



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION  
COMMITTEE

**Consideration of Additional Estimates**

TUESDAY, 19 FEBRUARY 2002

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**

**Tuesday, 19 February 2002**

**Members:** Senators Cooney, Greig, McKiernan, Mason, Payne and Scullion

**Senators in attendance:** Senators Bartlett, Calvert, Collins, Cooney, Crossin, Faulkner, Greig, Harradine, Ludwig, McKiernan, Payne, Schacht, Scullion and Sherry

**Committee met at 9.01 a.m.**

**ATTORNEY-GENERAL'S PORTFOLIO**

Consideration resumed from 18 February 2002.

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Attorney-General's Department**

Mr Robert Cornall, Secretary

Dr James Pople, Executive Adviser

Mr Ian Govey, General Manager, Civil Justice and Legal Services

**Office of the Director of Public Prosecutions**

Mr Graeme Delaney, Principal Adviser, Commercial Prosecutions and Policy

Mr John Thornton, Deputy Director, Legal and Practice Management

**Federal Magistrates Service**

Mr Peter May, Chief Executive Officer

**National Crime Authority**

Mr Adrien Whiddett, General Manager, Operations

Mr Jon Hickman, National Director, Corporate Services

**Australian Transaction Reports and Analysis Centre**

Mr Neil Jensen, Acting Director

Ms Liz Atkins, Deputy Director, Money Laundering Deterrence

Mr Alf Mazzitelli, Senior Manager, Corporate Resources

**Australian Law Reform Commission**

Professor David Weisbrot, President

Ms Rosemary Adams, Executive Director

**Federal Court of Australia**

Mr Warwick Soden, Registrar

Mr Alan Dawson, Senior Deputy Registrar

Mr Gordon Foster, Executive Director, Corporate Services Branch

Mr Greg Brown, Chief Finance Officer

**Family Court of Australia**

Mr Richard Foster, Chief Executive Officer

Ms Jennifer Cooke, Manager, Client Services

Mr Andrew Phelan, General Manager, Corporate Services

Ms Angela Filippello, Principal Registrar

**Human Rights and Equal Opportunity Commission**

Dr Sev Ozdowski, Human Rights Commissioner  
Mr Stephen Duffield, Director, Human Rights Unit  
Ms Rocky Clifford, Director, Complaint Handling  
Ms Susan Roberts, Director, Legal Services  
Ms Robyn Ephgrave, Manager, Finance and Services

**Office of the Privacy Commissioner**

Mr Malcolm Crompton, Federal Privacy Commissioner  
Mr Timothy Pilgrim, Deputy Federal Privacy Commissioner  
Ms Robyn Ephgrave, Manager, Finance and Services  
Susan Roberts, Director Legal Services

**Administrative Appeals Tribunal**

Ms Kay Ransome, Registrar

**Office of Film and Literature Classification**

Mr Des Clark, Director  
Mr Paul Hunt, Deputy Director  
Mr Paul Tenison, Business Manager

**Royal Commission into the Building and Construction Industry**

Mr Colin Thatcher, Secretary

**Royal Commission into the failure of HIH Insurance Group**

Mr Richard St John, Secretary

**High Court of Australia**

Ms Carolyn Rogers, Senior Registrar  
Mr Lex Howard, Marshal

**Insolvency and Trustee Service Australia**

Mr Terry Gallagher, Chief Executive  
Ms Kerry Hunting, Chief Finance Officer

**Office of Parliamentary Counsel**

Ms Hilary Penfold, First Parliamentary Counsel  
Ms Glenyce Collins, General Manager  
Mr Tony Perkins, Executive Officer

**Australian Government Solicitor**

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

**Australian Institute of Criminology**

Dr Adam Graycar, Director

**Criminology Research Council**

Dr Adam Graycar, Director

**Australian Security Intelligence Organisation**

Mr Dennis Richardson, Director-General  
Mr Jim Knockels, First Assistant Director-General  
Mr Mark Aspin, Coordinator Financial Strategies

