



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS
LEGISLATION COMMITTEE

Estimates

TUESDAY, 18 OCTOBER 2011

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE
LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Tuesday, 18 October 2011

Senators in attendance: Senators Abetz, Brandis, Cash, Crossin, Fifield, Furner, Humphries, Kroger, Ludlam, Mason, Marshall, Parry, Pratt, Rhiannon, Siewert, Wright, and Xenophon

ATTORNEY-GENERAL**In Attendance**

Senator Ludwig, Minister for Agriculture, Fisheries and Forestry and Minister Assisting the Attorney-General on Queensland Floods Recovery

Attorney-General's Department

Mr Roger Wilkins AO, Secretary

Ms Elizabeth Kelly, Deputy Secretary, Strategic Policy and Coordination Group

Mr Tony Sheehan, Deputy Secretary, National Security and Criminal Justice Group

Mr David Fredericks, Deputy Secretary, Civil Justice and Legal Services Group

Outcome 1—A just and secure society through the maintenance and improvement of Australia's law and justice framework and its national security and emergency management system**1.1 Attorney-General's Department Operating Expenses—Civil Justice and Legal Services****Access to Justice Division**

Ms Louise Glanville, First Assistant Secretary

Ms Karen Moore, Assistant Secretary, Justice Policy and Administrative Law Branch

Ms Janet Power, Assistant Secretary, Family Law Branch

Ms Kerri-Ann Smith, Acting Assistant Secretary, Marriage and Intercountry Adoption

Ms Sue Prunster, Acting Assistant Secretary, Federal Courts Branch

Ms Sam Byng, Principal Legal Officer, Marriage and Intercountry Adoption

Civil Law Division

Mr Matt Minogue, First Assistant Secretary, Civil Law Division

Ms Toni Pirani, Assistant Secretary, Business Law Branch

Mr David Bergman, Assistant Secretary, Personal Property Securities Branch

Ms Jane Fitzgerald, Assistant Secretary, Classification Branch

Ms Janean Richards, Assistant Secretary, Office of Legal Services Coordination

Constitutional Policy and Law reform

Mr Andrew Walter, Acting First Assistant Secretary

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

International Law and Human Rights Division

Mr Bill Campbell QC, General Counsel International Law

Mr Greg Manning, First Assistant Secretary

Mr Matt Hall, Acting First Assistant Secretary

Ms Annemarie Devereux, Assistant Secretary, International Human Rights and Antidiscrimination Branch

Mr John Reid, Assistant Secretary, International Law, Trade and Security Branch

Mr Mark Jennings, Senior Counsel

Social Inclusion Division

Ms Sarah Chidgey, Acting First Assistant Secretary

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Catherine Fitch, Assistant Secretary, Indigenous Policy and Service Delivery Branch

Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Office of Legislative Drafting and Publishing

Mr John Leahy PSM SC, First Assistant Secretary

1.2 Attorney-General's Department Operating Expenses—National Security and Criminal Justice

Criminal Justice Division

Mr Iain Anderson, First Assistant Secretary

Mr Anthony Coles, Assistant Secretary, Criminal Law and Law Enforcement Branch

Mr Doug Rutherford, Acting Assistant Secretary, Border Management and Crime Prevention Branch

National Security Capability Development Division

Mr Kym Duggan, First Assistant Secretary

Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch

Ms Raelene Thompson, Assistant Secretary, National Security Training, Education and Development Branch

Mr Michael Pahlow, Assistant Secretary, Counter-Terrorism Capability Development Branch

Ms Doris Gibb, Assistant Secretary, National Critical Infrastructure Capability Branch

Emergency Management Australia

Mr Campbell Darby DCS AM, Director General

Ms Diana Williams, Assistant Secretary, Security Coordination Branch

Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch

Ms Kerryn Vine-Camp, Assistant Secretary, Crisis Coordination Branch

Ms Janette Dines, Assistant Secretary, National Disaster Recovery Programs Branch

International Crime Cooperation Division

Ms Maggie Jackson, First Assistant Secretary

Ms Alex Taylor, Assistant Secretary, International Crime—Policy and Engagement Branch

Ms Catherine Hawkins, Assistant Secretary, International Legal Assistance Branch

Ms Kelly Williams, Special Adviser, International Crime Cooperation Central Authority

National Security Resilience Policy Division

Mr Mike Rothery, First Assistant Secretary

Mr Andrew Rice, Assistant Secretary, Identity Security Branch

Mr Chris Collett, Assistant Secretary, Emergency Management Policy Branch

Mr Duncan Anderson, Acting Assistant Secretary, Natural Disaster Recovery Policy Review Taskforce

Ms Carolyn Patteson, Assistant Secretary, E-Security Policy and Coordination Branch

Mr David Campbell, Director, CERT Australia

Mr Peter Wythes, Director, Protective Security policy Section, Critical Infrastructure Protection Branch

Mr Paul Stoddart, Director, Critical Infrastructure Policy, Critical Infrastructure Protection Branch

National Security Law and Policy Division

Mr Geoff McDonald PSM, First Assistant Secretary

Ms Tamsyn Harvey, Assistant Secretary, AusCheck Branch

Ms Jamie Lowe, Assistant Secretary, Countering Violent Extremism Branch

Mrs Natalie Pearce, Acting Assistant Secretary, National Security Policy Branch

Ms Tiffany Karlsson, Acting Assistant Secretary, Security Law Branch

Mrs Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

1.3 Justice Services

Access to Justice Division

Ms Louise Glanville, First Assistant Secretary

Ms Karen Moore, Assistant Secretary, Justice Policy and Administrative Law Branch

Ms Janet Power, Assistant Secretary, Family Law Branch

Ms Kerri-Ann Smith, Acting Assistant Secretary, Marriage and Intercountry Adoption

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Mr John Reid, Assistant Secretary, International Law, Trade and Security Branch

Mr Mark Jennings, Senior Counsel

Office of Legislative Drafting and Publishing

Mr John Leahy PSM SC, First Assistant Secretary

1.4 Family Relationship Services

Access to Justice Division

Ms Louise Glanville, First Assistant Secretary

Ms Karen Moore, Assistant Secretary, Justice Policy and Administrative Law Branch

Ms Janet Power, Assistant Secretary, Family Law Branch

Ms Kerri-Ann Smith, Acting Assistant Secretary, Marriage and Intercountry Adoption

Ms Sue Prunster, Acting Assistant Secretary, Federal Courts Branch

Ms Sam Byng, Principal Legal Officer, Marriage and Intercountry Adoption

1.5 Indigenous Law and Justice

Social Inclusion Division

Ms Sarah Chidgey, Acting First Assistant Secretary

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Catherine Fitch, Assistant Secretary, Indigenous Policy and Service Delivery Branch

Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

1.6 National Security and Criminal Justice

Criminal Justice Division

Mr Iain Anderson, First Assistant Secretary

Mr Anthony Coles, Assistant Secretary, Criminal Law and Law Enforcement Branch

Mr Doug Rutherford, Acting Assistant Secretary, Border Management and Crime Prevention Branch

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Ms Tiffany Karlsson, Acting Assistant Secretary, Security Law Branch

Mrs Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

People, Information and Technology Division

Ms Jane Bailey, General Manager

Strategic Policy and Coordination Group

Finance and Property Division

Mr Stephen Lutze, General Manager

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Priorities and Coordination Division

Mr Andrew Walter, Acting First Assistant Secretary

Dr John Boersig PSM, Assistant Secretary, Cabinet and Ministerial Coordination Branch

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Mr Craig Harris, Assistant Secretary, Strategic Communication Branch

People, Information and Technology Division

Ms Jane Bailey, General Manager

Australian Commission for Law Enforcement Intelligence

Mr Philip Moss, Integrity Commissioner

Mr Stephen Hayward, Executive Director

Australian Crime Commission

Mr John Lawler APM, Chief Executive Officer

Ms Jane Bailey, Executive Director, People, Business, Support and Stakeholder Relations

Dr David Lacey, Acting Executive Director, Intervention and Prevention

Australian Customs and Border Protection Service

Mr Michael Carmody, Chief Executive Officer

Mr Michael Pezzullo, Chief Operating Officer

Ms Marion Grant, Deputy Chief Executive Officer, Border Enforcement

Ms Jan Dorrington—Acting Deputy Chief Executive Officer, Passenger and Trade Facilitation

Mr Steven Groves, Chief Finance Officer

Ms Raelene Vivian, National Director, Cargo

Ms Gayle Brown, Acting National Director, Passengers

Ms Sharon Nyakuengama, Acting National Director, Trade and Compliance

Rear Admiral Tim Barrett, Commander, Border Protection Command

Mr Demetrio Veteri, Deputy Commander, Border Protection Command

Ms Roxanne Kelley, National Director, Enforcement and Investigations

Mr Nigel Perry, National Director, Maritime Operations Support Division

Mr John Gibbon, Acting National Director, Intelligence and Targeting

Ms Teresa Conolan, Acting National Director, People and Place

Mr Joe Attanasio, Chief Information and Knowledge Officer, IT Division

Mr Richard Willcock, National Director, Strategy, Risk and Coordination

Ms Kim Farrant, National Manager, International Trade Remedies

Mr John Bracic, Director Operations 1, International Trade Remedies

Mr Geoff Johannes, National Manager, Trade Services

Ms Sarah Major, National Manager, Trade Policy and Regulation

Australian Federal Police

Mr Tony Negus, Commissioner

Mr Andrew Wood, Chief Operating Officer

Mr Michael Phelan, Deputy Commissioner, Close Operations Support

Mr Andrew Colvin, Deputy Commissioner, Operations

Mr Peter Drennan, Deputy Commissioner, National Security

Mr Frank Prendergast, Assistant Commissioner, International Deployment

Mr Neil Gaughan, Assistant Commissioner, National Manager High Tech Crime Operations

Australian Government Solicitor

Mr Ian Govey, Chief Executive Officer

Mr David Riggs, Chief Financial Officer

Australian Human Rights Commission

The Hon. Ms Catherine Branson QC, President and Human Rights Commissioner

Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner

The Hon. Susan Ryan AO, Age Discrimination Commissioner

Ms Padma Raman, Executive Director

Mr Graeme Innes AM, Disability Discrimination Commissioner

Dr Helen Szoke, Race Discrimination Commissioner

Australian Law Reform Commission

Professor Terry Flew, Commissioner

Australian Security Intelligence Organisation

Mr David Irvine AO, Director General of Security

Mr David Fricker, Deputy Director General

CrimTrac

Mr Doug Smith, Chief Executive Officer

Mr Jeff Storer, Deputy Chief Executive Officer

Mr Darin Brumby, Chief Information Officer

Ms Yvette Whittaker, Chief Finance Officer

Ms Nicole Mayo, Director, Policy and Legal

High Court of Australia

Mr Andrew Phelan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Jeff Smart, Manager Corporate Services

Insolvency and Trustee Service Australia

Ms Veronique Ingram, Chief Executive and Inspector-General in Bankruptcy

Mr Gavin McCosker, National Manager

Mr Bob Morison, Chief Finance Officer

Mr Matthew Osborne, Principal Legal Officer

Office of the Director of Public Prosecutions

Mr Chris Craigie SC, Director

Mr John Thornton, First Deputy Director

Ms Stela Walker, Deputy Director, Corporate Management Branch

Office of Parliamentary Counsel

Mr Peter Quiggin PSM, First Parliamentary Counsel

Ms Susan McNeilly, General Manager and Chief Financial Officer

Committee met at 9:00

CHAIR (Senator Crossin): I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2011-12 and related documents for the Attorney-General and the Immigration and Citizenship portfolios. The hearing today is supplementary to the budget estimates hearings. The committee has before it a program listing agencies and outcomes relating to matters of which senators have given notice. The committee has set 2 December 2011 as the date by which answers to questions on notice are to be returned and 25 October 2011 as the date by which senators should lodge written questions on notice.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. The secretariat have copies of those if you need them. I draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying

the process by which a claim of public interest immunity should be raised. That will be incorporated into *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
 - (1) If:
 - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
 - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.
 - (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
 - (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
 - (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
 - (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
 - (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
 - (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
 - (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that

conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

Can I just remind officers to make sure that your nameplate is in front of the microphone, because Hansard need to be able to see it to identify you. I want to remind everyone in the room—everybody in the room—to turn off their mobile phones or put them on silent, please.

We have indicative time frames on the program and we are going to try and stick to those as best we can, considering we have only one day for the Attorney-General's portfolio. I draw people's attention to the fact that this committee has an hour and a half for dinner, from 6:30 pm to eight o'clock, as we strive for better family-friendly work practices in this building. Having said all that as the chair, I now welcome Senator Joe Ludwig, the Minister for Agriculture, Fisheries and Forestry, here today representing the Attorney-General, Mr Robert McClelland; and the Minister for Home Affairs and Minister for Justice, Mr Brendan O'Connor. Minister, do you have an opening statement before we get started?

Senator Ludwig: No, thank you, Chair.

CHAIR: Okay. Mr Wilkins, I welcome you as well. Do you have an opening statement for today, or did you want to provide that later?

Mr Wilkins: No, I am right, thanks, Chair.

CHAIR: Good. We will start with the Human Rights Commission.

Australian Human Rights Commission

[9:03]

CHAIR: I welcome Ms Branson and, in particular, the two new commissioners that you have with you: the Hon. Susan Ryan, who is the new Age Discrimination Commissioner; and Dr Helen Szoke, the new Race Discrimination Commissioner. On behalf of the committee, I welcome you both. I welcome the other commissioners back as well, but I am particularly going to pay attention to our two new commissioners and of course note that they are both women, so that is very exciting. Ms Branson, welcome and over to you. Do you have an opening statement?

Ms Branson: Thank you very much, Madam Chair, and good morning to you and the committee. The only opening statement I was going to make was to introduce the two new commissioners; you have done that for me, thank you very much. Could I just point out, for those members of the committee who are not aware, that the Hon. Susan Ryan is Australia's first ever Age Discrimination Commissioner. The legislation did not previously provide for an Age Discrimination Commissioner. So we are delighted to welcome her to the commission and we thank the Sex Discrimination Commissioner, Elizabeth Broderick, who previously assumed responsibility for age, although she was not technically an age discrimination commissioner. Dr Helen Szoke has joined us, as you said, Chair, as Race Discrimination Commissioner. That is a position that was previously filled by Mr Graeme Innes, together with the position of Disability Discrimination Commissioner. So I also thank him for his work in that area and say how pleased we are now that he is able to concentrate more particularly on disability discrimination and how pleased we are to have Dr Helen Szoke concentrating on race discrimination.

CHAIR: That is great. Thanks very much. We will go to questions. Senator Fifield.

Senator FIFIELD: If I could direct my questions to Mr Innes this morning in relation to the Disability Discrimination Act which, as you know, allows the Attorney-General to make standards on particular topics. My questions go to the transport standards and the premises standards as they relate to transport, rail transport and public transport in particular. As you would be aware, the standards specify minimum accessibility requirements, but the transport industry is a little unique. I guess you hear that a lot. Most sectors in industry say, 'We love standards but we're unique, we're special.' I think in the case of transport there are some particular circumstances which do make them unique which, I think, you share that view on.

For the benefit of colleagues I will share one instance before I put my question to Mr Innes. In the transport standards for instance lighting at train stations must be 150 lux minimum at entrances, passages and walkways but the recommended lighting for driver safety is 42 lux. So you have a conflict between what is good for accessibility and what is good for safety.

I know, Mr Innes, that you have been working with the Australian Railway Association on some ways to address this particular conflict and that you have written to the Australian Public Transport Jurisdictional Committee secretariat on the subject, in particular supporting legal recognition of the accessible rail services code of practice which has been developed. What I seek your guidance on is how that code of practice, which has come about through discussions between yourself, the Australian Railway Association and other organisations, can actually come into being? Does that require the Attorney-General to make some legislative changes to the Disability Discrimination Act to allow a supplementary compliance mechanism?

Mr Innes: The short answer to your question is, yes. At this stage, whilst the Australian Railway Association and peak disability organisations have been working on the development of this code, in fact, it has no legal status but is a commitment, which industry and disability organisations seek to make, to address some of the issues where compliance with the standards is problematic given the need to comply with other areas of law. The example that you have already given is one of the very relevant ones. It is also to clarify some areas where the standards may not cover or may not cover adequately. If such a code were to have any legal effect, there would need to be changes to the Disability Discrimination Act to allow for some form of co-regulation. I understand that that is one of the matters that the government is giving consideration to in the exercise on which it is currently embarked regarding consolidation of discrimination legislation.

Senator FIFIELD: There is a time pressure of sorts in relation to this because I think you or the commission have been granting exemptions to the rail industry, to the public transport sector, that I think expired in December of this year. Is that right?

Mr Innes: I think it is December. It might have been January of next year, because I recall that we granted some of those exemptions very close to Christmas last year. It is either December or January.

Senator FIFIELD: But there could be a number of exemptions with different expiry dates?

Mr Innes: I would have to take that on notice. We have granted a number of different exemptions, so I would have thought that they would have different expiry dates. It is possible for the applicants for those exemptions to apply for renewal but, at this point, that has not

occurred. My understanding of the work on the consolidation legislation is that there will not be legislation even before the parliament before that time. If organisations were seeking to have those exemptions continue until any legislative change occurred, they would need to apply for renewal. The renewal process with the commission is a track that people have gone down before. It is not in itself problematic. We consider the exemptions; we put them out to the community for comment and then the commission makes a determination on those exemptions.

Senator FIFIELD: Would you look favourably upon, or can you not offer a view until you receive, a formal application?

Mr Innes: I cannot offer a view, particularly because I make the decision in conjunction with, now, my five colleagues on the commission and I would not like to pre-empt that view. But we have not yet received an application. The Australasian Railway Association is I think well aware of that process, and it would be in a position, if it sought to do so, to seek those exemptions. We did not grant all the exemptions that they sought when the application was initially made, but we did grant most of them. It depended on the issues and the stuff they raised. The commission looked at each of their requests separately.

Senator FIFIELD: Do you support the legislative change to give effect to supplementary compliance mechanisms of this sort?

Mr Innes: I, as the Disability Discrimination Commissioner, am on the record as supporting that change—and yes I do. The commission has considered those changes, but I do not think it has made a whole-of-commission decision on co-regulation. Certainly, as an individual commissioner, I am supportive of that approach.

Senator FIFIELD: Would you like to see more industries adopt the approach that the Australasian Railway Association has taken?

Mr Innes: I certainly would. It is a far more time efficient—and efficient in other ways—process. The standards enacted in the areas of transport, access to premises and education are certainly important parts of the administration of the Disability Discrimination Act, but they took huge amounts of time and resources from both this commission and the various departments and other organisations involved in those processes. I see co-regulation, with a requirement on industry to consult with representative organisations of people with a disability and then to come back to the commission, to the Attorney—that has not been determined as part of the legislative process—or to an authorising body, as a more efficient way of addressing some of the issues around these laws, perhaps not only for disability discrimination but also for other areas of discrimination. I know that my colleague Elizabeth Broderick, who is not here today, has certainly supported such co-regulation in the area of sex discrimination as well.

Senator FIFIELD: Practical improvements are always better than a formulaic box-ticking exercise. I think one of the reasons that the transport industry is seeking this code is to provide some certainty to better enable investment, given some of the large amounts of money which are required to invest in rolling stock and infrastructure.

Mr Innes: Certainty is very important for many industries, but particularly the transport industry where infrastructure is expensive and takes time to build, develop or purchase. That was the rationale for the transport standards and the premises standards. And that remains

true, but I think that some form of co-regulation is probably a more efficient way to get to the same place.

Senator FIFIELD: I might direct this question through the minister to officers of the Attorney-General's Department, or to Mr Wilkins. What time frame is government looking at in considering amending legislation to enable these sorts of things to happen?

Mr Wilkins: I might get Mr Matt Hall to answer that, Senator.

Mr Hall: The process for considering the sorts of issues you have raised including the possibility of co-regulation—and that is certainly an issue that would be considered, I would expect, through the project to consolidate antidiscrimination laws—is underway at the moment. The discussion paper on the project was released on 22 September and the submissions on the discussion paper are due by 1 February next year, and they will inform draft legislation which will also be released for public consultation in 2012. So that is really the time frame.

Senator FIFIELD: But the government does not have any particular objections or difficulties with the concept of this sort of supplementary compliance mechanism?

Mr Hall: The government has not considered the options, but certainly there have been no objections made by the government to this sort of proposal being put forward and considered.

Senator FIFIELD: It might be something that the minister can take back to the Attorney-General, that there is a need here to facilitate this sort of cooperative approach and to provide greater certainty in particular sectors.

Senator Ludwig: I will take these comments back to the Attorney-General and see if he wants to add anything. So effectively, I will take it on notice and he will obviously have a look at the transcript and see if he can provide any additional information.

Senator FIFIELD: Thank you, Minister. Mr Innes, since we are on the subject of transport and accessibility, I might just give you the opportunity to give us a bit of an update on the airlines. I think at the last estimates you said:

I am very close to forming the view that it is an area in which voluntary compliance has not worked and where we need some clearer regulation.

Can you give us a bit of an update as to whether there has been any road to Damascus experience by any airlines in relation to accessibility issues?

Mr Innes: Most of the major airlines, I think, have lodged disability access facilitation plans with the Department of Transport. These are voluntary plans which indicate the areas of their services which are accessible for people with disability and the way in which those are accessible. But I would have to say that the discussions that I continue to have with people with disabilities as individuals, and peak disability organisations, suggest to me that there are still major problems in this area of transport with accessibility for people with disabilities. I am not yet convinced that the disability access facilitation plans—which, as I said, are a voluntary process—are having a great deal of effect in changing the practices of airlines. The issue comes from the way that the airline industry has changed over the last few years which has meant that the cost of flying is a lot less. Also the numbers of people flying in Australia are a lot higher and airlines, in order to address those costs, have made changes to their procedures. Unfortunately, in my view, some of those changes mean that airlines breach the provisions of the Disability Discrimination Act in terms of the way that they provide services

to customers with disabilities. I have not been convinced since the last hearing, where I said those things, that those processes have changed. I am very close to, if not over, the line in my view that this is an area which needs greater regulation as voluntary compliance is not working.

Senator FIFIELD: What are some of the instances where you think that the airlines might be in breach of the act?

Mr Innes: In my view, the two-wheelchair policy which a number of airlines apply is problematic. That is a policy whereby if two people with disabilities who use a wheelchair have arrived at an airport and a third person arrives—even, as we saw in a case some six or eight weeks ago, when apparently the third and fourth people had indicated to the airline that they travelled using a wheelchair—they are refused access to the flight. This is correct in some cases for narrow-bodied aircraft as it is not easy to stow the wheelchairs in the hold of the plane. I think that that is a reason for reduced numbers of people using wheelchairs travelling on airlines, but I am not sure that is a reason to restrict it to only two people. Of course, the safety of all passengers, including the passengers who travel using wheelchairs, must be paramount. If there is a problem stowing more than two wheelchairs then that might be a valid reason, but the other justification given is there are not enough staff available to assist with transferring people on to the aircraft because the turnaround times are shorter. I am not persuaded as much by that reason. I think the two-wheelchair policy is problematic. It is a policy which I understand at least three airlines still apply, not all airlines.

I think there are still some concerning decisions made about people with disabilities and their need to travel with a support person or carer. Some airlines apply those decisions to people who, I would have thought, would be able to adequately travel on their own. The main issues I hear about are situations which I think are caused by staff numbers and staff training problems where people are not provided with adequate service and are talked about or talked to in a way which is not appropriate and which would suggest that the people with disabilities are either a problem for the airline or are viewed as a package rather than as a person.

I travel fair bit in my role and I often hear over the radios used by staff to communicate with each other for assisting people with disabilities that, 'We have a wheelchair at such and such a gate' or similar sorts of descriptions. Those radios are turned up quite loudly because of the environment and the way that people are talked about is inappropriate, I think. There is a strong need for better staff training and for more staff to be available in these areas.

Senator FIFIELD: Your reference to the two-wheelchair policy sounds like something from the two-airline policy era. You mentioned there might be the need for further regulation. What would that look like?

Mr Innes: It may well be a need met by the sort of regulation that I was talking about in my answers to your previous questions. It may look like something different. I have not turned my mind to that in detail because, apart from my calls and the calls of disability groups, I do not see much sign of it on the horizon. But I think there is a need for government to send a stronger message to airlines that it is important for them to comply with disability discrimination legislation in the provision of their services.

Senator FIFIELD: Perhaps the co-regulatory code could provide the way forward but it does sound like there is still a need for attitudinal change. Something I think we touched on

last time is that perhaps there is also a role for some ministerial jawboning of the industry. Are you aware of anything that has happened since we last met?

Mr Innes: I am not aware of it but then I would not necessarily be aware of all the activities of relevant ministers in that respect, so it is difficult for me to answer that with any specificity.

Senator FIFIELD: While we are on the topic of attitudes, we did touch last time on employment of people with a disability in the public sector and you painted a fairly grim picture of the current situation. Have there been any positive developments since last we met that you are aware of?

Mr Innes: I do not think the situation has changed a great deal since we last met, I would have to say that this is an area where government, both at the level of the bureaucracy and at the ministerial level, is working hard to address the issue. The current head of the Australian Public Service Commission is working hard to address the numbers of people employed in the Commonwealth Public Service, and Minister Gray is also quite concerned about the issue. I have had discussions with him and his office and with Stephen Sedgwick, the APSC commissioner, along with a number of other people who work in the area of employment of people with disability, to try to address this issue. We have seen initiatives by two state governments in the ACT and Queensland, and there may be others of which I am not aware, to set targets for the employment of people with a disability in their public service. I have encouraged the Commonwealth government to move in the same direction. As yet there has not been that commitment. The government is keen to try other methods before that approach is taken. But, having said that, I think there is a real and serious commitment for government to turn around the very low numbers of people with a disability employed in the Australian Public Service, which I think I said at the last hearing have halved in the last 15 years. I would say the developments have been by way of some real commitment to address that situation, but it is the sort of thing where change is slow so, in terms of numbers, there probably has not been much improvement at this point.

Senator BRANDIS: President Branson, I want to start with the launch last month of the discussion paper on antidiscrimination law. That discussion paper was issued by the Attorney-General's Department, but I assume that the Human Rights Commission had substantial input into the preparation of that discussion paper.

Ms Branson: My understanding is that we had some but not substantial input into that paper.

Senator BRANDIS: Can you explain to me please, from the point of view of the commission, where the process goes from here? Will you yourselves be making a submission to the review of antidiscrimination law or will you as the supervising agency be, as it were, the recipient of submissions made by others?

Ms Branson: I imagine you are discussing the harmonisation project that Mr Hall mentioned a moment ago. Is that right?

Senator BRANDIS: The consolidation of Commonwealth antidiscrimination laws, yes.

Ms Branson: The discussion paper has been issued and yes, we will make a response to it. I think in the first instance that was intended to be a response at a relatively high level of generality. When more specific provisions are available for consideration—for example,

when a draft bill is released for public consultation—we would expect to make more detailed submissions.

Senator BRANDIS: Because of the pressure of time I will not dwell for long on this. Am I right in understanding that it is the Human Rights Commission's position that there ought to be a consolidated peak antidiscrimination statute to replace the existing sector specific antidiscrimination statutes?

Ms Branson: We are supportive of that. We think that the different standards around issues like complaint making with different time limits and different approaches means it would be more efficient for business and also those who represent disadvantaged groups if there were a single piece of legislation that was harmonised as far as possible.

Senator BRANDIS: Is that view shared by each of the discrimination commissioners who are appointed under the existing individual statutes?

Ms Branson: The submission that the commission made was made ahead of the appointment of the last two commissioners and it was a commission view at that time. I do not think we have had occasion since we have had the two new commissioners with us to reconsider it.

Senator BRANDIS: Let me seize the moment and ask Commissioner Ryan. Commissioner Ryan, I begin by congratulating you on your appointment as the Age Discrimination Commissioner. What is your position on the issue of consolidation into a single generic statute?

Ms Ryan: Thanks for your congratulations, Senator Brandis. My position at this stage—and, as the president has pointed out, since I have joined the commission we have not had all-of-commission consideration of a longer term position on this—is that there are apparently many benefits that could be captured by harmonising it into a single law. I think it is in the early stages. As the Age Discrimination Commissioner I will be very keen to see that nothing is lost in this process by way of the capacity of individual commissioners—be it me or my colleague Graeme Innes—to give specialised attention to specific areas. That is one of the possible negatives that need to be monitored very closely, and I am sure we will all do it.

Senator BRANDIS: Your position, if I may say so, seems to be a little guarded. That is no criticism, by the way. You seem to be resisting committing wholeheartedly to the idea and principle of a generic statute to replace your specific act.

Ms Ryan: Senator Brandis, I have been in this position for all of two months. I think it is incumbent on me to look very closely and very carefully at every process in which I will become engaged as a member of the commission. At the same time, I can see very clearly the in principle benefits that could arise from consolidation.

Senator BRANDIS: There is a certain logic to it. If this were purely a logical exercise then I would agree with President Branson that unity and harmony are logical desiderata. But this is more than an exercise in logic or legislative drafting. It is also an exercise in trying to do the best for vulnerable sectors. I am rather sensitive to the argument that some of those vulnerable people in those identified sectors do draw comfort from having the specific statutes that apparently are designed to look after their specific sectoral interests.

Ms Ryan: I agree with that. I think it will be one of the challenges of this harmonisation exercise that, as it progresses, we do not lose the capacity to give special attention and special

protection to particular disadvantaged people in our community while at the same time we are moving towards capturing the efficiencies of one law, which have been outlined in principle by the president.

Senator BRANDIS: What about you, Mr Innes? What do you think of this issue? Speaking as the Disability Discrimination Commissioner, would you rather have your own statute or be enveloped by a generic statute?

Mr Innes: The important thing for me is that the effectiveness of the law which currently protects people with disability is not in any way reduced but in fact is increased. As you would know, I have argued for coregulation as one of the ways to do that. I am not particularly concerned. On its face there is an argument that people may feel less protected if there is not a separate statute, as it were, in their name. I think the more important thing is that there is a separate commissioner representing the particular needs of a vulnerable group. I am not too concerned about whether or not the laws are consolidated into one area provided, as I said, that the protection is not in any way diminished.

Senator BRANDIS: Mr Gooda, what is your position from the point of view of the Race Discrimination Commissioner on this issue? Would you rather have your own statute or be enveloped by a single generic statute?

Mr Gooda: I am the Aboriginal and Torres Strait Islander Social Justice Commissioner. Dr Helen Szoke is the Race Discrimination Commissioner.

Senator BRANDIS: I am sorry. What is your point of view?

Mr Gooda: I have a generic view of monitoring the enjoyment and exercise of human rights of Aboriginal and Torres Strait Islander people.

Senator BRANDIS: That is your brief as it were. Why would it improve your capacity to do your job if this was consolidated into one general antidiscrimination statute rather than a statute that specifically concerned those vulnerable people whose interests you are charged with defending?

Mr Gooda: Aboriginal people are subject to discrimination across a whole range of acts that we cover in the Human Rights Commission. Aboriginal women and Aboriginal people with disabilities are vulnerable. Aboriginal people suffer race discrimination so harmonising, from my perspective, would make some sense. But I agree with Commissioner Innes that there has to be a specific commissioner for each of the areas so people take some comfort from a person who specifically looks after their interests.

Senator BRANDIS: Dr Szoke, what do you have to say about this?

Dr Szoke: I am going to claim a very recent appointment as well. I have been in the role for 5½ weeks.

Senator BRANDIS: So you do not have a view on this?

Dr Szoke: No. Let me just qualify, though, that I understand that the consolidation process will not reduce any of the protections that are currently provided under each of the legislations, and that would be important from my perspective.

Senator BRANDIS: I am sure it is not intended to but, having been around this place for a few years now, I am terribly conscious of the unintended consequences of so-called law reform. Have you thought about that?

Dr Szoke: I certainly have. I imagine that the process that the commission will go through is one of looking at maintenance of those protections and enhancement that could be achieved. I would mirror the comments that have been made by other commissioners that, in looking at the interests overall of the protections that a consolidated act would offer, we would also have a specific eye to the people that are relevant to our own jurisdiction within each of the separate acts at the moment.

Senator BRANDIS: Sure. Is the Sex Discrimination Commissioner here?

Ms Branson: No, she is not.

Senator BRANDIS: Is anyone representing the Sex Discrimination Commissioner here?

Ms Branson: In a sense I guess as president of the commission I am.

Senator BRANDIS: Are you able to inform us of her views?

Ms Branson: Elizabeth Broderick, the Sex Discrimination Commissioner, was part of the commission when we previously made a submission which was supportive of consolidation and harmonisation; but she, I think, like all of us, is anxious to preserve the position of the specialist commissioners, who we see as playing a very important role, and anxious to ensure that no protection to any disadvantaged group is lowered as a result of the harmonisation project.

Senator BRANDIS: I have to say I have a genuinely open mind on this, but I think it is by no means as simple as crystalline elegance in drafting a single statute.

Ms Branson: No, nor have we ever suggested that it is, and I do not think the commission would wish to take a final position on the desirability of a particular statute until we saw the draft statute. We are waiting to see the bill that will be exposed for public comment as a result of this exercise.

Senator BRANDIS: Okay. There are two particular matters covered by the discussion paper that I want to draw you out on, and they are related. One is the test for indirect discrimination and one is the question of the burden of proof and whether the burden of proof to be reversed and in what circumstances it ought to be reversed. What is your position, if you have one, President Branson, on the question of expanding or re-expressing the test for indirect discrimination and, in particular, the extent to which the courts can rely on inferential evidence only?

Ms Branson: Thank you for that question. It is a very technical question and the commission will meet and ultimately put a quite carefully formulated submission to the Attorney-General on this issue. I am not in a position now to tell you what is the position of the commission.

Senator BRANDIS: You do not have a concluded view on that issue?

Ms Branson: We are in the position that submissions have been made over the past by a previous commission. These are important questions. We have two new commissioners. It is only the view of the commission itself that is of significance and interest. The new, as now formulated, commission has not met to reach a final position on these issues.

Senator BRANDIS: Do you have a personal view?

Ms Branson: Madam Chair has directed me previously not to give my personal positions on questions of that kind.

Senator BRANDIS: I will not press it. Turning to the question of the burden of proof, the discussion paper rightly points out there are inconsistent treatments of the burden of proof, both across the suite of Commonwealth acts and as between Commonwealth acts and some of the state acts. Do you, President Branson, approach the question of reversing the burden of proof with a presumption against it? Do you need to be persuaded that there are strong reasons to depart from the traditional position in our law that the burden of proof should not be reversed except in unusual circumstances?

Ms Branson: I find myself in the same position as I was with respect to the last question: it is not a matter on which the commission has met. I am a relatively traditional lawyer; my own view can probably be speculated about. But it is not an issue on which the commission have met; nor have we decided, if special conditions are required, where and when they would be met.

Senator BRANDIS: So the commission again has no concluded view. If we are going to have a generic statute, presumably we are going to have a generic burden of proof provision. I must say I would be very reluctant if we were to have a generic reversal of the burden of proof although I allow for the fact that in some cases of proof by inference of indirect discrimination there might be a limited scope for such a mechanism in the statute. Do you not have a concluded position on that?

Ms Branson: The commission, as I have indicated, has only had its full current membership for a short period of time and we have not in fact I think conducted even a single commission meeting with the full six presidents present, so we do not have that commission view. I do not think it is necessarily the case that the harmonised statute would have complete uniformity across every issue of this kind. My assumption is that it would start with a presumption that this would be desirable but I do not understand the Attorney's position to be that no shift from uniformity could be allowed where circumstances suggested that it was desirable in the public interest.

Senator BRANDIS: There is though at heart here a broader human rights issue. I have focused this discussion quite specifically on the antidiscrimination legislation and you are the administrator of that ultimately. But more broadly your remit is to protect human rights. Don't you concede that there is a basic human rights principle that people should not be found to have breached a statute unless the complainant or the person making the allegation against them discharges the relevant burden of proof?

Ms Branson: I thought I went as close as I felt I could get away with, in view of madam chair's ruling, in indicating what my view about that was as a general proposition. What the commission's position is is something that will await consideration by the commission of the draft bill put before us.

Senator BRANDIS: Thank you. I want to turn to another matter if I may, please. It is the Human Rights Commission's intervention in M70, the Malaysia solution case. I am sorry; was it M70 or just M106 that you intervened in?

Ms Branson: Just M106.

Senator BRANDIS: Okay, in the Malaysia solution case. You intervened to argue a position at variance from the position of the Australian government, which you are perfectly at liberty to do. At what level was that decision taken?

Ms Branson: It was taken at the level of the commission. I spoke personally with every commission member because there was no meeting available for us to deal with that at a scheduled commission meeting but I spoke with every commissioner.

Senator BRANDIS: What was the basis of the decision to intervene in M106 but not in M70?

Ms Branson: That the commission had for a very long time taken a particular high level of interest in child asylum seekers, the detention of children and the treatment of unaccompanied minors generally. We have published on a number of occasions our view that the minister for immigration in being the guardian of unaccompanied minors found himself in a situation of conflict when he was also the person who made decisions concerning their detention and in this case the possibility of their removal to a third country. We considered other issues including the extent to which the interests of the unaccompanied minors might otherwise be comprehensively argued before the court. We were satisfied that the issues concerning the adult asylum seeker and people in a comparable situation would be comprehensively canvassed but we were not so satisfied with respect to the children.

Senator BRANDIS: Why? Why would you be more confident that the case would be made sufficiently well on behalf of the adult plaintiff but not on behalf of the infant plaintiff?

Ms Branson: We had views about the proper construction of the Guardianship of Infants Act that we were not confident would be put by other parties. I think in the event our judgment about that proved to be right.

Senator BRANDIS: Were you invited by the court or did the council who appeared on your behalf address the broader issues? These cases were heard together weren't they?

Ms Branson: They were heard together.

Senator BRANDIS: I have read the outlines of submissions put in by the various parties. The argument trespassed somewhat across the strict boundary lines between M70 and M106. Did the Human Rights Commission, through its counsel, address the broader issues raised by the broad litigation?

Ms Branson: I do not understand so. I was not present in court, but our instructions were very limited and our draft submissions were limited to the issue of the unaccompanied minor.

Senator BRANDIS: You retained Mr Jackson to appear for you?

Ms Branson: We did.

Senator BRANDIS: How much did that cost?

Ms Branson: Mr Jackson very generously agreed to do it without charging professional fees of any kind. We met his out-of-pocket expenses, which included travel and accommodation in Canberra.

Senator BRANDIS: What about his juniors? Did they do the same?

Ms Branson: He had a single junior, Mr Chris Horan. We paid fees to Mr Horan.

Senator BRANDIS: How much were those fees?

Ms Branson: There were apparently two accounts for Mr Horan: one for \$14,660 and one for \$374.

Senator BRANDIS: And who were the solicitors you instructed?

Ms Branson: We acted as our own solicitors.

Senator BRANDIS: Was there an internal cost generated within your organisation or was there no cost?

Ms Branson: Only to the extent that we used our own staff. There was no additional cost.

Senator BRANDIS: I just press you a little further on why the Human Rights Commission, quite properly taking an interest in the interests of these asylum seekers, would not address the broader issues. Was there a specific narrow point under the Guardianship of Infants Act that was the only point you wanted to agitate?

Ms Branson: There was a particular provision in the Guardianship act that we thought was a critical provision. We did wish to have our views on its proper construction before the court. But we have quite comprehensive guidelines that we seek to implement when deciding whether to intervene. We felt that they were satisfied with respect to the children and we thought they were not satisfied with respect to the adult. One of our concerns is not to attend court hearings for the purpose simply of repeating what would be said by the parties but only to go where we think we have something separate and different to offer.

Senator BRANDIS: That is fair enough. But was consideration given to seeking leave to intervene on a broader basis?

Ms Branson: Yes, it was.

Senator BRANDIS: Was that considered at a meeting of the commission?

Ms Branson: No. As I have indicated there was no scheduled meeting of the commission in the time frame where we needed to make a decision, so I spoke with the commissioners individually.

Senator BRANDIS: So you did a head count, as it were, and it provided a consensus among your colleagues?

Ms Branson: I walked around and spoke with all commissioners who were in the building and I rang up those who were not.

Senator BRANDIS: That is fine. Does the commission itself have a view about where Australia stands in relation to its international human rights obligations in circumstances where the policy of the government was to send asylum seekers to a country that was not a party to the UN refugee convention?

Ms Branson: Yes. Our views have been made plain on that. We believe it is not consistent with our obligations, because we believe it enhances to a high degree the risk of the non-refoulement obligation not being met.

Senator BRANDIS: I agree with you, by the way. Is that a view that is informed by legal advice taken by the commission or is that a view you yourselves have arrived at without the benefit of external legal advice?

Ms Branson: I am not aware of us seeking external legal advice on that issue.

Senator BRANDIS: You are right, by the way, if I may say so, with respect. Before I leave that topic, did you make those representations to government in an immediate way or did you merely put that view on the public record in a speech or a statement of some form?

Ms Branson: It certainly has been on the public record. I believe it would have been included also in correspondence to the minister.

Senator BRANDIS: Did you write to the Attorney, or any other minister for that matter, or did you have a meeting with the Attorney or any other minister as the Australian Human Rights Commission and say, 'Well, it is our view that the policy of your government is not a rights-respecting policy'?

Ms Branson: I cannot identify a meeting with the Attorney. Normally on an issue of that kind—although the Attorney would have been alerted if I was speaking to another minister—I would have sought to speak with the minister for immigration. In this case I did not meet with him personally, as I have indicated. I think it likely that I wrote to him but certainly we made public statements and I think issued press releases to that effect.

Senator BRANDIS: Could you please take this on notice. What I would like to see is the correspondence. You said you wrote to him.

Ms Branson: I said I think I probably did.

Senator BRANDIS: Can you produce to the committee please the correspondence from the Human Rights Commission to either the Attorney or to the minister for immigration in which the Human Rights Commission's concerns about the so-called Malaysia solution were expressed to the government?

Ms Branson: I will take that on notice.

Senator BRANDIS: Thank you. Finally on this, may I take it that the Human Rights Commission was not consulted by the government in the sense that there was no approach made to you or to your agency by the government when the Malaysia solution was being developed?

Ms Branson: We were not consulted.

Senator BRANDIS: Thank you. Were you surprised, by the way, with the result in M106, or is it what Mr Jackson told you to expect?

Ms Branson: I am not aware of Mr Jackson telling us what to expect. We thought, with respect to the miners, the issue was not an easy one, but we believed the outcome that we argued for was a real possibility.

Senator BRANDIS: Lastly, can I take you back to the Brennan report and in particular to the human rights education recommendations. What steps has the Human Rights Commission taken in the last 12 months to give effect to the enlargement of human rights education in Australia consistent with that recommendation?

Ms Branson: We have taken a number of steps. The most visible is the establishment of the community engagement team within the structure of the Human Rights Commission to oversee community education. They are working broadly in three areas. One is the development of a social media or web based education initiative, which we expect to launch on 9 December this year, the day preceding Human Rights Day. That is a significant initiative which we believe will make a major contribution to engaging the public broadly in interest in human rights and in advancing human rights education. We have also been working over virtually the whole of this year with ACARA, who are responsible for the development of the school curriculum, about ways in which human rights education might be embedded in a

useful way into that curriculum. And we are working with the Attorney-General's department to support them in their delivering of human rights education to the public sector.

Senator BRANDIS: I cannot find in the portfolio budget statement for your agency an item which tells us how much money the government has allocated to you or how much money you have spent on this education program. Can you tell us please?

Ms Branson: The figures are set out in the answer to a question that I think we gave to Senator Barnett on the last occasion. The funding was entirely for staffing and some travel funding. No program funding was provided. Since January 2011 our community engagement team has consisted of a director, a senior policy and project officer, a policy and project officer at the APS6 level, a temporary one at the APS5 level and a research assistant as well. Those numbers will increase because the funding increases over time. Of course, much of our education activity comes out of those who oversee our website and other material. Virtually all of our policy work we use in some ways in educational tools.

Senator BRANDIS: So there is not a specific allocation for this Brennan education fund?

Ms Branson: Yes, there was. The Human Rights Commission will receive a total of \$6.6 million over four years as a result of that: \$1.015 million for the 2010-11 financial year; \$1.433 million for the 2011-12 year; \$2.073 billion for the 2012-13 year; up to \$2.09 million for the 2013-14 year.

Senator BRANDIS: Before I let you go, I want to ask you a couple of questions arising from the interest in section 18C of the Racial Discrimination Act, which has been provoked by the decision in the Andrew Bolt case. How many complaints under section 18C of the Racial Discrimination Act is the commission currently seized of?

Ms Branson: I would have to take that on notice. I cannot say.

Senator BRANDIS: Please do. Are you able to tell us roughly? Are there any? Are there several? Are there many?

Ms Branson: I would be surprised to find that there were many but I am not certain.

Senator BRANDIS: Let me set out a series of questions which I would like you to take on notice. I would like to know: how many complaints under section 18C of the Racial Discrimination Act the commission is currently seized of; how many complaints under section 18C have been made to the commission in each year since section 18C came into operation in 1996; and in brief how were those complaints disposed of? I assume you have a process whereby complaints assessed as unmeritorious or slender complaints are not taken any further or where more serious complaints are investigated which, after investigation, suggest to the decision maker that they ought to be pursued and are the subject of some process of conciliation or ultimately action by the commission. Can you tell us of the disposal of, and what happened to, each of the complaints in each year under section 18C?

Ms Branson: Just to clarify, our paths are conciliatory only.

Senator BRANDIS: There is no other action you can take other than to conciliate, is there?

Ms Branson: No.

Senator BRANDIS: There are four tests under section 18C—to offend, insult, humiliate or intimidate. Is it the practice of the commission, or has it been the practice of the

commission in the past, to isolate one or more of those four criteria, or are complaints received by the commission under section 18C treated in a basket, as it were, without distinguishing between one or more of those four descriptors? In fact, could you tell me that now? What is the current practice?

Ms Branson: Since our efforts are directed under the federal legislation to conciliation, we would not seek to separate them out.

Senator BRANDIS: But surely you would agree with me that, within the ordinary usage of the English language, to offend has a much lower threshold than, for example, to intimidate. To intimidate someone there has to be more than merely saying something that causes offence, though it may include that.

Ms Branson: I think intimidating is a different concept to offending, yes.

Senator BRANDIS: Indeed. Equally, to humiliate someone is a more serious thing to do than to merely insult them. Again, an insult might be humiliating but not every humiliation consists merely of insult.

Ms Branson: That is correct, of course. You will be aware that the courts, particularly the Federal Court, have given some consideration to the meaning of insult in this context.

Senator BRANDIS: I will leave it there, thank you.

CHAIR: Senator Brandis, you are finished?

Senator BRANDIS: With the Human Rights Commission, yes.

Senator PRATT: I will start with Commissioner Gooda. I think that you have made some statements in relation to progress of the Declaration on the Rights of Indigenous People and the standards that are expressed in that declaration. I am keen to know from you what progress you think we have made and where you believe we need to be headed with that.

Mr Gooda: Probably the first thing I would mention—and it goes to the issues coming out of human rights framework around education, particularly of the public sector—is that we are seeking to have the declaration bundle put into what we generally call the 'seven big treaties and conventions' around human rights as an interpretive tool for those other conventions to be measured against for Aboriginal and Torres Street Islander people. I guess my aim would be to see if we can not only do that with education in the public sector but also education of the public more generally, and that would be a tool that the Parliamentary Scrutiny of Bills Committee could use when it is seeking to see if proposed legislation complies with our human rights obligations.

Senator PRATT: What about the new congress that has been established: does that have a role to play?

Mr Gooda: I think the congress speaks on its own behalf, but my understanding is that they are totally supportive of the declaration. We will be looking for a partnership between my office and the congress to give full effect to the declaration eventually.

Senator PRATT: I think Commissioner Broderick would normally answer these questions, but perhaps President Branson can assist me. I note that it has been sometime since the Human Rights Commission did work on the *Sex files* report—and you would be waiting for the Attorney-General to respond to that. I would be interested to know from the

commission about the significance of the decision around passports in terms of that assisting in making progress in the deficits that clearly exist in this area.

Ms Branson: That is a question that is appropriate to come to me in my role as Human Rights Commissioner. We were delighted by the decision on passports. We continue to urge the implementation of the recommendations of the *Sex files* report. We understand that it involved negotiations with the states, but we urge all governments to get together to seek to implement in full the recommendations of that report. I think there was another question at the end of your questions, which I forget.

Senator PRATT: What further needs to be done? Clearly, we await that response to the report.

Ms Branson: Yes, we do.

Senator PRATT: I guess it is the Attorney-General's Department that is responding but, as your response rightly highlights, a lot of that work also remains to be done by the states. Is there any sign of progress or are we really going to require some federal leadership on this question?

Ms Branson: We understand that the Attorney-General's Department is leading negotiations with the states. It may be that the department can give you fuller information about that. We anxiously await the outcome of those negotiations.

Senator PRATT: As do I. My next question is to Commissioner Ryan. There is already some emphasis in your work in relation to discrimination against mature age workers. It is certainly something that I pick up in my constituency work. In a booming economy like Western Australia, you would not think that we could afford to not engage with mature age workers in the workforce. What is your current perception of the extent of the problem? What kind of approach will you be taking to the issue?

Ms Ryan: You are quite correct in observing that I have already made many statements to the media and to sector groups about this. All of the research available to us is that the worst form of age discrimination in Australia is the discrimination against older workers or mature age workers. In some cases, a mature age worker is a worker over 45. I have started a series of meetings with industry bodies. I am planning to meet some industry sectors where there seems to be worse age discrimination in the workforce than there is in others. I am also participating in a mature age employment forum established by Treasurer Wayne Swan and supported by a secretariat from the Department of Education, Employment and Workplace Relations. Again that forum has all of the major industry bodies, unions and sector groups represented on it.

The situation as I see it now is that at the level of leadership of industry there is an awareness, as you implied, that at a time of low unemployment and when employers are constantly drawing attention to their need for more skilled workers, it makes no business sense—let alone the human rights of those involved—to ignore mature age workers. Medical research establishes that some of the prejudice against mature age workers—that you cannot learn anything over 50—is wrong. What I am hoping to do in the next year is to identify those companies which have taken a leadership position. I know there are some, but it is too soon for me to name and cheer them at this stage; I think I will be doing that within the next 12 months. Some companies have recognised that there is a pool of skilled and experienced

workers, their own mature age workers and, with a relatively low level of training and perhaps some flexibility such as a shorter working week and so on, they have the skilled workers that they need to advance their businesses.

