been at CrimTrac for four months during which time I have learned quite a deal more about the system itself. I have to say that I am reconsidering having a post-implementation

review at the moment. We went out for expressions of interest to conduct a post-implementation review of the technical aspects of the system, given that a couple of jurisdictions were engaged in interjurisdictional matching. I am still trying to work out whether it is good value for money to go out and do the PIR now or whether we should wait until we have additional jurisdictions engaged in interjurisdictional matching, which would enable us to get a more complete PIR. If we go out now, obviously the first thing to come back from whoever does the review will be: ‘My review is limited because we have only a limited number of jurisdictions at this time doing interjurisdictional matching.’ However, there certainly will be a review; there is no doubt about that. It is just a matter of when we will be best placed in terms of timing to conduct that review in terms of getting best value for money.

Senator LUDWIG—Although the database went live about four years ago, until you can get cross-jurisdictional matching amongst the states and the impediment—which I think the minister mentioned—resolved, there is probably little value in going out to the market for a review. Is what you are saying?

Mr McDevitt—I think we definitely would get some value out of what is occurring now, but we would get better value if we waited a little longer and had at least a couple of additional jurisdictions actively engaged in interjurisdictional matching.

Senator LUDWIG—Let alone cross-jurisdictional matching.

Mr McDevitt—Sorry, interjurisdictional matching, in matching across.

Senator LUDWIG—Sorry, I thought you said ‘intra’, but upon reflection it was ‘inter’. There is another database, isn’t there?

Mr McDevitt—There is the ANCOR database, which is a web-based system designed to assist police to case manage and share mandatory information about registered persons, as required by legislation. The current status of ANCOR is that we have in the order of 3,500 persons registered on the system. It is in use by all jurisdictions, other than South Australia and Tasmania. With South Australia, the issue is around the passage of legislation. With Tasmania, it is my understanding that they are keen to come on board with the ANCOR system. We will be going through an exercise with them around audit of records on the system and so on. I am confident that that will come back with a clean bill of health and we will soon see Tasmania uploading onto the ANCOR system as well.

The system is up, it is functional, it is working well and it is doing the job that it was designed to do. We are looking to bring some additional functionality into ANCOR, which will be investigation analysis tools that are able to identify links and relationships between people, addresses and so on, and a mapping function. That additional functionality is in the pipeline for ANCOR.

There are two more possible enhancements that we will need to build up business cases and get approval from the board of management to go ahead with. They are things like enhancing the system so it can cope with additional categories of offenders. For example, in the Tasmanian jurisdiction, where you might have a situation where the victim is an adult and the legislation that they have is about being able to register those offenders as well. So we are looking at being able to include additional categories of offenders and also additional

functionality in relation to having automated alerts when information relating to a registered person changes. They are all of our key systems.

CHAIR—Thank you, Mr McDevitt. We look forward to making a visit to Lyneham.

Mr McDevitt—Thank you, Madam Chair.

[10.41 pm]

Australian Transaction Reports and Analysis Centre

CHAIR—Welcome, Mr Jensen and Mr Mazzitelli.

Senator LUDWIG—Regarding the budget item ‘National Security: anti-money laundering and counter-terrorism financing—providing interim funding’: is this measure inclusive of the new regulatory powers contained in the Anti-Terrorism Act (No. 2) 2005 and the draft financial transactions act that is currently out?

Mr Jensen—I will get Mr Mazzitelli to answer that.

Mr Mazzitelli—No, it is not.

Senator LUDWIG—What does it relate to?

Mr Mazzitelli—The interim funding relates to the draft anti-money-laundering and counter-terrorism-financing legislation.

Senator LUDWIG—So these measures are not contained in the draft report?

Mr Jensen—I am sorry; I am not sure that we understand the question.

Senator LUDWIG—How much new money is there that is heading towards AUSTRAC? We will come back a bit. I was trying to short cut it as time is running out a little bit, but we will see how we go.

Mr Mazzitelli—The total new measure funding for AUSTRAC for the 2006-07 financial year is \$13.266 million.

Senator LUDWIG—How much of that is earmarked for what I will call the new regulatory role that AUSTRAC will play? I am happy to be corrected on the terminology I use. That is for the anti-money-laundering effort.

Mr Mazzitelli—The figure for AUSTRAC is \$9.2 million.

Senator LUDWIG—The remainder is split up for what purposes?

Mr Mazzitelli—The remainder of the funding has been apportioned to the Attorney-General’s Department.

Senator LUDWIG—Is it earmarked for a particular purpose, or is it general funding within AUSTRAC?