**Australian Federal Police**

Mr Mick Keelty, Commissioner

Mr John Davies, Deputy Commissioner  
Mr Simon Overland, Chief Operating Officer

**Australian Customs Service**

Lionel Woodward, Chief Executive Officer  
John Drury, Deputy Chief Executive Officer, Border  
John Jeffery, Deputy Chief Executive Officer, Commercial  
Mark Bonser, Director-General, Coastwatch  
John Hawksworth, National Director, Border Division  
Phil Burns, National Director, Commercial Division  
Gail Batman, National Director, Passengers and Information Technology Division  
Alistair Cochrane, Chief Financial Officer  
Sue Pitman, National Manager, Trade Measures Branch  
Philomena Carnell, National Manager, Planning and International Branch  
Steve Holloway, National Manager, Cargo Management Re-engineering  
Outcome 1: An equitable and accessible system of federal civil justice.  
Output 1.1—Legal services and policy advice on courts and tribunals, alternative dispute resolution, administrative law, human rights, evidence and procedure.  
Output 1.2—Support for the Attorney-General as First Law Officer, advice on constitutional policy, and promotion of Australian legal services internationally.  
Output 1.3—Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services.  
Output 1.4—Legal services and policy advice on international law.  
Output 1.5—Drafting of legislative and other instruments, publication of legislative materials and provision of related legal services.  
Output 1.6—Legal services and policy advice on information law.  
Output 1.7—Legal services and policy advice on native title.  
Output 1.8—Machinery of Government obligations (previously Output 1.6. This output will lapse at the end of the current financial year)  
Outcome 2: Coordinated federal criminal justice, security and emergency management activity.  
Output 2.1—Policy advice on, and program administration and regulatory activities associated with, the Commonwealth's domestic and international responsibilities for criminal justice and crime prevention, and meeting Australia's obligations in relation to extradition and mutual assistance.  
Output 2.2—Legal services and policy advice on security law.  
Output 2.3—Development and coordination of and support for national emergency management arrangements, including coordination of assistance to countries in Australia's region of interest, and provision of advice on emergency management matters to Commonwealth agencies, States and Territories, industry and the international community.  
Output 2.4—Development and promotion of protective security policy, advice and common standards and practices, and the coordination of protective security services, including counter-terrorism and dignitary protection.

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

Output 2.6—Provision of protective security services.

Output 2.7—Facilitation of the delivery of high quality national policing information services.

Mr Ian Carnell, General Manager, Criminal Justice and Security

Mr Geoff Hine, General Manager, Corporate Services

Mr Peter LeRoy, General Manager, Information and Knowledge Services

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Mr Tony Ward, Acting First Assistant Secretary, Office of Legislative Drafting

Ms Phillipa Horner, First Assistant Secretary, Native Title Division

Ms Sue Pidgeon, Acting First Assistant Secretary, Family Law and Legal Assistance Division

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

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

Mr Paul Griffiths, Acting Assistant Secretary, Office of Legal Services Coordination

Mr Ed Tyrie, Director, Protective Security Coordination Centre

Mr Martin Studdert, Director, Australian Protective Service

Mr David Templeman, Director, Emergency Management Australia

Mr Stewart Cross, Deputy CEO and Director Operations, CrimTrac

Ms Fran Raymond, Chief Finance Officer, CrimTrac

Dr Dianne Heriot, Assistant Secretary, Crime Prevention Branch

**CHAIR**—Today we resume this public hearing of the Senate Legal and Constitutional Legislation Committee with the examination of the proposed expenditure for the Attorney-General's Portfolio. On 14 February 2002 the Senate referred to the committee the particulars of proposed additional expenditure for the year ending 30 June 2002 for the Attorney-General's and Immigration and Multicultural and Indigenous Affairs portfolios. The committee will consider the portfolios in the order in which they appear on the revised agenda, continuing this morning with the Australian Federal Police.

The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. Keeping in mind the imminent budget estimates in May, the committee has agreed to the date of 2 April 2002 for receipt of answers to questions taken on notice and additional information. I remind everyone present that mobile phones should be turned off or, at the very least, made silent while in the hearing room.

I welcome Senator the Hon. Chris Ellison the Minister for Customs and Justice and the Minister representing the Attorney-General and Mr Cornall and officers of the Attorney-General's Department and associated agencies.