What we are dealing with here is quite a challenge because it goes to a deep cultural prejudice against older people. While my specific responsibility as Age Discrimination Commissioner is to implement the Age Discrimination Act, I have a more general task of challenging these age stereotypes. In doing that, I need all the help I can get.

Senator PRATT: I would be glad to assist and play my part. You said there are specific sectors in which this is often a more prevalent problem. Is there hard evidence for that?

Ms Ryan: At this stage, as far as I am concerned, it is anecdotal. The two areas that are said to be particularly discriminatory are the areas of retail and hospitality. Having said that, I have not yet been able to start discussions with those sectors; I intend to. However, senators, like everyone else, have eyes in their heads and when they buy things and get services from these sectors, they may note, with honourable exceptions, an absence of older workers. They may even regret the absence of older workers because, in many cases, the experience an older worker brings when serving the public is a valuable part of the business interchange.

Senator PRATT: I certainly agree with you. Thank you for that outline. I have a question for Dr Szoke. I think the Human Rights Commission has drawn attention to the prevalence of cyber-racism. What is the commission's view of the significance of this kind of problem? What kinds of effects is it having on the Australian community? What is the commission doing to help address this problem as a whole and in specific incidents of cyber-racism?

Dr Szoke: Sure, Senator. Thanks for the question. Let me start with the last question: in relation to specific incidents, I would probably have to take that on notice. I know that the commission has received complaints broadly in the area of cyberbullying, some of which may include racism, but I do not have that detail at hand at the moment. The commission has also been involved in initiatives, I think from the Attorney-General's Department, prior to my time and on an ongoing basis, looking at the issue in a general sense. We are also currently in discussions to be a partner in some research with a range of academic institutions, Victoria and New South Wales based at this stage, to look at prevalence, prevention and strategies to actually address it. Now, that is very much in the formative stages—it is yet to be finalised and it is certainly yet to be funded—and I think that will be quite important also for informing what strategies might be used in the longer term. It will certainly help the commission understand what role it can play beyond the receipt of complaints or input into government processes in this area.

Senator PRATT: What is the commission's view of the prevalence of this kind of activity? I know from the emails I receive—and, clearly, that is private correspondence from constituents expressing their views to their senator—that it is prevalent and that people feel that, once you have the non-face-to-face aspect of the internet, anything goes and you can express whatever view you like about other people.

Dr Szoke: I cannot answer at this stage on behalf of the commission; I am just not familiar with it. I am familiar with the Victorian jurisdiction and the experience there. From my previous role, I would indicate that there is an increase in the incidence of this, but I would not want to peg the commission to a particular view at this stage.

Senator PRATT: That is fair enough.

Dr Szoke: But perhaps we can take that on notice as well.

Senator PRATT: Thank you, I would appreciate that. My last question is to Mr Innes and it is about migration and disability. I notice there have been some reasonably high-profile cases and some quite ordinary cases involving people who have been affected by discrimination on the grounds of disability, particularly in relation to the children of migrant workers et cetera. There has been some community outcry, which has meant that, at times, decisions have been made that resulted in exemptions being made to discrimination on migration grounds. I was really after a view from the commission about, I suppose, our need to revisit this area, where we seem to have fairly arbitrary discrimination.

Mr Innes: The commission is on the record as expressing its concerns around this issue and the limitations of the Disability Discrimination Act applying to migration issues. We made a submission to the parliamentary committee which looked into that question, expressing those concerns—as have, as you say, a broad range of the disability sector. Cases continue to occur where people are discriminated against on the grounds of their disability but it is not in breach of disability discrimination legislation. We are still awaiting the government's response to the recommendations of that committee which I regarded as quite positive, but as far as I am aware the government has not responded to those recommendations.

Senator PRATT: And, under 'disability', we also include health status in broader terms—for example, if somebody is HIV positive et cetera.

Mr Innes: Absolutely. That falls into the definition of 'disability' under the Disability Discrimination Act. We also include the associates of people with disabilities, so your example of families with children who have a disability would also, in general, fall under the Disability Discrimination Act, but there is an exception for migration issues.

Senator PRATT: Thank you very much, Mr Innes.

Senator SIEWERT: While we have Ms Ryan at the table, I will start with my questions relating to ageing. I wanted to follow on from where Senator Pratt left off. A couple of years ago, when we were looking at the legislation that increased the retirement age to 67 in—

Ms Ryan: 2020.

Senator SIEWERT: yes—the issue that came up very strongly was the high proportion of older workers on Newstart, which is very worrying. The point that was being made was that, unless we actually address the issue of the number of older people that are out of work, we are going to condemn older people to living on Newstart, which is significantly less than the age pension, for another two years. Have you looked at those figures to see whether those trends are dropping or whether the levels are the same, and what we can do to specifically address that cohort of people?

Ms Ryan : I am gathering together all of the available data on what happens to workers through their 60s—earlier too, but certainly in that period where they have become long-term unemployed but are not eligible for the age pension. I can describe a positive in that the proportion of people aged up to 67 in the workforce is starting to climb, which I regard as a positive measure, but it is still tiny. There are a number of problems that can occur for people at 65. It is not only that, if they lose employment, Newstart may be available to them and, as

you pointed out, it is much lower than the age pension. An even more negative effect, which I am turning my attention to, is that once a person is 65, even if they remain in employment they are not in most jurisdictions eligible for workers compensation and they cannot get income maintenance insurance through their super fund or in any other way. So if a person in the workforce actively at 67, acquires a workforce injury and has to take some time out, that person cannot be supported by workers compensation. They do not have their income insured.

They may now, at this time, apply for the age pension because the 67 eligibility will not come in for a few years, and this seems to be a very negative outcome. Also, once a person has applied for the age pension because of an injury, the opportunity to resume their employment diminishes, there is no doubt about that, or disappears. They may apply for Newstart but, if they are in that situation of having nothing else to support them, they would probably go for the age pension. So it is a transfer of funding of the temporarily unemployed person to a benefit which was designed as the basic mechanism of support for people once they retired. It is unsatisfactory.

I am drawing attention to the workers compensation and to the income maintenance problems. Although Senator Pratt will probably be aware of this, it has recently been announced in Western Australia that the age bar to workers compensation has been lifted. That is very welcome news. The age bar has also been lifted in Queensland, but in the other jurisdictions, including the Commonwealth, it remains. Let us hope that the leadership of the states of Western Australia and Queensland will inspire some action there. In terms of income insurance I do have meetings scheduled with the superannuation industry and the insurance industry to see why it is that income insurance cannot be purchased by people in the workforce who are over 65.

The whole situation of mature age workers, those who maintain a job in their 60s, is that there are all these obstacles put in their way and in the way of their employers, who are not comfortable about having employees who are not covered in the case of an accident. It is an urgent issue. I will be making it a very high priority to try to advocate and perhaps even negotiate some improvements here. But, as I said, while the problem of mature age workers over 65 becomes extreme because of these obstacles, it can start with someone in their late 40s or early 50s.

Senator SIEWERT: I have one final question for you and then I have a question for Mr Gooda and also some questions for Mr Innes. Following up on the comments that you just made, will you be doing a sort of audit of what some of the other legislative barriers are? We have super for women; I know you have made comments on that and it is a well-recognised problem. But there is a series of other things as well that are barriers to older people remaining in the workforce or even working part-time. There are a lot of barriers for people who choose to engage in part-time work. Will you be doing a sort of audit of those barriers?

Ms Ryan: Senator, you really have your finger on the pulse. The commission has been arguing the merits of an audit of all Commonwealth laws that impose age barriers. We have been having discussions with the Attorney-General and the Attorney-General's Department. I believe that very soon there will be an announcement that such an audit will take place with involvement from the Human Rights Commission. It will be a very useful exercise, because it will enable very active senators like yourself to focus on these specific barriers and, of course, government and opposition to see exactly what is happening to obstruct people at a time when

there is bipartisan support. All parties support the view that older workers should be encouraged in the workforce. I hope there will be an announcement about the audit of laws very soon.

Senator SIEWERT: Okay. I actually told a bit of a story when I said it was my last question to you—I have a supplementary on that one! I have been looking very closely at the legislative amendments that are being made around disabilities and employment. One of the areas that I am concerned about is somebody ageing with a disability or ageing and acquiring a disability. I realise you have only been in the job for a relatively short space of time, but I wonder if you could take on notice to look at if you think there are specific issues about an older worker acquiring or with a disability going through the new assessment process that is being put in place in that you now have to demonstrate that you have failed to get a job through the employment process before you can access DSP.

Ms Ryan: I have been in the job a short time but I have the great benefit of consultations with my colleague Graeme Innes, who has been in his job, most effectively, for quite a long time. We have discussed the question of the capacity of people with disability to be hired or to stay in their jobs. It is the case that with some older workers they develop a disability, in which case there is a complication of their situation. I have not specifically looked at the test but we are establishing a cooperative way of looking at overlaps between disability and age discrimination in the workforce.

Senator SIEWERT: Okay. I might follow that up with you at the next estimates as well.

Ms Ryan: I hope I will have something positive to report.

Senator SIEWERT: Thank you. Mr Innes, could I follow up on some of the questions I was asking you at the last estimates around those with a cognitive or intellectual disability in incarceration. We had a conversation, you may recall, about that. At the time you said that you were not aware of any of the numbers around Australia in incarceration. Have you had an opportunity to review or set in place a process to establish how many people are in incarceration with a cognitive or intellectual disability?

Mr Innes: I am not able to refer you to figures—and the figures are a little bit hard to find—but I have certainly, since your question at the last estimates and since this matter has been raised with me by a number of disability organisations, been looking more carefully at this question. The number of people with disability—intellectual and psychiatric—who are incarcerated in Australia is much higher than their proportions represented in the general population. It is an issue that is a particularly concerning one. It is even more so, and I have been discussing this with my colleague Commissioner Gooda, for Aboriginal people with disabilities. It is an area where I am thinking of using more of my time and energy on it now that I am full time in this role, and I have certainly been encouraged to do so by a number of the disability organisations with whom I have met. I would go as far as to say—and I did say this in a speech recently—that the numbers of people with intellectual and psychiatric disability in prison are so high in Australia that prison actually becomes an alternative accommodation option. That is an appalling situation and one which we need to be addressing.

Senator SIEWERT: Thank you. I understand from our previous conversation that you will be picking this area up as part of the National Disability Strategy. Do I understand that correctly?

Mr Innes: Not quite. It is one of the issues where government could take some action under the justice initiative of the National Disability Strategy, and that is one of the number of reasons that I referred to that I am pursuing more interest in this area. I have not yet got to the point of discussing this with my colleagues at the commission and working out what role it might play in our work plan, but certainly it is referred to in the National Disability Strategy.

Senator SIEWERT: Thank you. One of the problems we have when we are working on this area is, of course, that it is under state and territory jurisdiction. We get feedback from the Commonwealth and I expect I will get more feedback when I ask more questions about it today. How do you foresee in your capacity as Disability Commissioner overcoming what are turning out to be real barriers in terms of getting a national approach?

Mr Innes: I think the National Disability Strategy is a good vehicle to get a national approach because it is a national strategy. It is a COAG approved strategy, so it involves all nine governments. I would certainly be planning to use that to try to work towards a national approach. We do not work exclusively with the Commonwealth government; we do some work with state and territory governments. But on this one I would be encouraging a national approach, as you suggest. I think the NDS is a good vehicle for that.

Senator SIEWERT: Thank you. I am conscious of time and do want to ask Mr Gooda a question or two about DRIP.

Mr Gooda: Good morning.

Senator SIEWERT: Good morning. I want to pick up on the Declaration on the Rights of Indigenous Peoples. I know Senator Pratt asked a couple of questions. I have some specific ones about education—specifically about proposals that we have now seen for expansion of the SEAM process that is operating in the Northern Territory and Logan in Queensland. The SEAM process has been going for a while. This is the school enrolment and attendance program. Is that program consistent with the articles of the Declaration on the Rights of Indigenous Peoples?

Mr Gooda: I would have to take that on notice. I have not really had a chance to look at that particular program.

Senator SIEWERT: So you have not looked at the SEAM program that has been operating in a number of trial places in the Northern Territory?

Mr Gooda: Is that about the welfare payment?

Senator SIEWERT: Yes. It is the program where, after a certain process, if your child does not attend school you get your welfare payment cut.

Mr Gooda: We have not specifically looked at it against the articles in the declaration.

Senator SIEWERT: Could you take on notice having a look at that program?

Mr Gooda: Yes.

Senator SIEWERT: It is hard to take on looking at the proposal for rolling it out given that we have not seen that yet, but certainly the trial has been operating now for a number of years in the Northern Territory. If you could have a look at that against the articles, that would

be appreciated. Having said that, what are the articles of DRIP that specifically relate to education?

Mr Gooda: I cannot roll them off the top of my head, but—

Senator SIEWERT: Sorry, I meant the philosophy or principles behind it.

Mr Gooda: The principles we look at in the declaration—and I keep arguing these—are things around free, prior and informed consent; the right to self-determination; the right to participate in decisions that affect our rights; and one, which is in the preamble, about the right to be different. That is just part of the preamble to the declaration. I keep on saying to people they have to design systems, whether they are education, health or employment, that cope with differences. It is not up to the individuals who are different to negotiate or navigate their way through the messy system we have in front of us. In looking at any specific article—and there are articles that relate to education across a whole range of things, specifically education and the right to be educated in your own language, which goes to some of the issues around bilingual education—I will generally look at those through the principles that I just mentioned: self-determination; the right to participate in decisions that affect us; the right to give or not give our free, prior and informed consent and the right to be different.

Senator SIEWERT: Thank you. If you could take that question asked on notice, that would be appreciated. Have you been involved in any of the consultation processes the government has undertaken for Stronger Futures?

Mr Gooda: Some of my staff have attended consultations, and I attended one in Nhulunbuy around the time of Garma, so we have been involved in them.

Senator SIEWERT: I have two follow-up questions from there. One: will you be reporting on that as part of the reporting processes you undertake?

Mr Gooda: We are just signing off on my social justice and native title report right now, and I cover the consultation on Stronger Futures fairly extensively in my social justice report.

Senator SIEWERT: When are those two reports being released?

Mr Gooda: We are looking at tabling in parliament on 23 or 24 November and, therefore, public release on 25 November.

Senator SIEWERT: Okay. Are you able to outline briefly—because I know we are running out of time—your opinions or thoughts on the consultation process?

Mr Gooda: In last year's native title report I outlined some broad principles around consultation with Aboriginal and Torres Strait Islander people, and that is what we measure them against. Is there adequate time? Are there resources available? Those principles are derived from the declaration on the rights on Indigenous people. Then we looked at the proposal around the six-week time frame for this consultation. We had some concerns, and I have expressed them to the minister. They go to the six-week time frame. This is a very extensive process that covers a whole lot of very-in-depth, detailed issues. We have a problem with the six-week time frame. If we look at the concept of free, prior and informed consent, the informed part worries me because it is a very complicated document that has not been translated into any languages in the Northern Territory.

Senator SIEWERT: You mean the consultation paper?

Mr Gooda: Yes, the *Stronger futures in the Northern Territory* paper. We outline in the report that we do have some concerns about that, but I will take it a bit further. I think we have to think about consultation in a continuum. There is a period of about six weeks for consultation and information gathering. There is a period for developing the responses that come out of that. I understand that will be expressed in legislative and budgetary measures because we are now heading towards the expiration date for the Northern Territory legislation. Not only that, in consultation with Aboriginal people about the implementation of those I am concerned with reports in the media today—I have only just been made aware of them briefly—that there have already been announcements on the response to that consultation. As far as I know, there has not been any consultation with any Aboriginal or Torres Strait Islander people about the second phase of what I talk about: the development of the legislative and budgetary responses to the consultations they underwent over that six-week period.

Senator SIEWERT: As I understand it—and I have only seen what was on the front page and page 6 of the *Australian* today—legislation will be introduced into parliament before the end of the year. I am trying to get my head around your comments on the consultation process for the second phase. If that sits on the books and is then consulted, does that meet that consultation process? What if it is treated like a draft and the consultation then occurs even though it has been introduced? Does that meet that requirement?

Mr Gooda: My views have been very clear, that there has to be consultation before that page about what is being proposed. I think a lot of us have been around a fair bit, and once pen is put to paper it is very hard to change things. Like I said, I wrote to the minister several months ago expressing my concerns. I have yet to receive a response to that. But the reports in the paper today do concern me.

Senator SIEWERT: Thank you.

CHAIR: I think that is the end of our questioning for the Australian Human Rights Commission. Thank you for making yourselves available today. I do not doubt we will have plenty of interaction with each other in this committee in the coming months.

Proceedings suspended from 10:40 to 10:57

Australian Federal Police

CHAIR: Welcome back to the Senate Legal and Constitutional Affairs Legislation Committee consideration of supplementary budget estimates. I formally welcome officers from the Australian Federal Police. Do you have an opening statement?

Mr Negus: No, Chair, I do not.

CHAIR: We will go straight to questions with Senator Humphries.

Senator HUMPHRIES: Could I start by getting a picture of the current staffing levels across the AFP? How many sworn police, protective service officers and unsworn staff are there?

Mr Negus: As at 29 September 2011 there were 6,703 staff in total for the Australian Federal Police. Of those we have 3,243 sworn police officers, 952 protective service officers and 2,508 unsworn staff for a total of 6,703.

Senator HUMPHRIES: Could you provide us on notice with a breakup of how those three categories of staff are distributed between different states, national operations and the ACT? That does include the ACT, I assume.

Mr Negus: That does include the ACT, yes.

Senator HUMPHRIES: And how many obviously are posted overseas as well?

Mr Negus: Certainly.

Mr Wood: I just mention that some of that data is in the annual report that was tabled in parliament on Friday. We will re-present it, but there is material available in the annual report as well.

Senator HUMPHRIES: The figures in the annual report would not be as late as 29 September would they?

Mr Negus: They would be 30 June.

Senator HUMPHRIES: 30 June, okay. Again, taking these figures in 29 September, how do we stand with the commitment to increase the number of sworn AFP officers by 500 positions—the commitment made by the government in 2007?

Mr Negus: Currently, we have recruited 318 of the 500 that were promised in that federal election commitment.

Senator HUMPHRIES: So if I deduct 318 from the 2,343 you mentioned before then that will give me the number of sworn officers the AFP had as of 2007?

Mr Negus: No, it is not quite that simple. We have redistributed the number of sworn versus unsworn internally over the last couple of years. We have been working on those ratios to provide more front-line police back on the beat. During the period from November 2007 at the time of the election we have actually increased our sworn police numbers by 547. But 318 of those would relate to the new policy initiative of the 500.

Senator HUMPHRIES: So you are saying some of those 547 have come by redistributing existing resources within the AFP. You cannot turn unsworn officers into sworn officers, though—can you?

Mr Negus: Some of them have in the context of what is happening at airports. We have taken protective service officers, for instance, and they have transitioned into sworn police officers as we have moved after the Beale review to the all-in model at Australian airports. The Australian Federal Police will take responsibility for those, so there has been a component of that.

To put it in some context: our numbers since 2007 have increased overall by 336, so almost equivalent to the 318 I mentioned about the new policy initiative. However, internally we have redistributed whether they were unsworn or protective service officers. Another 211 of those are now sworn police officers than were before. So there are a couple of things at work here all at the same time around the same endeavour, to get more sworn police out on the front line.

Senator HUMPHRIES: For an unsworn officer—not a protective service person—to become a sworn officer they would have to go through the normal recruitment and training process that anybody entering the AFP college would have to go through, would they not?

Mr Negus: Yes, they would. We do have some people who join as unsworn members and then they basically transition across. Likewise for the protective service officers; it is slightly truncated but there is still a 16-week recruitment program to give them the skills to be sworn police officers.

Senator HUMPHRIES: Okay. I would appreciate a kind of flow chart that shows me how you have taken the position in 2007 and translated to the position today where you say there are an additional 547 sworn officers. In essence, I want to know where they have come from, and I particularly want to know how many of those positions have been created by virtue of taking what were protective service officers and redesignating them as sworn officers.

You say there is a truncated process whereby they can become fully sworn officers in the sense in which you are referring to it here. What proportion of that 547 would those sorts of people make up?

Mr Negus: Deputy Commissioner Drennan might have exact figures, but I think it is in the low 100s—120 or 130 people have transitioned across. As we do this, you may recall that there is a five-year transition plan for the AFP to take over control of the airports in the context that it was state police who were the community police at airports. The AFP will now recruit and train its own people to take over those roles. And whilst it is a five-year transition, we are in the second year of that and we have so far done about 120 or 130 people.

I should say—and I will pass back to Deputy Commissioner Drennan in a moment—that over the last two years we have had a seven strategic principles strategy within the AFP. Part of that is in reinvigorating our investigations capability. We have looked at, really, where we can save things like supply costs across the board and reinvest that back into staff. Accordingly, we have been able to put more police on the front line while still actually providing them support to do their work. So there has been a conscious strategy about changing the dynamic of our budget to invest more into people and to have more sworn police doing those front-line activities.

In tabling our annual report last Friday we achieved some substantial results during the year, and that was very much as a result of that strategy in putting more people out there doing the work on the front line.

Senator HUMPHRIES: I am glad you are taking a positive approach to all of this, but it could also be said, could it not, that this is the product of a decision to make budget cuts in the AFP and that to maintain front-line operations you have simply had to reallocate resources in the way that you have described?

Mr Negus: Every year we face an efficiency dividend and pay rises that have to be funded internally, so it is about finding that balance. But we have managed to turn that into a positive and put more people out on the front line whilst absorbing those savings. Deputy Drennan, do you have those numbers?

Mr Drennan: Yes. To date there have been 97 protective service officers who have transitioned to sworn police officers and been deployed at airports. There are an additional 44 who are currently in the training college, and they will graduate before the end of this year. Of course, there are subsequent courses next year. So at the present time there are 97 who have completed their training and 44 still in training—a total of 141.

Senator HUMPHRIES: You mention that they were based at airports.. Do you mean that after they have made that transition from protective service officer to fully sworn AFP officer they are based at airports?

Mr Drennan: No. What has been occurring at the airports is this. You will recall that, following the Beale review, one of the recommendations was to move to a uniformed workforce at airports who would all be sworn police officers. What we had prior to that was two categories of police at airports. One was sworn police officers who were predominantly from states and territories, and the other was what we call counterterrorism first response officers, who were protective service officers. There are two types of work being done there. That work has now come together, so it is the uniformed sworn workforce there who will do both those roles. What is then occurring is that the protective service officers do their sworn police role, they go back to the airport and they take up those positions as sworn police officers. So the protective service officer role, the counterterrorism first response role, will eventually disappear at airports. The function will still be performed, but by sworn police officers.

Senator HUMPHRIES: These 97 who have made that transition are still specialists in respect of work at airports, aren't they?

Mr Drennan: They are deployed to the airport, but no; they are not specialists. They are sworn police officers. So in effect, once they have finished all their training and their on-the-job training, they can be deployed, as a federal agent or a sworn police officer could be, anywhere across the organisation into a sworn police officer role.

Mr Negus: We see great utility in having critical mass in many locations now where we did not before. For instance, in Tasmania we have only three federal agents, but there are probably between 20 and 30 at the airport. So now, with sworn police there, it gives us much more flexibility to have people support other operations and do other things that we did not have in the past.

Senator HUMPHRIES: Let us suppose there were a riot somewhere in Canberra tomorrow. Would you be able to take the sworn officers at the airport and deploy them to assist to combat the riot?

Mr Negus: We certainly would. They are certainly qualified and able to do that. They have all of the skills and legal powers that a normal police officer would have, but it is a matter of whether it would be appropriate in the context to do so.

Senator HUMPHRIES: What do you mean by that?

Mr Negus: We have a large building just down the road here where we could probably take some people out of non-operational areas who are also sworn police without taking them out of the airport environment.

Senator HUMPHRIES: I realise that. The point I am making, though, is that they are fully qualified sworn AFP officers able to do the same general range of tasks that any sworn AFP officer would be able to do.

Mr Negus: That is right and, whilst they may go back into the airport in the first instance, certainly in the long term I would expect that most of them would transition out into the wider AFP workforce, whether it be domestically or internationally. They have all of the opportunities available to them that everyone else has.

Senator HUMPHRIES: Just while we are on the airport, there was a report in the newspaper on 30 June this year about an AFP officer who supposedly lied about being an air marshal and tried to get into the plane's cabin on a Virgin Blue flight on 27 June. What can you tell me about that incident?

Mr Negus: I am aware of the incident. That happened here in the ACT, from memory. The matter was certainly reported to Professional Standards, and that is being investigated now. I am not sure of the actual status of that investigation but I understand it is ongoing. Obviously, if the allegations prove to be correct, these things are taken very seriously, and the alleged behaviour would be seen as extremely inappropriate. We will take whatever action is deemed necessary at the end of that investigation.

Senator HUMPHRIES: Is the officer still at work?

Mr Negus: Mr Wood, who has professional responsibility for our Professional Standards area, says he understands that that officer is suspended, but we will correct the record after the break if that is not the case. My understanding is that he was suspended.

Senator HUMPHRIES: All right. Four months is a fairly long time to be conducting an investigation like that, particularly if someone is suspended—were they suspended with or without pay?

Mr Negus: He would be suspended with pay.

Senator HUMPHRIES: So any idea when we will be able to know what the outcome of that incident was?

Mr Negus: I will try and get some details during the session this morning. I am not 100 per cent sure. These things are treated very seriously. Obviously, there is a natural justice process and there is a process around investigation that must run its course. Four months is getting to the point where I would expect something to be happening, yes, but I cannot tell you the exact details. It may well turn out that there are criminal offences being considered as well, which could obviously extend the nature of this. It may take some time.

Senator HUMPHRIES: Okay. Just changing tack a little, what role would the AFP be asked to play with respect to issues surrounding the implementation of the new carbon tax? You would be aware that there are already questions that have been raised about the extent of fraud in relation to things like carbon credits and so forth in other places where such taxes are at work. Can you tell me whether the AFP has focused on what role it will play with respect to enforcement of the rules around the carbon tax.

Mr Negus: I will just pass to Deputy Commissioner Colvin to answer that question.

Mr Colvin: Obviously, Senator, we were aware that the legislation was passed by the parliament last week and it is quite a large suite of legislation. The responsibility for that is of course with the Department of Climate Change and Energy Efficiency. With respect to AFP obligations, yes, we have been considering what obligations and commitments may come to the AFP as well as other agencies. Within the suite of legislation that has been put forward, there are a range of offences, some of which we would describe more as regulatory type offences, and the legislation as we understand it has, effectively, a regulation monitor within the legislation who would deal with a large portion of that. But obviously, on a broader scale, the AFP has Commonwealth responsibilities in relation to investigations of serious fraud within government programs, and that is something that we would need to consider in the

fullness of time, once the scheme was implemented. We are working with appropriate agencies, including the Department of Climate Change and Energy Efficiency. In fact, at a recent Heads of Commonwealth Operational Law Enforcement Agencies meeting, which is all Commonwealth law enforcement agencies, the issue was discussed, and the AFP, along with the Department of Climate Change and Energy Efficiency, will be leading a working group to look at the possible implications of a change to the legislation.

Senator HUMPHRIES: Fraud is usually quite a complicated area of investigation for bringing forward a prosecution. How many people work in the area of fraud investigation at the moment inside the national operations of the AFP?

Mr Colvin: I do have those figures, if you can just give me a moment. But the AFP operate a fluid model, so the figure that we would give at any given time can be increased or decreased according to what our priorities are. I do not actually have the number of personnel, but I can tell you that an AFP investigation team is generally in the order of five to seven people. I will get an exact figure for you. But within our broad crime operations, which pick up our fraud area, we have three teams in Canberra, two teams in Adelaide, three teams in Brisbane, a team in Cairns, a team in Darwin, a team in Hobart, six teams in Melbourne, one team in Perth and 13 teams in Sydney. So any work that would flow to us from a carbon pricing mechanism or exploitation of the legislation will be divided up amongst those crime operations personnel. We do not run a model that says, 'You're a fraud investigator.' You are a general investigator. If we have specific skill sets we need we may call on those, but in a more general sense we do not run a specific specialist model.

Senator HUMPHRIES: Can you tell us at this stage what kind of resources you expect to need to throw into that exercise?

Mr Colvin: No, not at this stage.

Senator HUMPHRIES: You say you have had discussions with the Department of Climate Change and Energy Efficiency. Is there some sort of formal structure, a working party or other mechanism, to describe the role that the AFP are expected to play?

Mr Colvin: There is. The working group commissioned under the heads of law enforcement agencies is yet to meet. I believe the officers are meeting at the lower level this week to start the process and put in place some rules and terms of reference for what the working group will do. Of course, we also have an outposted officer attached to the Department of Climate Change and Energy Efficiency who is able to help us work through some of those issues as well.

Senator HUMPHRIES: I will come back to those issues perhaps at the next estimates and get some more information about how that is unfolding. I want to move to some questions about the Villawood Immigration Detention Centre at this point. There have been a number of incidents at Villawood, as I am sure you are aware. In April there was a rooftop protest that lasted for 11 days or so. Can you describe for us what the role of the AFP was in that particular incident?

Mr Colvin: On 20 April there was a major disturbance at the Villawood Immigration Detention Centre in Sydney. In this case the New South Wales State Emergency Service were the first responders to that incident. In total, throughout that incident, the AFP deployed 105 members over the course of several days to help manage the incident, and we are currently

leading an investigation that has followed the disturbance with assistance from the New South Wales Police. I should say there is a coronial investigation as well concerning the arson that went on, and we are working with the New South Wales Police on that. Do you want me to take you through the events and the AFP's role?

Senator HUMPHRIES: If you can do so in two minutes that would be great.

Mr Colvin: It was a large incident. Perhaps I will paraphrase. The New South Wales Police and the New South Wales Fire Brigade were the emergency responders to that incident and, given the Commonwealth interest, they contacted the Australian Federal Police very early in the process. We deployed, as I said, up to 105 people over the course of the incident. Our focus along with the New South Wales Police was to return the Villawood Immigration Detention Centre to good order, so that Serco and Immigration could take over and run the facility, which is what we did. As for the rooftop protest, you would have seen that there was a range of people who accessed the roof of one of the buildings over, what was from memory, some nine days. We were only involved in the rooftop aspects in the initial stages. We assisted Serco and took over some of the negotiation. At the point where the immigration detention centre was restored to good order, or in our assessment returned to order such that Serco and DIAC could maintain control, we withdrew as did the New South Wales Police.

Senator HUMPHRIES: What did you say about the New South Wales Police?

Mr Colvin: Both the AFP and the New South Wales Police withdrew and handed control of the incident back to Serco and DIAC.

Senator HUMPHRIES: It was a nine-day rooftop protest. At what point did you and the New South Wales Police withdraw?

Mr Colvin: I can tell you that the event started on the evening of 20 April and there were people on and off the roof in the following days. We were in a position to assist and then take over management of the incident from the New South Wales Police at around 12.30 the following day, 21 April, by which time we were able to deploy sufficient resources to the site. We formally handed back control of the incident to Serco on 23 April, so two days later, at 10.40 in the evening.

Senator HUMPHRIES: The process went on for another week or so after you had withdrawn.

Mr Colvin: I am just looking to see when the clients finally did get down off the building. They came down of their own accord between 29 and 30 April.

Senator HUMPHRIES: So if you withdrew on the 23rd, it was about a week—

Mr Colvin: Correct.

Senator HUMPHRIES: At the public hearing of the Joint Select Committee on Australia's Immigration Detention Network on 5 October, the New South Wales Police indicated that, had they been in charge of the situation, they would have taken the detainees off the roof but they did not do so because they did not have the authority to do that. Can you say whether the New South Wales Police put it to the AFP at any stage that it was a better approach to take the detainees off the roof rather than to leave them there for nine or 10 days?

Mr Colvin: I am certainly aware of the evidence that was given at the inquiry at Villawood. What I can say is that throughout this incident, both I at the deputy commissioner

level, my assistant commissioner and a range of commanders were in regular contact with the New South Wales Police, and throughout the entire process we were at one with our view that it would be too risky to remove the rooftop protesters—risky for both the police and for the welfare and safety of the protesters. You will need to ask the New South Wales Police what they are thinking in terms of how they may have removed those protesters, but we are certainly very confident of our assessment at the time and the assessment of our tactical operators on the ground that to remove the protesters would have been far too risky.

Senator HUMPHRIES: You seem to be implying that you were at one with the New South Wales Police as the incident unfolded, but after the event the New South Wales police are telling the select committee that they thought that the detainees should have been forcibly removed from the roof. Did they or did they not put to the AFP that a better tactic at the time would have been to take the detainees off the roof?

Mr Colvin: I can say categorically that we were speaking with the New South Wales Police, and they did not put to us that there was a better alternative to take them off the roof at the time.

Senator HUMPHRIES: He said there were 105 AFP officers who were involved in the incident. You said that you came in on the 21st and withdrew on the 23rd. You are not suggesting that all 105 were involved over the first two days, are you?

Mr Colvin: No, the peak of our involvement, really, was on the evening of the 21st. There were a large number of tactical operators and public order management trained operators who assisted, with the New South Wales Police and Serco, in returning the centre to good order. You may recall that a number of what we described as agitators were removed from the centre, because we were not confident that the centre maintained the ability to appropriately house them after this point, and they were moved on to the Silverwater Remand Centre. So our deployment fluctuated in that there would have been negotiators, investigators, tactical operators, public order management people—there would have been a range of officers.

Senator HUMPHRIES: Where did the 105 officers come from? Are they all based in Sydney?

Mr Colvin: No, in fact a large portion of our tactical operators and our public order management operators came from Canberra.

Mr Negus: To add to that, at the last estimates hearing in answer to a question from Senator Brandis we discussed the tactical decision-making during that process. We were receiving regular updates from the people on the ground and supported their judgment that the people be contained within the centre. There was a large fence around the centre, and they were on a rooftop. Our tactical advice was that it was too risky to go in and try to forcibly remove them from the roof when they were threatening self harm and there were a range of other negotiation tactics which were better suited to have that situation de-escalated. As it turned out—and I am aware of evidence provided by DIAC at the last estimates hearing as well—those negotiations continued to a point where they came down peaceably, seven days later, granted, without any injury and without any damage to further property.

Senator HUMPHRIES: The AFP presumably have primary policing responsibility in a situation in any detention centre around Australia, but I assume New South Wales Police play

a role in supplementary assistance. Are they effectively sworn as special constables to come into a centre like that and assist the AFP? How does that work?

Mr Negus: It is a difficult situation which we are currently working our way through. A lot of it depends on where the centre is. In a place like Sydney where we do have a critical mass of people we are able to respond to some extent, but in more remote locations, and even Sydney to some extent, the New South Wales police will regularly be the first responders. Likewise, in remote locations in the Northern Territory and Western Australia, it could take a matter of a day or more for the AFP to get there.

We are currently working through with the state and territory police and with DIAC to enter into memorandums of understanding about where the responsibilities lie. There are some complicated legal issues around who can do what, and we are still working our way through that with some advice. But generally there is an understanding that, if an incident occurs, the first responders will be the state and territory police. We will then negotiate with them about who should take primacy for investigations. If it were a murder or a sexual offence or something like that, it is likely that the state police, because of their expertise in their areas, would take the lead. Other offences may well be left to the AFP. In this case, there were charges laid against people who had caused damage to the facility, for instance. Deputy Commissioner Colvin has been involved in those discussions and could probably give you a more fulsome explanation of some of the technical issues, but we are still working our way through that, with DIAC central to this in leading some of those negotiations.

Senator HUMPHRIES: To be quite frank with you, I am just a little surprised. Villawood has been there 20 years at least and probably a lot longer than that. There have been incidents there for a long period of time—perhaps more so recently, but it has been there for a long time and there have been issues there. We are only now developing a memorandum of understanding about how the various legal issues associated with restoring order in a place like that are handled?

Mr Negus: I can say from personal experience. I must say up front that certainly the public or the clients in those facilities need not worry about a police response. There will be one, but some of the other technical aspects are worked out in those issues as they unfold. We have been attempting to gain memorandums of understanding for probably close on seven or eight years. The landscape changes sometimes about this. We get some contradiction in legal opinion and legal advice between the states and the Commonwealth about who is responsible for what, and those discussions have been ongoing for a number of years now. We are closer than we have ever been, but we still have not yet settled on some of those things. But the reality is that on the ground when an incident happens the state police will respond and then we will sit down and discuss it. We have a very good working relationship with them about where we go from there.

Senator HUMPHRIES: This memorandum presumably will apply to all of the detention centres. It will need buy-in from the state police forces all around the country, won't it?

Mr Negus: Yes, it will. I think we will look to have separate MOUs with each of the states and territories and the Commonwealth and DIAC representing their interests from the detention centres. So it is a tripartite agreement, if you like, and that is what has caused some of the issues about making it as consistent as we possibly can yet also identifying and recognising some of the geographical differences with remote locations in Western Australia,

for instance, and the Northern Territory. Those are the sorts of things that have caused some difficulties in getting this to the finishing line.

Senator HUMPHRIES: Would you say that there have been problems associated with dealing with these sorts of issues by virtue of a lack of such a memorandum?

Mr Negus: No, I do not think so. I think that operationally we rise to each of the occasions and we sort out the details through that process, but we are—as the state police are—after far more certainty about responsibilities and where they lie. I think we have a broad understanding, but we do not have any MOUs in place to make this as categorical as we think it probably should be. But, as I said, negotiations have been ongoing for a number of years now and it is a matter of trying to get it to the finish line.

Senator HUMPHRIES: You said you are doing a review into that incident starting on 20 April and there is also a coronial inquiry?

Mr Colvin: I have just been advised, contrary to what I said before, that there is a coronial inquiry. The coroner has made a decision in New South Wales that he does not require an inquiry, so we have an ongoing investigation. At this stage, our investigation has charged nine people, who have all been before the court and I believe they are next before the court on 9 November. I will say, though, that the investigation is ongoing and we are seeking advice from the Commonwealth DPP and external counsel about additional charges and additional people that may still be subject to charges.

Senator HUMPHRIES: So you are conducting an investigation into who was responsible for the acts of disorder at the centre. Is that on top of an investigation about how the whole incident was handled by the department, by Serco, by AFP and by New South Wales police?

Mr Colvin: No, that is quite separate, and I am not aware of any particular inquiry of the nature that you are expressing. We always review our own procedures to see what we could have done differently or better and what worked and what did not. I think a more holistic look at how the response was managed would fall more into the type of work that the commissioner has already alluded to that is going on around the country to look at what the appropriate responses mechanisms are for various incidents. I would also add that what complicates this a little is that the legal footing for some of these centres varies, so an immigration detention centre may have a different legal status to an alternative place of detention. I am not trying to be evasive; it is just that each state and territory and each centre is different.

Senator HUMPHRIES: All right. Do you know if those nine people who have been charged already are still in immigration detention?

Mr Colvin: I do not know that. We could find out. I do not know that they would still be at Villawood as well. I think they were removed but I cannot be sure. We will take that on notice and find out.

Senator HUMPHRIES: There was a report on ABC radio at one point about comments by New South Wales Assistant Commissioner Carmine (Frank) Mennilli with respect to the lack of clarity about the legality of his forces going into Villawood should a fire or a riot eventuate. According to this report he said he had raised those concerns with the department of immigration just before the riot—I think that was the riot in April that we were referred to.

Are you aware of any concerns that were raised with the AFP about the legal status of New South Wales police intervening in the eventuality of a riot or a fire?

Mr Colvin: As the commissioner has said, this is part of the work that is going on about the legal technicalities of who has jurisdiction and where that jurisdiction comes from. There is a legal working group that has been put together which the department may be able to say a little more about. They lead the legal working group.

Senator HUMPHRIES: I can see that the work is going on now about that; that is good and it needs to happen. As I said, I am a bit surprised it has not happened already, but it is good that it is happening. What I am concerned about are the comments by the New South Wales assistant commissioner that he was concerned at the time about the lack of clarity of the position and that he raised those concerns with DIAC. I am asking you if he or somebody else from the New South Wales police at the time of this incident raised those concerns about the legal position with the AFP.

Mr Colvin: I can certainly say that the New South Wales police have raised with the AFP, in a range of forums and on a range of occasions, their concern about the legal footing upon which they act. At the time of the incident I do not believe that we were focused on those issues and I do not believe that they had been raised. As the commissioner has said, we move forward and do what needs to be done. But it would certainly be the case that the New South Wales police have raised with the AFP on a number of occasions their concerns.

Mr Wilkins: Senator, it might be useful, because we are a party to this working group and that issue has been raised with us, if I get Mr Iain Anderson to tell you what the actual position is. The report you got was a little muddled.

Mr I Anderson: The position is quite clear in a lot of respects, although there are some areas where it is not clear. The clarity comes from the fact that the Commonwealth Places (Application of Laws) Act does apply state and territory law as Commonwealth law to Commonwealth places, such as Villawood detention centre. State and territory police are in fact applying the laws that they are used to applying, which have been applied as Commonwealth laws in the detention centres. So it is quite clear what they do for the most part.

There are operational issues that were pointed to by the commissioner where they are not quite clear what is being required of them, and those issues need to be nailed down in the memorandum of understanding. But if there is actually a public order disturbance going on, if offences are being committed, then it is relatively clear that state and territory police have the power to act on those.

Senator HUMPHRIES: With respect, it was not clear to the New South Wales police because they told the select committee inquiry that they had raised serious issues about the legal situation at Villawood on 19 April, the day before this incident broke out. I assume something was happening there that led them to make these sorts of comments, but according to the assistant commissioner from New South Wales he raised this—he does not say with whom—with someone in the Commonwealth government on 19 April, the day before this incident occurred. If the New South Wales police have had this uncertainty—and, because there is no memorandum yet, there is still presumably some uncertainty about these

situations—I assume that there would be uncertainty with other police forces as well, in other states where immigration facilities are based.

Mr I Anderson: The uncertainty that has been raised in the legal issues working group, including by New South Wales, is about situations where they are not clear on whether it is actually an offence situation. With people on roofs, for example, it is whether they have the power to remove people who are sitting on a roof if they are not actually committing an offence. That is a situation where they are not clear about whether they have the power. But the New South Wales police have certainly said to us that, where an offence is clearly being committed, they have no doubt that they have the power.

Senator HUMPHRIES: I just put it to you that, with an expectation that we are going to be dealing with significant numbers of people in immigration detention for the foreseeable future, this kind of memorandum—which as you say, Commissioner, has been in negotiation for seven or eight years—needs to be finalised very quickly, because we do not want uncertainty about these things.

Mr Wilkins: We are certainly cognisant of that. I think that, as the commissioner pointed out, we are getting towards a resolution of this issue. It obviously involves a number of states and territories, the AFP, a number of police forces and DIAC, and obviously we are involved in that too. I agree with you: it should be sorted out. But the point we are making is that some of the lack of clarity expressed in that report that you read out has now been cured. It was never a problem. There have been discussions with the New South Wales police, and I think some of that uncertainty that you were referring to there has been put to bed. But I agree with you that there is a need to sort this out and settle it with an MOU; I agree with that.

Senator PARRY: Commissioner, have you received the statement of interests from your senior officers, as you are required to do?

Mr Negus: Yes, I have.

Senator PARRY: I have asked in a previous format, but have you submitted yours to the minister?

Mr Negus: Yes, I have.

Senator PARRY: Very good. Thank you. I now move to some issues about ACLEI. The relationship with ACLEI no doubt remains strong. The tables on page 120 of the annual report—I will get you the number in a moment—indicate that, of the corruption issues which are handled by ACLEI, there were a total of 30 for the 2010-11 year. That is table B1. Table B3, on the following page, indicates that of corruption issues there are 70 outstanding and 15 finalised. I realise that some of those 70 are from the previous financial year, 2009-10. Can you give us a breakdown of which are 2009-10 ones, or can you take that on notice if you have not got that at your fingertips.

Mr Negus: Yes, we would have to take that on notice to give you the accurate figures. We do not have those with us.

Senator PARRY: Thank you. I do not know whether it might help for future reports if that could be an added table. I do not know how simple that is to organise, but it would assist.

Mr Negus: Thank you.

Senator PARRY: Can you indicate whether any prosecutions have resulted from the 30 corruption complaints or the 15 finalised ones.

Mr Negus: We are just testing our memory. Obviously these are things we would be briefed upon. There are a range of things, and they do go over a number of years. I should say, just to clarify this for the record, that where an allegation of corruption comes in, even from an anonymous source, those must under the act be referred to ACLEI in the first instance for them to make their own assessment. They regularly refer things that they see as less serious matters back to the AFP to investigate, with their supervision. We then notify them of the outcomes of that. I will take it on notice.

Senator PARRY: That is fine.

Mr Negus: But from memory there have been no prosecutions. You might have read in the papers in the last week or so of a matter here in the ACT, discussed by ACLEI in their annual report. I think the officer's name was Ty Carbone, and he was dismissed from the AFP for inappropriately disposing of some narcotics that were seized in a nightclub. That is one that has been recently publicised in the media. But I cannot think of any other matters that took us down that path.

Senator PARRY: In relation to some of the corruption issues, as you rightly say, when the Integrity Commissioner refers them back for the AFP to deal with when they are lower level, do they then slip back into categories 3, 2 or 1 or do they still remain as that corruption issue category?

Mr Negus: They remain on that level and then we report back ACLEI on the outcomes of those.

Senator PARRY: Could I now move to page 112 of the annual report. There were some deficiencies highlighted by the Ombudsman. The majority of these were in relation to the unreasonable delay in the resolution of complaints. Do you have any further comment to add to the annual report?

Mr Negus: Senator, I might get Mr Wood to run you through it. We have done a lot of work in the last 12 months. We did have quite a backlog of complaints and, going back to Senator Humphries comments, four months is quite a lengthy time for an investigation. I have to say that, unfortunately, the AFP had taken some time to resolve complaints, and that is not a good situation for the member under investigation or the person making the complaint. We have cleared a backlog of around 200 matters. We now have, I think, 10 on the books for resolution, which is a number we have not seen in probably many, many years. I will get Mr Wood to run through some of the observations of the Ombudsman and what we have done in response.

Mr Wood: The report from the Ombudsman, as it says in the annual report, relates to a particular period in time. Generally the reports we receive from the Ombudsman are historical and we are working closely with the Ombudsman for more current reports to be generated from within the Ombudsman's office. The current stats as at 17 October, as the Commissioner mentioned, indicated that the critical point of the process where we had a backlog that was causing concern for us and of course for the Ombudsman is the adjudication step, which is the step at which all the information available comes to a senior officer to decide upon the appropriate action to be taken. We had between 350 and 400 matters at that stage 12 months

ago. Because the Commissioner approved the establishment of a panel of a number of senior executives who could make those adjudications, we were able to stabilise and prevent any further growth in that backlog. The Commissioner then also appointed a former senior executive of the organisation to come back and work full-time on clearing the backlog. As a result the figures have gone from 350 down to, as at last night, 10 at that adjudication step, which is a balanced figure. There would always be some at that point.

Mr Negus: I might just add, Senator, that in many ways in reviewing our professional standards regime the decision to have one person responsible for adjudication was about consistently and about someone who was appropriately trained and skilled to make those adjudications for the organisation. That was the head of our professional standards area. That may have been okay for an organisation of 2,500-odd people 10 years ago but now we are approaching 7,000 staff. Obviously the volume of work has meant that we really needed to review our systems, restructure and find a new way of dealing with this so that there were not inappropriate place. We have done that now and caught up on the backlog. So I think it is a very good news story in the context of the future. I do not think you will see those sorts of backlogs or delays occurring like they did in the past.

Senator PARRY: Could I now move to page 93 of your annual report and the relocation of headquarters. The successful move took place and I think the opening was in April. You made some comment in the report in relation to expecting the site to be fully operational by September 2011. We have just passed that date. Can you give us an update on whether the site is fully operational and successfully operating?

Mr Negus: The last piece of the puzzle to be completed was the triple C, which you might have seen on the news last night, that the Attorney-General opened yesterday. That took longer than we expected to be completed, but that was the final work to be done within the building. As I said, that opened formally yesterday.

Senator PARRY: I noticed somewhere else in the report that 48 vehicles have been reduced from the fleet as a result of the move. Are there any other efficiencies as well as the 48 vehicle reduction?

Mr Negus: I think just in the time spent we have condensed from 10 different geographic locations around Canberra into one. Whilst it is a big building and takes a long time to walk from one end to the other, it is much easier than getting into a car and driving to another location. I think we have already seen, firstly, time efficiencies in that regard and, secondly, the synergies between having our operational staff and our intelligence staff based one floor apart or in the same building. They are the sorts of things that have also delivered operational benefits. Similarly, we have all of our assistant commissioners in one location. Because we have such a diverse range of business units, having them work together, seeing those convergences across their business lines and having them able to communicate with each other on an hourly or daily basis has seen a significant improvement in the business model that we were able to apply. There is a range of other efficiencies that I am sure Mr Wood could talk about regarding building and property, and those sorts of things, and in the way we run the business, but from an operational perspective having all those people together in one location has been a great thing. We were in some pretty different standard accommodation around Canberra, from okay to not so good, but having a very good building now, which will

be at home for at least the next 15 years, has been significant to the morale of the organisation.

Senator PARRY: Thank you. I now move to the KPIs on page 17.

Mr Wood: Senator, before you move on to a new topic, could I just close off an issue from the PRS conversation that we had with Senator Humphries earlier, if that is convenient for the chair?

Senator PARRY: Certainly.

Mr Wood: Reporting back on the matter at the airport that we discussed earlier, the first comment I have back from my professional standards is that the facts of the matter are not the same as quoted in the media. The investigation was completed within the 180-day benchmark set for serious misconduct matters—the benchmark agreed with the ombudsman's office. The member was removed from normal general policing duties and was redeployed to other duties rather than being totally removed from the workforce.

Senator HUMPHRIES: While the investigation was happening?

Mr Wood: While the investigation occurred. The member has been given his natural justice opportunity in terms of making a statement back to the investigation. That was received yesterday. The adjudicator will now look at the original investigation and the natural justice response from the individual officer before deciding what the appropriate next action is.

Senator HUMPHRIES: That implies that we are not looking at a criminal investigation but at disciplinary proceedings potentially against an AFP officer.

Mr Wood: There are a number of matters in this case that I would prefer not to discuss here because of the personal circumstances of the individual officer, but that is a fair summation.

Senator PARRY: Going back to my question, the tables are on pages 20 and 21, KPI 17 and KPI 23 were the only two out of the 32 that were not achieved, one of which missed by only one per cent. On page 17 there is commentary about this, and in the two dot points under 'Program 1.3: Operations—Policing' are the two contributors to this KPI outcome. One is 'the wording of the survey question designed to inform this KPI' and the second point is 'the level of neutral responses.' Could you expand on that? It would be very interesting to know what the wording of the KPI was.