Mr Jensen—Just coming back to the total figure, there are two components to it. There is funding that is specifically for the implementation of the amendments to the Financial Transaction Reports Act resulting from the Anti-Terrorism Act. The other component is interim funding to commence the implementation process for the Anti-Money Laundering and Counter-Terrorism Financing Bill.

Senator LUDWIG—So you have those two separate amounts?

Mr Jensen—Right. They are the two separate amounts that we have within the budget at the moment.

Senator LUDWIG—They are what you have just given me?

Mr Jensen—That is right.

Senator LUDWIG—The smaller amount relates to the first initiative and the larger amount relates to the second?

Mr Jensen—That is correct, yes.

Senator LUDWIG—That is helpful. Will that include additional staff?

Mr Jensen—It does include additional staff. The funding for the Anti-Terrorism Act amendments will mean 10 new staff. Under the anti money laundering reform program, if I can refer to it as that, there will be 38 staff.

Senator LUDWIG—In terms of the regulatory responsibilities that you are going to take on for the anti money laundering, where are you at with that? Is there a business case being made? Is there a strategy in place? The exposure draft is out at the moment. I take it you are probably busy finalising the rules at the moment. I have been told earlier that there might be five or six. I suspect they have not quite finalised the drafting. I understand that AUSTRAC has taken on some of those functions.

Mr Jensen—That is correct. There is a range of rules and AUSTRAC has primary responsibility for those. But we are working with the Attorney-General's Department and with industry in developing those rules. We have had quite a number of meetings between the three of us, if I can put it in that context, in progressing the drafting of those rules. Some of them have been largely completed but there are still some minor components.

The funding for the anti money laundering reform program is interim funding. The reason for that is that the bill has not been finalised at this point and the rules have not been finalised to underpin the bill. So it is very difficult to determine exactly what AUSTRAC's entire role will be in the future until that legislation is finalised. So the funding has been given to us to enable us to start moving in that direction. A large part of that funding will be for the regulatory component, but there are associated functions in other areas within the organisation that receive components of the funding as well.

Senator LUDWIG—When is it likely that the final drafting of those rules will be completed?

Mr Jensen—We are continuing to work on the current rules. We hope that some of them will be finalised at a meeting on 5 June with the Attorney-General's Department and the industry. Others will be completed subsequent to that. Some are dependent on the bill itself. We cannot finalise the rules until the components of the bill have been drafted. So we are awaiting some components there.

Senator LUDWIG—That is the final exposure draft. It is not the current one that is out there?

Mr Jensen—It is an iteration.

Senator LUDWIG—It will be the final iteration, or at least one of the final iterations, if I can more correctly call it that.

Mr Jensen—That is right. In fact, rules will continue to be developed into the future. I guess it is an evolving fact that we will need to keep working on those rules over a period of time. The rules have been set up that way under the bill so that they can be changed when necessary, or new rules created as time goes by. So it is not something that will all be completed now and then that is the end of it. It will be a continuing process for us.

Senator LUDWIG—You are then required, as part of those rules, to register the cash dealers. What work has been undertaken on that?

Mr Jensen—Under the Anti-Terrorism Act amendments to the Financial Transaction Reports Act the registration is of remittance dealers. We can now commence, with that funding, to put into place our processes to develop that register and get it in place. That legislation does not take effect until early December—I think it might be the 13th. I am not sure of the exact date.

Senator LUDWIG—Yes. There is a lead time.

Mr Jensen—There is a lead time on that. The funding will enable us to do what we need to do in the next six months to have that operational as of that date.

Senator LUDWIG—So should I come back and ask you towards the November sittings about how we are going with that one?

Mr Jensen—Certainly, we would be pleased to give you an update.

Senator LUDWIG—I might come back at that point in time. In terms of the current databases that you have—the distribution of work may be a better way of putting it—I am not sure whether this committee has seen some of that work. If this committee has received it, I will withdraw the question, but what I was interested to recall is the types of information that are sought by the ATO, Customs and those types of organisations from AUSTRAC. In other words, you provide a report or they can draw data from you about financial transactions. I'm terrible in the way I might describe it, but I'm sure, Mr Jensen, that you can help me over the more technical terms.

Mr Jensen—I am not exactly sure what you are asking me, but I will try and—

Senator LUDWIG—I will do it this way: you get suspicious transaction reports; you do an analysis of those and you also get information from banks, through their SWIFT system.

Mr Jensen—That is correct.

Senator LUDWIG—And there is a range of data that you then hold. As a consequence, Customs, for example, might come along and ask, 'We're looking at a particular issue; what have you got on that?' That is a request for particular data. They might then have access to and run their own analysis of your database as well, depending on the licence that you might arrange for them to have. You then record that activity as well. Is that a reasonable summary?