I remind the officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, procedures to be observed by Senate committees for the protection of witnesses and, in particular, to resolution 1(10) which states in part 'where a

witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken,' and resolution 1(16) which states that 'An officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.' Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

Minister or Mr Cornall, do you have any matters you wish to raise by way of opening statement or comments this morning?

**Senator Ellison**—I do not, Madam Chair.

**Mr Cornall**—No, Madam Chair.

**CHAIR**—Thank you very much. We will then proceed to continue questions in the area of the Australian Federal Police.

#### **Australian Federal Police**

**Senator McKIERNAN**—My only question is to you, Madam Chair: will there be a morning and afternoon tea? We were promised that yesterday and we never got it. What did we do wrong and what do we have to do today to ensure that we do get a beverage break?

**CHAIR**—Senator McKiernan, if you had been a little more disciplined in your approach to time and we had not run so late yesterday, perhaps you would have received your morning and afternoon breaks; but, given that I am the chair, you did not. Would you like to ask any questions in relation to the Australian Federal Police?

**Senator McKIERNAN**—I do not even have an incentive to!

**CHAIR**—You could speed it up.

**Senator McKIERNAN**—Page 18 of the AFP annual report notes that it provides external agencies with access to AFP expertise by outposting officers to other organisations. It states:

The presence of these agents also provides ready access to police powers, such as the execution of search warrants.

A graph appears at page 109 which details the various agencies where the outposting occurs. At the very bottom there is mention of a private company. I thought that was a little bit unusual. Commissioner, what information can you give the committee about that particular outposting?

**Mr Keelty**—I am sorry. I have no independent recollection of what this one is. If I could take it on notice—

**Senator McKIERNAN**—We are not leaving till a little bit later, so perhaps you can get access to information.

**Mr Keelty**—Certainly. We will get someone to chase that down. My thinking is that it might have been to do with computer crime. But I will have that chased down.

**Senator McKIERNAN**—We can leave it until an hour or so. I suspect you will be at the table for at least that time, I do not know. I am being very disciplined!

**Mr Keelty**—I will have it followed up, Senator.

**CHAIR**—We will see what happens at 10.30.

**Senator McKIERNAN**—What level of resources has been committed to the people-smuggling strategy discussed on page 19?

**Mr Davies**—We presently have 10 strike teams nationally that are allocated directly to the NID strategy to look at the importation of drugs and associated matters. Regarding people-smuggling, at present there are 15 people on the people-smuggling strike team. We have a joint team comprising 10 Australian Federal Police and five officers from the department of immigration. They work from the Canberra office at this point in time and are dedicated full time to people-smuggling issues. Clearly, other people within the organisation from time to time are tasked with people-smuggling matters, but the people-smuggling strike team is the dedicated resource element, and if other issues arise we may allocate resources as appropriate and as the needs dictate.

**Senator McKIERNAN**—Page 32 goes on again about the people-smuggling strategy. It states in part:

The PST has been extremely successful in the short time it has been operating.

You would have noted that there has been recent publicity about what could be deemed to be the success of the strategy. Regarding the story by the weekend television media about the agent—if I can describe him as such—Mr Enniss, what can you tell me about that particular successful strategy?

**Mr Keelty**—That strategy has been significantly successful. I explain at the outset that it is the usual practice of the AFP—and any other law enforcement agency—not to disclose informants. The reason for that is that informants working for an organisation come to the organisation with anonymity and expect the organisation to respect that anonymity not only for the time that the person provides criminal information to the law enforcement agency but beyond that time. So the policy is not to disclose informants.