Mr Colvin: I may be best to help you with that. I do not have the wording of the KPI here with me. However, the wording was about whether one is satisfied to the extent of the AFP's involvement in operational coordination. In hindsight, even if I was to look at that question now, it is a little confusing as to what we are actually asking our partners to assess, which is why there was a high number of people who did not respond or who had a neutral response. While we are very disappointed that we did not reach that KPI we are investigating better ways to ask the question. In fact, in the simplest of terms, operational coordination is not something which you would expect the AFP to necessarily be getting involved in with our partners on all occasions. Many of our partners who are asked the question are not those whom we would be organising or coordinating investigations with. It was obviously disappointing, and we need to look at the messages and lessons we can learn from it, but as we have said in the annual report, our other key performance indicators were very strong. In

fact, the overall satisfaction with our crime program was 82 per cent, although that is not a reportable KPI.

Senator PARRY: It is unfortunate that here we concentrate on the negative rather than positive, and you did have 30 good outcomes out of 32, so we certainly acknowledge that. Would that explain why the international network clients gave you a higher level of satisfaction compared with the domestic clients, which is where you fell down on that particular KPI?

Mr Colvin: I think there are probably lots of reasons for that. I think the domestic environment is complicated, with a lot of agencies and a lot of different interests in the way we go about conducting our investigations. The international environment, while this may seem counterintuitive, is relatively straightforward as to what our role is and how we work with our partners. We are very pleased that our international partners gave us such a good rating, but I think there is work for us to do domestically.

Senator PARRY: On KPI 23 there is some commentary there under program 1.4, Close Operational Support. Do you want to expand upon the commentary there, again indicating that the external client satisfaction said:

External client satisfaction achieved 84 per cent against a target of 80 per cent.

It was only a one per cent factor—79 per cent compared to 80 per cent, which was the target.

Mr Negus: Achieving 30 out of 32 key performance indicators—

Senator PARRY: Is pretty good.

Mr Negus: Yes. Missing it by one per cent is probably worse than missing by about 10 because you start to wonder what if you did this or that. It is something we take very seriously and something we are working very closely on. We go back and look at what is happening with the people who assist us in conducting the surveys—the wording and whether we are getting the appropriate responses or not. We set ourselves high targets. Eighty per cent satisfaction rate is a pretty high target and it is designed to stretch our officers and our people, knowing that these things are not easily achieved. So in many ways we will reflect on that, learn the lessons from that and take that forward.

Mr Wood: I think it is worth noting that the external client satisfaction target was met. The one that was not met was the internal client satisfaction—clients within the AFP receiving services from forensics. If we were to succeed on one and fail on the other, the external one is the one—

Senator PARRY: Absolutely. As I said, we sometimes concentrate on the negative here and not the positive, so the other 30 are certainly commendable. My final question, Commissioner, is: can you give us an update, please, on questions I have asked before about the unexplained wealth legislation and how that is affecting AFP investigations. We did discuss improvements required to the legislation—could you give us an update on that?

Mr Negus: It is something that we have been paying a lot of attention to, and I know that we have had discussions in other forums as well about how this is progressing. All new proceeds of crime matters are considered by the AFP for possible application of the new provisions—and they are not so new now but going back to 20 February 2010. The AFP has prepared a submission to the Parliamentary Joint Committee on Law Enforcement inquiry into unexplained wealth, as you would be aware, and whilst we have limited casework to

inform full commentary on the effectiveness, as you would also be aware, we still have some concerns with regards to how the unexplained wealth provisions have been implemented and the difficulties that has caused us.

In particular, whilst unexplained wealth is a civil action and must be proven on the balance of probabilities, the need to show a link to the Commonwealth related offences potentially limits the use of the provisions. As we have discussed previously, the link to the reasonable grounds to suspect that an offence has been committed does cause some concerns from our investigation perspective and our discussions with the DPP about how easily these provisions can be implemented. So we have made a submission to the inquiry. I stand by the comments that I have previously made in this committee and other committees about this being an exceptionally useful tool for law enforcement to attack organised crime and those people who are sometimes two or three steps removed from where the narcotics or the counterfeit goods or the fraud is being conducted, but living in exceptionally luxurious circumstances and declaring far less income than perhaps most average Australians. So we look to work with the committee to make recommendations on how this can be improved and make it much more workable. But we still have not launched any prosecutions under the new unexplained wealth provisions which would enable us to take any action, and that is based on some of the limitations, we think, within the legislation.

Senator BRANDIS: How many AFP officers are currently deployed on the People Smuggling Strike Team?

Mr Negus: We have 99 officers currently working on people smuggling. That includes a broad range of different functions. I can probably get you some specific details—

Senator BRANDIS: It might save time if you just disaggregate those 99 officers for me by reference to what groups or bodies within the AFP they are assigned to.

Mr Negus: We have 73 investigators, 13 intelligence officers, 10 support staff and three other—I am not sure what the 'other' is actually. We also have 10 members offshore, so that would take the total to 109 all up.

Senator BRANDIS: The term 'People Smuggling Strike Team' comes from Budget Paper No. 2 for the 2009 budget. Is there still within the AFP a group called the People Smuggling Strike Team?

Mr Negus: It is still known as that. Going back several years ago there were far fewer people in that team. We have moved people in as the requirement to investigate these matters has grown.

Senator BRANDIS: So that is not obsolete; that is still a current entity within the AFP, is it?

Mr Negus: Yes, it is.

Senator BRANDIS: How many officers are currently members of the People Smuggling Strike Team?

Mr Colvin: The People Smuggling Strike Team comprises those 99 officers.

Senator BRANDIS: So it excludes the 10 offshore, does it?

Mr Colvin: We generally refer to the People Smuggling Strike Team as our domestic operations, but I can add to that, consistent with what I said to Senator Humphries earlier, that

we run a very flexible model. We have a number of investigations of crew involvement which will be conducted by officers around the country that are not formally part of the People Smuggling Strike Team. On any given day they are the 99 people dedicated full time working the people-smuggling issue but we will also have officers in Sydney, Brisbane, Melbourne or wherever who will be compiling briefs of evidence in relation to crew investigations and the like.

Senator BRANDIS: In the 2009 budget the government provided \$41.6 million over four years to fund additional AFP officers for the People Smuggling Strike Team and for other purposes. I am reading from Budget Paper No. 2 of that year on page 93. In 2011-12 and 2012-13 that appropriation tailed off to respectively \$5.7 million and \$5.4 million. That was the projection at the time of the 2009 budget. Can you tell me what the funding position of the People Smuggling Strike Team is currently, please?

Mr Colvin: I may have to take that on notice to give you an exact figure because there were a number of government funding lines that support the people-smuggling effort of the AFP.

Senator BRANDIS: Okay. You might have to take that on notice. Can you tell me what those government funding sources are, please?

Mr Colvin: For the 2009-10 financial year for four years ending in 2012-13 we were given \$4.06 million under the measure Enhancing Australia's Approach to People-Smuggling. In the same year we were given money under the measure Enhancing Australia's Approach to People-Smuggling Fusion and Colombo, which was \$2.6 million over four years. That funded our efforts in Sri Lanka.

Senator BRANDIS: Sorry, which year are you talking about?

Mr Colvin: These are measures that were introduced in 2009-10 that ran for four years.

Senator BRANDIS: That is where I began. If you have Budget Paper No. 2 for that year you will see the aggregate of those various measures over four years was, as I said, \$41.6 million, which did include what is described as:

... to fund additional Australian Federal Police (AFP) officers for the People Smuggling Strike Team; establish a technical investigation unit in Indonesia; and deploy AFP liaison officers to Sri Lanka, Pakistan, Indonesia, Malaysia and Thailand.

I am keen to know whether the level of deployment of those officers that was provided for under that four-year program has been kept at that level, whether it has increased or whether it has decreased.

Mr Colvin: I will take that on notice, but I am quite confident that the level has been kept at the level it was then.

Senator BRANDIS: As I said, the allocation tailed off to \$5.7 million in the current financial year and \$5.4 million projected for the next financial year, which was the last year of the program. Has that had an effect on the deployment of officers to any of those functions?

Mr Colvin: Again, the figures you are quoting are different in terms of the way that I am looking at it, so I will take it on notice in terms of the exact number.

Senator BRANDIS: I am going from the government's own budget measures paper.

Mr Colvin: We do not have the 2009-10 figures with us, so we will need to take that on notice.

Senator BRANDIS: Would it help you if I showed you my copy? I have it highlighted. Purely for the sake of making sure we are talking about the same thing, I will hold it open at page 93.

Mr Negus: While they are looking at the figures, to clarify my comments earlier about what the 'other' might contain. I am told it is DIAC and Customs officers seconded to the task force.

Senator BRANDIS: Those are the three others. Do they come out of your budget or out of the other budget?

Mr Negus: They are funded by the AFP. We pay their salaries while they are there.

Senator BRANDIS: Deputy Commissioner Colvin and Mr Wood, you have seen what I have been basing my questions on. Are we talking about the same things?

Mr Colvin: We are and we do not dispute that it tails off. Where we need to seek clarity is what other measures might have been brought online.

Senator BRANDIS: Do you think you would be able to do that over the luncheon adjournment?

Mr Colvin: I am told yes, we can.

Senator BRANDIS: Thank you; that is very helpful. In the current budget there is a measure, on page 97 of Budget Paper No. 2, enhancing regional capability to combat people smuggling:

The Government will provide \$10.8 million over two years to continue the deployment of seven Australian Federal Police (AFP) liaison officers to Sri Lanka, Pakistan, Indonesia, Malaysia and Thailand.

May I take it that those are the same AFP liaison officers as were described in the 2009 budget?

Mr Colvin: That is correct.

Senator BRANDIS: And there are seven of them, are there?

Mr Colvin: That is correct.

Senator BRANDIS: Who are the other three offshore officers? What are they deployed to do?

Mr Negus: I can tell you where they are. That number includes six people based in Indonesia, one in Malaysia, one in Pakistan, one in Thailand and one in Sri Lanka.

Mr Colvin: I may be able to add to that. We are funded for seven, but we have 10 at the moment, as the Commissioner said. We absorb the additional based on what we believe our needs are.

Senator BRANDIS: You have 10 at the moment under this program. Concentrating on the six in Indonesia, what is the rank of the senior ranked officer in Indonesia?

Mr Negus: We have a commander in charge of all AFP operations. That would include transnational crime, counterterrorism and people smuggling.

Senator BRANDIS: He is one of the six?

Mr Negus: No, he is our senior person in the country. We have probably in excess of 20 people in Indonesia doing a whole range of different things. The numbers do vary, but six are specifically there for people smuggling. The senior ranked officer in people smuggling would be a team leader at sergeant level.

Senator BRANDIS: We have about 20 under a commander engaged in all of the Australian Federal Police's activities in Indonesia in collaboration with the Indonesian policing authorities?

Mr Negus: That is right.

Senator BRANDIS: Of whom six are specifically tasked to deal with people smuggling?

Mr Negus: That is right.

Senator BRANDIS: Has that number changed since the 2009 budget measure was introduced or has it remained constant at six?

Mr Colvin: I would expect that the number has fluctuated according to needs.

Senator BRANDIS: You might take on notice how it has fluctuated in each of the years since the 2009 budget. Without trespassing on operational issues that you do not feel comfortable talking about in a public forum, can you describe to us generally the work that the six AFP officers deployed in Indonesia are engaged in. In particular I am interested to know your assessment of the state of coordination between the Australian Federal Police and the Indonesian policing and law enforcement authorities in relation to both intelligence about people-smuggling activities and the prosecution of people-smuggling offences under Indonesian law.

Mr Colvin: I guess our officers are involved in a range of activities, and I will need to be careful about exactly what we put on the public record. But you can imagine that they are intelligence officers as well as investigators. They work very closely with the Indonesian National Police, who have established a task force to look at people smuggling. And they work with the Indonesian National Police to follow leads, to develop intelligence and to collate that intelligence. It runs across the whole archipelago of Indonesia, so you can imagine that it is quite a large area that they are operating in.

How would I categorise that relationship more broadly? I think the relationship is very good. The Indonesian National Police remain very committed to the people-smuggling efforts with the AFP and other partner agencies. I will leave it at that.

Mr Negus: Can I add, just to be clear, that the AFP officers working in Indonesia, across all fields, have no police powers in those jurisdictions? They are there as advisers and as partners but they are not able to exhibit any police powers in those jurisdictions.

Senator BRANDIS: No. Your predecessor, Commissioner Keelty, told me in a Senate estimates hearing a couple of years ago about the coordination arrangements between the various governments and various agencies to keep an overall watch on people-smuggling activity. Do the Australian Federal Police officers continue to engage in that joint activity with the Indonesian government?

Mr Colvin: Yes, there is certainly a whole-of-government effort from the Australian perspective as well. You can imagine that within the mission in Jakarta there is a large contingent of a number of agencies who are combining to coordinate our efforts, and each of

us work with our individual partners. So our focus is with the Indonesian National Police. But certainly there is a large effort that goes into coordinating all of the Australian government efforts. That is led by the Australian Customs and Border Protection Service, but the AFP probably has the largest number of people in country working on this issue.

Mr Negus: I think that maybe it is not quite as accurate to say that the AFP would be involved with the government. All of our relationships and other things go straight through the Indonesian National Police. We are not coordinating any other agencies or any other government linkages within Indonesia. It is what the Indonesian National Police would do and how we can assist them and cooperate with them in that context. What they would do from their broader Indonesian government perspective is a matter for them, and we certainly would not be involved in that.

Senator BRANDIS: All right. The AFP officers in Indonesia report back to you, do they, in relation to the current state of their activities in Indonesia?

Mr Negus: Yes, through a mechanism under Deputy Commissioner Colvin. It comes back through an international network and back through to the central AFP.

Senator BRANDIS: And they provide reports to you from time to time about the extent of people-smuggling operations in Indonesia and they make assessments to you, do they, as to the likely level of people-smuggling activity?

Mr Colvin: A lot of that information is actually fed into the Australian Customs and Border Protection Service, which has the lead from the Australian perspective in assessing the intelligence.

Senator BRANDIS: I understand.

Mr Colvin: With a lot of that material, we have officers attached to the task force within the Australian Customs and Border Protection Service—

Senator BRANDIS: And you feed into that process?

Mr Colvin: We feed into that process, yes.

Senator BRANDIS: And in feeding into that process you provide your own assessments, do you not, about the level of people-smuggling activity in Indonesia, and you make your own evaluations and predictions about the imminence of unauthorised boat departures from Indonesia to Australia in the near future?

Mr Colvin: We feed our information in and it is combined with other agencies' information to make those assessments, yes.

Senator BRANDIS: How often are those assessments made? Are they a regular thing?

Mr Colvin: I will need to be careful about operational detail, but I can say that there is a meeting held daily that looks at contemporary intelligence. That meeting is chaired by the Customs and Border Protection Service. It would be inappropriate for me to go into too much detail about that.

Senator BRANDIS: What is the current view of the Australian Federal Police as to the immanence of unauthorised boat departures from Indonesia to Australia?

Mr Colvin: I guess that changes, and is updated each and every day.

Senator BRANDIS: What is the view today? Or the most recent view of which you are aware?

Mr Colvin: We continue to receive information about vessels that are departing or are suspected of departing Indonesia. As you would know, there are vessels that continue to arrive. In terms of making a broader assessment about increases or decreases, it is difficult for me to put a firm position on the record. There has been a decline in recent times, and we continue to look at the assessment of the intelligence. But we have not formed a strong view to say if that decline will continue one way or the other, or whether it will taper off.

Senator BRANDIS: Have you made a fresh assessment in the last four days since the cabinet decision last Thursday?

Mr Colvin: No, as I said, meetings are held every day to look at the contemporary intelligence but the AFP does not make a broader whole-of-government assessment about intelligence trends in the people smuggling—

Senator BRANDIS: I am sure you do not make a whole-of-government assessment but you do have your own views don't you?

Mr Colvin: Effectively we have the intelligence that we have and we feed it into a whole-of-government mechanism and that mechanism makes assessments.

Senator BRANDIS: And if your intelligence tells you for instance that there is an elevation in the amount of people-smuggling activity in Indonesia and an increase in the number of people smugglers soliciting clients and preparing them for journeys to Australia that is something that you would feed into that process.

Mr Colvin: That is correct, if we had that type of intelligence and it was of a nature that we were satisfied of its credibility, we would feed that in, yes.

Senator BRANDIS: Does the AFP—

CHAIR: Senator Brandis, have you nearly finished?

Senator BRANDIS: No, I have got hours to go.

CHAIR: We have an arrangement with Senator Rhiannon.

Senator BRANDIS: I was not party to that arrangement.

CHAIR: No, but I am chair and I am party to that arrangement.

Senator BRANDIS: I do not mind yielding to Senator Rhiannon when I have finished this bracket of questions but I have more extensive questions of the AFP on other topics.

CHAIR: I understand that I am just trying to ascertain whether you can wind up now and we could go to Senator Rhiannon and come back to you afterwards.

Senator BRANDIS: I am prepared to accommodate other colleagues as always as long as I can be reassured that as the shadow minister I will get enough opportunity to ask the questions on behalf of the opposition that I wish to ask.

CHAIR: You will get that. We started the AFP at 11 o'clock and we have them scheduled through till at least three o'clock.

Senator BRANDIS: I will just finish these questions and give Senator Rhiannon enough time between now and 12.30 to ask her questions. Commissioner Negus, does the AFP have a view about the relationship between the policy of the Australian government in relation to the

processing of unauthorised boat arrivals and the level of activity of people-smuggling operators in Indonesia?

Mr Negus: No, I do not think it is my place to be giving commentary on the policy of the Australian government—

Senator BRANDIS: I did not ask you for that, I asked you if you had a view.

Mr Negus: No, I do not.

Senator BRANDIS: Is it the AFP's view, without stating what that view might be, that there is a relationship between the policy of the Australian government and the level of people-smuggling activity.

Mr Negus: I think there are a range of factors which would impact upon whether or not people would be wishing to come to this country through the methods you are talking about. I do not think you can pin it down to one particular thing.

Senator BRANDIS: I am not asking you to. Does that range of factors include the policies of the day of the Australian government?

Mr Negus: The way the people smugglers might market those policies would be a factor of consideration, yes.

Senator BRANDIS: Can I take you to the PBS please, page 163—

CHAIR: Senator Brandis, can I ask you again. If this is a different area—

Senator BRANDIS: No, it is exactly the same area. The people-smuggling operations come under program 1.3: Operations—policing, don't they?

Mr Negus: Yes.

Senator BRANDIS: If you look at the second box on page 163 program 1.3 expenses you will see that there is a reference to four particular budget measures the last of which to do with tax havens has nothing to do with people smuggling and the other three are identified as various people-smuggling measures. The author of the note in that box says on the fourth line: The reduction of \$17.380m from 2012-13 to 2013-14 reflects the two-year budget measure Border Security—enhancing regional capability to combat people smuggling and the previous years' budget measures:

Do I read that correctly to mean that the amount of money being invested by the government in these measures in particular the border protection combating people-smuggling measure is going to fall between now and 2013-14? Is that the right way to interpret that?

Mr Negus: I missed the last bit of your question.

Senator BRANDIS: Do I take it correctly that the amount of money spent on those measures is going to fall between now and 2013-14? That seems to be what it says if you read the second sentence in the second box starting with the words 'The reduction of \$17.380 million'.

Mr Negus: Obviously the measures have a termination date. At the time that would be up to the AFP and, quite appropriately, the government to decide whether they would like to renew those terminating or lapsing measures in that regard. Without that renewal, yes, they would reduce.

Senator BRANDIS: So unless the government decides to have a new measure or to extend these measures, the amount we will be spending on those measures is going to fall by \$17.38 million between now and 2013-14?

Mr Negus: That is correct. Because of the dynamic nature of what is happening in the people-smuggling environment, most of these things are two-year measures because they need to be reassessed quite regularly as far as what is required to address the particular issues at a particular time.

Senator BRANDIS: I am bound to say, Commissioner—and I will wind up on this topic, Madam Chair—that whereas in 2009-10 we had a four-year measure for \$46.1 million, in the current budget we have a two-year measure for \$10.8 million. I will allow for the fact that the earlier measure did include other programs, but there does seem, as far as one can glean from these rather opaque budget statements, to be a reduction in the overall outlays on people-smuggling measures. Is that right?

Mr Negus: As I said, subject to the next review period when we will put forward submissions if we think that it is appropriate for the government to examine.

Senator RHIANNON: Yesterday there were media reports that a submission by the Australian chapter of the International Council of Jurists has been given to the Australian Federal Police and that it details evidence that corroborates and substantiates the findings of the UN Secretary-General's expert panel in respect of war crimes and crimes against humanity that took place in Sri Lanka at the end of 2009. What are the next steps for the AFP with regard to this submission and how long will the AFP take to assess the submission?

Mr Negus: I personally received in my office late on Friday afternoon the submission of which you speak. It is quite a lengthy document. It is almost a ream of paper, to give you an idea of the size of the document. We asked for that to be assessed as a matter of urgency and that assessment is ongoing. It is very difficult for me to give you a time frame around that but it is being treated seriously. We also acknowledged receipt of that publicly and in the press and also to the International Council of Jurists. That assessment process is underway at the moment and it would be premature for me to say anything more than that.

Senator RHIANNON: If this is an operational matter then I understand if you cannot answer it, but has the AFP been building a dossier of evidence on anyone in relation to Sri Lankan war crimes?

Mr Negus: Again, that goes to our operational activities. That would be difficult for me to answer.

Senator RHIANNON: What is the AFP's practice in respect of people living or visiting Australia who are accused of war crimes that may have been committed in other countries?

Mr Negus: Certainly, if matters are referred to us or we become aware of issues that we might act upon independently, we would conduct an investigation into that. Again, it would be dependent on what the circumstances were. Obviously jurisdiction can become an issue in these matters, so there are some technical legal issues. We would sometimes work with the Attorney-General's Department to clarify those issues and with the Director of Public Prosecutions to take those matters forward.

As far as war crimes are concerned generally, we do take them seriously. We have launched a number of investigations. Some of those are ongoing as I speak. They are complex

legal areas, particularly where most of the evidence that can be obtained is usually offshore, and we need to make sure there is a reasonable chance of the matter progressing. There are a lot of factors for consideration before we take these matters forward to a prosecution.

Senator RHIANNON: Thank you for explaining the process. To take it possibly one step further, if the AFP do find evidence in this current submission that warrants the commencement of any legal war crimes proceeding, what is the immediate next step?

Mr Negus: It depends on the jurisdiction that can be applied. Some of these matters may well be referred to the International Criminal Court or they may be prosecuted here in Australia if there are appropriate jurisdictional issues we can actually treat.

Senator RHIANNON: Was the AFP asked by the Australian government before the appointment of the Sri Lankan High Commissioner Thisara Samarasinghe as to what was known about his involvement in the Sri Lankan conflict?

Mr Colvin: No, not to my knowledge.

Senator RHIANNON: In another country I understand that the AFP now has recommendations of the coroner on the Balibo inquest and that you have had it for a number of months. Could you inform the committee of the status of the AFP's work in this area.

Mr Negus: It is actually more than a number of months; it is actually almost two years that we have been working on this case. There are a range of inquiries, as I mentioned before, that need to take place offshore which are the subject of mutual legal assistance requests, and because of that I am constrained in what I can say. But there have been some difficulties and, as you can appreciate, working with foreign governments and getting access to particular individuals or particular sources of evidence can be problematic. But the AFP continues with that investigation; it is still active. I cannot really say too much more than that without stepping into some dangerous territory and compromising the ability of those foreign governments to provide us with that assistance.

Senator RHIANNON: I am sure you appreciate, because you did not nominate the time frame yourself, that it is certainly difficult. So there really is nothing more that you can put on the record about that. I think it raises disappointments for the people involved.

Mr Negus: I am sure it does. We have been in contact with the families who live in Australia and given them fairly frequent updates when we have something to tell them about the progress of the investigation. I have to say that much of this is a matter of us submitting particular legal instruments to try to obtain that evidence in overseas jurisdictions and then it is a matter of waiting, and much of that is outside our control. We continue to push forward on that to get to a position to make a judgment on whether there would be sufficient evidence to take any further action, but we are not at that stage yet and we still have a number of inquiries outstanding, as I have said.

Senator RHIANNON: I may come back to that but I want to move on to some of the aspects of RAMSI. I understand that in August 2010 a Solomon Islands High Court judge, David Cameron, threw out evidence because AFP officers investigating a murder had, in his words, 'forgot basic procedures, including reading the suspect their rights'. Are the AFP officers who came before this judge in this case still with the AFP? If they are, are they still working in the Solomon Islands? Were the AFP officers advised on appropriate procedures that should have been used and should be followed in future?

Mr Negus: I do not have any notes on that particular topic but I do have the head of our International Deployment Group, Assistant Commissioner Frank Prendergast, here. He was running the organisation's component at that time. Mr Prendergast should be able to address some of those issues.

Mr Prendergast: In answer to your question about the current status of those people, I would need to take that on notice, but I can say that our officers who deploy overseas are very well prepared. They are experienced police; that is one of the criteria before they deploy. They need five years experience and they also go through extensive pre-deployment training.

Senator RHIANNON: Were these officers given immunity? I understand that is part of the arrangements that you have in the Solomons.

Mr Prendergast: That is correct, but the immunity would not be an issue in the case you are referring to.

Senator RHIANNON: Why is that?

Mr Prendergast: The immunities kick in when there is a legal process that involves perhaps a criminal prosecution of the officers or a civil proceeding that might involve the officers. This is a normal court issue that comes up every day across the country in criminal courts across the nation; it is not an issue where the immunities would be a factor.

Senator RHIANNON: How many incidents since the inception of RAMSI have there been where the immunity has been invoked?

Mr Prendergast: In relation to an individual officer?

Senator RHIANNON: Yes.

Mr Prendergast: None, by Australia.

Senator RHIANNON: Has it been invoked in any other way?

Mr Prendergast: It has been invoked recently in a matter before the Solomon Islands High Court, in relation to a civil matter.

Senator RHIANNON: What was that?

Mr Prendergast: It was in relation to an issue about the disclosure of police practice and methodology.

Senator RHIANNON: Is the fact that it has not been used an active decision of the AFP operations in the Solomon Islands not to use it, so to give more integrity to the operations there, or is it more that it just has not been something that has come up for you?

Mr Prendergast: When a set of circumstances come up where it may be invoked they are considered and a decision is made whether to invoke the immunities or not. For example, there have been some matters that involved AFP officers where the immunities could have been invoked but we have chosen not to.

When I say it has not been invoked other than in the one incident I am talking about, that is by Australia. Other nations have chosen to invoke it—RAMSI is a regional initiative—and other nations have chosen not to. It just depends on the circumstances.

Senator RHIANNON: Thank you for explaining that. I understand there are two documents marked 'Highly protected' relating to the case of three Solomon Island MPs who

claimed the AFP fabricated charges against them for inciting the 2006 post-election riot. Can these two documents be released?

Mr Prendergast: I would need to consider that. They are marked 'Highly protected'. I am aware of the case you were speaking of, but I do not have the latest situation on that issue. I believe it was back in the Solomon Islands court recently. I will take that question on notice.

Senator RHIANNON: Thank you. In what way was it back in the Solomon Islands court?

Mr Prendergast: The issue that those documents were raised in was in respect of a civil proceedings in the court in the Solomon Islands. That is the context in which those allegations were raised.

Senator RHIANNON: Do you agree that while these documents are not being released that contributes to a cloud over the AFP's operations in the Solomon Islands? Wouldn't it be better to help clear up how this issue arose?

Mr Prendergast: I do not agree that it does create a cloud. Obviously perceptions are an issue. If you look at the RAMSI mission and its history in the Solomon Islands, we conduct regular surveys about public perceptions about RAMSI, how effective RAMSI is being and whether people want RAMSI to stay or not. Those surveys show a uniformly high acceptance of and desire for the RAMSI mission to continue.

The issues you are referring to now relate to a court matter. These sorts of issues get raised in civil cases all the time and they are really a matter for the courts in many cases to deal with. I think you need to take each legal proceeding on its merits. You need to look at the implications of the release of those documents on both operational grounds and legal grounds. Sometimes there are good operational reasons and good grounds, say in relation to witness security and the security of people who may have come forward and given evidence in particular proceedings, to protect that material. That is the sort of basis that these decisions would be made on.

Senator RHIANNON: In the response you just gave you said in relation to actions in civil courts that these are happening all the time. But surely you would agree that this is a very unusual case and that, however it plays out, it is not to the benefit of the AFP or the Australian operations in the Solomon Islands. I was surprised that you used the terminology because it is not happening all the time.

Mr Prendergast: Sorry, Senator, I am not talking about that particular case. I am talking about civil cases where documents are called and assertions are made about particular actions. In terms of our release of the material, there needs to be some very detailed consideration about the possible impact of the release of that material, and that is what I was referring to. The case you are referring to is not a case that is directed at the AFP; it is actually a case where those particular individuals were suing the Solomon Islands government.

Senator RHIANNON: But I do understand that the AFP are caught up in it—that there have been allegations made that they have fabricated charges.

Mr Prendergast: That is correct.

Senator RHIANNON: Yes, and that is quite serious.

Mr Prendergast: It is, but it is being considered by the court in the Solomon Islands. I think the issue we have been considering is the release of records. What I am saying is that, in

terms of the release of any sort of protected record, there needs to be some very careful consideration of the impact of that release—and then, obviously, the court has a role in that.

Senator RHIANNON: So you are happy to take that on notice and come back to us if those documents can be released?

Mr Prendergast: That is correct.

Senator RHIANNON: Thank you. How many AFP personnel are based in the Solomon Islands as part of the RAMSI for 2010-11, please?

Mr Prendergast: I think the current figure is 143.

Senator RHIANNON: Have those numbers gone up or down since previous financial years?

Mr Prendergast: They have gone down. We had a much larger number there in August 2010 in respect of the Solomon Islands election, and there has been a draw-out of those numbers, in accordance with our planning, down to the current level.

Senator RHIANNON: Do you expect there to be a continual draw-down of these numbers?

Mr Prendergast: Our projected staffing levels for next year are around 109, bearing in mind they work inside the broader participating police force, which also includes New Zealand Police and police from every other participant in the Pacific Islands Forum.

Senator RHIANNON: What portion of the total funding for RAMSI goes to the AFP?

Mr Prendergast: I would need to take that on notice, Senator.

Senator RHIANNON: Thank you for that. I am just interested—

CHAIR: Senator Rhiannon, sorry to interrupt, but do you have many questions to go?

Senator RHIANNON: I have a couple more.

CHAIR: We will keep going with you and then break for lunch.

Senator RHIANNON: Sure. Sorry, I just realised the time. Mr Prendergast, could you give us an assessment of how the AFP sees the future of RAMSI.

Mr Prendergast: Yes, I can. I think the RAMSI is a unique mission by world standards, and it has made very good progress against its objectives. There were elections held by the Solomon Islands people in August 2010, and those elections went very well. I think that, when you compare that with what occurred in 2006, it is a major step forward. The main focus of the AFP in the Solomon Islands is the development of the RSIPF, the Royal Solomon Islands Police Force. When we first deployed, we had a dual focus: one was to restore stability and the other was to develop the capacity of the RSIPF. Our focus now is shifting from the stability operations aspect to more of a capacity development focus, given the internal development of the RSIPF and the general settling of the political situation in the Solomon Islands. That being said, there is a lot of work still to be done. There are some underlying issues in the Solomon Islands that still impact on the enduring nature of the current stability, and there are still some issues with the RSIPF's capacity and capability that we are addressing. So my assessment is that progress has been made, the progress has been good, but there is still work to be done.

Senator RHIANNON: Thank you very much. Mr Negus—this is back on Sri Lanka—were you aware of the Sri Lankan High Commissioner's role as head of the navy during the war when he was appointed high commissioner?

Mr Negus: No, I was not. Really, this has only come to our notice since the report was given to the AFP on Friday, so my knowledge prior to that was non-existent.

Senator RHIANNON: Thank you. In response to a question from Senator Brandis, you said that one of your people is stationed in Sri Lanka. Are you aware that, in September, a boat leaving Sri Lanka carrying 44 asylum seekers was stopped by the Sri Lankan security forces; and, if you are aware of that, did the Australian Federal Police officer stationed there assist the Sri Lankan security forces with any information about that boat and, possibly, in stopping the boat?

Mr Negus: I might get Deputy Commissioner Colvin to answer that question.

Mr Colvin: Senator, certainly we are aware. As we work with a number of partners around the region there are a number of vessels that get stopped by our regional partners. We are aware that that vessel was intercepted by Sri Lankan authorities. In terms of our specific knowledge at the time and information we may have provided, I will have to take that on notice. Suffice to say, we are working with the Sri Lankan police service on a range of fronts including people smuggling and broader trans-national crime and building their capacity. I would have to take on notice our specific knowledge of that particular venture.

Senator RHIANNON: I have some other questions relating to that so I will put them all in on notice.

CHAIR: We are now going to break for one hour for lunch.

Proceedings suspended from 12:35 to 13:35

CHAIR: We will reconvene our public hearing into the Senate's legal and constitutional affairs consideration of supplementary budget estimates. We have the Australian Federal Police with us, and we are going to go back to Senator Rhiannon for a few minutes and then to Senator Brandis.

Senator RHIANNON: Thank you, Madam Chair. Mr Negus, I would like to return to the issue of the AFP officer working in Sri Lanka. Could you inform the committee where he is stationed—where he works out of? Is it the Australian High Commission or the Sri Lankan police department?

Mr Negus: I will pass over to Deputy Commissioner Colvin for the specifics.

Mr Colvin: He is based in Colombo. He works at the Australian High Commission. He is an accredited officer with the High Commission in Sri Lanka and he works almost exclusively, I would say, with the Sri Lanka Police Service but out of the High Commission.

Senator RHIANNON: Who is he immediately accountable to?

Mr Colvin: Like all of our liaison officers, he has accountability to the mission and the head of mission, but ultimately he is an AFP officer and he is immediately accountable back to the AFP.

Senator RHIANNON: How would you define his work? Is it purely advisory to the AFP and to the Sri Lankan authorities, or is there an operational aspect to it as well?

Mr Colvin: He is a liaison officer. He is not in a position to perform any operational duties. He is there as a conduit of information between the Sri Lanka Police Service and us, and he is also there to assist with the development of Sri Lanka Police Service capacity.

Senator RHIANNON: Being a conduit for information means that you often have to collect the information. Does that mean that he may observe the boats when they are brought back, having taken people potentially to Australia? Would he be involved in that capacity, not actually in operations but there when operations are being carried out?

Mr Colvin: Not necessarily. We are very careful with our liaison officers not to overstep the line of what is a proper policing function performed by the local authorities. So in terms of vessels that are stopped by the Sri Lanka Police Service, he would be liaising with the Sri Lanka Police Service to see what intelligence might be relevant that we could use in Australia, or what assistance we may be able to provide to the Sri Lanka Police Service. It varies of course depending on the circumstances, but as a general rule he is there as a liaison officer and he has to draw a very distinct line between what he does and what the Sri Lanka Police Service do.

Senator RHIANNON: But you said 'not necessarily', so there could be occasions when he is actually present in terms of being able to assess the information or get the information. Would that be a correct assessment?

Mr Colvin: I do not want to rule out anything in particular, Senator, because I do not want to then have to say that there was an occasion when he was aware a boat was being brought into the Colombo wharf and he was there. It is not a normal part of our business to do that, because that is the proper response by the Sri Lanka Police Service.

Senator RHIANNON: In terms of the conduit of information, is that going both ways, both from the AFP to the Sri Lankan authorities and from Sri Lanka via the AFP officer back to Australia? Is that how it works?

Mr Colvin: That is right. The flow of information is both ways and there are tight protocols around how that information is managed and what type of information can be passed and what is passed.

Senator RHIANNON: Thank you very much. I have just a short question about the AusAID funding. How much of the AusAID funding makes up the proportion of the AFP funding?

Mr Negus: Senator, we actually work with AusAID very closely. I think we are the second largest deliverer of AusAID's funding behind AusAID, so it is a large proportion. But we will just have to get that figure for you.

Senator RHIANNON: I am happy for that to be taken on notice. You receive, as you have said, the largest proportion of aid money after AusAID itself. Australian aid money that you receive goes to projects. Do you keep that separate from your core AFP funding? Are there some projects that you will only undertake because you receive aid money? If so, what are they?

Mr Negus: Yes, there are. We would have to take that on notice. There is a range of those projects, a large number. Some projects, a certain percentage, would be ODA-eligible and the rest might come from other funding sources. Some projects, certainly, are funded 100 per cent

through ODA, because they are development activities or capacity building activities which fit within the very strict rules that AusAID apply across their funding streams.

Mr Wood: In the financial year 2010-11, ODA funding received by the AFP was \$233.3 million. On question No. 58 coming out of last estimates asked by Senator Barnett, there is a breakdown of ODA funding from 2007-08 through to the current budget, and then what is locked into future years' budgets.

Senator RHIANNON: Thanks for that. I will go back and look and see if I have further questions.

Mr Drennan: I would just like to clarify some answers to questions asked before lunch. With regards to the three members that were asked about in terms of whether they were being returned to Australia—they have. Two of those members were seconded officers from the Victoria Police and they are now back working with the Victoria Police. The third officer was an AFP federal agent who was attached to one of our offices in Queensland.

With regards to the issue on immunity, that immunity in a civil case was not invoked. The court dismissed the matter before it was required that it would be invoked. So there has been no instance where we have had to invoke our immunities in the Solomon Islands.

Senator BRANDIS: Commissioner Negus, I want to ask you some questions about Project Guild. Are you familiar with Project Guild?

Mr Negus: I am, Senator, yes.

Senator BRANDIS: Project Guild is concerned with the fate of the air security officers employed by the Australian Federal Police, is it not?

Mr Negus: I would not classify it as the fate of the ASOs, but it deals with the air security officer program, yes.

Senator BRANDIS: At the moment, the air security officers are designated as protective service officers—that is, they are not sworn members of the AFP. Is that right?

Mr Negus: They are not sworn police members, no. They are sworn in as protective service officers.

Senator BRANDIS: But they are not sworn members of the AFP.

Mr Negus: They are not sworn police members.

Senator BRANDIS: Do you know a gentleman called Shalini Dantan, the manager of human resource strategies?

Mr Negus: I do, but she is not a gentleman; she is a lady.

Senator BRANDIS: Pardon me. Can I show you an email message from Ms Dantan, please.

Senator Ludwig: Are you tabling that document?

Senator BRANDIS: Yes, I will table it. This is an email dated 24 June 2011. If you go to the third page of the email, you will see that it is signed by Ms Dantan on your behalf, Commissioner.

Mr Negus: That is right, yes.

Senator BRANDIS: So that was sent with your authority, obviously.

Mr Negus: Yes.

Senator BRANDIS: And it is directed to ASO employees within the aviation portfolio.

Mr Negus: That is correct.

Senator BRANDIS: Is the aviation portfolio part of program 1.1, 'National security—policing'?

Mr Negus: Yes, it is.

Senator BRANDIS: It is headed, 'Notification of potential excess status.' It refers in the first full paragraph to decisions made in the 2011-12 budget. It refers to an earlier all staff message on 11 May, notifying staff that the AFP had been requested to provide budget savings over the forward estimates and, in particular, further efficiencies that were to be implemented in the aviation portfolio over the financial years 2011-12 through to 2019-20. Do you see that?

Mr Negus: Yes.

Senator BRANDIS: For anyone who happens to be listening to this, the references here to the aviation portfolio are not to be understood as references to the department of aviation within the transport portfolio but within the aviation section of program 1.1—that is, 'National security—policing'—of the Australian Federal Police. That is right, isn't it?

Mr Negus: That is correct.

Senator BRANDIS: Ms Dantan goes on to say:

As a result of the Government decision the AFP has commenced Project Guild (as a sub-project of Project Macer).

Tell me what Project Macer is, please, Commissioner.

Mr Negus: Project Macer is the overall transition to the AFP taking over control of airports and this is, as I mentioned earlier in the day, about taking responsibility from state and territory police to the AFP for policing those 11 major airports.

Senator BRANDIS: Thank you. Ms Dantan says:

Project Guild will manage the rationalisation of the ASO program to meet the savings required and will also implement an AFP policy of transitioning the program to sworn member status. Project Guild is required to realise the initial savings by December 2011 and will over the next 2-3 years transition the program to sworn member status.

As a result of this transition, the role of Protective Service Officers in the ASO program will be phased out over the coming years and transition—

that is a verb—

to sworn policing roles.

What this foreshadows, it appears to say—Commissioner, correct me if I am wrong—is that the function of the ASOs as currently understood will cease and they will be taken over by sworn officers of the AFP.

Mr Negus: In a transition sense, that is correct.

Senator BRANDIS: Is it not the case, Commissioner, that the number of officers dedicated to the ASO program has reduced over time?

Mr Negus: It has reduced as a result of the last budget measures.

Senator BRANDIS: I want to go back before the last budget, but I also want to ask you about the last budget—and you might want to take these things on notice. Five years ago, at the time of the 2006 budget, there were 136 ASO officers, but by 2009 that had fallen to 110 ASOs—those are the so-called air marshals—and that since 2009 this has reduced further. Is that right?

Mr Negus: We have never publicly confirmed or denied the number of air marshals, as again this is an operational matter. I have been asked this question several times in this committee, and I have again declined to confirm the number of air marshals we may have, which have been publically speculated about. As you can appreciate, it does not take much to transfer those numbers into a capability and an ability to be on particular flights, and that is something that we have shied away from.

Senator BRANDIS: I understand that, but I am not asking you about capability at the moment; I am just asking you about numbers.

Mr Negus: You are quoting numbers as fact, but I am telling you we have never publically confirmed or denied numbers that have been speculated around in this committee or in the newspapers.

Senator BRANDIS: I understand that you cannot confirm what I am saying, but you are not disputing it. Can I tell you, by the way, that in this committee in the February estimates of 2009 I asked some questions of your predecessor, Commission Keelty, about reductions in the number of air marshals and he said, and I am quoting from page 109 the *Hansard* of 23 February 2009. Commissioner Keelty said to me:

It is a reduction, but it is not a reduction that does not enable us to do the work in accordance with the risk assessment.

So Commissioner Keelty did acknowledge at the time that there had been a reduction, and I am putting it to you in the 2 ½ years since Commissioner Keelty gave that evidence, at which stage there were 110 sky marshals, there has been a further reduction.

Mr Negus: Recently that is correct, but during that intervening two-year period—and again I could double check the figures and again perhaps provide you in confidence—but we have not reduced the number of air marshals until this budget measure was put in place.

Senator BRANDIS: Going back to Ms Dantan's email, she says in fourth full paragraph on the first page:

As a result of this transition, the role of Protective Service Officers in the ASO program will phased out over the coming years and transition to sworn policing roles.

I think you have already told us that is in consequence of some budget decisions and some budget cutbacks.

Mr Negus: No, what I said was that it is part of ProjectMacer.

Senator BRANDIS: Right, but that part of it is itself a result of some budget cutbacks. I have some other correspondence here which makes that clear. I could take you to it straight away if you like.

Mr Negus: I want to be very clear about the question you are asking or the assertion you are making. Can you just repeat what you have said?

Senator BRANDIS: I am just reading to you from a document that is in front of you:

As a result of this transition—

that is, the transition from ASOs to sworn AFP officers—

the role of Protective Service Officers in the ASO program will phased out over the coming years and transition to sworn policing roles.

What I am putting to you is that plainly what she is advising the staff, if you read the first four paragraphs together, is that this phasing out of the ASOs is in consequence of what she describes in the first paragraph of the email as the requirement of the AFP to provide budget savings over the four estimates.

Mr Negus: I am glad that I got you to repeat it, because I do not agree with that assertion.

Senator BRANDIS: So you do not agree with Ms Dantan?

Mr Negus: No, I agree with what Ms Dantan said, but I do not agree with your characterisation of what that actually leads to. I will just be very clear: there has been a reduction in the ASO program—no question about that. The issue here is that you are asserting that because of the budget cuts the transition to sworn policing roles is a consequence.

Senator BRANDIS: I do suggest waiting for the next question before you commit yourself further. Please have a look at this document. I am tabling that document. That is an AFP minute, isn't it?

Mr Negus: It is also marked 'highly protected'.

Senator BRANDIS: It is marked 'highly protected'.

CHAIR: Can you clarify your concerns about that, Mr Negus?

Mr Negus: I do not know where this has come from. It is an internal AFP document, but it is marked 'highly protected'. Whether it has been released to the senator under appropriate or other conditions I do not know.

CHAIR: Can you indicate then—

Mr Negus: I have not read it yet.

Senator BRANDIS: I suggest you do read it. Can I indicate to Commissioner Negus that I did want, in fairness to him—

CHAIR: Senator Brandis, just a moment. I need to clarify something as chair that the tabling of this document, which then makes it a public document, is satisfactory. We might get you to ascertain that first, because I do not want to have a document tabled that would breach any problems you have in terms of security.

Mr Negus: Thank you. It is four pages long, so I would like to at least have the opportunity to look at this. The ASO program, as I mentioned at the beginning, is a discreet program which is a very important layer of national security, so to divulge any operational components—I am not sure what is in this document just yet—would cause me some concern.

Senator BRANDIS: Commissioner Negus, can I tell you—

CHAIR: We might get Commissioner Negus to finish what he is saying

Senator BRANDIS: that I have looked at this document very carefully, and it does not appear to deal with any operational matters. So by all means. What I was going to say to you before I was interrupted by the chair—

CHAIR: Which is my prerogative, Senator Brandis.

Senator BRANDIS: I was going to ask you to read and familiarise yourself with the document. Before you did that I was simply going to identify the document as a document dated 26 September 2011 over the name of Superintendent Greg Davis, the national coordinator of the Air Security Officer program. That is all. The reason I wanted to put this document to you now before you went on with the answer on which you had embarked in response to the earlier document is that I did not want you to be embarrassed by saying something that you might find contradicted by this other document. I am not here to, as it were, trap you. So please read the document.

CHAIR: On that basis we will suspend this committee for five minutes to give the commissioner time to read this, consult with his colleagues and come back to us with an opinion about whether or not this committee should formally accept it as a document, which means, of course, it would then become public. We have not formally accepted it yet. We will suspend for five minutes while you have the opportunity to do that.

Senator BRANDIS: Before you formally do that, I might point out that, although the document is marked 'highly protected', it does seem to have had a very widespread circulation, because it is addressed to all ASO staff.

CHAIR: We will let Commissioner Negus determine the fate of this document in this committee today given his background and experience. So we will suspend this committee for five minutes.

Mr Negus: Thank you.

Proceedings suspended from 13:58 to 14:05

CHAIR: I reconvene this public hearing. Commissioner Negus, you might explain to me, as chair, the definition of 'highly protected' in terms of your documentation.

Senator Ludwig: One course of action that has been suggested—which Senator Brandis has agreed to but only to the point of him continuing to accept the circumstances—is that the document would not be tabled. Senator Brandis would then be able to use the document—obviously he has it in his possession—to refer to various paragraphs, to draw the commissioner's attention to those paragraphs and to ask questions about them which are, at least from Senator Brandis's point of view at the outset, not operational issues but that may go to other matters. Then Commissioner Negus might be able to comment on those other matters. If it does cut across operational matters then Commissioner Negus can say it is an operational matter and we can decide at that point whether or not it is and we can make a judgment call. It is designed, as I understand it, for Senator Brandis to ask relevant questions which are not operational as I understand it. Senator Brandis has agreed not to table it on that basis. I think we should proceed and see how we go. That is entirely reasonable. Senator Brandis is entitled to ask questions broadly about the budget, about budget related matters and about the budget of the AFP. If we stick relatively close to those issues then we should be fine.

CHAIR: We are not going to table this document, then?

Senator Ludwig: Not at this point in time. Senator Brandis said he would—

CHAIR: I will ask the secretariat to come and collect our copies, because we will not need them.

Mr Negus: Madam Chair, to answer your question, 'highly protected' is an AFP internal security classification that would equate to 'secret'. This is a very sensitive document. While Senator Brandis asserted it has been widely distributed, all of the people receiving it, the ASO staff, would have been security cleared to that level to receive the information. I have also instructed immediately that our professional standards area look at how this document was released by the AFP and how it ended up where it is now. So there will be an investigation in regard to that, because the release of documents to this classification, which detail operational activity, would put my own officers' lives at stake if this were to be compromised by some terrorist group or some other action.

CHAIR: I would have thought that would be the case.

Mr Negus: So, whilst I am happy to proceed and answer Senator Brandis's questions, I ask that they be carefully thought through before things are put onto the record which may divulge components of this document.

CHAIR: Thanks very much, Commissioner. We will be mindful of that as we proceed.

Senator BRANDIS: Commissioner Negus, I understand entirely what you are saying. The document is a minute—that is what it is identified as—directed to all ASO staff. It starts cheerfully: 'Hello, ASO team. Well, it has been an interesting past few months for the ASO program.' The author, Superintendent Davis, refers to a number of matters in the first paragraph in relation to the ASO program and the broader AFP. These are his words on the second line: 'With the reduction to the ASO budget announced in May, the commencement of Project Guild ...' Then there are a couple of other matters that do not seem to me immediately germane. What I want to focus on is the consequence for the ASO program of what Superintendent Davis calls 'the reduction to the ASO budget'. If you look further down on the first page of the minute, under the subheading 'progress', he says: 'As you would all know, the budget has been reduced by \$16.5 million over the next four years, and this will take effect at the end of 2011. This reduction means that we must reduce the number of ASOs, the number of team locations and the domestic deployment rate of effort.' There is another sentence there, which I will not read onto the record, but it refers to two particular locations. Let me just put it to you, Commissioner Negus, that it is the case, isn't it, that, as Superintendent Davis says, 'The ASO program has been reduced as a result of budget cutbacks.'

Mr Negus: Yes, it has. That is not in dispute.

Senator BRANDIS: Can we just put that document to one side for a moment. May I take you to the PBS, page 155: 'budgeted expenses for outcome 1', table 2.1, which includes the funding for program 1.1, 'National security—policing', which you agreed includes aviation policing. Might I take you as well to your annual report, which was transmitted to your minister on 26 September 2011—coincidentally, the same day as Superintendent Davis' minute was circulated to all ASO staff—and, in particular, the brief reference to the air security officer program at pages 30 to 31, and to the expenses and resources statement in appendix E, which appears at page 134. Unless I am misreading these various financial statements and other documents, there is nothing there, either in the PBS or in your annual

report, which discloses the fact that there has been this \$16.5 million reduction over four years to the ASO program. Where do I look to find that, Commissioner Negus?