Mr Jensen—That is a good summary of the way it works. They have online access, which is them making their own inquiries of the database on matters that they have information on, such as names, addresses, account numbers et cetera. We analyse our database in a range of

ways—I heard you mention earlier today our data mining techniques—applying that to the data. We come up with what we call items of interest. We put those into assessments and make those assessments available to the law enforcement agencies. So there are actually two ways in which they can get the information.

Senator LUDWIG—Yes, that is how I understood it. Of those, can you indicate as far as you are able, in terms of the ATO, Customs, ASIC, the AFP and ACC, the number of online searches that they might do? I think you log that, anyway, so that you can provide that. I know that some of it is provided in the annual report. I was looking for a more updated figure. Then the types of reports that you generate for Customs, ATO, AFP, ACC. Unfortunately, I have been asking this a lot, Mr Cornall, and you might be wondering about the reason. It will become apparent eventually.

Mr Jensen—On page 28 of our 2004-05 annual report, and in every annual report, we break down the figures for the tax office, across the Australian government agencies, social justice agencies and state and territory law enforcement agencies. We break those down in terms of logons to the system—for example, the Australian Taxation Office had 46,800 logons in that financial year. The next figure is for the total number of searches—425,791. The figure for name searches alone was 106,431. The other figure is for searches such as account numbers, perhaps addresses—319,000. We then break it down into a range of other things such as alerts, if they want a name put onto the system. There were 44 of those. The figure for our data warehouse searches, which is predominantly looking at industry occupation type activities, or something like tax havens perhaps, was 4,700. So the total logons across the 28 agencies that we provide data to, and who have access to the data, was 156,000-plus in that financial year. The total searches were just over two million for that financial year. For online searches, there were approximately 2,500 people who had online access at their desktops to our systems.

Senator LUDWIG—To gain online access do you accredit the agency, the individual or both?

Mr Jensen—I have a memorandum of understanding with the chief executive officer of each of the agencies. Within the schedules to those memorandums of understanding are a range of positions, the number of those positions and the type of access they can have. For example, certain people within the agencies can have full access to the database and some state agencies only have state related matters; some will have access to suspicious transaction reports and some will not have access to them. We negotiate that with the particular agency, and then the CEO and myself will sign off on that.

Senator LUDWIG—What access does Customs have?

Mr Jensen—I do not have the detail of the exact—

Senator LUDWIG—I am happy for you to take it on notice.

Mr Jensen—Yes, we will take on notice.

Senator LUDWIG—And ASIC, ATO and APRA?

Mr Jensen—APRA does not have access to our data. They are not an agency under the provisions of the legislation at this stage.

Senator LUDWIG—I would like to continue but I am happy to put the remaining questions on notice. Without a spill-over day it makes it a little bit harder to be able to arrange—

Senator Ellison—I will get a violin!

CHAIR—That is a very impressive rolling of the eyes.

Mr Jensen—I am happy to answer any questions as long as we can.

Senator Ellison—Here we are, at the end of the day, having done two days of A-G's very successfully, and very thorough questioning—it has worked out well.

Senator LUDWIG—Thank you.

Senator Ellison—I am frightened that you say you need a spill-over day.

Senator LUDWIG—If you want to give me another half-hour tonight I am happy to fill it.

Senator Ellison—Why don't we take questions on notice?

Senator LUDWIG—Thank you, Minister. That is a very wise thing to say.

CHAIR—Mr Cornall, as you recall, the agreed date for the receipt of answers to questions taken on notice is la fete de Bastille.

Mr Cornall—14 July.

CHAIR—That is correct. We would appreciate the department's cooperation with that. I think there are quite a significant number, actually.

Mr Cornall—I would not be surprised.

CHAIR—I know we always do, but I think we have outdone ourselves.

Senator Ellison—We normally top the whole estimates list.

CHAIR—Yes, and not necessarily by trying—it is just a matter of process. So, may I thank you, Minister, and you, Mr Cornall, and the officers of all of the associated agencies and the department. I also want to place on the record that this is the last estimates process with which one the officers of the secretariat will be assisting. Mark Stevenson has been a longstanding estimates officer and has in particular helped me and a number of secretaries over recent times with the estimates process. He would be well known to the department, the agencies and the officers of senators and ministers. I really want to thank Mark for his diligence and his efficiency in making sure our estimates do work as smoothly as they do.

Senator LUDWIG—I want to associate myself with those remarks.

CHAIR—Thank you, Senator Ludwig. After four very long days, can I thank the parliamentary attendants—and Norm in particular—for looking after us so well, and our sound and vision people—thank you very much. I declare these estimates closed.

Committee adjourned at 10.58 pm