However, given the publicity of the program that we have now seen and given the fact that I have access to a transcript of the program where Mr Enniss said that he had been working for the Australian Federal Police, I think that in my position it is important to report not only to this place but to the public that there is nothing untoward in the relationship that was developed with Mr Enniss. I can report to you that the AFP has had a relationship with Mr Enniss which commenced in August 2000. The formal relationship concluded in September 2001. During that period, Mr Enniss, through cooperation with the Indonesian National Police and with us, provided information to do with people-smuggling. It is important here to understand that there is no crime of people-smuggling in Indonesia. Contrary to the assertion made by the *Sunday* program, the amount of money provided to Mr Enniss for providing assistance to the Indonesian National Police, and therefore the Australian Federal Police, totalled \$25,527. That was made up of five payments of \$2,000: one was made in April, one was made in June, two were made in July and one in August 2001. A further \$15,527 was paid for expenses, including accommodation, airfares to travel to and from Kupang, Jakarta and other places, and associated expenses. All receipts have been taken into the possession of the AFP, and the record of the association with Mr Enniss is clearly documented.

The Australian Federal Police does not have an operational role in other countries. Therefore, it requires the assistance and collaboration of the host country, and in this case it was the Indonesian National Police. During the same period that Mr Enniss was working with the Australian Federal Police and the Indonesian National Police, some 451 persons were prevented from arriving in Australia. At an estimated cost of \$50,000 per person in terms of



processing and assimilation into the community, that is a saving to the Australian taxpayer of \$22.5 million. I repeat: the money paid to Mr Enniss in the period of the relationship with the AFP was \$25,527.

**Senator SHERRY**—I just want to clarify one point that I was not aware of. This was money paid by the Australian Federal Police. Were there any moneys paid to the Indonesian authorities that were in turn paid to Mr Enniss, or was it always paid by the Australian Federal Police?

**Mr Keelty**—On the advice provided to me, it has been paid in two ways. One is by electronic transfer to an account—that is, the five amounts of \$2,000. He was paid in rupiah, so I have done conversions here. The other payments were a mixture of him providing receipts for expenditure, such as hotels, taxi fares and airfares and, on sighting of those receipts, the money has been paid directly to him. I am unsure whether any of that money was transferred—that is \$15,527—through the INP.

**Senator McKIERNAN**—Is Mr Enniss an Australian national; if not, what nationality is he?

**Mr Keelty**—He is an Australian.

**Senator McKIERNAN**—You are now aware of the allegations contained in the program, that Mr Enniss was not only an informant to the AFP but also engaged in people-smuggling activities himself?

**Mr Keelty**—That is an assertion made by the program. We have checked by every possible method of checking whether any other person was smuggled into Australia during the same period of time that he was providing information. Whilst we do not discount it, it is not unlike a criminal informant on drug trafficking who will provide information about a syndicate whilst trying to allow another syndicate to succeed in importing narcotics into the country. From the records of the Department of Immigration, Coastwatch, Customs and the Department of Defence, it would appear that if those people have arrived in Australia then they have arrived in Australia prior to the earliest date quoted, 1997, which was prior to people-smuggling really being on the agenda in this country. In accordance with the program, the last allegations are some time during last year.

The only thing I would say about that is that, first and foremost, we are investigating the allegations and we are getting full cooperation from the *Sunday* program. They have provided significant information to us. So we are investigating the matter. Remember, of course, that people-smuggling is not a crime in Indonesia. If the people have landed in Australia, the only question I would ask is this. If they were Middle Eastern, the modus operandi of Middle Easterners is to come to the nearest point in Australia, such as Ashmore Reef or Christmas Island. Coming to the Australian mainland as a Middle Easterner is generally to attract attention to yourself and claim asylum. We have no records of large numbers of people arriving on the Kimberley coast. Having said that, we will investigate the matter thoroughly.

**Senator SHERRY**—But if it were a ‘successful’ smuggling operation, you would not have any records, because you would not know, would you?

**Mr Keelty**—What I am saying, Senator, is that the modus operandi of getting into the country is to put your hand up and claim asylum.

**Senator SHERRY**—In some cases that is true.

**Mr Keelty**—Certainly it is, in the experience of the last two years of Middle Easterners coming by that route. But I am not discounting what you are saying. There are others who have come before that. There are a large number of Chinese who came to this country in the years before that and certainly did not adopt the same practice of making it known that they had arrived in the country. So the matter will be investigated thoroughly.

**Senator SHERRY**—Are you aware of more sophisticated people-smuggling operations that would involve the transport of people, once they have landed in Australia, to other points of destination within Australia?