Mr Negus: The reduction would be in the aggregated aviation budget, which is several hundred million dollars. That is where it would be located.

Senator BRANDIS: Commissioner Negus, I am not being critical of you here, but I guess that is why we have these estimates hearings: so the parliament can be more well informed than the government might wish it to be as to what is happening below these very, very large aggregated figures in the financial statements that are produced with the budget.

Mr Negus: Can I say that this is a discrete program. It is not something where we like to publicly acknowledge the size of the budget, the number of staff or the locations that these people are fulfilling. We have been very up front with this. We briefed the staff very early on in this; we have briefed the unions involved in this as well. These are not just internal briefings from the AFP's perspective, but we have actually—

Senator BRANDIS: I was going to ask you about that. I was, in fact, going to go on to ask you some questions about the correspondence you have received from the CPSU about Project Guild and the winding back of the ASO program. Sorry; I interrupted you. Go on.

Mr Negus: Ask away, Senator.

Senator BRANDIS: Going back, then, to Superintendent Davis' minute of 26 September, that minute indicates that the ASOs, or the air security officers, have been invited—and I am paraphrasing slightly here, and this is based on the last paragraph on the first page of the minute—either to transition to be full-time AFP officers through the Federal Police Transition Program or to take voluntary redundancies. Is that right? Is that going to be the fate of the ASOs—they either become AFP officers through the transition program or become redundant?

Mr Negus: They can be redeployed into other roles commensurate with their current skill level. Can I go back and clarify something that you kindly did not want to embarrass me about. I want to delink the budget cuts from the transition of these people to be sworn police officers. The budget cuts are an issue we are dealing with, and we are happy to talk through that process. If we go back to the Roger Beale or the federal audit of police capabilities there was a push towards—and this is where the Project Macer issues come in—a more homogenous workforce—

Senator BRANDIS: Is this the all-in model referred to in your annual report?

Mr Negus: This is the all-in model, but it had a wider implication than that. It had a wider implication that people should be multiskilled and able to do a range of things. So, rather than being protective service officers, if they were sworn police they could be utilised far more widely in a variety of roles. Whilst the budget cuts were something we had to deal with—and the \$16.5 million you talked about—that was not the reason why people were asked to transition into sworn policing roles. That would have happened whether the budget was lessened or not. That was the point I was trying to make to you at the very start. Yes, the budget issues have to be dealt with, but the transition issues are quite separate. They are happening at the same time but they are quite separate.

Senator BRANDIS: I understand the point you make, and it is a fair point, but I am bound to say that that is not what Superintendent Davis says.

Mr Negus: As the Commissioner of the AFP I have a little more pull than Superintendent Davis. Whether he understands what was happening to the same level I do that is your interpretation of what he has written, but that is not my understanding.

Senator BRANDIS: I actually have not interpreted anything. I have just read to you his very words. He is, after all, the National Coordinator of the Air Security Officer Program.

Mr Negus: I do not think he does say that. The way I read that is not as categorical as—

Senator BRANDIS: Commissioner, let me read to you without comment what he said.

CHAIR: Senator Brandis, let the commissioner finish his line of thought and his sentences and then you can respond. I think that is only fair, given the sensitive nature of the information we are dealing with. Thank you.

Senator BRANDIS: What I am going to do, Commissioner, because I do not want to be accused of having put a spin on this or misrepresenting what Superintendent Davis, the National Coordinator of the Air Security Officer Program said, is read again his words without comment or elaboration. Under the subheading 'Progress' he said:

As you would all know, our budget has been reduced by \$16.5 million over the next four years and this will take effect at the end of December 2011. This reduction means that we must reduce the number of ASOs, the number of team locations and the domestic deployment rate of effort.

He goes on in another sentence, which I will not read because I can understand why you might arguably think it relates to operational matters, to refer to two locations.

Mr Negus: I am happy to comment on that.

Senator BRANDIS: Please, that is what I am inviting you to do. I read it without elaboration. If you take issue with it then please tell us why.

Mr Negus: The reference to reducing the number of ASOs—and I think that is the key point you are making here—is the number of ASOs in total. There will be fewer ASOs in that program. Whether they are sworn police or protective service officers is incidental. The number of ASOs will reduce as a result of the budget measures. One does not relate to the other. One is not a causal factor of the other. It is a reduction in the number of staff whether they are protective service officers or sworn police. That is the way I interpret it. That is the way it is written. I am sure that, if we had Superintendent Davis here, he would agree.

Senator BRANDIS: Commissioner, I think I am going to have to let you sort this out with Superintendent Davis—

CHAIR: I am pretty certain that is going to happen.

Senator BRANDIS: In any event, the document is the document. I have read you what the superintendent says and I think it speaks for itself.

Mr Negus: I am not sure it is material to the point you are making anyway. I am telling you what the AFP's position is. Whether you want to put Superintendent Davis's views for him is another matter, but I am telling you what the AFP's position on this is. It is not a transition from protective service officers to sworn police being caused by budget reductions. It simply is not.

Senator BRANDIS: People can make up their own mind what those words mean. Commissioner Negus, can I take you to the first paragraph on the second page, under the subheading 'Deployments'.

Senator Ludwig: Before we read it into the record—

Senator BRANDIS: I am not going to. In fact I was going to ask a question of definition and then I was going to ask whether the commissioner had an objection on security reasons for it being read. My question about definition is this: what does the acronym ROE mean?

Mr Negus: It stands for rate of effort.

Senator BRANDIS: Rate of effort, which is the term used in the previous paragraph. Now, Commissioner, may I read on to the record the first paragraph, please?

Mr Negus: Senator, I think that gets away again. There are changes to the program which are being worked through and absorbed by the AFP and to actually highlight where those changes may take place does provide operational detail that I would be uncomfortable with.

Senator BRANDIS: I will not do that. Did you attend the meeting referred to in the second paragraph, with the Attorney-General's Department and the Minister for Foreign Affairs or were you represented by one of your officers?

Mr Negus: I did not personally attend that meeting but I can ask the question. We only have one copy here so I will pass it to Mr Drennan who is in charge of that area.

Mr Drennan: No, Senator. That was attended by working level officers.

Senator BRANDIS: Going back to the second page of the minute, Commissioner Negus, at the foot of the second page there is a heading, 'ASO Enhanced Methodology'. I want to read to you the first line and a bit of that entry. Do you have any objection to me reading the first line and a bit?

Mr Negus: No.

Senator BRANDIS: It does not go to operational matters?

Mr Negus: I can see what you are going to read—that is fine.

Senator BRANDIS: Superintendent Davis says: 'Many aspects of this scheme were put on hold due to the changed budget situation and restructuring.' He then goes on to elaborate further. I am happy to put that on the record for context, if you wish me to. I am just erring on the side of caution here. Can I put it to you that once again it seems as plain as the words of the English language admit that these cutbacks, or in this case 'putting on hold' aspects of the scheme, are due to what he calls here the 'budget situation and restructuring'.

Mr Negus: That is correct, yes.

Senator BRANDIS: Okay, that is fine.

Mr Negus: Just to be clear Senator, it is difficult when we are jumping from one part of the letter to the next because there is quite a bit in between.

Senator BRANDIS: There is. I am trying to be fair to the author of the minute and to be fair to you, while at the same time avoiding anything that I think you might object to. My preference would have been to table the entire document so that there would be no issue of context here.

Mr Negus: It would not have been my preference, as I have said.

Senator BRANDIS: No and I am yielding to your preference, of course.

CHAIR: And the Chair also.

Mr Negus: What I was going to say, Senator, was that when he talks about a scheme I think we need not to put scheme in the context of the whole program here. He is talking in the previous paragraphs about some training courses and about an ASO development program. You need to put into context that the scheme does not mean the ASO program in its full sense.

Senator BRANDIS: I do not agree with you. He says, 'Many aspects of this scheme', and I suspect what he refers to in the two previous paragraphs are two of the aspects of the scheme. On the third page of the document towards the foot of the page under the heading 'Rumours', he says this: 'These past few months in particular have been very difficult and extremely disruptive for everyone who is associated with the ASO program. Unfortunately this is not likely to change any time soon. As we will continue to evolve, our people will gradually move on to new chapters in their lives and careers.' Once again, I put it to you, Commissioner, that that is consistent only with—as indeed are the other paragraphs I have read to you and isolated for your attention—the cutting back of this program in consequence of what Superintendent Davis describes as the reduction in the budget by \$16.5 million.

Mr Negus: That is correct.

Senator BRANDIS: Thank you. Are you aware of a staff meeting at the Sydney office of the ASO program in July this year at which aspects of Project Guild were discussed with ASO staff by Superintendent Davis, Glen McEwan, Darren Booy and Priscilla Hickey?

Mr Negus: No, I am not aware of it. As I said, we have attempted to do wide consultations to keep the members up to date with what is happening, so I am not surprised.

Senator BRANDIS: Are you aware that at that meeting Mr Booy stated that Project Guild was a government directed efficiency in which savings of \$16.5 million were to be found by reducing the number of ASOs? In the statement I have, I am given a number, but I will not read it onto the record. Are you aware that Mr Booy advised the staff of that?

Mr Negus: I am not aware of the meeting, but that is consistent with what we have been talking about.

Senator BRANDIS: And that that must be achieved by 31 October is what he said to the staff on that occasion.

Mr Negus: Again, I am not aware of that.

Senator BRANDIS: Coming back to my earlier question before I move off this topic, where am I to find, if at all, in any financial statements or budget statements published to the parliament, an accounting for this \$16.5 million reduction or is it just rolled into the line item that I have already identified?

Mr Negus: It is contained within the line item you have identified.

Senator BRANDIS: It is not disaggregated further in any public document?

Mr Negus: That is correct.

Senator FURNER: I have a range of questions and would like some explanation on a couple of areas—firstly, describing the actions the AFP have taken in response to the Commonwealth Organised Crime Strategic Framework.

Mr Negus: I will get the deputy commissioner in charge of our organised crime area to respond to that.

Mr Colvin: In recognition of the evolving organised crime environment, the AFP has conducted an organisational restructure which led to the creation, in February 2010, of the AFP crime program. As part of the crime program, we developed a serious and organised crime branch which was established through 13 multidisciplinary teams throughout Australia. These SOC teams conduct intelligence informed investigations and operations into active high-priority, high-threat domestic and transnational organised crime groups. During the 2010-11 financial year, the AFP progressed 150 different investigations, of which—significantly—51 per cent were conducted under a formal joint agency agreement with our partner agencies. A large part of what we do in the serious and organised crime space is influenced and supported by a range of intelligence and government instruments, which include the Organised Crime Threat Assessment, an Australian Crime Commission document; the Commonwealth Organised Crime Strategic Framework, owned by the Attorney-General's Department but of which we are a key part; the Commonwealth Organised Crime Response Plan; and the National Organised Crime Response Plan. Then there are a range of other governance documents that sit underneath that, including a protocol on multijurisdictional investigations as well as protocols that establish a range of whole-of-government national committees on organised crime.

Senator FURNER: On the 51 per cent joint agency operations that you refer to, is that an improvement on previous years in terms of success?

Mr Colvin: It is; 51 per cent are under formal joint agency agreements. That is where we have signed up to an agreement with another agency and all agencies agreed on a way to conduct the investigation. The reality is that very little of what the AFP does is done in isolation, so nearly all of our organised crime matters, in particular—in fact, almost without exception—are conducted in a multidisciplinary joint agency partnership arrangement.

Senator FURNER: I have read and followed recently some of the media attention around a number of large drug busts the AFP have been making. Would you advise the committee of the number and weight of drug seizures from 2010-11 and how this relates to the previous financial year, please?

Mr Colvin: I can do that. In the 2010-11 financial year the AFP seized a combined total of 5.187 tonnes, and some of that was, as I said before, with our partner agencies. That represented a 316 per cent increase on the previous year. The previous financial year it was 3,941 kilograms or 316 per cent more than our previous year. If you like, I can break that down into different drug types.

Senator FURNER: That would be helpful.

Mr Colvin: All these figures will be for the 2010-11 year, as reported in the annual report. For cocaine, the AFP seized 796 kilograms of cocaine, an increase of 404 kilograms over the previous financial year. With regard to heroin, the AFPC seized 583 kilograms of heroin in the financial year, an increase of 445 kilograms or 320 per cent from the previous financial year. In terms of amphetamines and amphetamine type stimulants, the AFP seized 404 kilograms in the financial year, an increase of 228 kilograms or 129 per cent over the previous year. Of MDMA the AFP seized 11 kilograms in the last financial year, an increase of just two kilograms or about 20 per cent from our previous financial year.

Senator FURNER: And overall a 316 per cent increase on the previous year of seizures.

Mr Colvin: That is correct.

Senator FURNER: What has made that possible? That is an enormous increase in seizures from the previous year.

Mr Colvin: It is, and I think there are a range of factors that made that possible. I do not think we should underestimate the effect that the serious and organised crime model that the AFP and the Australian government is operating under has had. There is the ability for the AFP to work very collaboratively, and partner agencies, both domestically and internationally, have led to those significant increases. There is our proactive use of intelligence and our adaptation to the organised crime environment as we see it, and then of course there are a whole range of market and demand driven factors which also play a part in the narcotics that we seize.

Mr Negus: I mentioned earlier that, in the two years I have been commissioner, we have committed ourselves to seven key strategic principles on how we run the organisation, and the first part of that was to reinvigorate our investigations capability and increase resourcing and skills in that area. We have done a lot of work in that area in the last couple of years, including pushing more people into the front line and having more officers available to do these sorts of investigations. But, also importantly, another one of those seven strategic principles was to strengthen our stakeholder relationships both domestically and offshore, and we have done a lot of that. We work very closely with state and territory police. We have a very good relationship with the Australian Crime Commission as well, of which I am the chair of the board. Again, we are looking at national task forces about how we can look at this as a holistic problem. We have put people into places like Los Angeles to look at the cocaine problem coming out of Mexico. It has been a proactive stance which is already bearing very good results from an intelligence perspective with the DEA in the US. So there has been good cooperation around the globe in really looking at this in a strategic sense and making sure that Australia is part of the global fight on narcotics. I am not sure whether the deputy said this but it also highlights Australia's attractiveness as a target destination, with our high dollar and the market forces that exist in drug trafficking. It also shows that we are getting some good intelligence, working closely with our partners and actually getting some good results in that context. The challenge for all of us is to continue this, year on year, and to make sure that we continue on an upward swing.

Senator FURNER: Would you advise the committee of the amount of assets, in dollar terms, restrained by the Criminal Assets Confiscation Taskforce in 2010-11 and how that relates to the previous financial year? Can you also advise what sorts of crime types are most common in relation to those seizures?

Mr Negus: I will ask Deputy Commissioner Colvin to give you the details, but it is also useful to look at the context. Again, we have tried a more creative way of dealing with criminal asset confiscation and we have more than doubled the restrained assets this year as opposed to last year. I will let Deputy Commissioner Colvin give you some details on the new task force arrangements.

Mr Colvin: In terms of our performance for the 2010-11 financial year, \$41.05 million worth of assets were restrained as result of the AFP and our task force operations. This compares with \$18.9 million worth for the 2009-10 financial year. To update the committee on where we are for this financial year, up to 30 September the AFP had restrained has

restrained \$5.45 million worth of assets. It is worth pointing out as well that in the previous financial year, 2010-11, the AFP seized around \$18 million in cash, so it is not just assets that we have restrained but cash that we have seized as part of our investigations. That says a couple of things. One is that, as we all know, serious and organised crime is a well-cashed-up business. It also says that our emphasis and focus on following the assets and the cash is a positive development in terms of the way we are attacking these serious and organised crime groups.

Senator, are you interested as well in the Criminal Assets Confiscation Taskforce and its progress? Were you asking about that?

Senator FURNER: Yes.

Mr Colvin: That is being implemented in two phases. The first phase of the task force was established in January 2011 and it brought together the AFP, the Commonwealth DPP, the ACC and the ATO. It was implemented within the existing resources of the participating agencies, so agencies gave us what they could. The task force is housed in the AFP. It is headquartered here in Canberra but we have arms of the task force throughout our regional offices. This varies in different locations but within those in regional offices we have ACC and ATO members who are attached to the task force. That is the first phase of the task force.

You will be aware that there is legislation currently before the parliament that deals with the Proceeds of Crime Act and some consequential acts that will give full effect to the task force in terms of the AFP's ability to commence and take on litigation action for proceeds of crime. Upon passage of that legislation through the parliament, that will signal the full implementation of the task force. We expect that to be sometime in early 2012.

In terms of actual staffing numbers, the current headcount of the Criminal Assets Confiscation Taskforce is 68. I also have some figures here on the resources contributed by the ATO and the ACC. The ATO is providing financial analysis support to task force investigations through five co-located ATO officers. Two of those are in Sydney, one is in Perth, one in Melbourne and one in Brisbane. Additional ATO support is being provided by dedicated but not co-located ATO serious non-compliance teams. The ACC is contributing six co-located officers to the task force: three in Sydney, one in Perth, one in Melbourne and one in Brisbane. The Commonwealth DPP is working very closely with the task force on a needs basis.

Senator FURNER: Earlier we were discussing the all-in policing model in Australia's major airports. Can you give me some feedback about when that program will be completed?

Mr Negus: I will ask Deputy Commissioner Drennan to speak to that.

Mr Drennan: The program has a time frame of three to five years. We are closer to the three-year period as opposed to the five years. It is a program which is progressing quite well, with the transition of protective service officers as sworn police officers, but also with other federal agents moving into airport roles, allowing the state and territory police to be released back to their host police forces.

Senator FURNER: So in respect of the three-year time frame are we on track with contemporary transition?

Mr Drennan: We are. As I said it was a three- to five-year time frame because of the large nature of the program and variables in relation to the ability for the state and territory

police forces to absorb their people back in and likewise the ability for us to train people who are transitioning from the PSO, protective service officer, roles, to the sworn roles or from people coming externally to the organisation if we needed to recruit externally. That is why it was given a three- to five-year time frame. We are closer, as I said, to aiming for three years and on that basis it is very much on track.

Mr Negus: With the individual states and territories it is what suits them best. Some places would like their officers back more quickly, it saves them recruiting, others who do not have particular issues around attrition would like them back at a more steady rate. We have been accommodating and appreciate their support in getting that done. As the deputy commissioner said it is more closely aligned to three years rather than the five-year time horizon that we originally had.

Senator FURNER: Moving on to another area I know that AFP officers attended the earthquake disaster over in Christchurch earlier this year. How many officers were deployed and what was the essential nature of their role whilst they were there?

Mr Negus: I think from memory it was 61. I am sure we have the figure here. The Minister for Home Affairs and I went and farewelled our officers at the airport and they were on the ground very quickly along with I must add members of just about every state and territory police force in this country. There were well over 300 Australian officers who went and assisted. Last time I was in New Zealand for a meeting the police minister over there, Judith Collins, pulled Mr O'Connor and I aside and thanked us personally for the actions of the officers.

In speaking to those officers on their return I think it was probably one of the most moving and rewarding experiences of their lives to be involved in Christchurch and to be helping out and doing the things that they did there while the earthquakes and the aftershocks were still continuing, so it was quite a difficult role for them. As they walked through the airport the locals burst into spontaneous applause that support had come from Australia. It has been relayed to me many times about the deep appreciation from the New Zealand people for the work that was done by the Australian police from every state and territory as well as the federal police.

Mr Drennan: There were approximately 60 there at any one time; however, people were rotated through that role. Over 100 people were actually deployed there. We can actually get you that number but at any one time there were about 60 police there. They were performing the role of general duties, search and rescue and command and coordination roles in assisting the New Zealand police.

Senator FURNER: No doubt we have had some other natural disasters not only on our continent but in the region. What other deployments have occurred in the last financial year for AFP officers?

Mr Negus: Again, you will find this in our annual report but we provided support to the Queensland Police Service when the major floods occurred around the South-East Queensland area and on the back of that with Cyclone Yasi we sent people to north Queensland to support the Queensland police in that regard. It has been a very difficult year in responding to those areas as well as managing a whole range of different other domestic and international issues for the AFP. We have been able to meet that and support our fellow police

officers in other areas including New Zealand within existing resources and, as I said, contribute in that context. Again the responses to SIEV221 were also quite substantial. It was in the order of I think 80 people who went to Queensland to assist with the floods and a lesser amount went to north Queensland to assist in Cyclone Yasi. I know that in speaking to the commissioner of the Queensland Police Service again they were very much appreciated and provided great support. In any of these emergency situations the local police usually respond in a very admirable way. However, sustainability becomes the issue in doing that after two days, four days, six days, this is when they need the reinforcements from our people and we have been able to fulfil that role.

Senator FURNER: Would you update the committee on the status of the charges made in relation to Operation Rescue as well? I understand it was an international investigation into an online network of child sex offenders.

Mr Negus: I will ask Assistant Commissioner Neil Gaughan, who is the head of our high-tech crime operations, which covers child protection operations, to give you some details.

Mr Gaughan: Thanks for the question. Some of the matters in relation to Operation Rescue are currently before the court; in fact, that is the vast majority of those people. That said, there have been a couple who have been before the court at this stage who have actually pleaded guilty. Our experience with this particular crime type is that well in excess of 95 per cent of people plead guilty at the earliest opportunity. It is unfortunately about all the information we have. We can provide some further breakdown of the actual status of each offender, but we will have to take that on notice.

Senator FURNER: You are not able to identify the number of arrests or charges at this stage?

Mr Gaughan: I do not have that one before me. Unfortunately, in this particular crime type, in the year to date we have arrested 118 people for this type of offence but to have the particular details on hand in relation to every individual operation is difficult.

Mr Negus: I know this has been of interest to members of the committee before and when I was reading the notes preparing for the committee I thought it would be useful, if I got the opportunity, to say this. Assistant Commissioner Gaughan mentioned that there have been 118 offenders apprehended this calendar year, so from 1 January, for 149 charges relating to child protection operations. This is online child sexual exploitation. But, more staggeringly, since 2005 when the high-tech crime operations team were put up there have been 757 offenders apprehended for over 1,000 charges.

This is a discrete unit of the AFP which looks at that online environment and protecting children and there have been a range of international operations we have been involved in over the last 12 months. They include one in June where we charged 11 men in a nationwide operation, as well as removing two children at risk from those environments. That is one of the most rewarding parts of what Assistant Commissioner Neil Gaughan does here—removing those children who are at risk. Those charged have been charged with a range of offences relating to using carriage services to transmit and possess child pornography.

It is also important for the committee to understand that internationally this is a growing issue. In March this year the AFP worked with our international partners with the investigation of the 'boylover' network. People may have seen that written up in the press.

Five men were arrested in Australia who at one point were high-ranking members of that online community and this 'boylover' network, but 184 offenders were arrested across the world. So very much Australia is playing its part in that international environment and over 200 children were safeguarded out of that one operation and removed from potential points of risk.

In recognition of Australia's growing role in this, and we have put ourselves forward to try and take a leadership role internationally of this, we have been asked to be the chair of a virtual global taskforce. The mandate of the virtual global taskforce is to protect children through supporting members across the worlds. This is raising skill levels in countries that might not have the technical capability. Assistant Commissioner Gaughan and others play key roles in that. In fact, Neil is the chair of that group. The importance of this is growing because the number of people involved in that virtual global taskforce is growing and the number of countries represented is growing. This is something that we are putting a lot of effort in, again in broader education and broader work across the community.

Senator FURNER: As you would be aware, we passed legislation earlier this year criminalising providing material support for people smuggling. Have there been any charges brought in relation to those offences and can you give some details on that?

Mr Negus: We will have to get Deputy Commissioner Colvin back again.

Mr Colvin: I do not believe we have, but I will correct the record if that is the case.

Senator FURNER: Okay. Thank you.

Senator HUMPHRIES: I want to ask about the report in today's *Daily Telegraph* about the 10 Vietnamese children who have disappeared from community detention in the last four months. Is the AFP actively investigating the circumstances of those children?

Mr Negus: No, we are not. It was referred to us to have a look at with regard to whether or not this could be a child-trafficking matter. The assessment was that it was not, so the matter now rests with DIAC compliance teams to look at those people—

Senator HUMPHRIES: It is been referred where?

Mr Negus: The matter was referred to the AFP to look at whether there were any child-trafficking implications. The assessment is that there are not. These people willingly walked out of those particular home detention environments. I understand DIAC compliance officers are now following up their whereabouts.

Senator HUMPHRIES: So, as far as the AFP are concerned, you do not hold any concerns about the safety and wellbeing of these children?

Mr Negus: Not from a trafficking perspective. There was no evidence to suggest this was linked to Commonwealth type child-trafficking networks. It is more an issue for DIAC and the state police to look for these people and find out about their current welfare. Certainly, if anything was raised with us or we came across any information in regards to that, we would pass that on to the appropriate people.

Senator HUMPHRIES: Do you know if the state police in Victoria, Western Australia or elsewhere are investigating the whereabouts of these children?

Mr Colvin: Senator, I do not believe that they are, no. I guess we need to put it in the context of the fact that every day there are people who overstay their visas or who are not where they should be from a DIAC immigration perspective—

Senator HUMPHRIES: Not many children, I would hope, though?

Mr Colvin: I would not know, to be honest. But, in terms of these particular individuals, we have no information that suggests any particular concerns for their safety or welfare. If such information did become available, we would make sure that we or the state police were investigating; but beyond that it is a matter for DIAC.

Senator HUMPHRIES: I suppose it is a difficult issue to address. But, if you do not know where the children are, you do not know what has happened to them, so how can you rule out their being involved in child trafficking?

Mr Colvin: Conversely, as well, there is no information to suggest that they are involved in child trafficking.

Senator HUMPHRIES: But these are children who have come to Australia and been committed into the immigration community detention system. They were presumably, at that point, under the care and protection of DIAC, a federal government agency. They seem to have disappeared from that care and protection. I would have thought that the disappearance of children who were at least at one point the responsibility of the federal government would axiomatically be a matter of Commonwealth responsibility.

Mr Colvin: I absolutely agree with you, Senator, and that Commonwealth responsibility at this stage still rests with DIAC. These people have not been reported missing, we have no particular information to suggest that they are involved in child trafficking or anything else of a serious nature, and I am sure that DIAC are the best agency to address what they are doing to establish the whereabouts of these people.

Senator HUMPHRIES: So you are saying you are not aware of any state or territory police force investigating these children's whereabouts?

Mr Negus: There have been discussions with the Victorian police, I understand, on this—between DIAC, the AFP and the Victoria Police. As the deputy said, they have not been reported missing as such because they think that they voluntarily walked out of these facilities. I understand the youngest is 15, if my information is correct. And, whilst they are children, DIAC are now looking to identify where they have gone and what their current status is. If they were genuine concerns for their safety, I am sure we and the Victoria Police would ask to do whatever we could to help that; but DIAC have primary responsibility, and their compliance teams, I am sure, are making every effort to identify and locate them.

Senator HUMPHRIES: I take it these are all children without parents in Australia?

Mr Negus: It is my understanding they came to Australia unaccompanied, yes.

Senator HUMPHRIES: Okay. The other issue I wanted to touch on relates to the AFP raid that took place in Melbourne in August 2009. There was recent media reporting on the status of an affidavit that you swore, Mr Negus, in relation to that. The affidavit in question is, I understand, a matter that is before the Melbourne Magistrates' Court at the moment, as to whether or not the affidavit can be published. But, in another affidavit, according to a news report on the *Age* website, you are quoted as saying:

... confidential (and candid) communications between the AFP and media organisations are necessary in order to maintain a level of trust and co-operation ...

Could you explain what you meant by that comment?

Mr Negus: I feel a little constrained because I am due to give evidence in the particular matter to which these affidavits relate in about two weeks time, and again the *Age* is contesting the suppression order around that affidavit. What I was essentially saying is that the conversations you have talked about were private conversations that were disclosed in an affidavit through the Australian Commission for Law Enforcement Integrity hearings with the OPI. They have since made their way into the brief of evidence, and I did not think they served any purpose—

Senator HUMPHRIES: Can I clarify that I am not talking about the comments in the affidavit which is the subject of the proceedings; I am talking about what this report describes as the supporting affidavit, which you are quoted as saying.

Mr Negus: That is right.

Senator HUMPHRIES: Is there any sensitivity around the statement I just read out to you? Is that a matter that is being contested in court?

Mr Negus: Not that statement per se.

Senator HUMPHRIES: That is what I am asking about.

Mr Negus: But as to what that statement relates to—yes, there is. To give you some context, there was a discussion between me and a particular editor of a newspaper in regard to Operation Neath, which was the counterterrorism investigation in Victoria which led to the conviction of three men for the alleged—or not alleged now—conspiracy to attack Holsworthy army base. We had a conversation about the publishing of the article in the newspaper the following day. The newspaper then agreed to suspend that publishing until a time that was operationally sound for the AFP to move ahead. That was disclosed during a range of hearings looking for the source of the leak to the newspaper. Again, that confidential conversation was not pertinent to the prosecution of the person who has been arrested for the leak, and therefore should have been suppressed.

Senator HUMPHRIES: I think you are giving me more information about the particular issue here and the particular case in relation to that raid than I actually want. I really want to find out about your views on the relationship between the AFP and media organisations. Maybe it is better if I ask these questions after this matter has been disposed of in the Magistrates Court.

Mr Negus: To answer your question, what I can say is that on occasion journalists will come into possession of material which, in the course of their inquiries, they then test with the police. Sometimes that relates to operations which are currently underway, and it could be very difficult for the police if those stories were to be published prematurely—it could blow a particular operation or put people's lives at risk. That was the case in this circumstance, and the newspaper decided that it was in its best interests not to publish at that time. That is what happened.

My comments are that—not all the time, but on occasion—there will be circumstances where newspapers or individual journalists will need to have confidential conversations with the police where agreements are reached about what information can be shared with the

public at a particular time and what cannot. I am not saying that this is the case all the time and I am not saying there will ever be a particularly trusting relationship between the two, but there needs to be a level of trust which can protect national security when the time is appropriate.

Senator HUMPHRIES: I understand exactly what you are saying, but just to be clear, you are saying that scenario arises when a media organisation obtains information about a particular operation of the AFP which is still in a sensitive stage, not because the AFP freely gives information to an organisation for the sake of securing a better angle on a story that comes ultimately from that organisation.

Mr Negus: No, certainly not. I can say without fear of repudiation that the AFP takes those things very seriously. We investigate leaks of information. This is not about prebriefing journalists and those sorts of things; this is when a particular investigation may be compromised and may cause people to be put at risk unnecessarily because of the publication time of a story.

Senator HUMPHRIES: I have other questions, but I will put those on notice.

Senator PRATT: I have some further aviation questions. I would like to know how much money the federal government has invested in policing at Australian airports in recent budgets.

Mr Drennan: The budget for the current financial year for aviation is \$122.197 million.

Senator PRATT: So that is for the AFP's part of the responsibilities? Is that correct?

Mr Drennan: That is for the AFP's aviation portfolio, which relates to policing at airports.

Senator PRATT: Does that capture everything that is in the all-in model for aviation policing and security? It is my understanding that it would not necessarily do that.

Mr Drennan: Yes, it does.

Senator PRATT: What is the investment over, say, the next four years? I understand there was an investment of \$200 million in aviation security measures, but I also understand that there is \$760 million over the four years. I do not know if they are separate and what they include.

Mr Drennan: It is probably best if we detail that to you on notice. The reason I say that is that in the forward estimates there is a range of leasing costs and there is a range of capital which has been provided to the AFP for us to establish a purpose-built premises at each of the airports where we have offices located around the country. The \$122.197 relates to the AFP's operations at airports as is, and in the forward estimates there is additional funding for future lease costs and also for capital to fit out buildings as they come online.

Senator PRATT: What is the budget for Project Macer at our airports?

Mr Drennan: The costing to implement Project Macer is absorbed within the aviation function budget. It is incorporated within that \$122.197 million.

Senator PRATT: As I understand it, that is where the Commonwealth is assuming responsibility for staffing over the next three to five years. Is that right?

Mr Drennan: Yes. The Commonwealth had responsibility for policing at the airports but it was a hybrid policing model, as I explained earlier on. The future for model core policing

will be an all-in, sworn model. All police officers doing policing at the airports will be sworn members of the AFP.

Senator PRATT: The 2010-11 budget for the forward estimates is the \$760 million I am referring to. Correct?

Mr Drennan: I cannot tell you if that is correct exactly. It incorporates a considerable amount of lease costs for premises in the future and also capital expenditure in the future. So it is roughly that but I really would need to get the exact details to give you a precise answer.

Senator PRATT: I understand there was an investment of about \$200 million in aviation security measures and that includes a range of improved security technologies. What are those improved security technologies and where do the new budget lines come in?

Mr Drennan: I am not too sure what you are referring to there and whether it is actually something that relates to the Office of Transport Security, who have responsibility for security at airports. We have responsibility for policing at airports.

Mr Negus: If I can help, I was at the announcement of that \$200 million. Most of those costs relate to screening and other security improvements around the airport precinct. The AFP's only allocation during that was a bit over \$17 million for increasing the number of canines and canine handlers we had. Ours was a smaller part. From memory, Minister Albanese was the major benefactor in regard to his department looking at security issues.

Senator PRATT: So the \$200 million is for a range of security measures across different departments.

Mr Negus: That is right—across a whole range of departments.

Senator PRATT: They include the Department of Transport and Infrastructure and the AFP. Thank you for clarifying that for me.

Senator HUMPHRIES: I want to ask about the report in the *Canberra Times* of 6 October about the average length of experience of officers serving in the ACT operations of AFP. The argument in that article was that 52 per cent of ACT policing members have under five years experience, 22 per cent of staff have between six and 10 years experience and 80 per cent of the force is still at the rank of constable, which compares with only 65 per cent in Queensland and 67 per cent in South Australia. So a relatively large number of AFP members are at that lower rank. Would you like to make a comment, Commissioner? I assume the ACT Chief Police Officer is not here, so would you like to make a comment about the greenness of the ACT policing cohort?

Mr Negus: Yes, you are correct, the Chief Police Officer is not here; he does his own estimates process in the ACT, as I am sure you are very familiar with. I do not dispute those numbers. I think across the AFP there has been a significant rate of growth in the last five or six years and we have had a lot of new people come into the organisation. I must say, though, that the average age of the AFP workforce is 40 years. These are not 18-year-old kids coming out of school, as I did, and joined the police force. The average age of our recruits is 29 or 30 and around 70 per cent have tertiary qualifications before they come to the AFP. These are people with one, two or three careers behind them as well as a degree from university studies. They are not young kids being thrown out onto the street; these are mature people who hit the ground running.

I think the ACT is very well served by the police force it has. I would have to compare those figures to the national figures we have, but they would not be that much inconsistent with the figures for the AFP. I did read in one of our areas here about the number of staff for the whole of the AFP who have been in less than three years, and I might see if my staff have that here. Yes, 26 per cent of the AFP staff have been with the AFP three years or less. If you think about the relative numbers, of almost 7,000 staff with about 1,000 of those being in the ACT, the numbers are not that much more inconsistent with that. It is something we look at; we look at mentoring and at making sure that people have significant opportunities to learn. There is a whole process they undergo once they leave the recruit college to make sure they are well developed in the skill sets that are required of them. As I said, I think the people of the ACT receive a very good service from their police force, who are well skilled and well able to do the job.

Senator HUMPHRIES: That is not to be doubted but, equally, we need to retain good people.

Mr Negus: Absolutely.

Senator HUMPHRIES: Given that people come in at a later age, they are more mature and they have generally come with a previous career or two before the AFP, if they are much more likely to find themselves in the AFP at the rank of constable than in an equivalent police force, isn't it likely over time that people will make that kind of comparison and are more likely drift to other police forces than to the AFP?

Mr Negus: From my perspective I think they have far greater opportunities with the AFP, and those include the domestic policing, the community policing, the national things we talked about before with Senator Furner such as organised crime, plus the international dimensions and the peacekeeping dimensions that the AFP offers. Our attrition rate at the moment in the sworn side of the force is 2.89 per cent, which is extremely low. It is five per cent in total, so our unsworn staff turnover at a higher rate, but with the police that we recruit it has been down as low as about 1.7 per cent last year. So if people join the AFP on the sworn side of the business they are not leaving in any great numbers, and if you look at those numbers it is probably a little low from an organisational health perspective.

Senator HUMPHRIES: It is a low rate of attrition.

Mr Wood: Can I add that page 128 of the national annual report does provide the break-up of sworn police in ACT policing. Just to pick two numbers, there are 59 members, sworn police, in the ACT Policing Service that have 26-plus years of service and another 43 that have between 21 and 25 years. So there are at the near end, as the commissioner mentioned, a number of people right across the AFP who have been in for less than three years, but in ACT Policing there are some quite significant numbers, given its total size, of people who have been in the AFP as sworn police for in excess of 15 years. There is a break-up on page 128.

Senator HUMPHRIES: It sounds like a significant number who are very experienced and an even larger number who are relatively inexperienced, and not a lot in between those two extremes.

Mr Negus: This comes back to the late nineties, when we had very little recruitment done by the AFP and there were some budget issues around that and the organisation did not grow. We find there is a bit of a bubble going through the system now where people have been in

either for 10 or 15 years plus or for three years minus, and there are not too many in between. So we are very conscious of that, and we have now made sure that even when we are not recruiting because the organisation is not growing—it has levelled out—we use appropriate strategies to make sure our workforce has that even recruitment process so that in the out years we do not experience the same problems.

Senator HUMPHRIES: You mentioned that the retention rate was high and the loss of people was low, but that is across the AFP. The bleeding of people from ACT Policing into national operations is a lot higher. If you count that as part of your retention figures, we have a rather high level of problems in the ACT, haven't we?

Mr Negus: We are very conscious to make sure that the ACT is seen as a very important part of the broader AFP. I have discussions with the Chief Police Officer and the Minister for Police and Emergency Services in the ACT, Simon Corbell; I have another meeting with him this Friday. Just on those issues, there is certainly a process placed around this. It is not left to chance or happenstance; there is an allocation of people that can leave the ACT for other activities in the wider AFP, and they are not released from the ACT unless it is consistent with that process, for those very reasons you talk about—so that that bleeding is not done at a rate that is seen to be excessive.

Senator HUMPHRIES: Could you take on notice a break-up over the last, say, five years of how many people have gone from ACT to national policing—for each of those five years, please.

Mr Negus: Certainly.

Senator HUMPHRIES: I have just one more question. Whatever the other factors relating to job satisfaction are, obviously pay is a significant one. You would be aware, of course, of the rejection of the recent enterprise agreement proposal. Where does that leave the AFP?

Mr Negus: I am personally very disappointed that it did not get up. It was roughly a 55-45 percentage vote against the enterprise agreement. We are now commencing the second round of bargaining with the bargaining agents—both the unions and the independent representatives. It leaves us in limbo. The existing collective agreement, which has existed for the last three years, continues, so we still have a set of industrial conditions that continue, and we are, again, actively bargaining with the independents and the unions to take it forward to a second round.

Senator HUMPHRIES: Would you say there is considerable dissatisfaction about the state of pay negotiations in the AFP?

Mr Negus: A 55-45 vote means it was not far; there were 250 votes that were the difference in the outcome. There was an 81 per cent return rate on that, so there was a high active involvement of the staff. It was disappointing all round. This was nine months of negotiations. We thought it was a fair package. As you would be aware, the AFP does not receive supplementation for pay rises; they have to be put through and offset by efficiencies. In an organisation where we are trying to push people onto the front line and maximise the staff that we have available to do the business, it has to be a responsible balance. I am sure we will get there in the end, but it was not inconsistent with what has been happening in a range of agencies across the Commonwealth in the last, probably, six months.

Senator XENOPHON: Commissioner Negus, you would probably be disappointed if I were not going to ask you questions about Allan Kessing—or surprised, perhaps.

Mr Negus: No, I am happy to answer any questions I can.

Senator XENOPHON: Thank you. At the last Senate estimates I asked you a number of questions in relation to the whole issue of the prosecution involving the AFP's investigation into Mr Kessing. You are aware that Mr Kessing has made application for the exercise of the royal prerogative of mercy in terms of a pardon. Mr Wilkins, perhaps I will be asking you questions about that this evening. I just want to go to this issue: clearly the information from the AFP is going to be material in terms of the exercise of that discretion. Mr Wilkins, you would agree with that—although this is perhaps not the time. In dealing with the prerogative of mercy, you will rely on information from various agencies, won't you?

Mr Wilkins: We will take into account all the matters, and that is certainly one of them.

Senator XENOPHON: One of the matters that has been put to me was that one of the reasons put as to why the conviction of Mr Kessing was appropriate was that Mr Kessing was offered an opportunity to have an interview with the Federal Police on the day his home was raided. That was put in correspondence from the Attorney-General's office—that there was an opportunity. This is in a letter from the Commonwealth DPP of 17 May 2010: there is an assertion that the AFP offered an opportunity for a tape record of interview. Are you familiar with that?

Mr Negus: I am not in this particular case, but it would be standard procedure that the person would be offered that.

Senator XENOPHON: And it says that he declined that opportunity to be interviewed on the day that his home was raided at Mount Victoria.

Mr Negus: Which is quite within his prerogative to do—to decline that.

Senator XENOPHON: Sure. The Commonwealth DPP said that he was told he had an opportunity to participate in a tape-recorded interview. Mr Kessing tells me that he was never actually offered that. No tape record was offered. What he says occurred was that there were a group of officers—two internal affairs Customs officers and a number of AFP officers—there and that the lead agent said to him words to this effect: 'The others have already given you up. You may as well tell us what happened.' No reference was made to a taped record of interview. There was no offer of a recorded interview. My understanding, though, is that Mr Kessing tells me that he believes there was a female AFP agent who was holding a video camera that was filming what was transpiring. That would be standard operating procedure, wouldn't it?

Mr Negus: Yes, either a video camera or a tape recorder depending on the circumstances. Yes.

Senator XENOPHON: He assumes that it was a video camera and that normally you would have audio on at the time. Would you normally keep that tape of that raid?

Mr Negus: Yes, we would. I just have to see how long we would actually keep that for. Those exhibits, per se, would be sent to the DPP for the prosecution process and then returned to us. I am just not sure—

Mr Colvin: Certainly there would be statements from the officers who were there or the officers who took statements in relation to the court matter that would have articulated what occurred on the day. We would have to check the exact details. It would be unusual, to say the least, if he was not offered an opportunity on the day to participate.

Senator XENOPHON: I am just telling you what Mr Kessing has put to me, and the easiest way to determine what occurred is if there is a true copy—if there is a video recording and an audio recording of what occurred at the raid.

Mr Negus: It would be the usual process through the court that, again, the defence would be given, just in a disclosure sense, copies of all matters that were going to be let in as evidence. I do not know whether or not there would be a transcript of that that would be with Mr Kessing's defence team. But certainly if he were to apply to us for a copy of the transcript of something he is involved in—

Senator XENOPHON: Or if I were to apply on his behalf with his permission, with his authority.

Mr Negus: With his written consent. I think that we would certainly be able to give a transcript of anything that he has participated in if it is still available.

Senator XENOPHON: Or, more importantly, the videorecording of the raid.

Mr Negus: Yes. I hear he has participated in the conversation with that process, so he would be entitled to a copy of it.

Senator XENOPHON: Normally you would keep something like this, wouldn't you? What policy do you have on destroying documents or material?

Mr Negus: I would have to double-check that. There are obligations under the Archives Act on a range of things. You can imagine how many exhibits and statements and other things the Federal Police would collect over a period of years.

Senator XENOPHON: Do you digitise things now, though? Do you put them on a hard drive?

Mr Negus: It depends. Some things are uploaded onto our case management systems. But again it is going back several years for this case—back to 2005 from memory. We could certainly check whether it is still there, but I suspect it would be. Yes, we are just checking now to see if we can get you an answer straightaway. But certainly, on the back of this, we will make inquiries and look to do that.

Senator XENOPHON: Since we spoke on this issue or since you were last here at estimates back in May, have you had an opportunity to familiarise yourself with the Kessing file, or were you previously familiar with it?

Mr Negus: I know broadly what the file is about. I asked the deputy commissioner of operations to re-evaluate the investigation based on some of the points that you had here. That re-evaluation has not identified any material that was unknown, and certainly not any material that would exculpate Mr Kessing or suggest any miscarriage of justice as was put to me at the last Senate estimates hearing. So, again, I am not suggesting that this was all-encompassing review, but I have asked the people involved to have a look at the file again, and to make sure that we went through this process to see whether there was anything there.

Senator XENOPHON: One of the issues I raised with you was whether the conversation between Customs officer Zoe Ayliffe and veteran journalist Norm Lipson was revealed in the course of the hearing. That is something that I do not think I actually got a direct answer from you—I am unclear as to what your answer was in relation to that, because if that was revealed to the defence, and there are issues here, which I will ask Mr Wilkins about this evening, about the whole issue of model litigants that may well have led to a different outcome in terms of diminishing a circumstantial case against Mr Kessing. You said that there was disclosure of the material relating to the contact with Customs by Norm Lipson, that you told the defence Lipson has been in touch with Customs and later wrote an article, but did you in fact alert the defence based on the model litigants rules, that Lipson had actually told Ayliffe that he had a couple of sources?

Mr Negus: Senator, I was not involved intimately with the case—

Senator XENOPHON: I appreciate that.

Mr Negus: so all I can say is to go back to what I said in the original: this was all about the letter of transmission to the DPP. What I can say is that Custom's referral letter that we talked about at the last estimates referred to statements made by the journalist Martin Chulov in a conversation with a talkback announcer on a radio station 2GB on 31 May. A transcript and audio recording of this interview with Mr Chulov in which he stated that his information came from two Customs sources, was disclosed to the defence. So the letter was not disclosed, but that was. Also disclosed to—

Senator XENOPHON: Sorry can we just go back a step, Commissioner, because that is very important, because I am wondering whether the two issues are being run together there, that the AFP disclosed the two sources issue in the Chulov transcript, but remained silent about it in the Lipson-Ayliffe conversation.

Mr Negus: No, I am just about to get to Mr Lipson. Also disclosed to the defence prior to the committal hearing was material relating to the contact with Customs by Norm Lipson, who is the contract reporter for the *Woman's Day*, so that was disclosed. The essence of that I do not have any more information on, but I think we did talk about it last time.

Senator XENOPHON: So what was actually disclosed in terms of Lipson and Ayliffe?

Mr Negus: Material relating to the contact with Customs by Norm Lipson. So that was disclosed to the defence prior to the committal hearing.

Senator XENOPHON: But that begs a very big question as to whether it was actually disclosed that Lipson told Ayliffe told that he had a couple of sources.

Mr Negus: I cannot answer anything more than that. I am happy to take on notice again the questions about what specifically was disclosed and I can give you some more information, but Mr Kessing was convicted, he then appealed, the appeal was dismissed and we went through this at the last Senate estimates hearing, so I will not go through all of the details I have here. I have had my people review the case. There is nothing in there that we can see which would point to any material that could exculpate Mr Kessing along the lines that you are talking about or that any miscarriage of justice took place in any way.

Senator XENOPHON: When you say there was a review of the case, what did that review involve, and was Mr Kessing contacted as part of that review process?

Mr Negus: No. This is an internal review of the case. Now as I have said to you very early on, I am not suggesting this was an all-encompassing review, but based on your comments at the last estimates hearing I asked that this matter just be looked at again and we have had someone go through the file and have a look at that matter in that way, and there was nothing that could be located that would give any more credence to me coming back here to tell you anything different than I did last time.

Senator XENOPHON: There was also the issue of the letter of the 17th. I will put some questions on notice in relation to this—perhaps not as part of the supplementary estimates process but as formal questions on notice. Perhaps I could liaise with your office in relation to that as a courtesy. I will not be asking you to script the questions for me though.

Mr Negus: That is appreciated.

Senator Ludwig: On this matter anyway.

Senator XENOPHON: Are you verballing me, Minister?

Senator Ludwig: No. I am just making sure that, if you want to annoy the commissioner on other matters, you are still free to do so.

Senator XENOPHON: I think there is enough for me to do in relation to the Kessing matter. I think the commissioner will probably agree with that. Reference was made to Mr Kessing being a disgruntled employee of Customs and that was part of the circumstantial case against him. Was that information that was provided by the AFP as a result of your investigations or was that coming directly from Customs?

Mr Negus: I could not answer that without taking it on notice. Again, this goes back to 2005. The officers sitting at the table here were not intimately involved with the investigation. For those sorts of details we would have to seek the people who were involved in putting the brief together.

Senator XENOPHON: Take that on notice because that is a pertinent issue. The investigation made reference to the reports in the *Australian* which triggered the investigation in terms of the leak of the report. The 31 May 2005 and 1 June articles by Jonathan Porter and Martin Chulov referred to a source describing events in relation to Schapelle Corby and cocaine importation from South America. I think he describes the source the journalist has as an eyewitness referring to CCTV footage. Was that part of the circumstantial case against Mr Kessing?

Mr Negus: Without actually having reference to the brief of evidence—

Senator XENOPHON: You can take that on notice. I do not expect you to answer it now.

Mr Negus: Yes.

Senator XENOPHON: There was also correspondence from the regional director on 13 May 2005 to Mr Kessing's supervisor, Ms Magni, raising issues about the reports in question. This was prior to the publication of the *Australian* article. There was a response by Ms Magni saying that 'not only are we aware of these reports'—that is, within that office—'but the issues are still quite pertinent in terms of issues of security breaches that were raised in the reports written by Mr Kessing'. Could you take on notice whether that formed part of the circumstantial case or whether that material was disclosed to the defence?

Mr Negus: I am happy to take those questions on notice. I have to say though that these matters have obviously had an opportunity to be aired in the courts. We will add whatever value we can to that to give you an appropriate response. Whether these are matters of public record already in the court transcript I do not know. We will have to see what we can give to you in that regard.

Senator XENOPHON: I am concerned that you are saying that, because these matters have been ventilated in the courts, it is not appropriate to ask these questions.

Mr Negus: No. I am giving some limit to my ability to talk about what the strategy was in the prosecution or the case. We will do our best to do that from the records we hold and whatever public records are available from the court, but the DPP play a role in this as well.

Senator XENOPHON: Commissioner, you talk about the strategy. Doesn't the fact that the matter was dealt with in the courts and is no longer a live matter before the courts free you of any restrictions in terms of discussing the strategy for the prosecution?

Mr Negus: I am not placing any restrictions on the AFP; I am simply saying that the matter goes back to 2005. We will have to look at what records we do hold and provide whatever information we can commensurate with those questions. I am not limiting the scope of my response in any way other than to say that this matter is now six years old from the original complaint. We will do our best to answer them. I am putting you on notice I suppose that some of these things will take quite a bit of work—to actually go back through transcripts, briefs of evidence and those sorts of things.

Senator XENOPHON: In terms of the process, because I think I have another eight estimates before my term is up. Is that right, Minister?

Mr Negus: I think I have six.

Senator LUDWIG: All going well.

Senator XENOPHON: There are no triggers for a double dissolution at this stage, Minister. If questions are put on notice, obviously you will respond to those questions within the time prescribed.

Mr Negus: Yes.

Senator XENOPHON: Is there any other mechanism to get to the issues that are the basis of the grievance that Mr Kessing has in relation to his conviction for these matters or are you saying that is the only basis?

Mr Negus: As you are aware, we sometimes do private briefings for particular members and senators. It is a matter of whether that would be of any utility. We are happy to answer the questions on notice as best we can. If those do not satisfy you then we are happy to explore other options to get to the point you are trying to make. We have been nothing but honest in our dealings and forthcoming with what we know about the circumstances. They have not changed in the last three or four Senate estimates in which we have gone through some of this material. The briefs that I have been provided by my people are as consistent now as they were then. The AFP, in looking at this matter, have not seen any changes in the stance or the position that was taken or anything inappropriate that has been identified through this process that we will change our stance on. I am more than happy to take on notice those questions and give you the most fulsome answers we can.

Senator XENOPHON: I would like to raise a couple of other issues in relation to this. Mr Kessing publicly said in 2009, when this matter was raised in parliament, that he had had contact with Mr Albanese who was the shadow minister in late 2004, well before these articles appeared in the *Australian*. Is it the policy of the AFP that if an aggrieved citizen goes to a member of parliament with documents that would otherwise attract prosecution under section 70, the fact that that communication was to a member of parliament would put it in a different light as there would be a defence which would mean it would be treated differently? In other words, does the AFP have a different attitude to the release of information to a member of parliament from the attitude it takes to information released to a media organisation under the terms of section 70 of the Crimes Act?

Mr Negus: No, we do not. In fact, if you had been here earlier, I referred a matter to our internal investigations when Senator Brandis attempted to table a document from the AFP to see how that document was released unlawfully through that process. It is a very recent example of about an hour ago.

Senator XENOPHON: I am sorry I was not here. I can raise with Mr Wilkins later whether a matter raised with a member of parliament has a different status under section 70 in terms of potential defences.

Senator LUDWIG: It depends on the context and where you raise it. There are certain rights whilst you are in a committee. I am not going to go to them as I am sure you are aware of them.

Senator XENOPHON: If it is given to an MP for the purpose of it being raised in the parliament or through a committee process it may be a different issue.

Senator LUDWIG: That is a different issue. I would take advice on that.

Mr Negus: Our stance has been that the alleged disclosure to Mr Albanese staff in 2005 was after Mr Kessing was convicted—

Senator XENOPHON: According to Mr Kessing and Mr Albanese as well. I am not saying there is anything wrong with that.

Mr Negus: Sorry, I was not being completely inclusive in that. The issue is that, given Mr Kessing's conviction—and I know there is a range of issues you are still pursuing around that—we did not think it was in the public interest to reinvestigate that particular matter. This is not about it being appropriate or not as far as Mr Albanese is concerned; this is about the public interest in the conviction on one matter to reinvestigate a similar matter in the context of Mr Kessing already having been convicted for that. That is where the AFP stands on this matter. It is not anticipated that we will reopen any investigation in that regard.

Senator XENOPHON: Finally in relation to this, Mr Kessing wrote via my office on 12 August, I think, to the Attorney-General's Department in relation to further information with respect to the application for a pardon. Has there been any communication between the Attorney-General's Department and the AFP requesting any further details since that letter? I am not asking you for the content; I am just asking whether there have been any communications.

Mr Negus: I am just informed that there have been some discussions.

Senator XENOPHON: As a result of Mr Kessing's subsequent letter of 12 August 2011?

Mr Colvin: There are ongoing discussions with the department to help the department form a view. I guess that they will advise the minister. I could not be sure whether it was before or after the ongoing discussions.

Senator XENOPHON: Mr Kessing wrote a detailed letter with a number of attachments with respect to this matter. I think it was 13 pages in all.

Mr Negus: Perhaps the department would be better placed to answer that question.

Senator XENOPHON: Was the AFP provided with a copy of Mr Kessing's letter of 12 August 2011?

Mr Negus: Yes, we were.

Senator XENOPHON: Until the next estimates two of my questions are on notice.

Mr Colvin: I may be able to answer one question for the senator that we took on notice. On 6 September there was video and audio of the search that was executed at Mr Kessing's property. Transcripts have been disclosed to Mr Kessing through his defence team of that video and audio and that included him being offered an opportunity to participate in an interview, which he declined.

Senator XENOPHON: Do you still have the video available of that?

Mr Colvin: We are just checking the status of that at the moment. It may be that we just have the transcript and not the video. We will have to take that on notice.

Mr Negus: The transcript would have been disclosed during the hearing.

CHAIR: We have still need the Australian Federal Police but we are going to break for afternoon tea.

Proceedings suspended from 15:36 to 15:53

Senator LUDLAM: Commissioner, I have a couple of brief questions on some matters I raised with you some time ago. I am interested in the High Tech Crime Operations section, if that is what it is still called, within the AFP. Can you tell us what the budget is for the 2011-12 financial year for those parts dealing with investigation of criminal activity related to online child sexual abuse?

Mr Negus: Assistant Commissioner Neil Gaughan who is the head of that area will answer that question.

Mr Gaughan: Thanks for the question. The current budget for high tech crime is \$55.54m with an FTE of 350. In relation to child protection operations, which I think was more your area of interest, the initial AFP funding for cybersafety measures was \$49.4m over four years for the financial years 2008 to 2012.

Senator LUDLAM: Over how many years?

Mr Gaughan: Four years.

Senator LUDLAM: That is about \$12m—

Mr Negus: I do have a little bit more information to perhaps give you an idea of the nature of the work. During 2011-12 the AFP has 53 dedicated officers to conduct child protection operations. We talked about this earlier in the day but at any time the AFP can bring people into and out of particular areas of investigation as the need arises. For instance, we could have 400 people working on a counterterrorism operation yet there are 149 working in that

portfolio. It is matter of what the priorities are. In 2010-11 there were a total of 98,669 hours expended on incident types relating to child protection operations. Almost 100,000 hours were expended in child protection operations. Nearly 56,000 of those were from the High-Tech Crime Operations area. Almost half again is from our generalist investigative pool with Assistant Commissioner Gaughan's specialists providing half of that total.

Senator LUDLAM: Are you quoting from the PBS?

Mr Negus: No, it is from an internal brief. A total of 576 members from across the AFP contributed to these hours. If you think about the number of investigators we have, almost 600 of them at some stage worked on child protection operations throughout the year. I talked before about it being an ever-growing problem and it is something we are really focusing on with something like 750-plus apprehensions since 2005 when the High Tech Crime Operations portfolio was put in place, and over 1,000 charges.

Senator LUDLAM: Has that gone up year on year?

Mr Negus: Yes it has. The international components of this, we have talked about before, have been growing. We are being more involved in that. This year alone Neil mentioned 118 people were apprehended for child protection operation matters with 140 charges.

Senator LUDLAM: Here in Australia?

Mr Negus: Here in Australia. That is just by the AFP. It is not counting what we refer to state and territory police.

Senator LUDLAM: Could I ask you to table whatever part of the briefing you have got that is suitable for public release.

Mr Negus: Yes, absolutely.

Senator LUDLAM: How much does the government spend or is planning to spend on education activities directed at offenders involved in online child sexual abuse as a crime prevention strategy? I understand probably most of what you are describing for me there is investigation and prosecution of things afoot. What if any is the preventive component?

Mr Negus: Yes it was. I will get Assistant Commissioner Gaughan to talk about this. Prevention and education, particularly for young people, is a very important part of what the High Tech Crime Operations portfolio does.

Mr Gaughan: The cybersafety national policy initiative did have a fairly large component, as the commissioner indicated, in cybersafety and cybersecurity. It is not just the role of the AFP to be involved in that particular activity. It is a whole-of-government one. ACMA also has a part to play as does the ACCC. The department of broadband has a significant role to play as well. Everyone is involved in education. From our perspective, we focus on education for children through our ThinkUKnow program, which is an award-winning program you are very familiar with. As far as offenders are concerned, which I think is the question you specifically asked, education is very difficult. We are working with academia particularly through the Virtual Global Taskforce, which I am currently the chair of, to engage criminologists to try and do some profiling around victimisation to try and break the cycle if you like. We are working very closely not only with academia and NGOs but also with industry in trying to break this crime cycle.

Senator LUDLAM: If you are working with academics, that is obviously pretty welcome. Are you working with counsellors and therapists? That is still not preventative. That is in a research capacity. What are you doing preventatively with offenders?

Mr Gaughan: Nothing specifically with offenders, I suppose. But we are also working with the telecommunications industry and the ISPs to block this type of offending material, which has been reasonably successful.

Senator LUDLAM: It does not get rid of it though and it does not stop people going looking for it. I am not disputing the value of all those other things. Specifically going to the issue of the people who are popping up, who you are prosecuting or who you suspect of doing this stuff, what is out there for rehabilitation and what is out there for therapy for whatever can be brought to bear on the people who are offenders?

Mr Gaughan: There are processes in place through the judicial process for dealing with offenders. It is not really a market that the AFP historically has been involved in whether it be for this crime type or any other crime type. That said, we are working with academia to actually try to come up with some solutions to break the offending cycle. That is the importance of what the VGT is doing in relation to some of the international conferences we have been hosting. One we are going to host in the UAE shortly will try to address some of those issues.

Senator LUDLAM: I will leave it there. It does not sound like it is part of your core business, but I just wonder, rather than me working through a maze of different departments and portfolios, whether you can pull out for us who is doing the work? Is it child protection at a state level or what do you do?

Where I am I going with this is that having spoken to someone who counsels offenders in this area, it sounds like a niche area that is reasonably well researched but very poorly resourced in terms of people just exiting the criminal justice system and being back out there again. There does not seem to be any kind of safety net that we can put under people.

Mr Gaughan: We will take that on notice. I was just talking to Mr Wilkins, and between ourselves and the department we may be able to give you a steer of where, if any, action is being taken.

Senator LUDLAM: Thank you very much. I have learnt a bit about the UK equivalent of what I guess your office is: their Child Exploitation Online Protection Centre, CEOP. Are you familiar with that outfit? Do you work directly with them?

Mr Gaughan: We work very closely with CEOP. They are a partner of the Virtual Global Taskforce. ThinkUKnow actually came from CEOP, so we have a very strong relationship with CEOP in this crime type.

Senator LUDLAM: They look like a very interesting collaboration with e-crime specialists and industry—ISPs, carrier providers and so on. I have had it put to me that compared with that model and what you folk have put together we could learn a bit from the structure of what they do there. Is there any appetite in Australia to move towards that kind of collaborative model or do you think we have the structure about right?

Mr Gaughan: In my view we have it right. We already work with those players on a regular basis. You mentioned industry; we work with the ISPs. The AFP was working very closely with Telstra and Optus in relation to the blocking issue that has come forward

recently. It is the relationship that we have with the ISPs that has put that front and centre. We work with academia and we work with industry. We have recently had a person seconded to Microsoft in Seattle, which is something that no other international law enforcement agency has. To some extent, I think that we are even slightly ahead of the curve.

Mr Negus: The former head of that body you are talking about—a fellow called Jim Gamble—was the former chair of the Virtual Global Taskforce. At Jim's recommendation the AFP has taken over the chair since he has left that organisation. So there is quite a strong personal and productive working relationship there.

We did learn a lot of lessons from CEOP. They were certainly leading the way internationally, looking at this as an international problem rather than it relating just to the specifics of a jurisdictional issue. We have tried to take whatever lessons we can from them and implement them here as well.

Senator LUDLAM: I did not come here to pick fights, but one of the criticisms that I have heard of the work that you do here is that it has a focus on the identification of Australian victims rather than on abuse by Australians of children overseas or in the region. There is obviously a serious issue in South-East Asia, for example, where some of this material is produced in the first place. Is that a fair criticism, in your view?

Mr Gaughan: In my view, no it is not. We have a significant focus on child sex tourism. Two of my officers have recently returned from the Philippines, where they were involved in some work with the FBI offshore. We work very closely with a number of non-government organisations offshore as well. I suppose the issue that the commissioner and some of the other deputy commissioners have touched on recently is that the prosecution for Australians offending offshore should rest with the jurisdiction in which the offences take place. We work with a capacity-building relationship with those agencies offshore.

We have arrested people and been involved in the prosecution of those people back here in Australia and have assisted overseas agencies, so it is certainly a focus. If we received intelligence that Australians are committing offences offshore we deploy officers to assist; the local law enforcement agencies would bring them to justice.

Mr Negus: Much of the work that we do, particularly through South-East Asia, is capacity building to make sure that the local law enforcement are, firstly, aware of these types of crimes and, secondly, treat them seriously. But we give them the capability and the support to be able to prosecute those cases in their own jurisdiction and work with them to develop laws where there is an absence of those laws.

I think there have been some recent cases where first ever prosecutions have taken place. There was one in Nepal recently, which we were a part of as well. Places like Cambodia and those sorts of places are now really very much having a local look at what is happening in their own backyard through the actions of the AFP in being there, supporting that and trying to actually encourage them in those environments.

Mr Gaughan: The VGT has actually grown its membership to now include members of the non-government organisations such as ECPAT. I was actually on the phone with the managing director of ECPAT in Thailand earlier this week, so those relationships are ongoing. In this crime space in my view it is not just about what the AFP does from a law

enforcement perspective it is how we react and relate to our international partners, so we are working collectively.

Senator LUDLAM: Normally I would direct a question like this to ACMA, who I think are appearing in a different committee later today, but I will put it to you anyway just in case. Do you have any forecast budget or current activity on ISP level filtering? You mentioned blocking before. It has been a bit contentious. Is the AFP involved in any way in the voluntary scheme that has emerged with some of the large ISPs?

Mr Gaughan: Yes, we are. We have facilitated Optus and Telstra being provided with the 'worst of' list from Interpol. That has been in place since earlier this financial year. We have actually received some expressions of interest from a number of other ISPs to also be involved in that trial. I stated at the outset that it is a trial and the first review of the trial will actually take place in December of this year which will be oversighted by the Child Protection Committee which is part of ANZPAA.

Senator LUDLAM: Some of these sites have a very short residence time, they are churning very quickly. How often is that Interpol list updated?

Mr Gaughan: Weekly.

Senator LUDLAM: That seems very slow.

Mr Gaughan: It is very difficult to do anything more quickly than that. The advice that we have is that it is weekly. The reason that it is done that way is to ensure the integrity of the actual process we are putting in place and that the URLs actually contain child abuse material. They must be viewed by two different law enforcement officers from two different jurisdictions.

Senator LUDLAM: I do not envy them that work at all. The list comes from Interpol through the AFP and is then transmitted to the ISPs that are participating in the trial.

Mr Gaughan: If you are a secure VPN, that is correct.

Senator LUDLAM: That has been running since early this year. When is the trial proposed to conclude and on what basis will you judge its success?

Mr Gaughan: It is an open ended trial at this stage. As I said more ISPs are indicating that they are interested in getting involved. The first review will take place in December. I can say that at this stage Telstra is the only ISP that is able to provide us with information in relation to the amount of blocks that are taking place and from the period of 1 July this year to 15 October there were in excess of 84,000 redirections.

Senator LUDLAM: What do people see if they try to hit up one of those links?

Mr Gaughan: They basically see an Interpol branded site that states that the website has been blocked as it contains child pornography. It then also provides them with some avenues for review if they actually believe the site does not contain child pornography.

Senator LUDLAM: So they can report it if they think that that link is in error?

Mr Gaughan: Correct.

Senator LUDLAM: Do you then come across a list of the IP addresses of people who are repeatedly trying to hit up those links?

Mr Gaughan: No, part of the negotiation, if you like, with the trial was that at this particular stage we would not be forwarded the IP addresses.

Senator LUDLAM: But there is nothing technically preventing that from occurring in the future?

Mr Gaughan: That is correct.

Senator LUDLAM: So in the meantime you get a blocked page and that is that?

Mr Gaughan: Yes.

Senator LUDLAM: When I asked ACMA similar questions in sessions past about the much broader range of material that is subject to domestic takedown orders or on the domestic refused classification list they provided us with a list of categories of kinds of material without identifying the URLs obviously. They did that periodically, numbers of links, whether it is a high-level host or an individual item on a particular site and a rough breakdown of categories of material. Are you able to do something similar for us?

Mr Gaughan: I would have to take that on notice.

Senator LUDLAM: If you would. My final question if there is time is completely unrelated and thank you for your assistance. It relates to CHOGM. Can you give us a quick rundown of the folk that you have on the ground in Perth at the moment and what the size of your presence will be when those events get underway?

Mr Negus: We will have 315 staff in direct support of CHOGM. It is important to state at the very beginning that the West Australian police service will maintain the responsibility for policing the event. The AFP will have people in close personal protection, they will be in intelligence areas and in liaison with the West Australia Police to provide cross-jurisdictional interoperability and some tactical resources. They will be under the command of the AFP they will be under the coordination of the West Australia Police. I personally will be there for the week leading up to CHOGM.

Senator LUDLAM: Which is next week.

Mr Negus: Yes.

Senator LUDLAM: From the basis of what you have told me I recognise that my state colleagues will need to follow this up with their counterparts in the state police. But I am aware of a number of people who have been raided. They have had their phones seized and they have been questioned or interrogated about the potential for demonstrations at those events. Are the AFP part of those activities of disrupting the demonstrations?

Mr Negus: No, we are not. We would be part of passing on any intelligence that would come into our possession but I do not have any visibility personally on what activities have been happening in Western Australia to collect intelligence.

Senator LUDLAM: There is a very urbane and polite gentleman from the AFP who comes to nearly every demonstration I have been to in the last 3½ years, ostensibly for my protection, which makes me feel all safe and warm. But it is fairly clear to me that the AFP does keep a pretty good handle on protest activity demonstrations and so forth across the board. What role are you taking specifically regarding people exercising their rights to have views about CHOGM, and so on, or is that all being devolved back to the state police? I

would find that a bit unusual, given that you do have a visibility at these events in the normal course of things.

Mr Negus: Certainly our close personal protection responsibilities mean that we need to make sure, where there are large public gatherings, that any people who are afforded that protection are properly protected. Mr Drennan, do you know about some of the issues around collection techniques and what we would be involved in? The responsibility broadly would fall back to the Western Australian police, and we will be providing support to them. It falls under Deputy Commissioner Drennan's portfolios. I will ask him to elaborate, if he can.

Mr Drennan: It is first and foremost a role for the state and territory police in relation to the criminal aspects of it. Also, in relation to security intelligence, certainly ASIO have a role, depending on the nature of the group. As far as our particular role is concerned, we do have a component of our protection portfolio which is protection liaison. That is not so much collecting intelligence; it is about working with specific groups and ensuring that there is some coordination in relation to what occurs so that we do not end up with a large group of people at a particular place causing some concern to the public when nothing has been put in place. That group works very, very closely with our state and territory colleagues. We are not out there doing intelligence collection in relation to groups that may be proposing to do any demonstrations or whatever with regard to CHOGM.

Senator LUDLAM: But somebody is. My understanding is that in Western Australia it is the organised crime squad that is booting down people's doors and taking names around the organisation of demonstrations. Does the AFP have any involvement in supporting that kind of activity, which to me seems incredibly heavy-handed?

Mr Negus: No, we do not.

Senator LUDLAM: That is pretty unequivocal. I will leave it there.

Senator CASH: My question is in relation to a contract notice.

Mr Negus: We will do our best to answer it.

Senator CASH: It is contract notice No. CN437586. The agency is the Department of Immigration and Citizenship, the category is police services, the contract period is 12 April 2011 to 30 June 2012, the contract value is \$753,605.41 and the description is 'AFP cost'. It says 'Villwood centre'. Is it meant to say Villawood centre?

Mr Negus: Like you, I would imagine so. We do actually send invoices to the department of immigration but I would not have thought they would be classified under a contract.

Senator CASH: No, it has come up as: 'Name: Australian Federal Police; Contract name: Property procurement and contracts'. My question, basically, is: what is it for?

Mr Negus: It might be best if we take it on notice. Broadly we do invoice DIAC for services provided, such as the Villawood detention centre or—

Senator CASH: What type of services would you have provided to, say, Villawood detention centre?

Mr Negus: Policing services which would be above the normal response to a particular incident.

Senator CASH: For example, during the riots?

Mr Negus: That is right; Christmas Island, likewise. There has been a recuperation of funds expended in those environments to support DIAC and Serco in those environments.

Senator CASH: Are you able to provide that information to me today, by any chance?

Mr Negus: We will do our best. We are just making sure we can get some information at this time. We will certainly get something back to you—yes or no.

Senator CASH: Thank you very much.

Senator HUMPHRIES: Can I ask about AFP operations on Christmas Island at the moment. Can you tell me how many staff are currently on Christmas Island?

Mr Drennan: There are 46 currently on Christmas Island.

Senator HUMPHRIES: How many of them are from the International Deployment Group, and how many of them are permanently stationed Christmas Island community police officers?

Mr Drennan: There would be three categories of people on the island. Of those who are currently there, there are 10 who we call members of the Christmas Island police; they are either AFP or special members of the AFP who are positioned there. As far as the actual numbers for the other two categories go—some of them are there for public order, and the third category are those that are there in regard to people-smuggling investigations—there are 21 of the public order people.

Senator HUMPHRIES: The public order people being the ones looking after the detention facilities?

Mr Drennan: They do not actually look after the detention facilities, but if there were to be some violent activity there then, yes, they would step in to support Serco and have the day-to-day running of those facilities under DIAC.

Senator HUMPHRIES: That is what I meant to say.

Mr Drennan: That is just to be clear for the record. That would leave 15 in regard to people smuggling.

Senator HUMPHRIES: All right. Could you take it on notice to tell us—perhaps on a month-by-month basis over the last 12 months—how many AFP officers have been on the island and how they break up between those three categories, please.

Mr Negus: We did provide that at the last estimates, I think. Certainly we can do it from that period to now.

Senator HUMPHRIES: If you could, yes—just from the last set of figures till now, please. That would be good. With the riots in March of this year, can you tell me what the outcome of the AFP investigations has been—specifically, how many charges have been laid, whether any convictions have been recorded and whether those charged or convicted are still at the detention centre.

Mr Colvin: I will be best to answer that question for you. The matters are still ongoing. There have been a number of offenders charged. Let me just get the right details for you. To date the AFP investigations have charged 22 people with the following Commonwealth and state offences: aggravated burglary, burglary, possession of stolen property, damaging/destroying Commonwealth property, damaging/destroying property under the

Western Australian legislation and harming/threatening Commonwealth officials. On 11 October, just recently, the Commonwealth DPP discontinued formal proceedings against three of those accused, and for the remaining 19 the matter has been adjourned to 11 November. It is before court, so there is not much more I can say.

Senator HUMPHRIES: Are those 19 remaining people who are being prosecuted still in detention?

Mr Colvin: I would have to take that on notice. You asked me the same question on the Villawood riots as well; I can answer that one for you now if you like, just so you know. They have been remanded into New South Wales corrections custody. I would have to check whether the 19 have actually been held in remand or have been bailed back to immigration detention custody.

Senator HUMPHRIES: Could you give us the status of all those 19. You have said the ones at Villawood are all in New South Wales corrections.

Mr Colvin: That is correct, and they are in a number of different facilities around New South Wales.

Senator HUMPHRIES: Thank you. Between 9 and 12 June there was a riot on Christmas Island involving approximately 100 detainees, with a group on the roof of one of the buildings, I understand. I understand that they were using metal poles and concrete blocks as weapons. Perhaps you can take this on notice: could you give us details of the weapons that were allegedly used by those people with respect to that incident, and can you also update us on the status of charges out of that incident, please.

Mr Colvin: We will take on notice the particular details of what weapons, but the matter is ongoing. We have a number of suspects, but no one has been charged at this stage.

Senator HUMPHRIES: Are all of the suspects still in detention?

Mr Colvin: Because they have not been charged, they would still be in those immigration detention centres, yes.

Senator HUMPHRIES: I will go to a broader issue about people smuggling. How many arrests of people suspected of being involved in people smuggling have there been over the last three years?

Mr Colvin: I can give you those figures by calendar year, if that is suitable. In the calendar year 2009, the AFP made 82 arrests for people-smuggling related matters. In the calendar year 2010, we made 203 arrests for people-smuggling related matters. For calendar year to date for 2011, we have made 208 arrests for people-smuggling related matters.

Senator HUMPHRIES: For each of those years can you tell me how many of those people were arrested in Australia and how many overseas?

Mr Colvin: Most of those would have been arrested in Australia because they would have been the crews. I can tell you that for the year 2009 of the 82 arrests, 76 were crew. For the year 2010 for the 203 arrests, 202 were crew. For year to date, of the 208 arrests 205 have been crew. All of those arrests have been made here in Australia. The remainder are for what we term as people-smuggling organisers, and there would be a mix with a majority of the arrests made overseas where we have then sought extradition.

Mr Negus: Whilst we cannot really talk about what is happening in each of these cases, we currently have seven extraditions of suspected people smugglers on foot, and those matters are continuing—seven people arrested overseas who we are trying to extradite back to Australia.

Senator HUMPHRIES: But the overwhelming majority of the people that you are arresting are those who are at the bottom of the chain, as it were, who know they are going to be arrested as soon as they get involved in these exercises?

Mr Negus: Most realise they are going to be arrested, yes, you are right.

Mr Colvin: Can I take that back one step? You asked me about the 19 people charged in relation to the March riots, they are all now back in DIAC custody.

Senator HUMPHRIES: In the detention facility on Christmas Island?

Mr Colvin: Yes, the immigration detention centre. The court would have bailed them back into immigration custody.

Senator HUMPHRIES: With respect to those three years that you have just given me, Mr Colvin, could you give me figures for how many convictions have been recorded? Perhaps you could take that on notice?

Mr Colvin: I can give that to you—I have those figures in front of me. For the calendar year 2009 we had a total of 27 convictions, and they were 27 crew members. For the calendar year 2010 we had a total of 66 convictions which were 62 crew members and four organisers. For the calendar year 2011 we have, so far, 81 convictions, all of which are crew members.

Senator HUMPHRIES: Has anybody in those last three years been given the maximum penalty, which I understand is 20 years imprisonment for involvement in people smuggling?

Mr Colvin: No, no-one has received the maximum penalty.

Senator HUMPHRIES: Do you know what maximum penalty has been imposed by the courts?

Mr Colvin: No, I would have to take that on notice.

Senator HUMPHRIES: If you would not mind. I think I can put the rest of my questions now on notice.

Senator BRANDIS: Commissioner, I want to ask you about a people-smuggling vessel believed to have been lost at sea which embarked from Indonesia on or about 13 November 2010. Are you familiar with that case?

Mr Negus: Yes, I am.

Senator BRANDIS: Am I right in understanding that the first engagement of the Australian Federal Police in relation to the vessel that was subsequently named SIEV221 was on 24 December 2010? Is that right?

Mr Colvin: When we first heard about SIEV221 was when it was identified just prior to washing up on the rocks on Christmas Island—

Mr Negus: I think we might be getting the SIEV numbers mixed up. SIEV221 was the one where unfortunately so many people lost their lives when it crashed on the rocks.

Senator BRANDIS: I am sorry that is not the vessel I have in mind. I have in mind the vessel that was believed to have left Indonesia on 13 November 2010. I understand that the AFP was first engaged in the case on 24 December; is that right?

Mr Negus: That is right. Inquiries were received by DIAC we understand just before that but were forwarded to the AFP on 24 December.

Senator BRANDIS: What happens when you first become notified of a vessel believed to have been missing? You create a file obviously, but do you initiate any investigations or do you just monitor the situation?

Mr Negus: We certainly do a range of things. I will pass back to the deputy commissioner to step you through that.

Senator BRANDIS: That would be very helpful. You might illustrate what you do in a routine case by what you actually did in this case.

Mr Colvin: In relation to the alleged vessel from 13 November three inquiries were received by DIAC between 17 and 20 December 2010 and they were reported to the AFP on 24 December, as you have said, via email. A fourth inquiry received by DIAC was forwarded to the AFP on 5 January. These would routinely be inquiries coming to DIAC from members of the public who are given information about their family on vessels they may or may not be aware of. They are asking if someone has arrived on Christmas Island.

Senator BRANDIS: So these are people in Australia whose family members or acquaintances were meant to be on this vessel and the vessel never arrived and was believed to be lost at sea. Is that what it amounts to?

Mr Colvin: It is difficult to be categorical about all the calls. I will give you an idea. There were 950 calls to the DIAC hotline around SIEV221. A lot of those calls were, 'Is my family member on the vessel?' or 'I am expecting somebody to arrive.' You are right, there is a fairly good network amongst the diasporas in Australia about other family members coming. They do not always know the details of which boat, when it is coming and where it left from, but they are expecting someone. Those calls are received by DIAC. AFP members then review the calls and sort them into Australian based and overseas based callers. The priority at the time was to identify how many people were on board SIEV221. Of course, in doing that we are also collecting information about members who may be on other vessels that arrive before SIEV221 or after.

Senator BRANDIS: Was this vessel given a SIEV number? I assume it was.

Mr Colvin: No, I do not believe it was.

Senator BRANDIS: Was that because it just disappeared in international waters?

Mr Colvin: No positive identification was ever made of a vessel that accorded with the various pieces of information we were given. The AFP sorts the information into domestic or offshore information. We work with our partners overseas and send that information to them to see if they can elaborate and assist. In the case of this vessel you are referring to, as we have said, there was no positive identification ever made of the vessel. The AFP did collect all of the information we could, added what analysis we could to it and then provided that information to the Indonesian national police so that they might be able to make further inquiries of their own.

Senator BRANDIS: What was the outcome of those inquiries? Did you establish that the boat in fact did disembark from Indonesia on or about 13 November?

Mr Colvin: In answer to your second part, no, to my knowledge we never established that that vessel did actually leave. All of the names we are aware of have been reported as missing. I do not want to refer to another agency, but I know that the Customs and Border Protection Service are responsible for bringing most of this information together and they will certainly be in a better position to give you a more conclusive answer to that.

Senator BRANDIS: I understand that on 2 September you forwarded all of the information that you had received about this putative vessel to the Indonesian national police; is that right?

Mr Colvin: That is what my notes here say as well.

Senator BRANDIS: And is that the end of your involvement the case?

Mr Colvin: Not necessarily. The INP may come back with further questions; there may be leads that they generate from our information that we pursue with them. It would not necessarily be the end.

Senator BRANDIS: But at the moment that is as far as your involvement is extended?

Mr Colvin: That is correct, yes.

Senator BRANDIS: When individual members of the diaspora or other sources contact you with the names of family members or associates who they believe were on this vessel, how is that processed? Is that sent to the Indonesian National Police, for instance?

Mr Colvin: We would be careful and sensitive about what information is given. A lot of this information is provided to us anonymously. You would appreciate that, depending on what information the person knows and how they come to know about it, they may well have committed domestic offences here in Australia. I cannot give one answer that fits all cases for you on that question.

Senator BRANDIS: What is your current position? You have not concluded that there was any such vessel or any such loss at sea of a vessel, notwithstanding these reports that were sourced from DIAC?

Mr Colvin: We, the AFP, have not, but as I said that is a better question to target to the Customs and Border Protection Service.

Senator BRANDIS: I certainly will, but I just wanted to establish what the AFP's involvement was. I understand it is an incidental involvement in this case. You do not have a view on the matter, is that what it amounts to?

Mr Colvin: I would not say we do not have a view on the matter.

Senator BRANDIS: What is your view, then?

Mr Colvin: We have looked at the information and, to the best extent that we can, we have pulled it together, analysed it and provided it to the INP, who may be able to add value to that. We have not conclusively satisfied ourselves that a vessel did or did not leave Indonesia. We know it did not make it to Christmas Island but we do not know whether or not a vessel turned back or whether its people subsequently got on other boats or are still waiting to leave Indonesia. I cannot be categorical about that.

Senator BRANDIS: I am not asking you to be. You said to me that it was not right to say you did not have a view but then you said you cannot be categorical about those matters. Those are perfectly consistent statements. What is your tentative or provisional view about the existence or nonexistence of this vessel?

Mr Colvin: Our view is that there was enough intelligence there for us to bring it together and take it to the Indonesian police to ask them to add value to it. I am not saying that there was or there was not a vessel.

Senator BRANDIS: That will do. Thank you very much.

CHAIR: Commissioner Negus, we thank you and your officers for your time today. We certainly appreciate the many hours in which you have provided the committee with your evidence.

Australian Customs and Border Protection Service

[16:34]

CHAIR: Mr Carmody, good afternoon to you and your team. We welcome you and officers from the Australian Customs and Border Protection Service. Do you have an opening statement?

Mr Carmody: No, Senator.

CHAIR: We will go straight to questions then.

Senator ABETZ: Welcome to representatives of the Australian Customs and Border Protection Service. Can you confirm to me that a human resources roster project commenced about five years ago in the department?

Mr Carmody: I do not have the exact date, but it has been some years, yes.

Senator ABETZ: And a payroll system was also introduced, or was attempted to be introduced?

Mr Carmody: It was not so much a payroll system as a roster. Our COMPASS system includes the payroll system.

Senator ABETZ: At the beginning I just wanted to make sure that we got the terminology right and we knew what we were talking about. We were seeking to upgrade both the roster system and the payroll system?

Mr Carmody: A HR system that primarily we utilise at the moment for a payroll system.

Senator ABETZ: Did we contract with a company known as Microster?

Mr Carmody: That is correct.

Senator ABETZ: Have we now abandoned that project?

Mr Carmody: We found that the Microster system, in our view, was not capable of meeting our requirements, and that was the rostering part.

Senator ABETZ: Was that at a cost of about \$5 million?

Mr Carmody: I think we have done an impairment which would cover the area—

Senator ABETZ: What is an 'impairment' mean?

Mr Carmody: Impairment is where there has been investment in an asset and where the actual capability does not prove to be utilisable.

Senator ABETZ: What does that tell the Australian taxpayer about how much money has been spent on this project which has not come to fruition?

Mr Carmody: It says that we were unable to deliver some component because, as we got into the operation of that system, we found that it was not capable of delivering what we wanted.

Senator ABETZ: How much did it cost?

Mr Carmody: I will get my chief finance officer.

Mr Groves: In the 2009-10 financial year we impaired \$3.6 million associated with the Microster—

Senator ABETZ: Was any money impaired in previous years in relation to this project?

Mr Groves: No. I guess the impairment relates to the component of expenditure that was capitalised and was sitting on our balance sheets as an asset under construction. There may have been other costs associated that were not capitalised. I do not have those with me but I can confirm that the impairment amount, which was the majority, was \$3.6 million.

Senator ABETZ: Are we anticipating that we will have an impairment amount on the 2010-11 figures?

Mr Groves: Not in relation to the Microster component.

Senator ABETZ: What about the payroll component?

Mr Groves: Yes, there was some work that was impaired in the 2010-11 year associated with the broader payroll, I guess.

Senator ABETZ: Is that just a write-off to the layman when you impair something? It sounds a fancy word but is it just a write-off?

Mr Groves: We did write off the components in it—

Senator ABETZ: So we can say \$3.6 million was written off in relation to the roster system—right? Can I take you then to the payroll system. How much was impaired or written off there?

Mr Groves: Reflected in our financial statements was \$9.6 million.

Senator ABETZ: Was the director—and I do not want names—of National Pay and Accounts responsible for the overseeing of this task?

Mr Carmody: No, they were involved in a lot of the testing and specifications, but they were not responsible for the overall project.

Senator ABETZ: Which person—not by name designation but by position—was responsible for the overall delivery of these two projects?

Mr Carmody: That changed over time, but in the latter part we assigned an individual SES officer. Her exclusive role was to bring the project to fruition.

Senator ABETZ: And it has not come to fruition?

Mr Carmody: Yes, it has. It is operating now. We have been paying through that system since the first pay in this financial year.

Senator ABETZ: So it has now come to fruition, but with a write-off of considerable millions of dollars. Has that person received a bonus payment?

Mr Carmody: I do not know, but the person who delivered that took over a project—as is evident from the impairments or write-offs—that was not delivering to the standard we expected, so I am not doing her performance assessment now. But that person actually brought the project on track.

Senator ABETZ: Was that person paid a bonus?

Mr Carmody: I do not know.

Senator ABETZ: You can take that on notice. You can give us a date on notice as to when responsibility shifted from one designated officer to another, keeping in mind I do not want to know names.

Mr Carmody: I understand.

Senator ABETZ: And whether the predecessor person—if I can describe it as such—who was responsible for implementing this was paid a bonus in the previous years.

Mr Carmody: We will take that on notice.

Senator RHIANNON: I have some questions about Customs. What actions have Customs taken to prevent any further dog fur pelts—and I am referring to *Canis familiaris*, not the so-called raccoon dog—from entering the country?

Mr Carmody: I will get our expert to advise you.

Ms Major: We have a range of approaches or activities that we employ to ensure that cat and dog fur does not enter Australia. Those strategies are based on, for example, information that we might receive from the public or from concerned companies that direct our targeting efforts. Where we have concerns about a particular consignment, we would arrange to have the consignment examined to determine whether those goods contained cat or dog fur.

Senator RHIANNON: When you say you receive information from the public, do you then go to the store that may be selling those goods and then follow through with the chain of supply?

Ms Major: It depends on the circumstances, but generally speaking if something is found in the domestic market but we know that those goods have been imported, we would work with the importer to determine whether those goods had breached the import control.

Senator RHIANNON: My question was specifically about the chain of supply. A member of the public would not understand all this. They have seen some goods in a shop that they are concerned about. You have inspected them and determined that they are dog fur. Do you then speak to that business, ascertain where they purchased them from and follow that back through? Could you provide that detail?

Ms Major: Where we have an allegation of cat or dog fur, we would normally approach the importer in the first instance. We would ask them to present documentation to us to verify the details of where that has been imported from, what the particular product is constituted from and any commercial information that we thought was necessary to examine that issue. If we had reservations about whether the product contained cat or dog fur, we could then ask that company to have that product tested by an appropriate expert. Depending on the results of that testing, we would take further action.

The records since 2007 show that we have had 19 referrals in relation to 17 instances regarding cat or dog fur. In some of those instances, the goods have been destroyed where the

importer has not been able to provide sufficient evidence to reassure us about the origins or the nature of the fur. In other instances, those goods have been released—for example, where the laboratory testing has indicated that they were not dog fur.

Senator RHIANNON: You made the comment that you approach the importer in the first instance. I go back to the example from the public because that is how a lot of the examples come to us. In the first instance, would it be that you would have to approach the seller, the retailer, of those goods to find out who the importer is?

Ms Major: In some instances that would be right, yes.

Senator RHIANNON: How would you find out who the importer is otherwise? Are you saying you already know who the importers are of most of these goods so you do not need to ask the retailer? I am trying to understand how it works because we are getting so many complaints about this.

Ms Major: In some cases the importer is the retailer and they have agents who work on their behalf. In other cases, where the retailer is not the importer, we would discuss with the retailer who is acting on their behalf in terms of bringing the goods into Australia. Using that information we would interrogate our records to allow us to look at what shipments might have come through at what times and where they have been distributed to, for example.

Senator RHIANNON: In response to an earlier question, you said you would ask for the product to be tested. Does that mean the retailer or the importer is obliged to do that when you make such a request? If so and they do not do it, what happens?

Ms Major: Customs has the authority to ask the importer to have the goods tested where we have concerns about the nature of the fur in a garment or in a pelt that has been imported. That testing is conducted at the expense of the importer. If they refuse to have that testing done and we have reasonable grounds on which to believe that the particular goods contain prohibited fur—as you say, domestic dog fur—then we would generally arrange to have those goods seized. The person that we seize them from can seek to claim them back. If they do that, we would go before a court and present our information about why we believe that they have breached the import control. Generally the experience to date has been that, where seizures have occurred, those goods have subsequently found not to be dog fur and they have been released. In others, they have been abandoned and the goods have been destroyed.

Senator RHIANNON: I understand following an investigation by the Humane Society International that there was no person within Customs who can identify dog fur. Have Customs staff now been retrained so they can identify a fur pelt sourced from *Canis lupus familiaris*?

Ms Major: Customs officers are not experts in assessing fur and the nature of fur contained in a garment. We do not do that ourselves. Where we have concerns we refer the fur for testing or examination by another authority.

Senator RHIANNON: In one of those tests carried out recently, was it found that there were high levels of hexavalent chromium in those fur pelts?

Ms Major: That is not correct.

Senator RHIANNON: Did you find there was any chemical contamination?

Ms Major: The laboratory results that have been provided to us by HSI indicate that there was hexavalent chromium in a particular sample that was tested. The expert advice that we have from a number of government agencies is that the levels of hexavalent chromium in those garments were unlikely to be a risk for anything other than contact dermatitis.

Senator RHIANNON: Considering hexavalent chromium is classified as a class 1 human carcinogen by the World Health Organisation's International Agency for Research on Cancer and it is reported that it is regularly used in dog fur pelts sourced from China, is this an issue that your office is paying attention to, particularly in the context of occupational health and safety for Customs officers?

Ms Major: It is certainly an issue which we have paid very serious attention to, not so much in terms of our officers, but perhaps I can elaborate. My understanding from the expert advice we have received from both Safe Work Australia and from the Australian Competition and Consumer Commission is that although hexavalent chromium is a carcinogen its cancer-causing properties, if you like, occur when the dust is inhaled or ingested. In this case, the hexavalent chromium is a residue in the garment because of a treatment during the tanning process and the expert advice that we have received from those outside agencies is that the risk is around leaching into the skin through sweat. We have also had advice that the residue amounts in the particular products tested were at a low level and it was unlikely to cause anything other than contact dermatitis. The ACCC has advised us that they have no record of an adverse reaction in relation to this particular product. In addition, there is no prohibition on items coming into Australia with hexavalent chromium in them.

Senator RHIANNON: I understand that there was a recent report, possibly a government report, on the testing of Witners and Myer products. Will you table that report?

Ms Major: Those reports are the property of the importers, in that case the two particular companies. We have seen the results but they are not our reports.

Senator RHIANNON: Is that a follow-on from that earlier explanation that you gave that it is the responsibility of the retailer or the importer to undertake the test?

Ms Major: We can certainly direct that they undertake those tests. In those two cases, my understanding is that both retailers undertook those tests voluntarily and shared the results with us.

Senator RHIANNON: How are you confident of the integrity of those tests if the company that is involved in importing the fur pelts are the ones responsible for organising the test and then showing you the report?

Ms Major: I do not think we are in a position to adjudicate over the laboratory results; however, we did review the results. They were very comprehensive analysis reports. All of the test reports, including those provided by HSI, qualify their conclusions by saying that microscopic testing of animal fur is not an exact science. We examined two tests that were undertaken on behalf of those companies. One was undertaken by the Centre for Forensics Studies at the Canberra University, which is a very well regarded laboratory and is used by Customs in, for example, testing in some of our narcotics areas. The other was undertaken by the CSIRO, who I understand HSI has used previously themselves.

Senator RHIANNON: The information I have received about that report is that it actually discounts the findings of Hans Brunner, who I understand is the world's leading expert on

mammalian hair identification. Considering that we have such conflicting advice, shouldn't this information be made public because it appears that there is no easing up on this trade in dog fur pelts coming to Australia.

Ms Major: Our examination of the reports indicated that there was no evidence to suggest that the goods that had been imported were in fact dog fur. As I say, we are not in a position to adjudicate between the experts, and the reports are not our property.

Senator RHIANNON: In terms of launching an investigation into these illegal products, would you consider it or are you asserting that in fact there is not enough proof that they are illegal.

Ms Major: In order to be able to seize and destroy goods or to stand before a court we would need to have very solid evidence that the goods were in fact prohibited items. In this case we do not have, in our view, sufficient evidence to indicate that the goods are in fact dog fur and are therefore prohibited items.

Senator RHIANNON: One final question: is it that they are not dog fur or are they what is often called 'raccoon dog', which I understand is not illegal?

Ms Major: If I recall the test results correctly, it is a combination of both. In some cases there is a suggestion that some of the elements may have been raccoon dog, which is not an illegal pelt, and in other cases that the fur in fact was rabbit or musquash.

Senator RHIANNON: Thank you.

Senator WRIGHT: The background to my questions are two missing boats, one of which left Indonesia on 2 or 3 October 2009 with 105 Hazaras aboard. The second left Indonesia on or about 13 or 14 November 2010 with up to 97 people aboard. First of all, in relation to the latter boat, Customs told the *Sunday Age* on 26 December 2010 that Customs was not aware of the missing boat of 97 people and told the *Sydney Morning Herald* on 8 May 2011 that it had not received any calls about it. Since then, Customs and Border Protection have said:

A number of enquiries were received by the Department relating to people who were believed by family members to have travelled from Indonesia to Australia on or around 13 November 2010 and had not been heard from since. These calls were received via the SIEV 221 hotline established following the Christmas Island boat crash disaster on 15 December 2010.

My first question is: can Customs explain the contradiction? Why did it initially say it was unaware of the missing boat and then change its mind?

Mr Carmody: Because at the time the statements made they were accurate. At that time we did not have information available to us.

Senator WRIGHT: I am just trying to make sense of that answer, given the dates that I am aware of. The first statement to the *Sunday Age* was made on 26 December 2010 but the calls were apparently received by the SIEV221 hotline established following the Christmas Island boat crash disaster on 15 December 2010. Are you saying that the calls that came in were after 26 December 2010?

Mr Carmody: No. To clarify, the advice given by our people was in respect of what we knew and what calls we had received. The SIEV221 hotline calls you are referring to were received by the Department of Immigration and Citizenship.

Senator WRIGHT: So the information was not passed on to Customs as far as you are aware.

Mr Carmody: It was not until we received one inquiry that was after the date that that media inquiry was made.

Senator WRIGHT: Which of the two dates that I referred to was it after? Can you tell me?

Mr Carmody: In each case of the statements that were made we had not received what was the basis of the inquiry; we had not received that information at that time.

Senator WRIGHT: If you do not have the information now, at what date were you first aware of the fact that there had been a number of inquiries received by the department relating to people who were believed to be family members? At what date were you advised that there were inquiries made on the SIEV221 hotline?

Mr Carmody: We received one inquiry directly to Customs and Border Protection. That was on 29 July 2011, which was after the dates you were referring to.

Senator WRIGHT: Was that directly from a family member or a concerned member of the community?

Mr Carmody: It was a family member, as I understand it.

Senator WRIGHT: I understood from your answer that there was information passed on to you from the department of immigration, who would have been in receipt of the information in relation to the SIEV hotline. When was that information passed on?

Mr Carmody: It was after 26 December 2010, which is the relevant date. It was actually received on 4 January 2011.

Senator WRIGHT: I did refer to an article in the *Sydney Morning Herald* dated 8 May 2011, which was four months after 4 January.

Mr Carmody: Yes. I think that was a different issue.

Mr Pezzullo: In relation to the *Sydney Morning Herald* article on 8 May to which you refer, I do not have the article in front of me but as I recall the article having cleared the media response I have got a fairly direct recall of it. The journalist inquired why it was that in the December response that we had previously given to the same journalist, Ms O'Brien, we had not been in a position to identify those calls that had been made to DIAC, as the CEO has just said, because we were notified on 4 January. So that deals with an element of the *Sydney Morning Herald* story of 8 May.

The journalist who wrote the story in May for the also asked a question about whether at that time we had received any direct calls about that venture. As I recall it and as the CEO has just indicated, over the course of these past months whilst this matter has been a matter of public interest, our agency received one call directly, in July, and, as the CEO is indicated, that was received on 29 July of this year.

Senator WRIGHT: Just turning to the second boat, this was the boat with 105 Hazaras aboard which went missing on or around 2nd or 3rd of October 2009. The home affairs minister, Brendan O'Connor, was reported in the *Sydney Morning Herald* on 25 May 2010 as saying that 'subsequent credible information' to Customs showed the boat's difficulties had been resolved. He later added:

... surveillance activities that day by border protection command did not detect a vessel in distress.

But since then, Customs and Border Protection has been quoted as saying:

... information Customs and Border Protection received about a vessel in distress on 3 October 2009 may have referred to this incident ... Customs and Border Protection advised the Australian Maritime Safety Authority ... of a possible distress situation, including possible vessel coordinates ... AMSA contacted ... the Indonesian National Search and Rescue Agency, who accepted responsibility for coordinating the search.

So my first question in relation to this vessel is: where did Customs get the information from that there was a boat in distress?

Mr Carmody: I do not know that I can go into specific detail of intelligence we receive, but it was a report about a possible vessel in distress. We did cover this in the estimates hearing in May of last year.

Senator WRIGHT: My understanding is that additional information has come to light, which is why I am asking these questions again. So there was a report that there was a boat in distress?

Mr Carmody: We received a level of intelligence that a vessel may have departed and be in distress. Then we provided that information to AMSA. Because the possible location was reported to be in the Indonesian search and rescue zone, AMSA then, as is normal practice, provided that information to BASARNAS, the Indonesian search and rescue authority. I am not quite sure of the sequence. Shortly after we got the initial evidence, we got a further source of intelligence that said that the vessel was no longer in distress. BASARNAS also reported back that they had been unable to locate a vessel in distress. Notwithstanding that, we continued a flight pattern just to make sure as best we could whether there was such a vessel in distress and that showed no evidence, there was no sighting of the vessel.

Senator WRIGHT: But it sounds from your answer that there was no firm evidence that the vessel had been located, so—

Mr Carmody: We never located a vessel—

Senator WRIGHT: the assumption was that because no vessel was found, there was not a vessel.

Mr Carmody: We do not know. The truth is that we just do not know. There were those reports. We pursued them. AMSA pursued them. We were never able to locate the vessel.

Senator WRIGHT: What date was that initial report made?

Mr Carmody: On 3 October 2009.

Senator WRIGHT: You have indicated that you do not feel at liberty to indicate who made that initial report.

Mr Carmody: That is right.

Senator WRIGHT: What degree of credibility was attached to the report?