**Mr Keelty**—Yes, we are. It is not dissimilar to drugs, where they are landing in a remote part of the country and are then transported to a major centre. So there are some similarities, because we are talking about the smuggling into the country of an illegal commodity, if you like—to put it in its harshest terms.

**Senator SHERRY**—Yes; but you would not know the total number of people who successfully enter Australia via those more elaborate methods of people-smuggling, would you?

**Mr Keelty**—The answer is no, but I qualify that by saying that if they were large in number they would have to appear or emerge somewhere within the community. So it is almost like drug trafficking: I cannot tell you that we stop 100 per cent of drugs coming into the country. Similarly, I cannot tell you that we stop 100 per cent of persons coming into the country.

**Senator SHERRY**—I have seen figures of the number of people who overstay visas. It is in the tens of thousands, as I understand it, of people who enter the country by illegal means and overstay. Do we know the proportion of those people, if they are ever caught and sent back out of the country?

**Mr Keelty**—Senator, I am not avoiding the question but I need to point out that we deal with the criminal aspects of people-smuggling. The department of immigration is probably best placed to answer that question.

**Senator SHERRY**—Just going back to the payments, are you aware of whether the Indonesian authorities have ever paid any money to Mr Enniss?

**Mr Keelty**—I am not aware, but I might be able to find out in the course of our presence here.

**Senator SHERRY**—Why was he paid in rupiah?

**Mr Keelty**—Only because it is the local currency.

**Senator SHERRY**—So the money was transferred into an account in his name in Indonesia.

**Mr Keelty**—From the instructions provided to me, that is right—but provided from Jakarta to Kupang.

**Senator SHERRY**—Sorry, what do you mean?

**Mr Keelty**—Our police in Jakarta transferred the money to Kupang.

**Senator McKIERNAN**—You attributed part of Mr Enniss's activities to the stopping of a large number of people coming to Australia illegally. But within the period of time that Mr Enniss was engaged, Australia recorded the highest ever number of people coming illegally and landing on our shores. How do the two correlate? How can you on one hand measure

your success in stopping people while on the other hand recording the highest number ever to come to Australia by those means?

**Mr Keelty**—Again, I respectfully remind you that the Australian Federal Police is not responsible for stopping the people coming to the country but for investigating the crime behind it of people-smuggling. You are right; during the same period of time a large number of people arrived in Australia illegally. At the same time, a large number of people were prevented from arriving, so the problem would have been multiplied had these people not been stopped or prevented from arriving. That occurred through engagement with the Indonesian National Police to prevent much larger numbers than we received from coming to this country.

**Senator McKIERNAN**—I asked that question in the context of the accusation that Mr Enniss is actively engaged in the people-smuggling racket.

**Mr Keelty**—I understand the question. What I am saying is that we know—and I am giving you the precise figures, Senator—that 451 people did not come to Australia but otherwise would have had it not been for the engagement and cooperation, through the Indonesian National Police, of Mr Enniss.

**Senator McKIERNAN**—So those were people who were apprehended on the boat about to leave?

**Mr Keelty**—Some were apprehended on boats; some who were apprehended were gathered in different places in different parts of Indonesia.

**Senator SHERRY**—If it is not illegal in Indonesia, how can they be legally apprehended in Indonesia?

**Mr Keelty**—That is a matter for the Indonesians, Senator.

**Senator SHERRY**—That does not answer my question.

**Senator McKIERNAN**—How then can you make the claim that you are making, Commissioner?

**Senator LUDWIG**—It is not a claim that you have only made here, verbally; you have made it in your annual report on page 33. I will quote it to you and perhaps you can ponder it while you answer. It says:

In excess of 3,000 persons suspected of intending to enter Australia illegally have been arrested by the Indonesian authorities since cooperative arrangements were implemented in relation to people smuggling with the INP in February 2000.

That is in your annual report; that is what it says: they were ‘arrested’. Earlier today you said that people-smuggling in Indonesia is not illegal. Perhaps you could explain that.

**Mr Keelty**—Can I read it back to you, Senator?

**Senator LUDWIG**—By all means.

**Mr Keelty**—It says:

In excess of 3,000 persons suspected of intending to enter Australia illegally have been arrested by the Indonesian authorities ...