Mr Carmody: It was sufficient for them to make the report for us. We take all these issues seriously because of the potential consequences. We judged it sufficient to raise it with AMSA and then judged it sufficient to raise it with BASARNAS. Notwithstanding BASARNAS's response that they were unable to locate any such vessel in distress, we did take the precaution of continuing to do a flying pattern to attempt to locate it.

Senator WRIGHT: What period of time was that over?

Mr Carmody: It was over a number of days, I think.

Senator WRIGHT: You are not quite sure but you think it was a number of days?

Mr Carmody: No, I do not have the exact detail of the flying time but it was a few days.

Senator WRIGHT: I might ask you to take that question on notice and then we can establish what period of time.

Mr Carmody: We will take that on notice.

Senator WRIGHT: The question comes back to the fact that the home affairs minister was then quoted as saying that 'subsequent credible information' to Customs showed the boat's difficulties had been resolved. What difficulties would they have been?

Mr Carmody: I referred to that in my answer, that—

Senator WRIGHT: Difficulties in that they were not able to be found?

Mr Carmody: No, the difficulties with the vessel. I do not know whether there were mechanical or other difficulties but the difficulties that were leading to the view that they were in distress.

Senator WRIGHT: What was the basis on which it was considered that their difficulties had been resolved? What was the information that was provided? That seems a very assertive statement to make. What was the basis of the information that they had difficulties and that they had been satisfactorily resolved?

Mr Carmody: The report was that the difficulties had been resolved, yes.

Senator WRIGHT: And you cannot tell me who made that report?

Mr Carmody: I would prefer not to go into our sources. I can just say again that, notwithstanding that report, we did continue to take precautionary action to seek to identify whether there was any such vessel.

Senator WRIGHT: It was a vessel that was never actually identified is what I understand to be the case.

Mr Carmody: We have never been able to identify it as a vessel that arrived, for example.

Senator WRIGHT: But there was a report that the vessel was potentially in sufficiently serious trouble to involve a procedure and then there was another report that their trouble had been resolved but you cannot give any further information about who made that report or any other basis on which you accepted that report, although I accept also that you have given evidence—

Mr Carmody: They were from the same sources, I believe.

Senator WRIGHT: They were from the same sources?

Mr Carmody: I believe they were.

Senator BRANDIS: I am going to pursue the issue that Senator Wright has just been pursuing about these two missing vessels. Let us start with what we might call the October 2009 vessel. Your agency answered in question on notice No. 86, taken from Senator Ronaldson at the last estimates, that it had conducted a review into the incident and that there may have been a boat carrying 105 Hazara asylum seekers. When was that review instigated?

In particular, was it only instigated after the matter was first reported in the press on 17 January 2010?

Mr Carmody: Following the report on 18 January, we conducted a further review of our holdings of information, which confirmed, as I understand it, the information we had previously given in Senate hearings.

Senator BRANDIS: Who ordered the review? Did you order it, Mr Carmody, or did the minister order it?

Mr Carmody: I did not; I do not know who.

Senator BRANDIS: Mr Pezzullo?

Mr Carmody: Mr Pezzullo can tell you.

Mr Pezzullo: After the emergence of media reporting, which itself was based on very similar phenomena to the matter that you discussed before with the AFP about where family members come forward, both the Department of Immigration and Citizenship and the Federal Police advised us of concerns being raised by family members. Coincidental with the publication of the media report in the *Age* on 18 January—I cannot quite remember the sequence; I will have to take that on notice—I directed the intelligence assessment team, which works within Customs and Border Protection but which draws together relevant reports from all agencies, to review, as Mr Carmody just put it, all of our holdings on the matter, all the contemporaneous sources of information that we had, including the information that Senator Wright just went to. We satisfied ourselves that there was nothing further that had come to light in the period between October 2009, when the incident contemporaneously had occurred, and January 2010, when those media reports started to emerge. I satisfied myself that there was no further information that we had to hand. Nonetheless, as is stated in the response to question on notice No. 86, we took the liberty of consulting again with a number of other agencies just to make sure that no-one had any fresh information that had come to light since.

Senator BRANDIS: So you initiated this review.

Mr Pezzullo: Yes.

Senator BRANDIS: And the review, having canvassed the matters you have just mentioned, reached the conclusion you have just given. What became of the review? To whom was it sent? Was it, for example, sent to your minister?

Mr Pezzullo: Indeed, as is referred to in the answer as part (e), a brief on the review that had been conducted was submitted to the Minister for Home Affairs on 20 January 2010.

Senator BRANDIS: That review has never been made public, has it?

Mr Pezzullo: No.

Senator BRANDIS: What is the reason?

Mr Pezzullo: Elements of it would be highly classified.

Senator BRANDIS: What sort of elements?

Mr Pezzullo: Some of the matters that Mr Carmody was going to earlier in terms of how we come to learn certain things about the status of a vessel, the syndicates that put them to sea and other relevant matters.

Senator BRANDIS: Certain operational, policing, surveillance matters—

Mr Pezzullo: And intelligence matters.

Senator BRANDIS: and intelligence matters would be highly confidential. I can understand that. Why can't the review with the redaction of those matters be published?

Mr Pezzullo: That is something I would have to look at very carefully, to take on notice and give consideration to.

Senator BRANDIS: I am asking you to do that, Mr Pezzullo and Mr Carmody. I can perfectly understand and would not press you to put into the public arena intelligence matters or sensitive operational matters that might compromise operational activities of your agency or other agencies, but it does seem to me that a review of the kind you have described could, in a redacted form, be placed into the public arena.

Mr Pezzullo: That is a matter we will have to take on notice and consult appropriately.

Senator BRANDIS: I am asking you to do that. You are familiar with the conclusions of the review, aren't you?

Mr Pezzullo: Indeed.

Senator BRANDIS: I am surmising here but I assume the review would have included an appraisal of the various holdings—to use Mr Carmody's word—that you had, and an analysis, and that it would have stated some conclusions.

Mr Pezzullo: As I recall the document, it broadly could be characterised in those terms.

Senator BRANDIS: As I say, I am surmising, but that seems a logical way in which something like that would be done. I am going to ask you about the conclusions. I cannot immediately see why the conclusions would reveal any intelligence matters. Did the review conclude that such a vessel had in fact put to sea in October 2009?

Mr Pezzullo: It is difficult to answer that because the status of our knowledge of whether or not a vessel had in fact put to sea, the evidence base, might be solely a highly classified base. I would prefer to take that on notice as well.

Senator BRANDIS: I am going to press you on this. I am not asking you to reveal the evidentiary steps or the analytical steps by which your review may have arrived at a conclusion. But I think I am at liberty to ask you what conclusion was arrived at without asking you to reveal the steps that got you to the conclusion. Was it the conclusion of the review that a boat had put to sea in October 2009?

Mr Pezzullo: I would have to refresh my memory by looking at the report.

Senator BRANDIS: Is the report available in the committee room?

Mr Pezzullo: No.

Senator BRANDIS: Can it be obtained and brought to the committee after the dinner break so that you can refresh your memory, Mr Pezzullo?

Mr Pezzullo: I am happy to take some guidance from the minister and others. I would prefer to do this in a calm and reflective kind of way.

Senator BRANDIS: We would all prefer to do things calmly and reflectively, but we are also under the pressure of time. I have conceded freely that you should not be asked about intelligence matters, and I am not asking about intelligence matters; I am asking about

conclusions that were reached. You seem very familiar with this review; if you tell me that you cannot remember whether the review concluded that the boat had put to sea, I will take that at face value. I would like the review to be requisitioned and brought to the committee room so you can refresh your memory, only about its conclusions. I am going to ask you about those conclusions. How long will it take for that to be done?

Mr Pezzullo: I would prefer to consult before I answer that question.

Senator BRANDIS: No, how long will it take for that to be done?

Senator Ludwig: The officer has indicated that he is more comfortable taking the question on notice. The question also surmises that there is a conclusion.

Senator BRANDIS: The officer has conceded that the review makes conclusions.

Senator Ludwig: But it may not make conclusions about the matters you refer to.

Senator BRANDIS: That is why I am asking him to familiarise himself with the review.

Senator Ludwig: They may go to the substance of the intelligence issues. I have not seen the document, so I am not trying to intercede on Customs' behalf about the document. It seems to me that Customs are willing to look at the document and provide, on notice, a response to your questions.

Senator BRANDIS: On notice is no good to me, Minister. The only reason the witness has put forward for his inability to respond immediately to my question is he wants to refamiliarise himself with some conclusions. That can be done by looking at the document. It has not been said that there is anything onerous about fetching the document and bringing it to the committee room. Presumably, a copy of the document exists in reasonable proximity to here. I will not be fobbed off. Mr Pezzullo, how long will it take you to have the document brought to the committee room

Senator Ludwig: I think in this instance they can take it on notice, they can refamiliarise themselves and then give you an answer as to whether they have had sufficient time to be able to then answer your questions after the dinner break, or within a period of time. That allows them to consider it and come back with a more definitive answer.

CHAIR: That is if, in fact, Customs are here after the dinner break. If we finish answering questions we might not require them back.

Senator BRANDIS: I have so many questions for Customs, I can promise you they will still be here after the dinner break.

Mr Pezzullo: To assist the Senator, I have just taken advice. I can say, without going to the questions of sources and intelligence—as you have indicated, you are not going to press on that in any event—that both contemporaneously in October, when we flew the surveillance flights and made the references to BASARNAS, as the CEO has said, and subsequently in the review that was done in January that was reported to the minister on 20 January, it was taken as assumed that a boat had left. There was sufficient material evidence that a boat had left. I do not want to go to the basis for knowing that. You have indicated that you understand that. To the extent that you can only ever really validate whether a boat is, if you like, on the water through surveillance, as the CEO has indicated, no surveillance outcomes were ever, if you like, achieved either in October or when we reviewed the data later. But there was certainly some intelligence indications that a vessel had left. I am very confident—if I need to correct

the record of course I will—that the review of the material in January 2010 would have reaffirmed that. I will come back to you if, on refreshing my memory—

Senator BRANDIS: If you want to change that answer, elaborate it or qualify it then come back to us by all means. You can do that over the dinner break.

Mr Carmody: Just to clarify, the conclusion was on the probability that the vessel had left. We still do not know what happened to it. We do not know whether it sank; we do not know whether it turned back. We just do not know.

Senator BRANDIS: That is why I am asking you these questions. I think we all understand that the conclusions do not have to be 100 per cent certain. They are probabilistic conclusions of what was likely in all the circumstances and on the basis of all the material that was reviewed in your holdings. We will proceed on that basis.

In answer to questions from Senator Wright you addressed the issue, which was also canvassed in the press reports, that there was reason to believe that the boat had some difficulties. What was the nature of the difficulties? Was it foundering? Was it sinking? Was there some other form of distress at sea situation? What were the difficulties?

Mr Pezzullo: In general terms, as we broadly indicated in evidence given in May last year to Senator Hanson-Young, who asked similar questions, there was a distress situation that appeared to be occasioned by mechanical difficulties. It is difficult, without going further into some highly sensitive grounds, to be any more precise than that.

Senator BRANDIS: That is fine.

Mr Pezzullo: How that information has been characterised is not in this case necessarily characterised by someone who is expert in such matters, if I can put it in those terms, and I do not wish to go any further. But they would certainly be generally characterised as mechanical in nature.

Senator BRANDIS: You concluded probably the boat had set out from Indonesia. You concluded that it was in a distress situation caused by mechanical difficulties.

Mr Pezzullo: Possibly.

Senator BRANDIS: I am just listening to what you just said. What happened to the boat?

Mr Pezzullo: The end result is we do not know.

Senator BRANDIS: So is the last piece of information you had about this vessel that it was in distress because of mechanical difficulties?

Mr Pezzullo: No. In fact, the last active piece of information we had—

Senator BRANDIS: I am not quite sure what an 'active' piece of information is.

Mr Pezzullo: Where we have got a lead as to the situation that is emerging on the water—is that it had rectified whatever the original source of the situation was and that it had resumed its journey. And it was never heard of subsequently. That goes back to Senator Wright's question about the basis upon which Minister O'Connor made certain statements.

Senator BRANDIS: That is what I was trying to establish. You believe the boat set out. You believe, for reasons that I am not going to ask you to go into the evidentiary basis of, that it was in a situation of distress due to mechanical difficulties. You believe it resolved those difficulties and, what, resumed its journey?

Mr Pezzullo: Yes, resumed its journey. But, as the CEO said, out of an abundance of caution we continued to fly surveillance and continued to stay in touch with BASARNAS.

Senator BRANDIS: And after it had resumed its journey, having resolved its mechanical difficulties, was the status of the vessel the last piece of information you had about this vessel?

Mr Pezzullo: It was the last piece of information that we received contemporaneously. As I have indicated in earlier answers, subsequent to that contemporaneous situation family members started to come forward in the latter part of 2009.

Senator BRANDIS: Let us deal with contemporaneous information first.

Mr Pezzullo: If I can use the technical jargon, the last real-time or near real-time information that we had was that the vessel had resumed its journey, but we continued the surveillance posture that we had and the liaison with BASARNAS.

Senator BRANDIS: May I take it that at the time it resumed its journey it was continuing to head in the direction of Australian territory?

Mr Pezzullo: We do not know. As I said in my earlier answer, we did not have active surveillance on the vessel. We had some other means of indicating its status.

Senator BRANDIS: I see.

Mr Pezzullo: What direction it ultimately decided to head in, if indeed it was under its own power et cetera, we just do not know, in a real-time sense.

Senator BRANDIS: Are you able to give us an estimate of the time, in hours or days, that elapsed between the vessel having set out and the last real-time indication you had that the vessel was still on the water and under way?

Mr Pezzullo: I would have to refresh my memory, and again I do not want to be overly precise about how it is that we come to know these matters. But the gap, as it were, between the estimated or assumed point of departure and the estimated or assumed point of distress was measured not in days but in hours—but whether that was 24 hours or 28 hours or in that vicinity, and whether you would describe that as hours or a day, I do not know. I do not want to be any more precise than that without refreshing my memory.

Senator BRANDIS: No, that is fine. Was there a time line as well between the point at which you understood the vessel to be in distress and the point at which your best information was that the vessel was no longer in distress and had resumed its journey? In other words, how many hours after the report that the vessel was in distress was the last real-time evidence that you had that it was continuing to undertake its journey?

Mr Pezzullo: I will correct the record if required but, as I recall it, it all transpired within a matter of hours.

Senator BRANDIS: Within a matter of hours. Okay. And, at the time the vessel was believed to be in distress, was it in international waters?

Mr Pezzullo: I would have to take that on notice. In terms of the possible coordinates, which were not precise, not down to seconds in terms of latitude and longitude, I would have to take that on notice; but it certainly was, because of the AMSA referral process, in Indonesia's search and rescue zone.

Senator BRANDIS: It was in the Indonesian search and rescue zone, and it may or may not have been in international waters.

Mr Pezzullo: Whether it was in their contiguous zone or just outside, I just do not recall.

Senator BRANDIS: That is fine. And as of the last real-time report you had of the vessel, when it had resumed its journey and the distress situation was apparently behind it, was it at that point in international waters?

Mr Pezzullo: It is the same answer as before: I would have to refresh my memory. Certainly, it was in the Indonesian SAR zone. As for whether or not it was in the contiguous zone, I would have to refresh my memory.

Senator BRANDIS: All right. Now, that is the contemporaneous or real-time evidence, and then you had some subsequent or, if you like, retrospective evidence as to what may have happened to it. May I surmise that that evidence included inquiries from members of the public that were passed on to you, asking about the fate of their family or acquaintances who were aboard that vessel?

Mr Pezzullo: Yes, Senator. Again, I would have to refresh my memory as to the evidence that the CEO and I gave on 25 May 2010 to Senator Hanson-Young. But, as I recall that evidence, we did make reference to family members who had come forward—principally, as I recall it, to the department of immigration.

Senator BRANDIS: Mr Pezzullo, I do not want to oversimplify what you have told the committee, but it seems to me that we have three stages here. We have the point at which the vessel embarked, we have the point at which the vessel was believed to be in distress for mechanical reasons and we have the point at which, subsequently, it was once again on its journey and your understanding, or your conclusion, was that it was no longer in a distressed situation; and the time line for those three stages in the sequence of events is a matter of hours rather than days.

Mr Pezzullo: The gap between the first and second stages, as you have described it, was probably more in the order of a day, and the gap between the second and third stages, as you have described it, was within a period of hours.

Senator BRANDIS: Okay. I understand.

Mr Pezzullo: I was on duty that night, so I have a fair recall of it. If I could just be very clear, in case I have not made it clear already: at the third stage, when the vessel had potentially rectified itself and was resuming its course—unknown as that was—we were very cautious. The standard of evidence or the threshold of credibility, to go back to Senator Wright's question, that we apply in these cases is very low. We do not spend a lot of time gaming or second-guessing the source overly. If it is broadly credible and there is safety of life at sea at stake, we act as if what we are being told is very much real and true. So, even when we got to that third stage—the vessel has rectified its difficulties, has resumed its course—we discounted that to the extent that we took it as if it still might be in distress and hence continued to fly patrols. That is what Mr Carmody, and I think the minister, said at the time, when that other quote of his was read out to the committee.

Senator BRANDIS: All right. That is really where I was heading. At the point at which you concluded in real time that you thought this vessel was in distress for mechanical reasons,

and allowing for the fact that it was in the Indonesian search and rescue zone, what steps did you initiate, if any, to come to the aid of this distressed vessel?

Mr Carmody: We have already indicated that we passed that information on to AMSA, who have the responsibility for search and rescue. Because it was suspected that the likely location, if I can put it that way, was in the Indonesian search and rescue zone, under their convention they passed that information to the Indonesian search and rescue authority, BASARNAS, who conducted their inquiries and concluded and advised AMSA that they could not locate any vessel in distress.

Senator BRANDIS: There is no reason to believe that, post the period of distress, the vessel reached the shores of Indonesia, is there?

Mr Carmody: We do not know. There is no specific evidence.

Senator BRANDIS: There is no evidence that it did, is there?

Mr Carmody: No.

Senator BRANDIS: What was the form of your communication to AMSA? Was it an email? Was it a telephone call? Was it some other form of communication? If so, what?

Mr Pezzullo: On the precise details I might refer to my colleagues in the Border Protection Command. They handled the specifics of the liaison.

Senator BRANDIS: Mr Pezzullo, this is obviously an urgent situation. There is a vessel at sea in distress. We know from experience that these are reasonably flimsy vessels. It could sink in a matter of hours or potentially minutes.

Mr Pezzullo: We are very seized of that, Senator.

Senator BRANDIS: You do not know how perilous the situation is, but the moment you become aware or conclude that it is distressed then it is obviously an intrinsically urgent situation, isn't it?

Mr Pezzullo: Indeed.

Senator BRANDIS: And treated as such.

Mr Pezzullo: As I said earlier, I was on duty that night. I would have to check my own records. I would have had direct telephone conversations myself. As to the actual transmission of information, whether it was an email or whether it was some other of form of contact with AMSA, I might just ask my colleague Ms Grant to speak—

Senator BRANDIS: Just give us a time line, will you? I assume, of course, that a log is created when these events occur.

Mr Pezzullo: Indeed it is, but we might see if Ms Grant has anything to add.

Senator BRANDIS: Can that log be produced please? If the log contains intelligence or other material that is not appropriate to be put on the public record, can an appropriately redacted version of the log be produced?

Ms Grant: The usual procedure in these situations is that we will telephone answer and we will email answer with information as soon as it comes to hand that there is possibly a vessel in distress, which is what occurred on the day that we are referring to here.

Senator BRANDIS: Whose call was that? Was it yours, Mr Pezzullo? You said you were—

Mr Pezzullo: No.

Senator BRANDIS: Whose call was it? Yours, Ms Grant?

Ms Grant: The call comes through our 24/7 watch floor in the Border Protection Command, so the Australian Maritime Security Operations Centre operations officers get this information and they have the standing communication channels established with their counterparts in the rescue coordination centre of AMSA.

Senator BRANDIS: So it is the person who is in charge on the shift at that particular time who makes the call to send an urgent message to AMSA?

Ms Grant: The officer in that area needs to be notified. If the information comes in through, say, our intelligence side of the business, our intel part of the business will inform the operations floor so they can immediately pass that information to AMSA.

Senator BRANDIS: I understand that. I am just trying to get the sequence right. There must be a person whose task it is in circumstances like these to make a call—in other words, to conclude that there is a sufficiently serious or grave situation that AMSA should be contacted. Who was that person on this particular occasion?

Ms Grant: I would have to take the name on notice to get exactly the position—

Senator BRANDIS: That is fine; you do that, Ms Grant. But it is one individual, isn't it? It is not as though you have a committee meeting to assess real-time intelligence. A particular person has to take responsibility for making the call, don't they?

Ms Grant: Yes, that is what happens. Once the intelligence office receives that information, if there is any suggestion that there is a vessel in distress, an intelligence officer will not waste time assessing it. They will deal with the seriousness of that information and immediately hand it on, especially if there are coordinates that give a location.

Senator BRANDIS: Is that intelligence officer the person who makes the contact with AMSA, or does that officer convey an urgent message to another person who conveys it to AMSA?

Ms Grant: The intelligence officer conveys it to our watch-keeping area of the Border Protection Command, which has established protocols with AMSA for relaying this information.

Senator BRANDIS: As you said before—or perhaps it was Mr Pezzullo—a log is kept. That log would tell us how many hours or minutes—or even seconds potentially—elapsed between the making of the call or the declaration that there may be a distress situation, to conveying it to the watch-keeping officer and the watch-keeping officer conveying the message to AMSA and AMSA in its turn conveying the message, as in a case like this, to the Indonesian search and rescue authorities.

Ms Grant: The log, in the terms you are probably envisaging, is kept in the Border Protection Command, so they would log in the time they receive the information from the intelligence officer, and they would log the time they made the call to AMSA. Once it gets to AMSA, they have their own log records.

Senator BRANDIS: Of course, and we can ask AMSA that in another committee. Can those sections of the log from the time the call was made that there was possibly a vessel in

distress to the time at which AMSA was contacted—can those parts of the log be produced, please?

Ms Grant: We can certainly take it on notice to produce a declassified version.

Mr Carmody: While we are doing that, can I just confirm that we flew on 3 October and then again on 5 October.

Senator WRIGHT: Is it possible to know the period of time over which the flights occurred?

Mr Carmody: They occurred one each of those days. We can find out the flying time, but that would include the flying time there and around—

Senator WRIGHT: That is what I would like to know—in a sense, the scope of the surveillance.

Mr Carmody: We will provide whatever we can, but they were the days—two hours on the first and seven hours on the second.

Senator BRANDIS: In fact, the day on which the call to AMSA was made was 3 October, wasn't it?

Mr Carmody: Yes.

Senator HUMPHRIES: I asked questions of AMSA this afternoon about this particular boat, and AMSA advised the rural affairs committee that the communication from Customs and Border Protection with respect to this boat was not a phone call but an email sent at 3.30 pm on 3 October and that there was no other communication. Is that likely to be the case, as far as you are concerned?

Ms Grant: Yes, that could well be the case. We usually would make a phone call and send an email, but if an email is sent there does not have to be a phone call; there is no protocol that says it will be both. But common practices suggests—I accept that AMSA records they had the email and not a phone call.

Senator BRANDIS: You said that there had been aerial surveillance on—was it the 5th, did you say, Mr Carmody?

Mr Carmody: It was 3 October and 5 October.

Senator BRANDIS: And that aerial surveillance would have been focused on the coordinates of the vessel, of course?

Mr Carmody: The broad area that those coordinates indicated. They were not precise coordinates, as Mr Pezzullo has already mentioned.

Senator BRANDIS: I understand that. My point is that you were not searching the whole of the Arafura or the Timor Sea. You knew where to look for this vessel.

Mr Carmody: We might have been on the day but this particular flight was directed because of that incident.

Senator BRANDIS: Because of that incident, you knew where to look, you sent the surveillance flights and the surveillance flights could not find anything.

Mr Carmody: That is correct.

Senator BRANDIS: Approximately how far from the nearest coastline were the coordinates?

Mr Carmody: I am not sure I can answer that precisely. My understanding of the coordinates, as Mr Pezzullo has indicated—and I do not understand these terms—was that the last figure on the coordinates, which is the seconds, was not included. That means it was quite a sizeable box, a large area.

Senator BRANDIS: How many square kilometres?

Mr Carmody: We would have to take that on notice. I do not have that detail here.

Senator BRANDIS: It amounts to this: you were sufficiently concerned that the vessel was in distress to send a message to AMSA; and you were sufficiently concerned that you commissioned two special surveillance flights to overfly the coordinates that you had. There is no evidence whatsoever that the vessel either returned to Indonesian shores or indeed anywhere else. It just disappeared.

Mr Carmody: The point is we do not know. We did everything in our endeavours to follow up on the leads. But the bottom line, as far as I am aware, is that we do not know.

Senator BRANDIS: I am not for a moment suggesting that you did not do everything that you could have done. But if you had a sufficient level of concern that the vessel was in distress to initiate the steps that have been described, and there is no evidence whatsoever that the vessel returned to Indonesia, and it was never found, and there was no retrospective evidence from any of the relatives or your other interlocutors that the people who were believed to be on the vessel showed up later, that invites the likely conclusion that the vessel sank, doesn't it?

Mr Carmody: That is one conclusion. But, as I say, we are not in a position to know. I do not think it is appropriate for me to hazard guesses.

Senator BRANDIS: I am not asking you to hazard a guess, either. If you eliminate all the possibilities consistent with the vessel not having sunk and the vessel was never found then that invites the conclusion that the vessel sank, doesn't it? You cannot be sure, of course. You cannot be absolutely certain.

Mr Carmody: I cannot answer the question as to what happened to the vessel.

CHAIR: Just to let the officers know, we are going to keep going with Customs until at least in the time.

Senator BRANDIS: One last thing on the 3 October 2010 incident, on what basis do you conclude that there were the 105 or 107 Hazaras on this vessel?

Mr Carmody: You will need to help me, Senator, as to whether we have—I am concerned about talking about intelligence sources and others. I am interested in whether we have publicly stated that there was 105. And if we have not—

Senator BRANDIS: I am referring to letters from Mr O'Connor to Mr Michael Keenan of 29 September 2011 and 17 October 2011—that is this morning.

Mr Carmody: Is that saying we said that or there are media reports, because the question itself talks about media reports of 105?

Senator BRANDIS: I am informed, and I cannot go further than that, that what that correspondence establishes is that there was a view that there were approximately 105 Hazaras on the 3 October vessel.

Mr Carmody: I am certainly aware of media reports but again we have already indicated we had intelligence that a vessel had gone but I am wary of going any further on the nature—

Senator BRANDIS: Let us put it to you directly: is it the view of Customs that the vessel contained Hazara asylum seekers?

Mr Pezzullo: It is very difficult to answer that question directly because of the question of intelligence sources and methods—

Senator BRANDIS: I am not asking about the methods.

Mr Pezzullo: I know, Senator, but for me to answer that question directly would reveal, betray, expose a degree of intimate knowledge of who got on the vessel, how many people got on it and who organised it. I have seen media reports generated by whatever means that there were Hazara on the boat and I have seen media reports that 105 persons embarked on the vessel. That much I am happy to say; I have seen those media reports. As to what I can confirm or any other officer in this room based on their reading of classified information, it is something that I cannot comment on.

Senator BRANDIS: All right. Mr Pezzullo, do you dispute those media reports?

Mr Pezzullo: I am not in a position to either confirm them or deny them.

Senator BRANDIS: Thank you. Let us turn to the November 2010 vessel. You have seen reports that a vessel left Indonesia bound for Australia on or about 13 November 2010?

Mr Pezzullo: Yes.

Senator BRANDIS: In answer to a question taken on notice by the Department of Immigration and Citizenship that department confirmed that it received several inquiries from relatives who were on this boat who had not heard from their relatives since they left Indonesia on 13 November 2010. At what time did the Customs and Border Protection Service receive any information about a vessel answering that description being in distress?

Mr Pezzullo: The best way for me to answer that question is as follows: it is a circumstance quite unlike what we have in shorthand referred to as 'the October 2009 vessel'. We had no—and to this day have no—contemporaneous information along the lines that we have been discussing: the vessel has departed, gets into distress, may or may not come out of distress.

Senator BRANDIS: May or may not sink.

Mr Pezzullo: Indeed. The first we became aware of claims that a number of people—the original media reports, as I recall them, were in the order of about 97 persons—had left on or about that date in November was when the media started reporting that fact based, in turn, on claims from family members, as you have just indicated, in December 2010.

Senator BRANDIS: What date in December?

Mr Pezzullo: As I recall, I think we provided a statement to the relevant newspaper on 26 December. I think they might have run an article either that day or the following day.

Senator BRANDIS: So if the November vessel, if we can call it that for short, got into distress, that was something you did not know about until weeks later?

Mr Pezzullo: Until family members started coming forward when, as you have heard in the earlier evidence, DIAC started receiving certain representations.

Senator BRANDIS: When did DIAC first apprise you of those representations?

Mr Carmody: Wasn't it 4 January? No, hang on—I believe it was 4 January.

Senator BRANDIS: So there was no reference to you about this supposed November vessel before 4 January and you had no reason to have any knowledge of it?

Mr Pezzullo: Other than the previously stated media reports. There was one, I think, on Boxing Day and I think the same journalist also ran a media report on New Year's Eve, as I recall it.

Senator BRANDIS: So as you rightly say, Mr Pezzullo, it is not like the October vessel where you had real-time knowledge or belief of a situation concerning the vessel?

Mr Pezzullo: No contemporaneous view.

Senator BRANDIS: Notwithstanding that you had no contemporaneous or real-time knowledge, did you on the basis of those references and retrospective reports, if I can so describe them, conduct an inquiry?

Mr Pezzullo: Senator, in that case the answer is no. It is again quite unlike the October 2009 situation because we did not have holdings. However, before we went back to the journalist in question that I have referred to, I did ask the question of the same team: 'Do we have anything that matches the description, anything in our contemporaneous holdings?' I had sufficient confidence based on their response to me that we were in a position to say on 26 December to the journalist, 'We had no information on that vessel.'

Senator BRANDIS: Has any more information come into your hands since then in relation to the vessel—or the putative vessel, I should say?

Mr Pezzullo: As Deputy Commissioner Colvin said in his responses to the same line of questioning, they have received certain information and they have conducted certain inquiries. I have been made privy to their work in that field so, in terms of information that has come to our attention, it has been through that means.

Senator BRANDIS: Minister O'Connor in his letter to Mr Keenan this morning says, referring to these inquiries forwarded from DIAC:

All four of the inquiries were forwarded by DIAC to the Australian Customs and Border Protection Service on 4 January 2010.

Did the matter go no further from you receiving those inquiries that the minister mentions in his letter?

Mr Pezzullo: In terms of our remit as it were, because we are not dealing with a real-time safety of life at sea situation, it is quite different from the October 2009 vessel.

Senator BRANDIS: No, I understand.

Mr Pezzullo: We do of course from an intelligence point of view try to come to an understanding—and these reports are relevant to that process—of did a vessel ever leave?

Because for us in terms of the intelligence pattern, are there organisers who are sending vessels that we have missed, as it were?

Senator BRANDIS: So you did that?

Mr Pezzullo: From that point of view.

Senator BRANDIS: You asked yourself that question, if I can put it like that, and what conclusion did you arrive at?

Mr Pezzullo: On or about 4 January or subsequently?

Senator BRANDIS: Whenever. I am assuming that the inquiries or the appraisal that you have just described happened after 4 January.

Mr Carmody: Mr Pezzullo indicated in response to an earlier question that, at the time it was raised, he checked with our intelligence people and we were unable to identify any such vessel.

Senator BRANDIS: I heard him say that, but then he went on to say that you did ask yourselves the question: did a vessel ever leave? Well, what was the answer? Did you reach a conclusion?

Mr Pezzullo: The only conclusion that we continue to provisionally hold is the same conclusion that Deputy Commissioner Colvin gave in his evidence that we just do not have enough information to categorically be able to state the position one way or another.

Mr Carmody: We did not conduct—

Senator BRANDIS: If I may say with all due respect, there seemed to be an unnecessarily large number of qualifications in that answer. Nobody is suggesting—I certainly am not—that you could have had a categorical view of such an intrinsically uncertain possible event. So I am not asking if you had a categorical view, but you yourself have used the expression 'a provisional conclusion'.

Mr Carmody: I think we need to understand what has been pointed out by Mr Pezzullo that this is a very different occasion—

Senator BRANDIS: Yes, I understand that.

Mr Carmody: And in terms of our responsibilities, Mr Pezzullo asked at the time whether there was any such intelligence and there was none. But in a full sense of investigation of the claims that continued to be made, and we only received one call, from memory, from a family member—

Senator BRANDIS: And then you had four matters referred to you by DIAC?

Mr Carmody: Well, they alerted us to it. But in terms of the investigation, given that this was not an arriving vessel and we are not a safety but we do get involved in safety issues when it happens, that was our responsibility. It was the AFP who conducted the investigation into this. They are the only people who could give any sort of considered answer to this.

Senator BRANDIS: I asked some questions about it to the AFP, and they said that I should ask you—

Mr Carmody: I think they gave you the answer as to what they concluded.

Senator BRANDIS: Yes, they did.

Mr Carmody: What I am telling you is that, while generally we have a role in interception of vessels, I have explained our responsibilities in this case and the agency that took on the investigation of this matter was the AFP. They have told you what they were able to tell you.

Senator BRANDIS: They have. And Mr Pezzulo told me that you asked yourself the question, 'Did a vessel leave?' All I want to know, allowing for the fact that any conclusions you may have reached in addressing that question would be highly tentative or highly provisional, what was the conclusion you reached—just state it in your own words, would you?

Mr Pezzullo: I am happy to state in my own words that I don't have enough information. I don't know.

Senator BRANDIS: So your conclusion, having asked yourselves the question, 'Did a vessel leave?' that it was impossible for you to answer that question to any meaningful standard or threshold of probability. Is that what it amounts to?

Mr Pezzullo: Yes, it is not possible for me to state whether a vessel did or did not leave.

Senator BRANDIS: That is fine. Now back to the broader issue of border protection. Could you confirm some figures for me, would you please, Mr Carmody. Am I right in understanding that, as of perhaps yesterday when Mr Keenan's office helpfully put together this brief for me, since August 2008 when the Rudd government changed the policy there have been 12,592 unauthorised boat arrivals in Australia on 245 boats, not including the boats that may have sunk; is that right?

Mr Carmody: Senator, we have been through this a couple of times each time we have been here.

Senator BRANDIS: Well it is very important that the public know because this is an issue of public interest, as you know, Mr Carmody.

Mr Carmody: I think my answer will be the same. I have figures on a calendar year—

Senator BRANDIS: Don't disappoint me now, Mr Carmody.

Mr Carmody: I am going to give you the same answer I gave you last time—

Senator BRANDIS: Since we go through this at every estimates, there is absolutely no reason for not having the answer. What are the figures?

Mr Carmody: I have calendar year figures, and we can give you those, if you like.

Senator BRANDIS: If you can read the calendar year figures into the record and then I will ask you for the monthly figures up to October this year.

Mr Carmody: I do not have them by month but the total figure as at this calendar year is 2,572.

Senator BRANDIS: So it is 2,572 in this calendar year up to what day?

Mr Carmody: It was as of yesterday.

Senator BRANDIS: As at yesterday, that is fine, good. So there were 2,572 in 2011 as at yesterday. How many vessels is that?

Mr Carmody: That is 42 vessels.

Senator BRANDIS: For completeness, can you give us the figures both of individuals and of vessels for calendar year 2010?

Mr Carmody: There were 134 vessels with 6,555 individuals. The figure excludes crew.

Senator BRANDIS: How many were there in 2009?

Mr Carmody: There were 60 vessels with 2,726 individuals.

Senator BRANDIS: How many were there in 2008?

Mr Carmody: There were seven vessels with 161 individuals.

Senator BRANDIS: Of those seven vessels and 161 people, how many of them were post August of 2008?

Mr Carmody: I am sorry to disappoint you but I do not know.

Senator BRANDIS: Mr Pezzullo seems to know.

Mr Carmody: He has better information than me. It is good to have competent deputies. In 2008 there were seven vessels and 161 people from September to December.

Senator BRANDIS: Does that mean there were zero between January and September?

Mr Carmody: According to this sheet, yes.

Senator BRANDIS: That is interesting. You said all of those figures exclude crew.

Mr Carmody: That is my understanding, yes.

Senator BRANDIS: What is the total number of full-time equivalent staff currently employed by Customs?

Mr Groves: For the month of September, our average paid FTE was 5,194.

Senator BRANDIS: In the PBS table 2.1, the average staffing level in 2010-11 is given at 5,250, which is a reduction of 500 from the previous year. Are you familiar with that?

Mr Groves: Could you repeat that?

Senator BRANDIS: I am going from the PBS for your agency, page 122, table 2.1. The last line item, the average staffing level number for 2010-11, is given as 5,250, which is a reduction of 250 on the previous year according to this table.

Mr Groves: That is correct in the 2010-11 PBS if that is what you are reading from.

Senator BRANDIS: As of today, what is it?

Mr Groves: It was 5,194 for September.

Senator BRANDIS: How many of those staff positions are located within Border Protection Command?

Mr Groves: I do not have the number for September. As at August there were 92.8. That was for July and August of this financial year.

Senator BRANDIS: I am sorry. I cannot understand that. I just want to know what the most recent number you have is. So there were 92.8 FTE positions as at August. Is that right?

Mr Groves: That is correct.

Senator BRANDIS: How does that compare with 12 months previously? If it is easier for you, take it as at 30 June 2010.

Mr Groves: Most of those numbers reflect the average over the years. I can certainly give you the figure for Border Protection Command for 2010-11. The average was 98.8.

Senator BRANDIS: So the average in 2010-11 was 98.8 but as at August it was 92.8. So there were six fewer FTE positions.

Mr Carmody: Just to state the obvious, I think there are times when there are vacancies and those numbers fluctuate.

Senator BRANDIS: What about the average in 2009-10?

Mr Groves: In 2009-10 it was 96.4.

Senator BRANDIS: And 2008-09?

Mr Groves: It was 91.3.

Senator BRANDIS: And 2007-8?

Mr Groves: I do not have that.

Senator BRANDIS: How many customs officers are currently employed on Christmas Island?

Ms Grant: The advice is that we have three full-time customs officers and nine acting officers of customs on Christmas Island. I think that we have provided that information in a question on notice from the previous hearings.

Senator BRANDIS: Has that number increased or changed in the last four months?

Ms Grant: No, that number is the same as it has been for some time now.

Senator BRANDIS: When boat crew are taken to court on people-smuggling charges at various places, are border protection officers usually required to give evidence?

Ms Grant: We run our operations through the Border Protection Command. All of our customs officers who are the customs crew on board our vessels are housed in our Maritime Operations Support Division, so we did not actually give you those figures when you were asking for numbers earlier. There are close to 400 people who work on our vessels and who are housed outside the Border Protection Command. When they are going to undertake operations they are assigned to the Border Protection Command and a vessel and its crew go into Border Protection Command.

Senator BRANDIS: Let me get this straight: of the 92.8 positions that your colleague gave me for August, that excludes all the crews on border protection vessels?

Ms Grant: That is right.

Mr Carmody: Yes.

Senator BRANDIS: But for some purposes those crews are included in those figures—is that right?

Ms Grant: No, just for accounting where our staff are. We have the people who work in Border Protection Command Headquarters and that is what is represented by the 92.8 ASL—

Senator BRANDIS: Would all of that 92.8 work at headquarters?

Ms Grant: Yes, they work in our headquarters based in either Canberra, Darwin, or in our regional bases.

Mr Carmody: Perhaps to understand the construct, Border Protection Command is a joint command. It is not just Customs and Border Protection staff; there are also Defence Force staff and representatives from a range of agencies, because it is a joint command. When it comes to crewing, it is a combination of our patrol boats which, as Marion Grant has just explained, we crew up, and then for the command purpose as to what they are assigned to, they move over to border protection for the positioning. There are both Customs and Border Protection assets and Naval assets involved. So when you are looking at Border Protection Command and our operations on patrol and surveillance, it is a combined operation in that way.

Ms Grant: The crews on our vessels do need to prepare witness statements from time to time and they can be called to court to give evidence, as would be the case if it were any sort of breach of our borders.

Senator BRANDIS: Do they ever appear by videolink or do they always have to physically attend a court?

Ms Grant: That would depend on the arrangements of the particular court.

Senator BRANDIS: I understand, but I assume that ordinarily they would be required to attend personally like any other normal witness in court to give their evidence.

Ms Grant: Most courts require personal attendance, but if it does not suit, and particularly in situations where officers are on patrol on vessels and may be at quite a distance from the particular court, in certain circumstances arrangements can be made for videolink or telephone hookup, but it is determined by the individual court.

Senator BRANDIS: I understand. Leaving aside the possibility of telephone or video evidence, what effect does it have on the operation of the vessel when a member or members of the crew have to attend court? Are arrangements made that they are not rostered onto the vessel at that time?

Ms Grant: Yes. If an officer does need to go to court it is a duty day for that officer, but if they cannot be on patrol it is like the absence of an officer for many and varied reasons. Officers go on holidays, officers get sick, officers need to go to training courses, so we accommodate all of these things within our rostering.

Senator BRANDIS: Have ever been any instances of border protection or customs vessels not being able to put to sea or be operational because crew have been required to attend court?

Ms Grant: Not to my knowledge. I cannot recall an occasion when we have had to tie up a vessel because we could not put crew together because they were in court.

Senator BRANDIS: Have any border protection officials take stress leave or had stress related illnesses over the past 12 months and, if so, how many?

Ms Grant: We would need to take that on notice.

Senator BRANDIS: That is fine. Have any customs staff stationed on Christmas Island take stress leave or had stress related illnesses and, if so, how many?

Ms Grant: Likewise, we would need to take that on notice.

Senator BRANDIS: What is the breakdown by APS classification of staff in the Trade Measures Review Branch?

Mr Carmody: Can we take that on notice ?

Senator BRANDIS: Yes. For how many years have those staff—that is, the staff in the trade measures review branch—been in (a) the branch, (b) Customs and (c) the Public Service?

Mr Carmody: We will have to take that on notice. It is now the Trade Remedies Branch. Its full title is: International Trade Remedies Branch.

Senator BRANDIS: Turning back to border protection, was Customs one of the agencies consulted by the government in the development of the so-called Malaysia solution?

Mr Carmody: We would generally be involved in operational issues.

Senator BRANDIS: What operational issues?

Mr Carmody: Our advice on policy matters goes to operational issues.

Senator BRANDIS: The Malaysia solution, as it was described by the government, consisted of sending 800 asylum seekers to Malaysia and taking 4,000 from Malaysia. What operational issues which were directly of concern to Customs would that involve?

Mr Carmody: There were not too many, apart from issues that might go to the response of people when we are intercepting them and so on.

Senator BRANDIS: But that is at an anterior stage of the process to the so-called people swap.

Mr Carmody: Yes. In the past I have sought to make, and it has been accepted, the distinction that we are an operational organisation. I have avoided getting involved in policy debates, and that has been accepted in the past.

Senator BRANDIS: That is probably very wise.

Mr Carmody: Subject to the chair's guidance, I would like to maintain that position, given our role.

Senator BRANDIS: I can understand why you might say that. Do I take it from what you say that when it comes to the design or the architecture of these high-concept ideas like the East Timor solution or the Malaysia solution, your agency has not had any direct input at that policy design level?

Mr Carmody: We are involved on the Border Protection Taskforce, where a range of issues like that are discussed, but we are not the primary policy agency and, as I said, being an operational agency I think it is important that we steer clear of policy and political debates. That has been the position that I have sought to maintain in this committee.

Senator BRANDIS: I know your minister, Minister O'Connor, is not a member of cabinet but was he seconded to the cabinet meeting on Thursday?

Mr Carmody: I do not think it is appropriate to talk about what has happened at cabinet meetings.

Senator BRANDIS: Do you know, Senator Ludwig? You were there.

Senator Ludwig: I am not going to talk about cabinet matters.

Senator BRANDIS: No, I am not asking you to talk about what was said. I am merely asking—

Senator Ludwig: I know what you are asking—

Senator BRANDIS: whether a particular individual was seconded to cabinet.

Senator Ludwig: I know what you are asking and I am not answering it.

Senator BRANDIS: All right.

CHAIR: Senator Brandis, Senator Xenophon has about five minutes of questions. Do you want to go right through to dinner?

Senator BRANDIS: We finish at 6.30? I think it might be best if I get through as much of this as I can.

CHAIR: All right. We will see you back at eight o'clock, then, Senator Xenophon.

Senator BRANDIS: Did your agency contribute to the government's thinking in its decision on Thursday to re-embrace onshore processing?

Mr Carmody: We did not give direct—I am just trying to steer clear of us being involved in any policy debate—

Senator BRANDIS: I am not trying to ensnare you in the political shoals here, Mr Carmody!

Mr Carmody: and, unless the chair tells me otherwise, I believe it is appropriate for our organisation, as an operational agency, not to be involved in these issues.

CHAIR: And I think, Mr Carmody, given the experience we have had with the Australian Federal Police, you are best placed to make those calls, essentially. If you believe that the answers are going to jeopardise your operational activities in some way, I think it is best you make that call.

Mr Carmody: I am not saying it would jeopardise specific operational issues. I am saying that I have indicated that we are involved in forums where matters are discussed, but I believe it is important for our agency as an operational agency not to inject itself into public questions of policy and policy debate.

Senator BRANDIS: That is fine, Mr Carmody. I think it is reasonably well established in these committees that one can ask whether advice was given but one cannot ask what the advice was. Now, my question to you is the first—whether you gave any advice on that issue, not what the advice was—and I take it from what you said a moment ago that the answer to that question is no.

Mr Carmody: Well, I cannot think of direct advice on that. There may be advice on operational consequences or the impacts of that position. That would be, to the best of my knowledge, the sort of thing that we would be involved in.

Senator BRANDIS: Given the government has had more positions on this than the Kama Sutra in the last little while, it is a matter of fascination to find out what the various tributary sources of advice were that have informed the government's multiple positions.

Mr Carmody: As I have said, we often get involved in—

CHAIR: Senator Brandis, if you have questions, let us have them, rather than some commentary.

Mr Carmody: providing operational consequences and the like. We are involved in forums where these matters are discussed.

Senator BRANDIS: Sure. I will move on. Has there been any revision to Customs' budget for the interception and surveillance of unauthorised boat arrivals?

Mr Carmody: There were some surveillance savings but they were primarily in the south, not the high-threat people-smuggling zone.

Senator BRANDIS: If I can take you to Budget Paper No. 2, the budget measures statement, starting at page 95—do you have a copy of Budget Paper No. 2 there?

Mr Carmody: I do not have it here.

Senator BRANDIS: You do or you do not?

Mr Carmody: It is coming.

Senator BRANDIS: That is like mother's milk in these proceedings, Mr Carmody, Budget Paper No. 2! Starting at page 95, there are measures—well, the first one does not seem to amount to much; it is the extension of the lease of the *Triton*.

Mr Carmody: Yes, there are a number of measures that were continued.

Senator BRANDIS: On page 96, there is a reduction of \$20.8 million over the forward estimates in your aerial surveillance activities.

Mr Carmody: Yes, I think I indicated that was the Dornier aircraft and that the flying was not in the high-threat people-smuggling zones.

Senator BRANDIS: All right. The third item on page 96 is a 'counter people smuggling communications campaign' allocation of \$3 million. What does that involve?

Mr Carmody: We had funding that terminated at 2011-12, and this introduced some ongoing funding that enables us to work through agencies in other countries to provide communications—for example, about the dangers of travelling on vessels and other issues to do with maritime people-smuggling ventures.

Senator BRANDIS: Then, at the foot of page 97, there is a measure called 'Border Security—maintaining increased aerial surveillance of Australia's northern waters', which is for \$15.3 million over two years. So we are saving \$20.8 million on aerial surveillance in one budget measure and increasing it by \$15.3 million in another budget measure? How do you explain that?

Mr Carmody: As I explained, they are flying in different areas.

Senator BRANDIS: So this is a reconfiguration of aerial surveillance assets, is it?

Mr Carmody: On the measure you just referred to, you would be familiar with terminating measures.

Senator BRANDIS: Yes, I am familiar with them.

Mr Carmody: There had been in previous years increased aerial surveillance in the northern area. That measure terminated. This was a two-year injection of funds to maintain that.

Senator BRANDIS: Then, on page 98, we see a two-year measure of \$1.5 million for 'post-interdiction management of suspected irregular entry vessels'. They used to be called 'illegal'; now they are called 'irregular'.

Mr Carmody: Yes.

Senator BRANDIS: What does that involve? It involves keeping these vessels wharfed and ultimately destroying them, doesn't it?

Mr Carmody: This actually reflects a saving on past measures. It had to do with provision of towing for vessels. It is a savings measure, because our experience demonstrated that a large number of these vessels just were not suitable to be towed. They were destroyed, and therefore we did not need the level of funding that had previously been provided.

Senator BRANDIS: Ultimately they are all destroyed, aren't they?

Mr Carmody: Yes, but the particular measure that was in there—and this is a saving on that measure—was to provide for potential contracted towing of vessels. That depends on the number that are in such a condition that they are not destroyed at the time.

Senator BRANDIS: I understand. Finally, there are two measures for overseas resources: the budget measure at the foot of page 98 and the next one, on page 99. The first of them is your agency's overseas engagement.

Mr Carmody: Yes, and the second is Attorney-General's.

Senator BRANDIS: The second is an allocation to the Attorney-General's Department, but in respect of people smuggling as well. What does the first reflect? It presumably reflects the increase in the activity of Customs in its cooperation with overseas partners in interdiction.

Mr Carmody: Yes. Again, it is a terminating measure; it terminated in 2010-11. The 2011-12 and 2012-13 figures are for our representation overseas.

Senator BRANDIS: Has Customs requested additional resources from the government in view of the statements that you have heard—and that we have all heard—from the Prime Minister and Mr Bowen in recent days that there will be, in view of the adoption of onshore processing, a significant increase in the number of unauthorised boat arrivals?

Mr Carmody: I do not think it is appropriate for me to talk about what might be under consideration by government in response to that.

Senator BRANDIS: You have heard what the Prime Minister had to say in her press conference with Mr Bowen last Thursday night.

Mr Carmody: I did, and the Prime Minister indicated that one of the important measures that would continue would be overseas disruption activity and intelligence services. That goes much wider than us.

Senator BRANDIS: Of course.

Mr Carmody: As to what government is considering or not considering, it is not appropriate for me to talk about it.

Senator BRANDIS: But presumably, if the Prime Minister's prediction were to be true, you will need additional resources to do your job.

Mr Carmody: It is not for me to talk about what we might ask for. We have our surveillance assets. We have our patrol assets. We have our intelligence capability. We will continue to employ them.

Senator BRANDIS: Perhaps I can ask you a different question. If the Prime Minister's prediction at her press conference last Thursday of the effect of the government adopting a

policy of onshore processing is correct, that is, the number of unauthorised arrivals on a monthly basis increases as she has predicted it will, will you be able, within your existing resources and your existing budget allocation for the current financial year, to deal with that substantial increase in the number of unauthorised arrivals?

Mr Carmody: As I have indicated, we have patrol assets and we have surveillance assets; they will be deployed to meet whatever situations arise.

Senator BRANDIS: If the Prime Minister's prediction is right will they be enough?

Mr Carmody: I do not think it is appropriate for me to give advice on what might or might not be appropriate for the government to do. But I can tell you that we will deploy those assets to continue what has been a very high rate of success in intercepting these vessels, and I would expect that rate of success to continue.

Senator BRANDIS: Let me put it to you this way: prior to the government's policy change, were your surveillance and interception assets deployed to full capacity?

Mr Carmody: They were deployed to the capacity of the resources we are provided with and they have achieved a very high success rate in interception. I would expect that to continue.

Senator BRANDIS: Were they deployed to full capacity?

Mr Carmody: They were deployed to the extent we are funded to provide surveillance and control.

Senator BRANDIS: I think you are making yourself clear enough. Can you please provide us with a brief account of the number of aircraft and the number of hours per month allocated for aerial surveillance for respectively Australia's northern and southern waters.

Mr Carmody: I just need to be perfectly accurate in my previous answer. When our annual report comes out, there will be slight variances between assets being overused and some being underused, but it is not hugely material. Our annual report will show that. Marion, do you have anything else?

Ms Grant: We have Dash 8 aircraft under a contract that Customs and Border Protection Service has with the provider of those Dash 8. We also have some of the RAAF P3 surveillance aircraft made available to Border Protection Command. We do not run on an hourly basis. We tend to measure our efforts by the area of surveillance that we undertake. So for the 2010-11 financial year we achieved slightly more aerial surveillance than our portfolio budget statements target due to, I think, the increased hours we got out of the RAAF aircraft in particular.

Senator BRANDIS: You did not extend your own surveillance activity with your Dash 8s; you asked the Air Force for additional surveillance. Is that what it amounts to?

Ms Grant: We did not ask the Air Force for additional surveillance. As part of the defence contribution to the Border Protection Command they make a certain amount of their aircraft available. It is really based on the risk assessment of where we need to fly. That determines which particular aircraft will operate in particular geographic areas. Due to some of the longer distance flying out to, say, Christmas Island, we have achieved some greater surveillance coverage by using the RAAF aircraft in those locations. It is not a case of how many hours we had and what we can achieve from the hours; it is a case of the coverage—

Senator BRANDIS: Let me just ask you this: were the number of hours of aerial surveillance conducted in 2010-11 by the aggregate of the Customs Dash 8 aircraft and the RAAF assets greater or less than in the previous year?

Ms Grant: In terms of hours, I would need to take that on notice.

Senator BRANDIS: Do you know?

Ms Grant: No, I do not know because we do not record our results in terms of hours. We record our results—

Senator BRANDIS: What is your benchmark measurement then? If it is not hours of surveillance, what is your benchmark measurement?

Ms Grant: It is the area of surveillance coverage we achieve, how many million square nautical miles we cover in the areas of interest—

Senator BRANDIS: I am sorry, Ms Grant; perhaps I am being a bit slow here but that does not make a lot of sense to me, because if you achieve the coverage of a large area but you do not do it as often as you might have done in a previous year, that is a less thorough surveillance, even though you might be covering a larger area. Surely the frequency is at least as important a variable in this as the area.

Mr Carmody: It is a cumulative area, isn't it? It is not just a single area—

Ms Grant: We may be talking at cross-purposes—

Senator BRANDIS: Maybe we are.

Ms Grant: We do not think that counting the hours that we fly is a very good indicator of how successful our efforts are, because you could be flying a lot of hours over areas that are not of interest to us.

Senator BRANDIS: That is my point. There are two variables here, aren't there? There is the area under surveillance and the frequency of the surveillance.

Ms Grant: When you say 'the frequency of surveillance', what do you mean by that?

Senator BRANDIS: What I mean is how frequently a given area is surveilled.

Ms Grant: We have aircraft up every day. A flight will depend on the situation with the aircraft. A typical flight could be an eight-hour flight and during that eight hours a certain area of surveillance will be achieved. We have a statistical recording system that logs every flight—exactly where it flew—and accumulates.

Senator BRANDIS: I do not think this should be as hard as perhaps I am making it. I want, according to your benchmark, a comparison—comparing like with like—as to whether there was more or less aerial surveillance in 2010-11 than in 2009-10. Whatever the benchmark or the yardstick is, I just want to know whether you undertook more aerial surveillance last year than in the previous year.

Mr Carmody: I think Ms Grant has already answered that, if you go back to the point before—and I am sure she will correct me if I am wrong—when she indicated our benchmark of square nautical miles. I should point out that that is not static. It is not just a case of looking at the map and saying, 'Well, there's that many square nautical miles.' It is the number of times you fly over that adds to the square nautical miles coverage, so it is a cumulative total, to address the point you were making earlier. I think Ms Grant has already indicated that,

because of the composition of that flying, particularly the long-haul flights to Christmas Island—you would be aware of the tragedy there and some of the increased flying—the overall cumulative square nautical miles covered were increased.

Ms Grant: I can confirm that the million square nautical miles that we flew in 2010-11 was more than we flew in 2009-10.

Senator BRANDIS: Do you have those figures in front of you? Could you read them onto the record for me?

Ms Grant: We achieved 147.76 million square nautical miles in the 2010-11 year which exceeded the PBS target by 2.76 million, the target being 145. I do not have with me the exact number of hours for the 2009-10 year but I do recall that we came in slightly under target for last year so that is why I can say that 2010-11 was greater than 2009-10, but I would need to take on notice to provide you with the precise number for 2009-10.

Senator BRANDIS: Could you do that for me please? I will put any further questions for Customs on notice.

CHAIR: Except I cannot release you. I am sorry, Senator Xenophon has questions and to accommodate Senator Brandis prior to dinner we indicated to Senator Xenophon to come back after dinner.

Mr Carmody: Is it possible to get an idea of Senator Xenophon's area of topic so I can let a number of my officers enjoy their dinner?

CHAIR: I do not know. We probably cannot answer that unless we track him down. Before we break for dinner I need to let people from ACLEI, the Australian Commission for Law Enforcement Integrity, know that we do not need you at all. I am sorry to have kept you waiting all day but as senators firm up their area of questioning we can firm up who we need and do not need so ACLEI officers are free to go. I am sorry, Customs, but you will need to come back.

Proceedings suspended from 18:36 to 20:05

CHAIR: We will formally reconvene. We have Customs and Border Protection with us and we will start with Senator Xenophon.

Senator XENOPHON: Mr Carmody, it may not surprise you to hear that I will be asking you some questions relating to Mr Kessing's case, and I will continue asking questions about Mr Kessing's case for the next, I think, eight estimates that, health permitting, I will be here for.

Mr Carmody: Eight? I had better count how many I will be here for, Senator!

Senator XENOPHON: It is only going to get worse! I just want to go to a couple of issues. Firstly, Mr Kessing wrote, through my office, on 12 August a letter of response to Mr Coles at the Attorney-General's Department in relation to his application for a pardon under the royal prerogative of mercy. We know from the evidence given earlier today during my questioning of the AFP commissioner that the AFP was provided with a copy of that letter of 12 August, presumably in order to comment on it for the Attorney-General's office to consider. Can you advise whether Customs received that letter or whether there have been any communications with the Attorney-General's Department in relation to Mr Kessing's application for a pardon.

Mr Carmody: We are not aware of any. We will correct that if it is the case but on the material we have we are not aware of having received that.

Senator XENOPHON: Could you double-check that.

Mr Carmody: I will double-check it, of course.

Senator XENOPHON: That does surprise me, because a letter from the Commonwealth Director of Public Prosecutions dated 17 May 2010 to the Attorney-General's Department set out reasons why Mr Kessing should not receive a pardon. One of those reasons set out in terms of so-called circumstantial evidence was that Mr Kessing was:

... a disgruntled employee of the Australian Customs Service and therefore had a motive to seek to embarrass the Australian Customs Service or to publicly expose what he perceived as the Australian Customs Service's inaction regarding the subject matter of the reports by leaking the reports to the media.

Presumably the conclusion that Mr Kessing was a disgruntled employee would have been something that would have come from his employer, namely, the Australian Customs Service.

Mr Carmody: I cannot comment on that. That is not something I am aware of.

Senator XENOPHON: Could you take it on notice.

Mr Carmody: Absolutely.

Senator XENOPHON: That is something that would be within your knowledge, presumably.

Mr Carmody: Sorry, yes, I was just saying that I do not have that information with me at the moment. I am more than happy to take it on notice and clarify.

Senator XENOPHON: In the context of that response, my understanding is that Mr Kessing retired from the Australian Customs Service because of the terminal illness of his mother in early 2005 but that in 2004 he was on more than one occasion offered a promotion within the Customs Service. How do you reconcile a person who is offered a promotion being described as a disgruntled employee? In other words, this is one of the factors that led to there being a circumstantial case against Mr Kessing.

Mr Carmody: I do not want to go to the substance of whether that goes to the case, but I will have to—

Senator XENOPHON: I am sorry, Mr Carmody, but it does go to the case. The letter from the Commonwealth Director of Public Prosecutions dated 17 May 2010 sets out what they perceive to be the evidence establishing Mr Kessing's guilt. There were a number of matters, one of them being that he was a disgruntled employee. That is something that presumably would have come from the Australian Customs Service.

Mr Carmody: I cannot be certain of the basis of this claim. I do not want to speculate. It could be a claim by him. I just do not know, but I will verify—

Senator XENOPHON: No, Mr Kessing was not claiming that he was a disgruntled employee. This was an assertion made by the Commonwealth DPP.

Mr Carmody: Okay.

Senator XENOPHON: To what extent was the assertion from the Commonwealth DPP that he was a disgruntled employee founded in any material provided by the Australian Customs Service?

Mr Carmody: I will provide that to you on notice, Senator.

Senator XENOPHON: Can I just go to a letter from the region again—I am happy for you to provide this on notice. The regional director of Customs for New South Wales on 13 May 2005 sent an email to Mr Kessing's supervisor, Ms Catarina Magni, which in summary says, 'What do you know about reports that have been prepared about security at Sydney airport?'—regarding the security issues, presumably they are the reports that Mr Kessing prepared back in 2003-04. There was a response from Ms Magni on 16 May 2011 saying, words to the effect, that, 'Yes, we are aware of these reports and these issues are still pertinent, or the concerns are still valid in terms of the security concerns.' When did the regional director become aware of the reports referred to in his email of 13 May 2005? What was the nature of the regional director's understanding of those reports? How many people within Customs were aware of the reports that Mr Kessing was charged with and later convicted of leaking to the media? And I note that Mr Kessing continues to deny this vehemently. Could you take that on notice as well?

Mr Carmody: I will take that on notice.

Senator XENOPHON: Given that Mr Kessing has sought a petition for the exercise of a prerogative of mercy, do you see it as your role to contact the Attorney-General's office or is this something about which the Attorney-General's office will need to contact you? Mr Wilkins, I think Commissioner Negus earlier said that they had received a letter on Mr Kessing of August of this year seeking a pardon. I think it is fair to say, Mr Carmody, that he did not receive such a letter, given that the Commonwealth DPP has raised issues in terms of rejecting the pardon in matters that would be directly within the purview of Customs. Can you advise whether Customs was provided with a copy of that letter?

Mr Wilkins: I do not have my hands on all the details, but I might get Iain Anderson to answer that question.

Mr I Anderson: To the extent that the issues canvassed in the 12 August letter were particularly about the impact of obligations of disclosure, that in itself is in the matter that goes to Customs. It is a matter about the AFP and the DPP in terms of disclosure and the impact of the alleged non-disclosure of a document upon the trial. That said, however, we have been in reasonably frequent communication with Customs about the different comments, suggestions and allegations that have been raised in the media as well as by Mr Kessing himself to seek views from Customs about those matters.

Senator XENOPHON: In terms of the pardon application on Mr Kessing, one of the factors that the Commonwealth DPP has raised is that he was 'a disgruntled employee of the ACS and therefore had a motive to seek to embarrass the ACS' et cetera. Is that not something that you would ordinarily seek information from Customs about in terms of considering the broad discretionary issues at stake with a department?

Mr I Anderson: We have been in fairly frequent communication with Customs about the matters that have been put forward by Mr Kessing or in the media accounts as well.

Senator XENOPHON: You have provided a copy of Mr Kessing's application, or his letter, to the AFP?

Mr I Anderson: Absolutely. I cannot say for sure whether the letter of 12 August has been provided to Customs, but we have been in reasonably frequent communication with Customs about the issues that have been raised by Mr Kessing or on his behalf.

Senator XENOPHON: Would it not be reasonable to assume that if you had provided a copy of that letter to the AFP, you would also provide a copy of that letter to Customs?

Mr I Anderson: The issue that was being particularly canvassed at that point about whether something had been disclosed to the defence and the impact of that on the trial was a matter in particular—the disclosure or lack thereof—for the AFP and the DPP. I do not believe that we specifically put that issue of the disclosure by the AFP to Customs because it is a matter for the AFP and for the DPP whether the AFP disclosed the letter and whether the DPP disclosed the letter. Customs had nothing to add to that.

Senator XENOPHON: Mr Carmody, there is an issue about the communications between Zoe Ayliffe, who worked for Customs, and Norm Lipson, a journalist. It appears to be the case that Mr Lipson had told Ms Ayliffe that he had a couple of sources in relation to security breaches at Sydney airport. I take it that is an issue for your colleague to raise?

Mr Carmody: Yes.

Senator XENOPHON: Can you advise whether the information that there were a couple of sources was provided to the AFP?

Mr Pezzullo : The answer to your question is yes.

Senator XENOPHON: Let us make this clear. I did ask questions of this of the commissioner earlier. You are unambiguous that you disclosed to the Federal Police that Mr Lipson had told Ms Ayliffe that he had a couple of sources?

Mr Pezzullo : Yes, and in turn the AFP have advised us, since you raised the matter on 26 May, that they in turn included that information in the brief of evidence that they made available to the Director of Public Prosecutions, who in turn have confirmed to us, in terms of closing off the question that you asked me on 26 May, that that information was in turn provided to Mr Kessing's legal team on 17 October 2006.

Senator XENOPHON: Mr Kessing's legal team said something different in relation to that. They said that they were not given that full information. You are saying that there is a chain of evidence in relation to that?

Mr Pezzullo : To be absolutely comprehensive and complete in my answer to you, on 26 May you asked—and you will recall the exchange that we had across this table—and I undertook to take that very matter on notice. Our inquiries, subsequent to that Senate hearing, which we then responded to in question No. 71, in summary, went to the following points. We made inquiries with the Federal Police, the Commonwealth Director of Public Prosecutions and also officers internal to our service who had assisted in those inquiries in the period of 2005-06. Those inquiries indicated that Ms Ayliffe, the officer that you have named previously in this committee and you have named again this evening, was not interviewed by the AFP in relation to the Kessing matter. The AFP have confirmed that to us. However, a statement by a more senior Customs and Border Protection officer was prepared in 2006 for

the purposes of the proceedings against Mr Kessing. The statement described and attached a series of emails. One of the emails had been sent by Mr Lipson, the journalist who you have named, to Ms Ayliffe and another email sent between officers of Customs stated that Mr Lipson had indicated to our agency that he had 'more than one source'. The CDPP has confirmed that that statement, including the attachments I have just described, was provided to Mr Kessing's legal team by the CDPP on 17 October 2006.

Senator XENOPHON: Was that the complete email chain referred to? Is that what you are referring to?

Mr Pezzullo : I have seen a document. There is certainly a series of emails attached to that statement, yes.

Senator XENOPHON: There are no other emails relating to this chain of communication between Mr Lipson and Ms Ayliffe other than those that have been disclosed?

Mr Pezzullo : I have no contemporaneous knowledge of these matters that occurred in 2005-2006. What I have seen is a statement which attach a series of emails that appear to be a chain, but whether there are other emails or gaps in that email chain it is not for me to undertake a forensic evaluation, and I have not done so.

Senator XENOPHON: I will leave it there, thank you.

Mr Carmody: In relation to some questions asked by Senator Abetz, my Chief Finance Officer sent me a text, which I do not fully comprehend, but it will require a clarification of the answers of timing and nature of impairment and we will provide that on notice in response to Senator Abetz.

Senator HUMPHRIES: I want to follow up something. Earlier today, there was reference to the communication that Customs and Border Protection was likely to have sent to AMSA in relation to that boat of October 2009. Is it possible to have that correspondence tabled?

Mr Carmody: We will take that on notice and if it is possible we will provide it.

Senator HUMPHRIES: Thank you.

CHAIR: Mr Carmody, thank you very much for your time this afternoon and this evening. We will see you again in February, if not sooner.

Mr Wilkins: Chair, I have a communication here from the Australian Federal Police and it is asking me to advise this committee that, in relation to Senator Cash's question to the AFP in relation to the DIAC contract, and advise that this contract had been of course generated by DIAC. They are still trying to get a response to your question. I am advised by the AFP that, unfortunately, it will not be available this evening.

Senator CASH: Thank you very much.

Australian Law Reform Commission

[20:21]

CHAIR: I welcome Professor Flew and representatives from the Australian Law Reform Commission. Do you have an opening statement at all?

Prof. Flew: Only an apology for one of my colleagues, the executive director of the ALRC, Ms Sabina Wynn, who was going to be attending but, unfortunately, injured herself

when on holidays last week and then came off her crutches earlier this week. So I am flying solo today.

CHAIR: Our best wishes to her. I hope she is listening and we send her our regards. Senator Humphries.

Senator HUMPHRIES: Can I start by asking about the current state of ALRC funding? I recall the comments made to the Senate inquiry into funding of the ALRC a while back where the ALRC was likened to the black knight from *Monty Python and the Holy Grail* with limbs flying off and so on. Could you tell us what the current state of the capacity of the ALRC is to conduct the work that it has a brief from the taxpayer to do?

Prof. Flew: On the wider issues around the ALRC, there was an inquiry conducted into the ALRC. The ALRC's own statements to that inquiry are on the public record. The government has responded to that. More specific questions on that I would need to defer to the department on that. On the overall resource situation of the ALRC, it has achieved cost savings. The library has become largely digital. My own status as a commissioner is on the secondment from the Queensland University of Technology and that salary is being met by the Attorney-General's Department for the duration of the inquiry.

As you may be aware, the ALRC has recently relocated. In its annual report tabled for this financial year, that has generated what appears to be a significant deficit, but that is in fact what is referred to as an onerous contract relating to the previous tenancy that expires as of September this year. In that regard, the ALRC is very much travelling to its budget. It has a small deficit, taking out that from this financial year, that relates to incurring a cost in terms of taking on the discovery reference.

Senator HUMPHRIES: I want to ask you about that lease question of your premises in a moment. You made reference to the response to the inquiry. Did the department issue a media release when it released its response to the most recent Senate inquiry into the ALRC? That is a question for the minister or Mr Wilkins.

Mr Wilkins: We do not normally issue press releases. I doubt that we issued a press release, I do not normally issue press releases.

Senator HUMPHRIES: I was advised that there was a media release issued in this case.

Mr Wilkins: By the department, Senator?

Senator HUMPHRIES: Yes. I do not have a copy of it, though. If you are not aware of it and I cannot produce it—

Mr Wilkins: I will make sure we did not. People keep telling me on my right here that I did not.

Senator HUMPHRIES: Well, I think she would know by the look of the certainty of her face. There was a very emphatic shake of the head—pity Hansard cannot record that. There was no release of any information about the government response by the ALRC itself or the Victorian Law Reform Commission before there was any official tabling of the government response, presumably on the floor of the parliament?

Mr Wilkins: I do not think so, Senator. If I am wrong about that, we will correct the record.

Senator HUMPHRIES: Just in terms of that response, I take it that the tenor of the government's response is that it has not accepted the case of the ALRC of at least the extent of the shortfall in funding that was the thrust of the case made by the ALRC to the Senate inquiry?

Mr Wilkins: I think the gravamen is we probably have not accepted the outcome of the inquiry, but we have had collaborative discussions with the ALRC and come up with ways of addressing their funding issues, so that they will be able to have two full-time commissioners. Some of that is continued. I was forwarding out this lease issue, as I understand it. My officers probably have more detail, if you want us to go into it. The bottom line is that we think—and we have had constructive discussions with the ALRC—that we can work our way through this without necessarily accepting exactly what I think was in that report.

Senator HUMPHRIES: I am aware from what you have said, Professor Flew, about the economies that the ALRC has made, but I take it that the other side of that equation, which is presumably additional money is not on the table at this point in time.

Mr Wilkins: There needs to be some rationalisation of rental, as I understand it. I might ask Ms Glanville to fill you in on the details, Senator.

Ms Glanville: We certainly know of the contract issue that Professor Flew has referred to and that did result in a deficit, but as a result of other efficiencies—Professor Flew has mentioned one in relation to libraries, there is another in terms of sharing the premises with the Australian Government Solicitor and there are other savings including some ways of looking at staff and the work of staff, and the roles that they take on—the commission now reports that it will move very healthily and on a sustainable footing into the future. We have had that advice relatively recently, but certainly the work that has been done has led to that conclusion.

Senator HUMPHRIES: That is helpful. I suppose the question needs to be asked though. Professor Flew, do these measures give the ALRC the kind of financial capacity to do its work that it spoke about to the inquiry?

Prof. Flew: Well, the ALRC is certainly meeting its deadlines in terms of the briefs for reports that it has been given. I am chairing the classification review and we have met our deadline for the discussion paper. We received over 2,450 submissions in response to the issues paper, which was quite a large workload, but the team have been able to achieve that. Collocation with the Australian government has allowed for shared services with compatible partners, and there are some other cost savings. For instance, the discussion paper I was referring to has been published only in digital format in this instance, which generates a cost saving in printing.

Senator HUMPHRIES: That is good, but that is not actually the question I asked. Before the inquiry you identified a problem with the extent of funding any gap between what you were funded to do and what you actually believed you needed to do as part of your brief from the Australian taxpayer. Have the measures you have described, and which have been described by Ms Glanville and others, breached that gap?

Prof. Flew: That would be a question I would probably need to refer to the president, Professor Rosalind Croucher, who appeared before that inquiry.

Mr Wilkins: From the government's point of view we believe that they have. That is not unimportant, because that is the source of budget support for the ALRC.

Senator HUMPHRIES: I am pleased to hear that. I would like to hear what Professor Croucher's view of that is when we next hear from her. Can I come to the question of the premises that are being rented. Where are the new premises that the ALRC has moved to?

Prof. Flew: It is level 40 of the MLC Centre in Martin Place.

Senator HUMPHRIES: Is that of similar or smaller size than the previous premises?

Prof. Flew: I never worked in the previous premises, so I cannot give you a direct comparison, but my understanding is that, while smaller, it is set out in a way that is preferred by the staff. One of the difficulties with leasing the previous premises was that it was an open-plan office, and they are out of fashion in the Sydney CBD at the moment. There is the scope to have shared services with the Australian Government Solicitor, in particular—a range of meeting rooms that are two storeys up from that building.

Senator HUMPHRIES: I took it from Ms Glanville's comments before that the new premises are less expensive than the old ones. That was presumably the reason that the move took place, at least in part. Could you take on notice to tell me how much the ALRC is saving from that measure?

Prof. Flew: Yes, I can do that.

Mr Wilkins: I think we could probably give you those numbers now, Senator.

Senator HUMPHRIES: That is better than taking it on notice.

Mr Wilkins: The rental in the King Street premises is \$602,000 per annum and the rental at the new AGS premises is \$285,293 per annum.

Senator HUMPHRIES: That is a huge reduction. However, at the moment you are actually still renting both premises, aren't you?

Mr Wilkins: Indeed the King Street lease expires in September 2012, and that is the bridging issue. The department is providing some supplementation until we can get there.

Senator HUMPHRIES: What is happening? What are the other premises being used for at the moment?

Prof. Flew: The previous premises?

Senator HUMPHRIES: Yes.

Prof. Flew: They remain vacant. There has been active work in trying to get a new tenant in there, but the reality has been there is a surplus of CBD office space in Sydney at present and there are aspects of that space, such as the open-plan nature of it, and issues around the length of the lease that have made it difficult to capture a client for it.

Senator HUMPHRIES: It is a very big difference. Did you say it was on the 42nd floor?

Prof. Flew: The 40th floor.

Senator HUMPHRIES: That must be pretty expensive accommodation, I would have thought.

Prof. Flew: It is pretty good accommodation.

Senator HUMPHRIES: You must have been on a pretty bad lease arrangement in the old premises, I would assume—

Prof. Flew: Right.

Senator HUMPHRIES: rather than getting an absolute bargain in the MLC Tower. I have a question about the ALRC advisory committee. What is the current composition of the advisory committee?

Prof. Flew: Two part-time commissioners continue to advise the ALRC, Justice Collier and Justice Kenny. Otherwise, advisory committees I believe have been formed on an ad hoc basis around particular inquiries. For instance, the classification review has an advisory committee of 14 members representing industry and government.

Senator HUMPHRIES: Do you describe the work of the advisory committees in the annual report?

Prof. Flew: I would have to have a look at that. I might have to get back to you.

Senator HUMPHRIES: If you do, that would be great. If you do not describe it in the annual report, a short description of what it has been doing over this last financial year would be useful. I also would like to know how many times the advisory committee, however composed, has met and, if possible, the agenda items discussed.

Prof. Flew: I will take those questions on notice.

Senator SIEWERT: I am interested in following up some recommendations from the committee's report on the review of compensation payments from last year and specifically the comments that were made in the report about Centrelink debt. Have you done any work or had a look at the waiver of debt provisions contained in social security legislation?

Prof. Flew: I would have to take that question on notice. Others have worked on that inquiry and I could get them to provide you with the information on that.

Senator SIEWERT: In that case, you will probably have to take this question on notice too. If you are looking at the issues, the recommendations and the comments that were made in the report, where are you up to in that process and what is the time frame for completing that work?

Prof. Flew: I will take that question on notice.

Senator BRANDIS: I have just one question. A couple of years ago the Australian Law Reform Commission published its very extensive report into privacy law in Australia. Were you, or any of those before the committee this evening, involved or concerned in the preparation of that report?

Prof. Flew: Professor Croucher, the President, who is on approved leave, would be able to comment on that one better than I would. Obviously it has become a very topical document at this stage, but I was not personally involved.

Senator BRANDIS: But you are familiar with it?

Prof. Flew: In a second-hand way.

Senator BRANDIS: You say it has become topical. The issue of privacy has certainly become topical. But what struck me as curious when the issue did become topical, after the Prime Minister made some observations that News Limited in Australia had questions to

answer on account of the conduct of the journalists of New Limited in the United Kingdom and pointed to the ALRC report on privacy, is that the ALRC report, which is about 3,200 pages long, does not anywhere suggest that, of the privacy issues that Australia should face as a matter of public policy, abuse by the press or the adequacy of the existing frameworks concerning the conduct of journalists was one of the privacy issues of concern to those who authored that report. That is right, isn't it?

Prof. Flew: It would be a question that I can provide comments about.

Senator BRANDIS: It is really more an observation but, if you are familiar with the report, you will know that is the case. There was one chapter in the three volumes about the press. There were two recommendations in relation to the press and one of those recommendations was that the scope of journalists' privilege be expanded, which is hardly consistent with a view that journalists were misusing their position, is it?

Prof. Flew: I am a professor of media so I do have personal views on the issue.

Senator BRANDIS: I am asking you about the particular report on the ALRC.

Prof. Flew: I am not able to give you a direct answer to that; my apologies.

Senator BRANDIS: It is probably not worth our while, Professor, if you are not familiar with the report. But I make the observation that a basis—that is, the ALRC's privacy report—upon which the Prime Minister claimed there were reasons to consider more intrusive privacy laws which tied the hands of journalists in fact, when examined, provided no support whatsoever for that assertion and, indeed, the ALRC report recommended greater immunities for journalists. That is so, isn't it?

Prof. Flew: I take it as a comment.

Senator BRANDIS: Thanks.

CHAIR: Professor Flew, I do not think we have any other questions for you. Thank you for making yourself available and staying so late this evening.

Prof. Flew: Thank you.

Australian Security Intelligence Organisation

[20:41]

CHAIR: Good evening, Mr Irvine and Mr Fricker, and welcome to our estimates hearing. Mr Irvine, do you have an opening statement that you wish to make?

Mr Irvine: There are some brief remarks that I might make that may be of assistance to the committee.

CHAIR: Thank you.

Mr Irvine: In terms of those aspects of security for which ASIO is responsible, clearly a key element remains the threat from terrorism. I thought it would be useful to report that, in the last year, and certainly since we last met, there have been both some positive and some negative developments. A number of al-Qaeda's most significant leaders have been removed from the scene: Osama bin Laden and al-Qaeda's de facto second-in-command, a man by the name of al-Rahman, being the most obvious; and the death of Ilyas Kashmiri, a Pakistani terrorist who is believed to have been involved in bombing attempts in Europe and India as well as in Afghanistan and Pakistan, has also been significant.

Particularly significant for Australia is that last September saw the death of the radical Yemeni-American cleric Anwar al-Awlaki and his chief propaganda lieutenant, Samir Khan. Al-Awlaki was a particularly significant figure in al-Qaeda, and particularly in al-Qaeda in the Arabian Peninsula. He was a key driver in attacks and attack-planning against Western countries and he very adroitly exploited the communications medium provided by the internet to inspire many young people around the world to engage in violent jihad, including in Australia. Indeed, some editions of his internet magazine, called *Inspire*, specifically identified Australia as a target. Al-Awlaki was the inspiration for the Fort Hood shooting in the United States, in which 13 people were killed. He arranged for the failed D253 bombing attempt over Detroit a year and a half or so ago, to which a young Nigerian has now pleaded guilty. He arranged the air cargo attacks that were disrupted. In fact, right up to his death he continued to be active in planning and seeking out people to carry out terrorist attacks around the world. In many ways he is the example of the 'modern' terrorist organiser. A highly articulate English speaker, he used the internet to maximum effect as a very effective medium to reach and radicalise people beyond traditional borders. He was specifically targeting an English-speaking audience and encouraging jihadists in the West and elsewhere to take up action using whatever means was at their disposal.

The death of al-Awlaki was therefore an important event in the ongoing fight against terrorism. Our assessment is that it will weaken al-Qaeda's short-term capacity to conduct and plan terrorist attacks. But al-Awlaki's and al-Qaeda's message still remains potent amongst extremists, and the death of a few key leaders is clearly no cause for complacency at this stage. There is a threat from operatives already in place around the world as well as from stand-alone actors, and that threat at present remains largely unchanged. In particular, in Somalia we have al-Shabaab increasing its terrorist attacks in that country and quite recently, and alarmingly, a group called Boko Haram, an al-Qaeda associate Islamic group in Nigeria, has conducted an attack against the United Nations office in Abuja, killing over 20 people and wounding a lot more. I think it is particularly indicative of their callous nature, and their callous disregard of humanity, when terrorist groups attack the United Nations and all that it stands for in terms of its mission for peace and world harmony. New extremist groups and individuals continue to emerge and, as the recent disruption to the United Kingdom demonstrates, the death or detention of violent jihadist leaders does not stop the plots that are afoot. The message that my organisation would like to convey is that we should retain a common-sense perspective on the threat of terrorism. We do not need to go overboard about it but we should remain vigilant to and recognise the persisting nature of the threat. We will continue to work with elements of the community to address that threat.

A second key area of activity for ASIO in the period under review relates to the security assessing of irregular maritime arrivals. In the last estimates hearing I briefed the committee on steps taken by the government to streamline the process of providing security assessments to IMAs. Upon request we provide them to the Department of Immigration and Citizenship. These changes appear to be achieving their objectives without compromising either the integrity or the rigour of this critical security process. Since the implementation of the new processes in cooperation with DIAC in April 2001, about 80 per cent of IMA security assessments have been completed in less than a week. Currently there are 464 IMAs, people who have been found to be refugees who are undergoing a security assessment. This represents about 10 per cent of the total number of IMAs in detention. We have issued 50

adverse assessments and 17 qualified assessments since January last year and overall we have conducted over 6,500 security assessments.

Finally, at the moment there is no particular administrative matter that I need to draw to the attention of this committee. These are all covered in the annual report to parliament, which was presented several weeks ago. Like all government departments, you would expect that this time we are operating under tight budgetary circumstances, but we are continuing to address those through better application of risk management principles and through operational efficiencies coming from our strategic reform program. I am pleased to say, too, that our recruitment strategy appears to be back on track, but we remain very keen to attract bright young Australians from a diversity of backgrounds to serve the nation in the security intelligence function.

Senator WRIGHT: I have two questions. I understand that in the past ASIO has indicated concern and undertaken activity in the field of illegal fishing operations. Can you describe your efforts in this area over the last year?

Mr Irvine: I cannot think of any operation activities that have been conducted in relation to illegal fishing in the last year, if ever. In fact, I am pretty sure that is actually outside our remit.

Senator WRIGHT: I am basing this question on information that I was given that one of the justifications for expansion of ASIO powers at one point was that there was a need to have surveillance over illegal fishing operations. I might ask you to take the question on notice.

Mr Irvine: I do not think I need to take the question on notice at all. We have not conducted any activities in relation to fishing.

Senator WRIGHT: I understand that you have not been doing that in the last year, which is the answer to my question, but you are also repudiating the background to my question, which is that there were some suggestions that that was a function of ASIO. I am wanting to see whether you want to clarify that or not. I cannot at this stage clarify where my question came from, but I can do that.

Mr Fricker: There was a hypothetical example given during the explanation for the changes to the definition of foreign intelligence under the ASIO Act. It was a hypothetical, I believe, not provided by ASIO. It was a hypothetical example of where a foreign intelligence collection requirement might require the assistance capabilities of ASIO. It is not an ASIO function to collect intelligence on illegal fishing. That function does not come under the definition of security under the ASIO Act.

Senator WRIGHT: I apologise for not being better briefed. This was a question that I had at the last minute, but I think it is important to clarify that. I understand that one of the bases of the Intelligence Services Legislation Amendment Act was to look at ASIO's operations in relation to Australia's economic interests. Is that where that came from?

Mr Irvine: Perhaps I could give a brief explanation of what I think is the key element that you are getting to in recent changes made. ASIO is empowered under its act, and in relation to the Intelligence Services Act under which other foreign intelligence agencies collect, to collect foreign intelligence using technical means within Australia. It does so at the request usually of the Minister for Foreign Affairs and the Minister for Defence. The reason the amendment was introduced in the past was that the definition of foreign intelligence as it

appeared in the ASIO Act and the Intelligence Services Act under which the foreign collectors operate was different. Therefore, it was thought sensible to align the two definitions. As a result of that change to the act, there has actually been very little change, if any at all so far anyway, in what ASIO does on behalf of the foreign intelligence collectors in Australia.

Senator WRIGHT: Thank you. My second question relates to the ASIO annual report, which states:

Subject to authorised exemptions for the protection of national security, a list of consultancy contracts let to the value of \$10,000 or more (inclusive of GST) and the total value of each of those contracts over the life of each contract may be made available to members of Parliament as a confidential briefing or to the Parliamentary Joint Committee on Intelligence and Security on request.

I would like to avail myself of that offer of a confidential briefing to learn which companies are benefiting from ASIO consultancies and for what. I guess that is a request on notice.

Mr Irvine: We would be delighted to oblige.

Senator WRIGHT: Thank you, Mr Irvine.

CHAIR: Senator Rhiannon, how many questions do you have? Are there a couple, or a fair few?

Senator RHIANNON: A fair few, but it always depends on how long the answers are.

CHAIR: I will go to Senator Brandis, then, in the interests of fairness—that is, one question from the Greens and one to Senator Brandis.

Senator BRANDIS: I am glad the Greens and the opposition are being given equivalent treatment, Madam Chair! Mr Irvine, I want to ask you some questions about Hizb-ut-Tahrir. You were asked at the May estimates hearings about the Hizb-ut-Tahrir conference in Sydney in July last year. Your evidence was, and I hope my paraphrase is a fair paraphrase, that you were not able to explain why international Islamic extremists visiting the Sydney conference of Hizb-ut-Tahrir were not drawn to the attention of ASIO. Can you tell us please what measures did ASIO take to ensure that in the future that does not occur again, that visits by persons of interest to ASIO to Hizb-ut-Tahrir gatherings in Australia were detected?

Mr Irvine: The answer I gave then and the answer I would give now is that we are to an extent dependent on the visa security checking process and to be alerted by the Department of Immigration and Citizenship to people who are on that list. It is still possible for people who we would need to check more thoroughly to somehow escape that.

Senator BRANDIS: I can understand that, and I am obviously not going to ask you go into anything of an operational character, but may we be reassured that, following the Sydney episode, steps have been put in place by ASIO to enhance its surveillance of persons falling into that category?

Mr Irvine: These persons that you refer to have come from overseas, and we are in a fairly regular dialogue with DIAC on the types and the sorts of people that would trigger a check. Internally, in relation to Hizb-ut-Tahrir, I would not comment.

Senator BRANDIS: Hizb-ut-Tahrir, I am told, has organised two recent conferences in Australia—another one in Sydney in July of this year and one in Melbourne earlier this month; is that right?

Mr Irvine: I am personally not aware of that, but I am sure that other people in my organisation would be.

Senator BRANDIS: I am instructed that that is the case, and I infer from your answer that if you are not personally aware, Mr Irvine, your officers who are tasked with this particular area of surveillance would be aware?

Mr Irvine: I would not use the word 'surveillance'. It is a special term for us.

Senator BRANDIS: No, sure. You may perhaps want to take this next question on notice. Are you aware of foreign visitors who entered Australia to participate in either of the recent two Hizb-ut-Tahrir conferences—that is, the July conference in Sydney and the October conference in Melbourne?

Mr Irvine: I will have to take that on notice.

Senator BRANDIS: Would you also take on notice how many there were and from which countries they came.

Mr Irvine: Yes.

Senator RHIANNON: There are a number of young Indonesians in Australian jails who worked on boats that brought asylum seekers to Australia. Does ASIO have any involvement with these young Indonesians—I am referring to the young men who are under age—at any stage once they reach Australia?

Mr Irvine: Off the top of my head, no.

Senator RHIANNON: Does that mean no?

Mr Irvine: To the best of my knowledge, definitely no. I am not sure whether they have been interviewed, but I think it would be most unlikely.

Senator RHIANNON: As there does seem to be some uncertainty, could you take it on notice, please.

Mr Irvine: Yes, I will take it on notice.

Senator RHIANNON: ASIO uses the term 'issue motivated groups'. Looking at publications in recent years, it appears that that term has evolved in use. I will make some references and then I would like you to comment. On page vii in the 2005-06 annual report it says:

ASIO does not investigate lawful protest activity.

There is a more significant quote on page 49 about the Commonwealth Games and the Forbes CEO conference:

The security of major events, including the 2006 Melbourne Commonwealth Games, the Forbes CEO Conference in Sydney and other events attracting the convergence of issue motivated groups was a focus for ASIO in 2005-06.

The way the term 'focus for ASIO' is used there, I am assuming that you are actually gathering intelligence on those organisations. Correct me if I am wrong. In submission No. 47, 26 June 2009, to the Standing Committee on Environment and Communications, it states about e-crime:

The perpetrators of such attacks can range from the ubiquitous hacker through to criminals, issue-motivated groups, terrorist organisations and nations.

There you are talking about attacks from issue motivated groups and you are linking them with various other organisations. The current annual report states:

Australian issue-motivated groups in general use legitimate protest to publicise and further the cause they advocate ... ASIO's interest in protest is limited to that which is unlawful or violent.

It appears to me that the term 'issue motivated groups' is at times used in different ways. Could I ask how you do define that and whether you are monitoring and spying on issue based groups.

Mr Irvine: Issue motivated groups is a term we use within ASIO to describe those groups who conduct activities that might lead to violence or to activities that are prejudicial to security. We look at a number of groups—and I am not going to say which ones—and in most cases we can be confident that they are going to express their advocacy, their protest, their dissent or express their views in ways that are lawful but in particular in ways that are not violent and not prejudicial to security. It is very hard then to give you a firm definition that covers all of the groups, including those who may not be involved in violent activity or protest.

Senator RHIANNON: I certainly note that life is very fluid in social movements as it is in life in general. But as ASIO has been around for a long time and protest movements have been around a long time, we can see that there is a certain style and peaceful action has been the very dominant way those groups have interacted over the years. Do you agree with that statement?

Mr Irvine: Yes, I do. I would also say we need to know that.

Senator RHIANNON: When you make that statement after my statement, does that mean you therefore have to be gathering intelligence on those organisations to determine that, even though there is quite a long history now with these social movements as part of Australian civil society?

Mr Irvine: Asking the question the way you have, you make the gathering of intelligence a grand and mysterious matter. In many cases, our monitoring of violent groups or groups that could have a tendency to violence will be a strict intelligence exercise. In many other cases, it is a simple matter of liaison with local authorities to assess whether or not a particular group needs to be looked at further. Most groups in Australia clearly fall into that latter category, thankfully.

Senator RHIANNON: That leads well into my next question. If I understood you correctly, you said that for many of these groups you basically liaise with local authorities, which I guess means checking out whether you need to gather more intelligence on those before you initiate an intelligence operation. Is that how it would work?

Mr Irvine: That is certainly an important way it would work. It is not the only way but it is an important way.

Senator RHIANNON: That would mean the local police. Forest protests is one example I was going to ask about. Does the monitoring of issue motivated groups include forest protest groups, who are active in protecting native forests? Let us take the south-east of New South Wales and north-east of Victoria, where there are regular, local protests. In those instances, would you check in with the local police or are there are other local authorities you would check in with to determine if you had to look at it further?

Mr Irvine: In protests of that nature, if we knew about them, we would be most unlikely to pursue any inquiries whatsoever.

Senator RHIANNON: There is a plethora of climate change groups around at the moment and many people would describe them as issue motivated groups. How would you handle that situation?

Mr Irvine: The expression of an advocacy for climate change is surely a lawful activity in which we would have no interest, unless we had information that it would lead to violence or was in some way prejudicial to national security as national security is defined in the ASIO Act.

Senator RHIANNON: In the 2005-06 report, I found a section a bit surprising, partly because it was fairly limiting, and I am interested to know whether this has changed. On page 44 of the report under the heading 'Developing our engagement with the Australian community' you talk about that engagement involving enhanced dialogue. But the only examples given are speaking to the Islamic and Jewish communities. It is obviously excellent that you are doing that, but I wondered why you just give those as examples of engagement with the Australian community. Has the policy broadened out since 2005-06?

Mr Irvine: Without going into any operational details, there are very obvious reasons why we would wish to talk to those communities, but there are other communities with which we have contact. I will not name them. Indeed, we also talk and work with communities on a broader basis, not simply ethnic or religious communities.

Senator RHIANNON: You just said that you would not name the others. You have named them but you will not—

Mr Irvine: You named them actually.

Senator RHIANNON: I am quoting from your annual report.

Mr Irvine: Oh, I see, yes. I apologise.

Senator RHIANNON: I am just curious as to why you name Islamic and Jewish communities but you do not name others.

Mr Irvine: I think because they are very visible areas where there are potential threats, including to those communities.

Senator RHIANNON: I will finish up with just a few process questions. I see that the 2011 Independent Review of the Intelligence Community is underway. What is the status of this and will it be made public? I do not need a detailed answer; I am just interested in following it and understanding how ASIO interacts with it.

Mr Irvine: The Independent Review of the Intelligence Community is being conducted by a former Secretary of the Attorney-General's Department, Mr Robert Cornall, and a university academic and head of one of the University of Melbourne colleges, Dr Rufus Black. ASIO has cooperated fully with that inquiry. The results are not public. My understanding is that at some point the government may decide to make elements of that report public, but that is a decision for the government.

Senator RHIANNON: Thank you. I want to get an update on COAG's review of counterterrorism legislation. Again, I am interested in the level of ASIO involvement. I am not sure whether it has commenced. If it has not commenced I would be interested in the

reasons, if you know them, for the delayed commencement of the review and also the time line on it—when it is due finally to commence, be completed et cetera.

Mr Wilkins: It might be useful if we answer that for you. I might get Tony Sheehan to answer. It is actually one that the department is dealing with.

Mr Sheehan: You are correct that the review has not commenced yet. It is referred to in legislation; preparations have been underway in the department for the review; it has not commenced, though, at this stage.

Senator RHIANNON: We are talking about the one that was agreed to on 10 February 2006 and was supposed to start in 2010?

Mr Sheehan: Yes. I will just have to check that the date in 2006 is correct. That time line sounds correct, and it was flagged for five years hence, as I understand it. I might just check that, if I may.

Mr McDonald: That is correct. The review was to occur five years after the legislation at the end of 2005. However, that was not a statutory obligation so much as an aspiration. The commencement of the review—

Mr Wilkins: Senator, there is not a requirement in the act as to when exactly it should happen. COAG decided to delay it. It is a COAG prerogative. I think there was some concern about how it would interact with the appointment of the monitor that is being setting up for terrorism legislation. So it has drifted. We are all ready and set to go. I think it is just a question of when appointments et cetera will be settled.

Interaction with the legislation monitor is one of the issues. The monitor covers some of the same fields as this review would cover and, except that the monitor cannot look at state legislation, this COAG review would. There are also a number of reviews that have been carried out independently by the states, and I think we wanted to take stock of all that as well. As to why COAG decided, exactly—I am speculating, to some extent, but I think it was because of that crossover. But it will occur.

Senator RHIANNON: Am I correctly understanding that the hold-up essentially is that the people to carry out this review of counterterrorism legislation have not been appointed, or is it more than it has not been decided to do it?

Mr Wilkins: I think people have been identified. They have not been appointed.

Senator RHIANNON: So people have got the job to do it?

Mr Wilkins: No, they have been nominated, I think it is probably fair to say. I am not sure that they have finally been signed off by COAG yet, have they?

Mr Sheehan: I think that is correct.

Senator RHIANNON: Can who those people are be publicly disclosed? Can we understand what the process is?

Mr Wilkins: No, I think COAG will at the right time announce that; it is not my prerogative to do that. It is being sorted out.

Senator RHIANNON: And we do not know what the right time is yet?

Mr Wilkins: No. I think that is a question that really needs to be directed at the Department of the Prime Minister and Cabinet, since they are in charge of the COAG process.

CHAIR: We do not have any other questions for ASIO. Thank you for attendance. We are going to move on to the Australian Government Solicitor.

Australian Government Solicitor

[21:17]

CHAIR: I welcome officers from the Australian Government Solicitor. Mr Govey, do you have an opening statement?

Mr Govey: No, I do not.

Senator BRANDIS: I just want to explore one area with you, if I may, briefly—that is, the question of legal advice to the Australian government in relation to the so-called Malaysia solution. We heard evidence in other estimates from the department of immigration and I myself have been told by Mr Metcalfe, the secretary of the department, that advice in relation to the Malaysia solution was provided to his department from a variety of sources, including advice from Attorney-General's. Was the Australian Government Solicitor involved in the provision of any advice either to the department of immigration or indeed to any other department or instrumentality concerning the Malaysia solution?

Mr Govey: Senator, as you know, there are limits on what AGS, as the legal services provider, can say in this area, but it is on the public record that we have provided advice in relation to various aspects of the migration work that has been going on in relation to Malaysia, including the High Court case, where we were the solicitor on the record, and also in particular through Ian Deane, who is special counsel AGS outposted to the immigration department.

Senator BRANDIS: Is Mr Deane here tonight, by the way?

Mr Govey: No, he is not.

Senator BRANDIS: It just was not clear to me whether Mr Deane was within the Attorney-General's Department or within the AGS, but he is within the AGS.

Mr Govey: That is correct.

Senator BRANDIS: Other than Mr Deane and leaving aside essentially formal matters like doing the solicitor's work in the High Court appeal, did other officers of the Australian Government Solicitor provide advice to the immigration department concerning the Malaysia solution?

Mr Govey: I would need to take that on notice.

Senator BRANDIS: Do you know?

Mr Govey: No, I do not. I think it is true that other officers were involved but whether or not anybody else gave advice I am not sure about.

Senator BRANDIS: But Mr Deane was the principal adviser and he was a secondee, was he?

Mr Govey: That is right. He is the only AGS person outpost to the immigration department, so in that sense he sits with them and was very closely involved.

Senator BRANDIS: But he still remains an officer of the Australian Government Solicitor's office.

Mr Govey: That is correct.

Senator BRANDIS: We were told by Mr Metcalfe that the Solicitor-General provided certain advice to the government. When the Solicitor-General provides advice to the government, is there a standard procedure as to who prepares the brief for the Solicitor-General, instructions to counsel and so forth?

Mr Govey: I am not sure you could describe it as a standard procedure. Very often it is my colleagues in AGS who provide that brief.

Senator BRANDIS: Okay. Let us work back from the easy part to the arguably more problematic part. Mr Gageler, Mr Lloyd and Mr Kennett provided advice to the government after the High Court's decision by opinion number SG 21 of 2011 on 2 September about the implications of the decision in plaintiff M70. Did the Australian Government Solicitor provide the instructions to counsel and the brief to counsel for the provision of that advice? I can show it to you if you like but you are probably familiar with it.

Mr Govey: I have seen the advice but I'm afraid I do not know the answer to the question about whether a brief was provided.

Senator BRANDIS: What about the instructions to counsel?

Mr Govey: Sorry, I was including that in the reference to the briefs.

Senator BRANDIS: There is a schedule to the opinion. It is a one-page schedule. It lists 18 documents with which Messrs Gageler, Lloyd and Kennett were briefed. I do not mean any disrespect at all in saying this, but it is not perfectly clear from the face of the opinion precisely what questions they were asked to address. It is pretty clear the area that they were asked to address but the questions to which they respond are not formulated in the text of their opinion. What I am eager to know, because there has been a little bit of unpleasant political misrepresentation of the effect of the Solicitor-General's opinion, is what the precise questions were that Messrs Gageler, Lloyd and Kennett were asked to answer for their opinion of 2 September. Are you able to help us with that?

Mr Govey: No, I am not.

Senator BRANDIS: Are you able to tell us, or if you cannot take it on notice, whether in fact the instructions for that opinion came from your office?