I am saying that people-smuggling is not a crime in Indonesia. There is nothing contradicting the annual report in what I am saying. They have been arrested in Indonesia for offences that the Indonesian authorities have deemed it appropriate for them to be arrested for, but there is no dual criminality. There is no offence of people-smuggling in Indonesia. If they have been

arrested because of visa violations or if they have been arrested for other matters, it is a matter for the Indonesians and I cannot pass judgment on why the Indonesians would arrest them.

**Senator SHERRY**—We are not asking you to pass judgment; we are asking you to explain.

**Mr Keelty**—We have engaged the Indonesians and identified to them large numbers of people gathered in their country who intend, through people-smuggling routes, to come to this country. They have agreed to stop them from coming here and have arrested them for a variety of offences. I imagine the majority of the offences would be visa violations.

**Senator SHERRY**—Would any of them include bribery?

**Mr Keelty**—I have not got that advice.

**Senator McKIERNAN**—What type of visa violation would it be then?

**Mr Keelty**—You are asking me to discuss—

**Senator Ellison**—I do not think that Commissioner Keelty is an expert on Indonesian immigration laws. He has given an explanation as to the fact that these people are not people-smugglers. It does not say in the report that they are. People-smuggling is not an offence in Indonesia. It is obvious that these people have been arrested, and Commissioner Keelty has given a plausible explanation as to why they have been arrested. As to the detail of visas and the immigration laws in Indonesia—

**Senator McKIERNAN**—With all due respect, I could respond to that. We are talking here about the expenditure of Australian taxpayers' money. The AFP are expending taxpayers' money. They are paying agents in Indonesia to give information to the AFP—to the Australian public some of it will eventually come out—and what I am doing now is justifying that expenditure of money. I did not raise the issue of visas in Indonesia; Commissioner Keelty raised the issue of visas. So I think I am quite at liberty to press Commissioner Keelty on what he said about the possibility of individuals being apprehended by the Indonesian authorities for visa violations.

We are spending taxpayers' money to gather this type of information in Indonesia and in other parts of the world. We are discussing a program that became public not through the commissioner, not through the AFP's annual report but by other means. I think I am quite at liberty to press this matter. If the commissioner does not know, we will record that. Then we can seek further justification on the expenditure of the money.

**Senator Ellison**—Madam Chair, the question of Senator McKiernan's does not go to the expenditure of money at all. It goes to the validity of the arrest by Indonesian authorities of these people. That is the line of questioning. It has absolutely nothing to do with the expenditure of money that we have been talking about. The questions have been along the lines of why were they arrested, on what basis were they arrested. The questions go to the validity of and the reason for the arrest of these people. We know that these people were arrested by the Indonesians. As to why the Indonesians exercised that power and the basis of the arrest, Commissioner Keelty has given a plausible explanation. But to go any further, it is really a question that needs to go to the Indonesian authorities.

**CHAIR**—As I understand Commissioner Keelty's advice to the committee, Minister, Commissioner Keelty does not have further information on the basis upon which the Indonesian authorities have pursued and made these arrests. It is not clear to me whether the senators here are expecting information on the Indonesian authorities' activities, but that seems to me to be the question that you are asking, Senator McKiernan.

**Senator McKIERNAN**—Let me frame the question differently. Commissioner, you said that 451 people were directly attributed to the activities of Mr Enniss.

**Mr Keelty**—That is correct.

**Senator McKIERNAN**—How can you substantiate that claim? I am asking this in the context of other claims that have been made over a period of time, some of which are receiving media attention at the moment. Are you in a position to give the committee full information on those 451 people who were stopped from departing Indonesia and landing illegally in Australia?