Mr Govey: I will need to take that on notice and talk to both my own colleagues and the department of immigration.

Senator BRANDIS: Indeed it is not apparent from the face of this opinion who the client was. Counsel do not, for example, say, 'we were asked to advise'—X, Y, Z—'on these matters.' Would it be unusual for the Solicitor-General to be approached directly by a minister or even the Prime Minister to give advice without the interposition of an instructing solicitor?

Mr Govey: I would have to take that on notice as well. I am certainly aware that it has happened and I do not just mean in recent times as I can say over many years. It was not unusual—I should not say 'unusual'—but it was not unknown for the Solicitor-General to receive those sorts of requests including under the former government.

Senator BRANDIS: We know that on the evening of the High Court decision on 31 August the Solicitor-General briefed the cabinet *viva voce*, because the Prime Minister has said that. It was the day before she attacked the High Court. And we know, because the government has released the opinion, that the Solicitor-General and his two senior colleagues

provided an advice on 2 September and the Solicitor-General himself, though on this occasion without co-authorship, the following day provided another brief opinion about the guardianship aspects of the High Court decision as well. Now, given that the government itself has publicly released the Solicitor-General's two opinions, might I ask you, in those slightly unusual circumstances, to provide—or if your office had no involvement in commissioning the opinions to let us know, but this is if you did—the instructions to counsel so that the opinions might be properly interpreted and in particular the expressed questions that the Solicitor-General was asked to address, which would have appeared in the instructions to him, can be made part of the public record as well.

Mr Govey: I will take that on notice but, as you would appreciate, that will not be a call that AGS makes.

Senator BRANDIS: I understand why you say that. Mr Govey, there were other opinions not released by the government provided by the Solicitor-General before the High Court's decision. Did the Australian Government Solicitor instruct the Solicitor-General in relation to any of those opinions; that is, opinions about the Migration Act?

Mr Govey: Again, I would need to take that on notice, but I know that he did work very closely with Ian Deane in particular.

Senator BRANDIS: So would it be a fair surmise that, if the Solicitor-General did provide advice—as we know he did because we have been told so—that he would have provided that advice on the instructions of Mr Deane?

Mr Govey: I really would prefer to take it on notice.

Senator BRANDIS: Okay. Were officers of your department involved in the preparation of the written submissions that were filed in the High Court on the appeal?

Mr Govey: Yes.

Senator BRANDIS: Did they draft those submissions or were the submissions drafted by the Solicitor-General and his office?

Mr Govey: I am not sure of the precise details. I know that my colleagues from AGS were part of the Solicitor's team.

Senator BRANDIS: Were officers of the Australian Government Solicitor, apart from Mr Deane, involved in the drafting of the terms of the document issued by the governments of Australia and Malaysia which has misleadingly been called an agreement but is described on its face as an arrangement in relation to asylum seekers?

Mr Govey: Again, I would need to take that on notice.

Senator BRANDIS: Did you or officers of your department at any time advise the government that it was likely to be successful in the High Court proceedings?

Mr Govey: I will have to take that on notice as well. Again, it will not be a matter for us in AGS to provide the answer.

Senator BRANDIS: I understand that. This is a slightly different case than the usual, this one, Mr Govey, because we know that certain statements were made about the published opinions of the Solicitor-General by political individuals in the government which were just not true. We know that the Prime Minister and Mr Bowen have said that the government was advised to expect that it would be successful in the High Court. So my point is that if a

political figure misrepresents the effect of a published opinion of the Solicitor-General post the High Court decision, one would have to treat with some scepticism the integrity of what they have to say about the advice they had received before the High Court decision. I know it is not your decision but it does cast the matter in a somewhat different light. I will leave it there thank you, Mr Govey.

CHAIR: We do not have any other questions for you, Mr Govey, or for Mr Riggs. Thank you for your time this evening.

Proceedings suspended from 9.32 pm to 9.45 pm

Office of the Director of Public Prosecutions

CHAIR: Let us resume this public hearing. Mr Craigie, good evening, and welcome to you and your team. Do you have an opening statement that you want to provide?

Mr Craigie: No.

Senator HUMPHRIES: Thank you for waiting so long for us to ask you questions tonight. On the last occasion in May, a letter was tabled, which I think was from you Mr Craigie?

Mr Craigie: I think it was a message that had been transmitted within the DPP to my staff.

Senator HUMPHRIES: Yes, and that made reference to the seeking of a direction from the Attorney-General. Can you give us the aftermath of that message and where that issue stands at the moment? Has the direction been issued?

Mr Craigie: To put it in context, the message was by way of explaining to the staff a number of options that were likely to open up against certain eventualities as to whether certain resources were made available or not and reconciling the demands of the work that was coming through our door with limited resources, and absent those two things being matched, if more funding was not to be provided, the only other area of theoretical give was the work being done, and the only way that the work could be diminished consistent with my statutory remit would be if there were a decision made by executive government, which would need to translate into a direction. That was the context of the conversation that took place when we were last here and it has been the context of further conversations that have taken place twixt me, my office, the secretary's department and, through him, the Attorney.

Where we are at now is that, as I think the Attorney indicated shortly after this was discussed at estimates last time, a review of our situation was directed and has been completed. Pending a government response to that review and the shape of whatever new arrangements should be made for our funding, some interim arrangements have been put in place whereby we have been authorised to advance the average monthly drawing upon our allocated budget to the tune of an extra \$900,000 per month to tide us over until some alternative mechanism is put in place.

The review that I mentioned, and perhaps the secretary can tell you more about this because it has now reached the stage of being with the Attorney, was carried out by Mr Blunn, a former secretary of the department. The review is presently with the Attorney, and that is where the matter lies for resolution, effectively, by government in terms of what sort of further and more permanent arrangements may be made in order to resource us in order to

cover all of the work that comes to us and over which, I think everyone recognises, we have no control. That brings us up to where we stand now.

Senator HUMPHRIES: When was the review by Mr Blunn completed?

Mr Craigie: Strictly speaking, I should say that these are probably questions for the department but I can tell you that it took six to eight weeks, or something of that order. I set up a team within my office under the aegis of a deputy director to assist Mr Blunn with such information as he may require. He completed the review and, as I say, it has gone to the Attorney.

Senator HUMPHRIES: Does that answer my question? When was the review presented?

Mr Craigie: I do not have that information, but I am sure someone in the department would. It was their review, so it would be appropriate to ask them. I am not being mysterious about this. It happened over a period of six to eight weeks and was completed quite recently. I cannot give you the precise details.

Senator HUMPHRIES: It been presented to the government?

Mr Craigie: To the Attorney.

Senator HUMPHRIES: Mr Wilkins, do you know when it was received by the Attorney?

Mr Wilkins: It was completed on 31 August.

Senator HUMPHRIES: The interim arrangement you spoke about has been in place for an extra \$900,000 per month since the review was presented?

Mr Craigie: Yes, but strictly speaking it is not an extra \$900,000; it is the bringing forward of funds allocated to us.

Senator HUMPHRIES: Yes, but presumably you will have a serious problem by the end of the financial year if you have not been supplemented and you are drawing down \$900,000 a month.

Mr Craigie: I assume that is recognised by the government. That is one of the reasons the interim arrangements are in place.

Senator HUMPHRIES: Is it possible to see the review? Can it be tabled?

Mr Wilkins: No. I agree with everything Mr Craigie said, except that he left out the fact that it was commissioned by the Expenditure Review Committee of cabinet. It is actually a report to the cabinet and it is currently being considered by the Attorney. It will be taken to the cabinet for the cabinet's consideration, so it has the status of a cabinet document.

Senator HUMPHRIES: Mr Wilkins, this is the third or fourth agency we have heard from today in this portfolio which is experiencing serious difficulties.

Mr Wilkins: Who are the others?

Senator HUMPHRIES: The ALRC—

Mr Wilkins: No, I do not think we agreed that they were experiencing difficulties. In fact, I think they were sent away to come back and explain to you what their financial position was.

Senator HUMPHRIES: I will rephrase that. It is the third or fourth agency that has publicly expressed concern about the state of its budget—

Mr Wilkins: In the past.

Senator HUMPHRIES: even if you do not agree with where that stands.

Mr Wilkins: With due respect, I do not think they did at that stage. We have taken remedial action. I am not sure the ALRC were saying they still have problems.

Senator HUMPHRIES: Mr Craigie, in trying to recall the details of the budgetary issues that led to that message being tabled on the previous occasion at estimates, I take it that there is an issue of additional workload, which has contributed to the financial arrangements you have described with the review and the drawing down of your advance. Has that been contributed to by a problem with high workload?

Mr Craigie: I think it is commonly understood up and down this table that the people-smuggling component of our practice has added a very considerable volume of work to the national practice of the CDPP, and that is the principal source of extra demand upon us and has obviously raised some challenges for us.

Senator HUMPHRIES: Can you describe to the committee the extent of the extra workload in your office by virtue of the phenomenon of people smuggling?

Mr Craigie: I can probably fairly safely nutshell it by saying that, in a given year, before the major volumes of the people-smuggling prosecutions started to appear, we would expect to prosecute something in the order of 100 indictable trials before juries around the country. Our expectation in the next financial year is that something of the order of another 87 would come solely from—sorry; the first director is giving me some more precise figures. Something of the order of 83 further people-smuggling-related trials will arise in the current financial year, and in 2012-13 there will be another 99 trials from that source alone. So you can see, crudely, almost a doubling of our indictable trial burden—over a number of jurisdictions too, which is another complicating feature of it.

Senator HUMPHRIES: And trials of this kind are of a comparable complexity to the other sorts of indictable trials that the office conducts?

Mr Craigie: They have their own issues. They are no more or no less trying, but they have their own particular features. They are logistically challenging, because not only the accused persons but witnesses—some of them asylum seekers and some of them professional people, including naval personnel—may be stationed or held or otherwise located around the country. There are those issues, and there is simply the challenge of marshalling the evidence in such a large number of trials. There are the issues that are inherent in any case involving people speaking a number of languages—the need for interpreters. If one were running these trials as an infrequent incident, they would be serious and complex but not unduly taxing. The major source of challenge is simply in the numbers being confronted.

Senator HUMPHRIES: What kind of increase in your staffing establishment have you had to engineer in order to deal with this higher workload of people-smuggling-related prosecutions?

Mr Craigie: We currently have about 40 people either wholly or substantially committed to people-smuggling work. Obviously, in some of these smaller jurisdictions in particular, those people would have to be shared across a range of other practice areas, but it is something of the order of that figure currently.

Senator HUMPHRIES: Is the extra work with regard to translation and interpreters a cost that is borne by your office?

Mr Craigie: It varies from jurisdiction to jurisdiction. In some places it is and in some places it is not. An example would be New South Wales, where there is quite a substantial impost in this and other areas for interpreters. Apart from the expense, of course, there is also the challenge of, for instance, finding a number of Hazara interpreters to appear in Victoria, New South Wales, Queensland or wherever these cases are being heard. So they are both a resource challenge for us or whoever else is bearing the cost and a practical challenge as to whether or not the qualified skills are available and can be shared around that number of jurisdictions.

Senator HUMPHRIES: Has other work in your office had to be deferred or otherwise have reduced resources allocated to it in order to accommodate this extra pressure on people-smuggling prosecutions?

Mr Craigie: We always prioritise work of any kind depending on where it stands in the hierarchy of urgency and seriousness. People smuggling is yet another, and fairly significant, element in that ongoing process of prioritising all our cases. But you may be assured that we continue to assess and prosecute any matter that comes to us and satisfies the tests in the prosecution policy. But it may be a question of some matters not having the priority that they formally had alongside people smuggling.

Senator HUMPHRIES: There is no prospect of that load being eased any time soon, is there, Mr Craigie?

Mr Craigie: I think given the number of matters that we have in the system that have not as yet got to the courts or have not even been the subject of decisions by the AFP whether or not to charge, and that is the principal way that these matters commence, we can see a very substantial workload as we sit here tonight going forward probably into a third year from now.

Senator HUMPHRIES: In light of the time, I do not want to ask any more questions on that.

Senator BRANDIS: Just two things quickly, Mr Craigie. Has your office received correspondence and, in particular, a reference from the Australian Electoral Commission concerning breaches by Mr Craig Thomson, the member for Dobell, of the disclosure provisions under the Commonwealth Electoral Act?

Mr Craigie: I have no personal knowledge. I might just check.

Senator BRANDIS: Thank you.

Mr Craigie: I suppose the courteous answer is that, if we had, it would not be me my practice to tell you but, in any event, I am able to say that I we have not.

Senator BRANDIS: So you have had no correspondence with the AEC concerning Mr Thomson?

Mr Craigie: No.

Senator BRANDIS: Have you had any conversations with officers of the AEC concerning Mr Thomson?

Mr Craigie: I certainly have not, no.

Senator BRANDIS: Have any of your officers?

Mr Craigie: Not that either I or the first deputy are aware.

Senator BRANDIS: Have you had any reference from either the Australian Electoral Commission or Fair Work Australia or, indeed, from any other Commonwealth entity concerning the conduct of the Health Services Union's east branch and alleged non-compliance with its disclosure obligations?

Mr Craigie: I am in the same situation. I cannot assist you.

Senator BRANDIS: When you say you cannot assist me, are you telling me that the answer to my question is no, or are you telling me that you do not feel at liberty to answer my question?

Mr Craigie: I think that is a question I should take on notice.

Senator BRANDIS: If your position is that you know the answer but you feel you are not at liberty to provide it, then that is what you should say.

Mr Craigie: I do not know the answer. I would be acting on a hunch if I were to give you one, and I do not think that would be helpful.

Senator BRANDIS: You do not know the answer to that so you will take that question on notice and you will obviously reserve your right to decline to answer it on consideration when you have made your inquiries.

Mr Craigie: Indeed.

Senator BRANDIS: Another matter is Mr David Hicks, the terrorist: I have pursued this matter with your office for the last several estimates rounds. I must say, Mr Craigie, that I am very pleased that you have decided to initiate proceedings under the Proceeds of Crime Act. Can you just give us an update as to where those proceedings lie.

Mr Craigie: It will come again before the court in November.

Senator BRANDIS: Perhaps just for the sake of the record, can you give us a precis from the time you initiated the proceedings to the next steps you anticipate. Can you give us a quick summary of what has happened.

Mr Craigie: I think all that would be prudent for me to say to you at this stage is that proceedings have been initiated in respect of what we assert are proceeds of criminal activity by Mr Hicks.

Senator BRANDIS: This is a literary proceeds order.

Mr Craigie: The literary proceeds. That matter is currently before the Supreme Court of New South Wales. I would adhere to our normal practice that, certainly once we have reached the stage of having a matter before the court, it would neither be prudent nor sensible for me to comment any further.

Senator BRANDIS: I am not asking you to comment on the merits of the case. You have obviously formed a view about your prospects or you would not have initiated the proceedings. I really just want a chronology of the procedural steps. On what date were the proceedings initiated?

Mr Craigie: I can tell you that on 20 July a notice of application for a restraining order on literary proceeds was served on Mr Hicks on behalf of the DPP.

Senator BRANDIS: That was the initiating document was it?

Mr Craigie: That was the initiating process. On 3 August 2011 applications were heard before the Supreme Court of New South Wales and the matter is to return to the court early in November. I think it would probably have been on the basis of directions and in anticipation of setting a hearing date.

Senator BRANDIS: Was that restraining order made on an interim basis when the matter was last before the court?

Mr Craigie: As I understand it, yes.

Senator BRANDIS: Was that a consent order?

Mr Craigie: It would appear so.

Senator BRANDIS: Who were the respondents? Obviously Mr Hicks. Was his publisher, William Heinemann, also a respondent?

Mr Craigie: I do not have the process in front of me. That is what would help answer that question.

Senator BRANDIS: I would just like to know what procedural steps have been taken and what orders have been made.

Mr Craigie: If you permit me, I will take that on notice and we can refer to the papers as filed and see who is indicated.

Senator BRANDIS: Can you also tell me—surely you have this in front of you on your file—if there are any respondents other than Mr Hicks and his publisher and, if so, who they are?

Mr Craigie: I do not have that detail.

Senator BRANDIS: You do not know?

Mr Craigie: Not in detail.

Senator BRANDIS: Take it on notice please. On the interim orders that were made by the Supreme Court, were there ancillary orders made at the same time in relation to the disclosure of the location of proceeds?

Mr Craigie: I am not across that particular detail. Again, it is something I can certainly give you on notice.

Senator BRANDIS: These are pretty straightforward questions. These are not criminal proceedings; they are civil proceedings. What you have sought is really in the nature of a Mareva injunction, isn't it?

Mr Craigie: Yes.

Senator BRANDIS: Commonly in proceedings of that kind orders are made against a respondent requiring them to make disclosure to the adverse party of the whereabouts of bank accounts and other property. I just wonder whether those orders were sought and made against Mr Hicks and the other respondents in this case.

Mr Craigie: I know it may surprise people, but I sit at the top of an organisation that, on a given day, is prosecuting very many matters. The Hicks matter I understand is one of considerable public notoriety, but the particular aspects that you are asking—

Senator BRANDIS: It is also a case of some legal notoriety because these literary proceeds orders are seldom made, aren't they?

Mr Craigie: Indeed, and you may not be surprised to know that my principle focus was the initial decision that I made, to which you have directed attention. The day-to-day conduct of that litigation comes before me as particular further decisions need to be made about it. I am not making an excuse; I am simply explaining to you that you may not be surprised that the fine detail of where we are at an interim phase in litigation which is not yet listed for hearing is not at my fingertips but I am more than happy to give you that detail when I go back and get hold of the file and see what some of those details might be.

Senator BRANDIS: I am a little surprised, Mr Craigie, since this has been pursued by me in the last three estimates hearing. Nevertheless, I understand you are a very busy person. Can you take all those questions on notice, please? What is the nature of the next hearing in the Supreme Court? Is it just a mention or are we setting down hearing dates?

Mr Craigie: I suspect it will be all of those things rolled into one. It is certainly an interim hearing and I would suspect a hearing at which we could probably have a trial date set, subject to any applications to the contrary being received by the court.

Senator BRANDIS: Thank you, Mr Craigie.

CHAIR: Mr Craigie and your team, thank you very much of your time this evening.

Office of Parliamentary Counsel

[22:12]

CHAIR: Mr Quiggin, do you have an opening statement?

Mr Quiggin: No, we do not have an opening statement.

CHAIR: We will go to questions.

Senator BRANDIS: I have only one question for you, Mr Quiggin. Was your office responsible for drafting the Migration Legislation Amendment (Offshore and Other Measures Bill) 2011—that is, the government's bill to deal with the High Court's decision about the Malaysia solution—which was ultimately not proceeded with by the government?

Mr Quiggin: Yes.

Senator BRANDIS: From whom did you take instructions? Was it from the department of immigration or was it from any other department or agency?

Mr Quiggin: The department of immigration was the instructing department for that bill.

Senator BRANDIS: Were any other departments or agencies involved in providing you with instructions?

Mr Quiggin: The Australian Government Solicitor was involved through in-house counsel.

Senator BRANDIS: Was that Mr Deane?

Mr Quiggin: Yes, and the Attorney-General's Department was involved at one point.

Senator BRANDIS: Can you produce, please—and you may want to take this on notice—a copy of the drafting instructions you were given?

Mr Quiggin: I would need to take that on notice.

Senator BRANDIS: I might say, Mr Quiggin, in informing your thinking about whether you want to make any objection, that the bill is a public document and copies of the draft of the bill when it was still in an iterative stage were provided to Mr Abbott, Mr Morrison and me on 16 September by your client department. So if there is any privilege issue, your client has waived that privilege by providing—

Senator Ludwig: It is a bold claim, Senator Brandis, and Mr Quiggin has taken it on notice. He may have to refer to the primary department which has given him the instructions for determining—

Senator BRANDIS: We are not talking about legal advice here.

Senator Ludwig: It is still advice to government.

Senator BRANDIS: We are not talking about legal advice here. What I am asking about is instructions in relation to the preparation of a legislative instrument which was provided to the opposition at an iterative stage and which is now a public document. That is all.

Senator Ludwig: I understand what you are asking for, and I have just said that it will be taken on notice.

CHAIR: You are actually asking for the drafting instructions, so Mr Quiggin is going to take that on notice.

Senator BRANDIS: Thank you.

CHAIR: As there are no further questions, Mr Quiggin, I thank you very much.

Attorney-General's Department

[22:15]

CHAIR: We move now, finally, to the Attorney-General's Department. Mr Wilkins, do you have an opening statement?

Mr Wilkins: No.

CHAIR: We will commence with outcome 1, which I assume is also cross-portfolio, general and corporate questions.

Senator BRANDIS: I have some questions in relation to the Malaysia solution and advice provided by your department, Mr Wilkins, to government in relation to that matter. I am particularly interested in advice provided by the Office of International Law. That is within your department, is it not?

Mr Wilkins: Yes, it is.

Senator BRANDIS: Is Mr Campbell here? Does Mr Campbell still run the Office of International Law?

Mr Wilkins: No, Mr Manning does.

Senator BRANDIS: We have heard that the Australian Government Solicitor provided advice to the Department of Immigration and Citizenship through Mr Deane. We know that the Solicitor-General provided advice. We know through Mr Metcalfe that in-house lawyers within the immigration department provided advice. I will come to the Office of International Law in a moment but, other than the Office of International Law and those other officers whom I have mentioned, did other advice go to the government from the Attorney-General's Department in relation either to the preparation of the proposed arrangement between the

governments of Australia and Malaysia or to the subsequent aspects of that matter, culminating in the High Court's decision on 31 August?

Mr Wilkins: No.

Senator BRANDIS: But we do know that advice was given by the Office of International Law. Mr Manning, were you the person in the Office of International Law who was principally responsible for providing advice to the government in relation—

Mr Wilkins: I might answer the question, if I may. Certainly some of the advice was given by Mr Manning but not all of it.

Senator BRANDIS: Alright. I do not mind if you answer the questions, Mr Wilkins. I always say that I want the questions answered only by the person who can give me the best answer. Some of the advice was given by Mr Manning. Was advice also given by other officers of the Office of International Law?

Mr Wilkins: Yes.

Senator BRANDIS: About how many officers were involved?

Mr Wilkins: Probably about 10—quite a lot.

Senator BRANDIS: You are looking at a document there, Mr Wilkins, is that a document that contains some advice, is it?

Mr Wilkins: It is a document that gives me some information. It is a briefing document.

Senator BRANDIS: Let me go through this chronologically, and I am very conscious of the time so I will run through it as fast as I can. The relevant international instrument, if I can use a neutral term, between the government of Australia and the government of Malaysia was signed on 25 July 2011. Were you, Mr Manning, and your officers involved in the preparation and drafting of that document?

Mr Manning: No, they were not involved in the preparation and drafting of it. It depends what you mean by that, Senator.

Senator BRANDIS: If they were not involved in the drafting of it, were they involved in giving advice to government in relation to the preparation of drafting of it?

Mr Manning: Yes, they were.

Senator BRANDIS: So the draftsman of the document was not an officer of International Law but they were consulted in relation to the drafting of the document?

Mr Wilkins: That is, I think, the best way of characterising what was happening, yes.

Senator BRANDIS: Were you yourself involved?

Mr Wilkins: Only peripherally.

Senator BRANDIS: I am particularly interested in the provenance of 4.16 of the document, which reads, 'This arrangement represents a record of the participant's intentions and political commitments but is not legally binding on the participants.' Was that provision inserted into the document on the advice of the Office of International Law?

Mr Wilkins: No.

Senator BRANDIS: Do you know what the provenance of 4.16 was?

Mr Wilkins: No, I do not.

Senator BRANDIS: Mr Manning?

Mr Manning: I do not.

Senator BRANDIS: We know, because we have been told on the public record, that advice was given by the Office of International Law in relation to the issue of the conformity of the arrangement with the government of Malaysia to Australia's international human rights obligations. It is the case—I invite you to affirm this, but we have already been told this—that the Office of International Law provided advice on, among other things, the conformity of that arrangement with Australia's obligation under the refugee convention.

Mr Wilkins: The 'consistency' of that.

Senator BRANDIS: I say 'conformity'; you say 'consistency'. I do not think that is a very big difference. So it is the case that whether or not the arrangement was compliant with Australia's obligations under the refugee convention was a matter on which you gave some advice to the government?

Mr Wilkins: I think that is overstating or misstating what we actually gave advice about.

Senator BRANDIS: You tell us in your own words.

Mr Wilkins: We gave advice about what the obligations were.

Senator BRANDIS: Under the refugee convention?

Mr Wilkins: That is right.

Senator BRANDIS: In the context of the arrangement with Malaysia?

Mr Wilkins: That is right.

Senator BRANDIS: It seems to me to be a hair-splitting distinction, with respect, to say that if you are advising about Australia's obligations under the refugee convention in the context of the arrangement with Malaysia that is not the expression of opinion about whether or not that arrangement was compliant with those obligations.

Mr Wilkins: Let me explain it this way: it is one thing to say what the obligations are; it is another thing to say whether or not an instrument gives effect to those obligations.

Senator BRANDIS: Or is in breach of them.

Mr Wilkins: They are two very different questions, you would agree.

Senator BRANDIS: Yes.

Mr Wilkins: We gave advice about what those obligations were.

Senator BRANDIS: Yes. And was that advice given both orally and in writing?

Mr Manning: I cannot recall whether it was given both orally and in writing. It was given in writing.

Senator BRANDIS: On how many occasions? How many different particular advices or opinions were given, please, Mr Manning?

Mr Wilkins: It is a bit difficult to say. There were lots of iterations of the arrangement. There were a variety of different occasions on which advice was provided on different aspects.

Senator BRANDIS: Yes, and in each case was that written advice?

Mr Wilkins: No, not on each occasion. As Mr Manning said, sometimes there was verbal advice.

Senator BRANDIS: Well that is where I started—there was both verbal and written advice. Just confining ourselves for the moment to the written advice and allowing, as Mr Wilkins has said, that there were numerous iterations of the arrangement, how many discrete pieces of written advice in relation to the arrangement were provided by the Office of International Law?

Mr Wilkins: Twelve.

Senator BRANDIS: What was the date of the first of those?

Mr Wilkins: The fifth of May.

Senator BRANDIS: What was the date of the last of them?

Mr Wilkins: The sixth of July.

Senator BRANDIS: And the instrument was executed on, I think I said, 25 July.

Mr Wilkins: These are not all advices to the department of immigration of course. There are a variety of recipients.

Senator BRANDIS: I did not confine myself to advice to the department.

Mr Wilkins: Okay. I just wanted to make that clear.

Senator BRANDIS: So there were 12 pieces of written advice provided by the Office of International Law and there were several pieces of oral advice provided as well?

Mr Wilkins: Yes.

Senator BRANDIS: Was the issue of whether, by entering into that arrangement, Australia may be in breach of its obligations under the refugee convention canvassed, addressed or touched upon in any of that advice?

Mr Wilkins: You mean whether the arrangement was consistent with international obligations?

Senator BRANDIS: I do not want to have a quibble with you about the meaning of the word. That is why I have expressed my question deliberately in a reasonably broad way.

Mr Wilkins: It is not that straightforward to answer. The advisings—there were quite a lot of them, as you understand—were looking at different aspects of the arrangement and it went through different iterations. It said what the international obligations of Australia were and gave suggestions about how they might be accommodated within the document or how the document might be changed to better reflect that. If that helps to answer your question, that was the nature of some of the advisings.

Senator BRANDIS: In the answer you have just given, you have in mind, do you, Mr Wilkins, Australia's obligations under the refugee convention?

Mr Wilkins: Yes.

Senator BRANDIS: That is what you were talking about?

Mr Wilkins: And other things as well.

Senator BRANDIS: You have made that perfectly clear, but I will approach this in a methodical way. We know that some of the advisings, to use your word, dealt with that issue

of the refugee convention. Mr Manning, did you or those who drafted any of these 12 written pieces of advice at any stage express concern that the arrangements that were being negotiated between Australia and Malaysia may not be consistent with or compliant with Australia's obligations under the refugee convention?

Mr Wilkins: That is going to the substance of the advice. I do not think we can go there. As you will appreciate, it is a fairly fine line.

Senator BRANDIS: It is a fine line and I am trying to stay just on the right side of it. Senator Carr, in answer to a question from me in the Senate on 22 September, said that he had been informed by Mr Bowen, the Minister for Immigration and Citizenship, that the Office of International Law through the Attorney-General's Department was closely consulted in relation to these arrangements. Was it your ultimate conclusion in relation to the final iteration of the arrangement with the government of Malaysia that it was in conformity with Australia's legal obligations under the refugee convention?

Mr Wilkins: I think you are asking for the substance of the advice again.

Senator BRANDIS: Can you confirm that the arrangement was consistent with Australia's international legal obligations?

Mr Wilkins: It would still disclose the contents of the advice.

Senator BRANDIS: I am not now asking about the advice. I am asking you, Mr Manning, in particular, as the head of the Office of International Law, for your professional opinion.

CHAIR: I am going to rule that question out of order, Senator Brandis.

Senator BRANDIS: I am sorry?

CHAIR: You are asking Mr Manning that question as an individual rather than as a public servant.

Senator BRANDIS: I am asking him in his capacity as the head of the Office of International Law.

Senator Ludwig: You just asked for an opinion.

Senator BRANDIS: Yes, I am entitled to ask for opinions.

Senator Ludwig: I am not so sure in respect of whether you are asking for a legal opinion.

CHAIR: Are you asking for a personal opinion?

Senator BRANDIS: Mr Manning, it was a question directed to you and not to you, Mr Wilkins.

Senator Ludwig: Good luck!

CHAIR: If you are asking for an opinion, Senator Brandis, I have ruled that out of order.

Senator BRANDIS: On what basis?

CHAIR: The officer is not here in his own personal capacity.

Senator BRANDIS: I am not asking the question in his personal capacity. I am asking the question of Mr Manning in his capacity as the senior representative of the Office of International Law.

CHAIR: But his answer will have to reflect one way or the other the legal advice that has been provided.

Mr Wilkins: No, the rules were that officers could not be asked their opinions.

Senator BRANDIS: There is no element of my question that is asking Mr Manning to disclose the advice.

Mr Wilkins: No, no, I thought that in Senate estimates committees we could not give—

Senator BRANDIS: Nor am I asking Mr Manning—this is what you might have in mind, Mr Wilkins—his opinion about government policy. I am asking you, Mr Manning, in your official capacity as the senior representative of the Office of International Law, whether in your view—

Senator Ludwig: That is another way of asking the same question.

Senator BRANDIS: the arrangement signed by the government of Australia and the government of Malaysia on 31 July is in all respects compliant with Australia's obligations under the Refugee Convention.

Mr Wilkins: Perhaps the best way of characterising it is that we provided advice to the government and the government is happy that the Malaysian deal is consistent with and has expressed the view that they believe it is consistent with Australia's international obligations. Further than that I do not think it is fair to go. I certainly do not think it is fair to ask Mr Manning those questions.

Senator BRANDIS: Mr Wilkins, you are a reasonably experienced public servant who has appeared before this committee many times. Might I just observe that it has not gone unnoticed by anybody following these proceedings that you are shielding Mr Manning from answering my question.

Senator Ludwig: Let me shield Mr Manning. It is not up to you, Senator Brandis, to accuse Mr Wilkins—

Senator BRANDIS: I am not accusing anyone of anything.

CHAIR: I am going to read the standing order, that officers of a department or the Commonwealth shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

Senator BRANDIS: Mr Manning has not ask for that to be done.

CHAIR: Mr Manning has a right to ask for that to be done.

Senator BRANDIS: But he has not done.

CHAIR: I am reminding him that under the Senate standing orders he has the capacity to do that.

Senator BRANDIS: You have heard to the chairman had to say. Mr Manning, I have asked you a question. What is the answer?

Senator Ludwig: You are either asking for an opinion or his advice about the legal opinion that was provided to the government. Either way I think it is not—

Senator BRANDIS: I think we may assume, Minister, that Mr Manning is a competent senior lawyer with expertise in international law not shared by anyone at the table. I am asking his opinion in his official capacity about a question of international law which is within his field of expertise.

Senator Ludwig: And my view is that you can ask a question in relation to a whole range of matters but you are asking an opinion of an officer and they need not proffer it.

Senator BRANDIS: I am asking an opinion of an expert within his field of expertise.

Mr Wilkins: You are asking for legal advice, Senator.

Senator BRANDIS: I am asking for what Mr Manning's opinion is about the law.

Mr Wilkins: You are effectively asking—

Senator BRANDIS: For the umpteenth time you, Mr Wilkins, and you, Minister, have prevented Mr Manning responding to my question. Mr Manning, I want to know—

Senator Ludwig: I am saying to you very clearly that you are asking for a legal opinion from Mr Manning. On that basis you are aware that there is a longstanding matter that these committees do not concede to that.

CHAIR: Senator Brandis, the standing orders—

Senator BRANDIS: Senator Ludwig, it may be lost on you but there is a difference between asking for legal advice—

CHAIR: Senator Brandis, I am asking you to be quiet for a moment.

Senator BRANDIS: and asking an expert what his expert opinion is.

CHAIR: Senator Brandis, I am not going to give you the call if you want to continually talk over the top of me as chair.

Senator Ludwig: I cannot see the difference.

Senator BRANDIS: You probably cannot, Senator Ludwig. It might be lost on you.

CHAIR: Senator Brandis and Minister!

Senator Ludwig: I would always bow to a QC—or a senior counsel—but I do not accept your advice on this.

CHAIR: I am happy to finish these estimates 25 minutes early. As chair, I am asking both of you to just be quiet for one moment, please.

Senator Ludwig: Sorry, Chair.

CHAIR: Thank you. I just want to reiterate that the standing orders quite clearly prevent an officer of a department of the Commonwealth giving opinions on matters of policy.

Senator BRANDIS: I am not asking for an opinion on a matter of policy.

CHAIR: I am not suggesting you are asking that, Senator Brandis. Just try to be quiet for one minute. The standing orders also suggest that the officer shall be given reasonable opportunity to refer questions asked of that officer to superior officers or to the minister. Senator Brandis, it is my ruling as chair that you are asking him for an opinion on a matter that was before him in his legal capacity. You are asking for legal advice, and I am going to rule that question out of order. I ask you to move on with other questions.

Senator BRANDIS: I will move on. Your ruling is absurd, but I will move on because I have no choice.

CHAIR: If you are reflecting on the chair, Senator Brandis—

Senator BRANDIS: I have no respect for you as chair.

CHAIR: Senator Wright, you have questions, don't you?

Senator BRANDIS: Mr Manning, I have a different question.

CHAIR: I am going to Senator Wright now.

Senator BRANDIS: I have another question. I have not finished my questions.

CHAIR: As chair, I say you have finished your questions, and I am going to Senator Wright.

Senator BRANDIS: I am abiding by your direction to move on to a different question.

CHAIR: You have reflected poorly on my ruling, and I am going to Senator Wright.

Senator BRANDIS: That is a matter for the floor of the Senate, as you know, Madam Chair.

CHAIR: Senator Brandis, you have had your chance to ask questions.

Senator BRANDIS: Mr Manning, I have another question for you.

CHAIR: I am going to Senator Wright. When she has finished, I will come back to you.

Senator BRANDIS: I have another question for you, Mr Manning.

CHAIR: You can keep it till after Senator Wright has finished.

Senator BRANDIS: Mr Manning, do you—

CHAIR: Senator Brandis, you do not have the call. I have gone to Senator Wright. Senator Wright, it is your call.

Senator BRANDIS: Mr Manning, do you in fact have an opinion on the matter? I am not asking you what your opinion is now. I want to know—

CHAIR: Senator Brandis, you do not have my call.

Senator BRANDIS: whether you have an opinion on this matter.

CHAIR: Senator Brandis, you do not have my call and I have gone to Senator Wright.

Senator Ludwig: You are not helping yourself here.

Senator WRIGHT: I have a question for group 2, not for group 1, so I need to wait.

CHAIR: All right, thank you. Senator Humphries, do you have questions in this group—group 1?

Senator HUMPHRIES: No.

Senator PRATT: I do.

CHAIR: Senator Pratt, we are going to go to you now.

Senator PRATT: Mr Wilkins, you are probably aware that this morning I asked the Human Rights Commission some questions. I asked them a brief question about the *Sex files* report. I am keen to know where the government's response to that report might be up to. I understand there is some activity within the department coordinating a response. I am interested in whatever information you are able to give me.

Mr Wilkins: I will get Mr Matt Hall to answer that question.

Senator PRATT: Thank you.

Mr Hall: The government's response to the *Sex files* report has been conducted through the department at this stage. The department has written out to NGOs in the area in relation to issues and to explain the approach it is going to take to responding to the *Sex files* report. The first thing that it is looking at is the way that federal agencies are collecting information about a person's gender identity. So all federal agencies have been written out to by the department with a view to developing a consistent approach to collecting gender identity information. This review is aiming to inform the development of a consistent approach nationally to this issue, which is something which states and territories will be consulted about in due course. Certainly the government favours taking a harmonised approach to this issue as well as to the legal change of sex across Australia. So that is the work that is being conducted at present. As I mentioned previously, there has been advice given to NGOs in the sector about the work that is happening.

Senator PRATT: So is there any clarity yet about the extent to which federal agencies will be able to harmonise their activities in the absence of state-wide harmonisation?

Mr Hall: All of the responses that we require across the Commonwealth have not been received yet. Until that stage that analysis would not be able to be undertaken.

Senator PRATT: Is there a timeline available yet for completion? I know that there are a number of people waiting for a response but it seems that, if you are waiting for the states to resolve this issue, the federal government will never be able to respond. I am after some clarity as to when the Commonwealth will put forward its intended approach so that it can start talking to the states about it.

Mr Hall: There is not a time frame at this stage. I would probably also add that it is an aspect that we are able to consult civil society more broadly about through the development of a national action plan on human rights and that will inform the process as well.

Senator PRATT: So there is a plan to do that.

Mr Hall: That is right.

Senator PRATT: In relation to constituency groups who have an involvement in gender identity issues.

Mr Hall: That is correct.

Senator PRATT: Terrific. Thank you.

Senator BRANDIS: Mr Manning, do you have an opinion on the question I asked you before? I am not asking you what that opinion is. I am asking you whether you have an opinion on the matter.

Mr Manning: The government has said that it is satisfied that it complies with its obligations under international law. I am not sure that any personal opinion of mine adds to that. That is the government's position. My responsibility is to advise the government on questions asked of me.

Senator BRANDIS: We know what the government's position is. I am asking you something else. Do you have an opinion?

Senator Ludwig: Should he have an opinion, be it an expert legal opinion, then it would be provided to government and not to you, Senator Brandis, under a longstanding convention.

Senator BRANDIS: I am merely asking whether as a matter of fact this gentleman, the only person at the table with expertise in this field, has an opinion. It is a yes or no question.

Senator Ludwig: I am entitled in representing the Attorney-General to answer your question which I have done. You do not have an as of right to ask any officer who sits at the table any question.

Senator BRANDIS: It is quite extraordinary the extent to which you are attempting to deny Mr Manning the opportunity of responding—

Senator Ludwig: The government has responded to your question.

Senator BRANDIS: The government has not responded to the questions. The government has refused to answer them. We are getting nowhere so I will move on to different area.

Senator Ludwig: I should answer it now just so we are clear. Australia's international obligations are important and they will continue to be upheld but the government is satisfied that it will meet its obligations under international law in relation to the regional processing, the Malaysia arrangement. Mr Manning reflected the government's position and that continues to be the case.

Senator BRANDIS: Mr Manning, I will move on to a different topic. This is a question which was ruled in order earlier on. Did the advice which you gave to the government concerning the Malaysia arrangement address or deal with the question of whether that arrangement was consistent with or compliant with Australia's obligations under the convention against torture?

Senator Ludwig: That goes to the content.

Senator BRANDIS: No, it goes to the topic of the advice. Was advice given on that matter.

Mr Manning: I would refer you back to the earlier comments by Mr Wilkins about advice being given on the nature of obligations. Certainly, advice was given on the nature of obligations under the convention against torture.

Senator BRANDIS: It was, all right. Do you have an opinion yourself about that question whether the arrangement was consistent with Australia's obligations under the convention against torture.

Senator Ludwig: I will answer that question. Again, the government is satisfied that it will meet its obligations under international law in relation to regional processing particularly through the Malaysia arrangement.

Senator BRANDIS: All right. Moving on to another topic—you are making my point for me more eloquently than I could, Senator Ludwig.

Senator Ludwig: Thank you, Senator Brandis.

Senator BRANDIS: It is a pleasure. Mr Manning, we heard from Mr Wilkins that the last date on which written advice was provided to government was on 5 July 2011. That was the 12th of the 12 written opinions in relation to the Malaysia arrangement. I now want to turn to the question of the terms of the bill, about which I asked the Office of Parliamentary Counsel a moment ago. Was advice taken in relation to that bill from the Office of International Law?

Mr Manning: Yes.

Senator BRANDIS: Was that advice written or oral or both written and oral?

Mr Manning: Certainly there was written advice and I believe there was also oral advice.

Senator BRANDIS: Let us confine ourselves again to the written advice. How many pieces of written advice were provided in relation to the terms of the bill?

Mr Wilkins: There were eight.

Senator BRANDIS: What was the date of the first of them?

Mr Wilkins: It was 14 September.

Senator BRANDIS: And the last of them?

Mr Wilkins: That was 28 September.

Senator BRANDIS: Did that advice address the question of whether the terms of the bill were consistent with Australia's obligations under the UN refugee convention?

Mr Wilkins: Yes.

Senator BRANDIS: Do you have an opinion on that question, Mr Manning?

Senator Ludwig: I think we have been here before, Senator Brandis.

Senator BRANDIS: I am going to ask that question and if you want to filibuster the answer go right ahead, Senator.

CHAIR: I am going to keep ruling it out of order unless the minister would like to answer it.

Senator BRANDIS: You are not going to allow Mr Manning to answer that question, Senator?

Senator Ludwig: It is a question I can answer. You are entitled to ask a question and—

Senator BRANDIS: I am doing what I can to avoid asking the question I should not ask, which is the content of the advice.

Senator Ludwig: I am entitled to answer it. Compliance with Australia's international obligations of course is broader, as you can appreciate, than the simple content of the arrangement or the terms of the legislation. It requires a broad assessment—and I am sure you understand this, Senator Brandis—of the totality of Australia's legislation, administrative and practice. So it does form part of the arrangement which is a part of a broader framework that Australia will have in place for regional processing in order to comply with its international legal obligations.

Senator BRANDIS: Of the eight pieces of written advice provided in relation to the bill, was the issue of the bill's compliance with Australia's obligations under the UN's convention against torture also addressed?

Mr Manning: Yes.

Senator BRANDIS: Do you have an opinion about that matter?

Senator Ludwig: Again, the government has a view about that matter, and you are entitled to ask—

Senator BRANDIS: I was asking Mr Manning; but, anyway, we will not repeat that.

Senator Ludwig: Again, I am entitled—

Senator BRANDIS: No, you do not need to go on, Senator Ludwig.

Senator Ludwig: to provide the answer.

Senator BRANDIS: I am not going to press that any further. I am reading from what Senator Carr said to the Senate on 22 September in response to my question. Is it the truth that it is the view of the Office of International Law that the amendments are 'consistent with Australia's international obligation'?

Senator Ludwig: The government says it is.

Senator BRANDIS: I am asking whether that is the view of the Office of International Law.

Senator Ludwig: You are entitled to ask the question and I am entitled to answer.

Senator BRANDIS: This one is a little different. You see, I asked some questions of Senator Carr about the view of the Office of International Law and he came back into the Senate chamber and asserted that that was the view of the Office of International Law.

Senator Ludwig: I do not recall that.

Senator BRANDIS: Either he was telling the truth or he was not.

Senator Ludwig: Do you have the transcript there?

Mr Wilkins: Can we take that on notice, Senator?

Senator Ludwig: I would not mind looking at the transcript just to confirm that. It is not that I doubt that you are saying it accurately; I just think on that basis that it would—

Senator BRANDIS: I refer you to page 57 of the *Hansard* of 22 September.

Senator Ludwig: On that basis I am happy to take it on notice.

Senator BRANDIS: Since you are taking it on notice, let me formulate the question very clearly. Is it the view of the Office of International Law that the government's amendments to the Migration Act are consistent with Australia's international obligations under both the UN refugee convention and the UN convention against torture?

Mr Wilkins: I will take that on notice. I can certainly say that the government—

Senator BRANDIS: I know what the government's position is, Mr Wilkins. The government's position has been stated an nauseum.

Mr Wilkins: The government has reached that position having heard advice from the Office of International Law and other people as well.

Senator BRANDIS: We know, Mr Wilkins, because it has been said to us yesterday and today in this committee, and it has been said to Mr Abbott, me and Mr Morrison in private briefings that the government has taken a variety of legal advice from a number of different sources. One of those is the Office of International Law. As we both know, it is not universally true that all legal advice is unanimous. I want to know in particular whether the conclusion that the government asserts it has arrived at, informed by the totality of its legal advice, is a conclusion that is shared by the Office of International Law.

Mr Wilkins: I understand, senator, and as you will appreciate, we are trying to safeguard the confidentiality of legal advice to the government. If that has been said explicitly then we will see whether that may change the ball game, but we will have look at that.

Senator BRANDIS: Mr Manning, I feel sorry to have put you in this position but I am bound to say your silence has been eloquent.

Senator Ludwig: I wish I could say the same for you at times, Senator Brandis.

CHAIR: Do we have any other questions for Group 1? If not, I will move to Group 2 and start with Senator Wright.

Senator WRIGHT: My questions are in relation to David Hicks. Has the government responded yet to the United Nations Commission on Human Rights regarding David Hicks' claims?

Mr Wilkins: These are perhaps some questions that Mr Manning can answer.

Mr Manning: The government's submissions were lodged last Friday.

Senator WRIGHT: Can you tell us what that response was?

Mr Manning: Not at this stage. The usual practice in these matters is not to comment on the detail of submissions while they are ongoing and I doubt, for example, that Mr Hicks' advocates have received a copy of it yet.

Senator WRIGHT: Can you give any idea about when we might be able to see the content of the submission?

Mr Manning: It is in the hands of the committee. I am unable to give you an indication of that off the top of my head.

Senator WRIGHT: Given the intense public interest in the case of David Hicks, can the government publicly release any legal advice it may have received about the compatibility of David Hicks' military commission trial with international law, specifically the 1949 Geneva Conventions and the International Covenant on Civil and Political Rights?

Senator Ludwig: The short answer is no. It is not intended to release it. I will reiterate for those who are new that there is a longstanding convention from Attorneys-General of both political persuasions not to release legal advice. You can ask questions in a limited way about whether the advice exists and a couple of minor procedural questions around that. The former Attorney-General, Mr Ruddock, I think put it eloquently back in 2004. It also goes to the issue of, if there are opinions or advices as the case may be, that it is for government, not for others.

CHAIR: We can ask questions, Senator Wright, on did you seek a legal opinion, who sought it, who was it given to, when was the sort and how was it sought, but the content of it is confidential to the government.

Senator WRIGHT: Thank you. Was a legal opinion sought in relation to those matters which I have just outlined?

Mr Manning: I would have to take that on notice, given the expiration of time.

Senator WRIGHT: Can the government give an assurance that David Hicks received a fair trial in accordance with minimum international standards?

Mr Wilkins: I think that is a matter best directed to the United States. That is where Mr Hicks was tried, not here and not under the auspices of the Australian government or the Australian system.

Senator WRIGHT: Has the government sought advice as to whether or not David Hicks received a fair trial in accordance with minimum international standards?

Mr Manning: Again, I will have to take that on notice.

Senator WRIGHT: In relation to community legal centres and services, officers from the Attorney-General's Department have commented to some Aboriginal and Torres Strait Islander legal services that a different funding formula is used in determining funding to these bodies when compared to other community legal services. Is that so?

Ms Chidgey: We do use a particular funding allocation model for funding Aboriginal and Torres Strait Islander legal services. The model is based on a range of factors, including the distribution of Indigenous populations and other demographic data. It includes estimates for demand and also weighted factors for cost-of-service delivery. The model is designed to ensure that funding is allocated to areas where demand for services is likely to be higher including, for example, due to education and employment levels and where also the cost of delivering services is higher, such as remoteness and non-English speakers.

Senator WRIGHT: How does that compare with the formula applied to non-Aboriginal community legal centres?

Mr Arnaudo: In relation to community legal centres there is no one model because there is quite a lot of diversity in the sector. Also, state and territory governments provide funding to those services. In Indigenous legal aid the Commonwealth is largely the exclusive funder of Aboriginal and Torres Strait Islander legal services. The states make some contributions in some places. There are different types of services being provided in that context which are not directly comparable. Perhaps the closest comparison would be for mainstream legal aid commissions for the funding that the Commonwealth provides to the states and territories and they use the model with different factors, because there are different client groups and different types of matters, which is very similar to the model we use in Indigenous legal aid. So there is a similarity there but in terms of community legal centres there are differences with the community legal centre model. Because of the diversity in that sector, it is quite different from the model we use for Indigenous legal aid.

As Ms Chidgey explained, with Indigenous legal aid we use very much population projections and other demand and cost factors to make adjustments to ensure we target the funding to the areas where it is most needed but also to reflect the cost of the delivering services because of remoteness and other factors as well.

Senator WRIGHT: Is the formula that is then applied across Aboriginal legal services a uniform formula which will then have differentials according to those factors or is it a variable formula from service to service?

Mr Arnaudo: It varies from service to service because the services have different jurisdictions and regions to which they have to provide. For example, New South Wales as one of the largest Aboriginal populations in the country compared to the population in Tasmania. So Tasmania will be getting less funding because the population there is smaller than in New South Wales. Also, the other factors such as remoteness and cost of delivering those services with the other factors need to be taken into account. There is no one uniform policy.

Ms Chidgey: It is certainly the case that the same set of factors is used to apply that funding allocation model, even though those factors are more significant in some jurisdictions than in others.

Senator WRIGHT: Is it possible to obtain details of the formula which has been applied and the funding which has been—

Mr Arnaudo: Sure, we can take that on notice and provide more detail.

Senator WRIGHT: I would appreciate that, across the various Aboriginal services.

Mr Arnaudo: Across the various jurisdictions in Australia, yes we can do that.

Senator WRIGHT: Thank you very much.

CHAIR: Mr Wilkins, that is the end of our estimates for this session. I thank you and all of your officers.

Unfortunately, we did not get through group 2 or anywhere near group 3. See you in February.

Mr Wilkins: Thank you, Chair, and members of the committee.

Committee adjourned at 11.01 pm