**Mr Keelty**—Yes, I can. I cannot give you the breakup of the 451 at the moment—if you like, I can take that on notice—but I can describe generally what occurs. Through the information provided by Mr Enniss, holding places are identified where people are gathered. I will explain some of the people-smuggling activities. Generally, people are gathered in one, two or more places and at an appropriate time when a boat is made available they are gathered from those places, placed on the boat and the boat leaves Indonesian waters. Sometimes there is a change of crew at the time that it leaves Indonesian waters so that the crew bringing the boat to Australia has no idea of the point of disembarkation from Indonesia. Sometimes the boat comes directly from Indonesia to Australia. So the 451 people are people who were identified either on a boat and the boat was turned around and brought back to Indonesia or people who were gathered in a place awaiting collection to go on board a boat and were disrupted by the Indonesian authorities and prevented from doing so. Remember that these are people who largely have entered Indonesia illegally, so I imagine there is a whole raft of issues relating to what I said before about visa violations, like passport offences, illegal entry—

**Senator McKIERNAN**—I am not going to press that matter.

**Mr Keelty**—I would have to take it on notice and we would see whether the Indonesian authorities could be asked—

**Senator McKIERNAN**—I am not going to press that matter. I understand whether parameters lie. What I did want to do was justify the expenditure of Australian taxpayers' dollars on these activities. I am seeking to justify that in the light of the information which came, not from the AFP, not from the government, and not from the immigration department but from the media. I think it is quite legitimate in these circumstances to press the matter. But I am not going to press the matter on Indonesian visa violations other than to say, and to record, that it is my understanding that the Middle Eastern persons who were entering Australia illegally over the last 12 months to two years have actually entered the region through Malaysia because they don't need visas to enter there, and then there is freer movement between Malaysia and Indonesia. That is one of the routes that they have been working on. But I suggest the AFP knows a lot more about that than I. But I am not going to press that matter here.

**Mr Keelty**—Can I just correct the record, Madam Chair.

**CHAIR**—Yes, Commissioner.

**Mr Keelty**—The AFP does report on how many people we prevent from coming into Australia that we know of. Whilst the *Sunday* program might have exposed methodology, we do report and the Minister for Justice and Customs has reported to parliament figures—

**Senator McKIERNAN**—About Mr Enniss?

**Mr Keelty**—that include the number of people who have been prevented from coming to Australia.

**Senator McKIERNAN**—You have an informant who has been paid with Australian taxpayers' dollars who now has a very serious allegation laid against him. That allegation did not come from the AFP, it did not come from the minister, it did not come from the any other government agency or department; it came from the media.

**Mr Keelty**—The allegation came from the media but the reporting on how many people were prevented from coming here through expenditure programs by the AFP under the people-smuggling initiative are reported.

**Senator McKIERNAN**—Yes, and 451 are directly attributed to the activities of Mr Enniss.

**Mr Keelty**—That has now been reported but was included in overall figures that we report on annually.

**Senator SHERRY**—In relation to Mr Enniss's effectiveness or otherwise, did you have other informants on the payroll at the same time as Mr Enniss? I do not want to know the names, obviously, but do you have other informants on the payroll?

**Mr Keelty**—There are other informants.

**Senator SHERRY**—So how can you attribute directly the success of 451 to Mr Enniss?

**Mr Keelty**—Quite simply—the information provided by Mr Enniss details an address where the people are located. The police go to that address and find the people gathered.

**Senator SHERRY**—Is this in Australia?

**Mr Keelty**—No, this is in Indonesia.

**Senator SHERRY**—If Mr Enniss were a people-smuggler and he brought 1,000 people into Australia—or whatever the number would be if he were a people-smuggler—and he had given you information that led to the arrest of 451, that would mean his net worth would be negative, wouldn't it?

**Mr Keelty**—It is hypothetical. I will repeat an answer I gave before: all the checking we have done with all the agencies indicates that there has been no evidence of those unlawful arrivals during the period of time we have been dealing with Mr Enniss.

**Senator SHERRY**—It is not unusual, is it, for informants to inform on their opponents within an area of illegal activity?

**Mr Keelty**—That's correct.

**Senator SHERRY**—In the drug industry, to eliminate your opposition, it is not unheard of for drug traffickers to inform on their opponents within the trade, is it?

**Mr Keelty**—That is correct and that is why you seek corroboration from other sources. In fact, you have a strategy to manage your informer.

**Senator LUDWIG**—In respect of Mr Enniss, was information passed to the Australian Federal Police by Indonesian officials from West Timor about Mr Enniss alleging activities as a people-smuggler?

**Mr Keelty**—The Indonesian authorities in West Timor were aware that Mr Enniss was a people-smuggler because we were working with the Indonesian National Police.

**Senator LUDWIG**—Was information passed to the AFP—and, if so, when—about Mr Enniss?

**Mr Keelty**—Information was passed to the AFP on 17 June 2001, on 23 September 2001 and on two other occasions that Mr Enniss was a people-smuggler, but the information provided was considered to be information that was already within the possession of the AFP. There was no specific information about activities outside those that were known to the AFP at the time. In other words, we knew he was engaged in people-smuggling because he was telling us what was going on. From the information that had been provided about his activities from other authorities within Indonesia, there was nothing that we considered to be outside the realm of the information that we already had.

**Senator LUDWIG**—Let us get this clear: who were the other officials? Were they separate from the Indonesian police who were telling you he was a people-smuggler? Was it the West Timor part of the Indonesian National Police that were telling you he was a people-smuggler, but you knew he was a people-smuggler because you were dealing with him about people-smuggling activities?

**Mr Keelty**—Both.

**Senator LUDWIG**—Who were the other officials?

**Mr Keelty**—Immigration and also INP officials.

**Senator LUDWIG**—Where were they from? Where were they based?

**Mr Keelty**—Generally in West Timor, but that is not unusual. The analogy with a drug operation here in Australia is that you may be working with an informant, working on an operation in a particular part of the city, and the local police will identify a person as being involved in drug activity. You receive that intelligence and you marry it up with the operation you know to be operating.

**Senator LUDWIG**—How was the information passed? Was it via the embassy in Jakarta, or was it a telephone call to the Jakarta operations in the AFP? Was it via Immigration officials in Jakarta or some other means?

**Mr Keelty**—There are a number of sources: some by way of report to Jakarta, and some by way of meetings held with other agencies.

**Senator LUDWIG**—What about DFAT officers in Jakarta?

**Mr Keelty**—I do not have any information on that, I am sorry.

**Senator LUDWIG**—Was information about the operations of Mr Enniss and people-smuggling passed to Canberra? If so, when and to whom?

**Mr Keelty**—It would have been passed to Canberra because we were aware of the operations. In terms of when and to whom, I would have to take that on notice.

**Senator LUDWIG**—Particularly which agency in Canberra received the information: the AFP, DIMIA or DFAT.

**Mr Keelty**—I will provide that as part of the answer.

**Senator SHERRY**—What was the AFP's understanding of Mr Enniss's occupation, besides being an informant?

**Mr Keelty**—I think we understood that he was involved in the fishing industry. We were aware that he had access to vessels through the fishing industry.

**Senator SHERRY**—When you say ‘access’, did he own a fishing boat or boats? Did he lease them? Do you have any knowledge of the details of his working relations?

**Mr Keelty**—I do not, but that would be contained on the holdings within the organisation.

**Senator SHERRY**—I assumed you would know that. Please take that on notice. You make a point of noting his alleged outstanding success in leading to the direct apprehension of 451 persons. Regarding the other informants that you mentioned that you have on the payroll, in response to my earlier question, how many arrests have there been as a consequence of the information given to you by other informants?

**Mr Keelty**—I do not have a year-to-date figure, but the figure in the annual report for the previous 12 months was in excess of 3,000.

**Senator SHERRY**—Does that include the 451 as a result of Mr Enniss?

**Mr Keelty**—It would. For the proportion that was in that reportable period.

**Senator SHERRY**—Are they people who have been detained in Indonesia?

**Mr Keelty**—I would have to take on notice what has since happened to them in Indonesia—whether they have been deported out of Indonesia or whether they are still detained there.

**Senator SHERRY**—Are you saying that Mr Enniss is one of your most successful operatives?

**Mr Keelty**—No.

**Senator SHERRY**—You quoted 451 as being attributed to Mr Enniss, which seems to me to indicate that you regard him as a very successful operative.

**Mr Keelty**—He is a successful operative, or the information has been successful. In terms of investment for value, I am asserting that it was a valid investment of Australian taxpayers’ money for the value that was returned to the Australian taxpayer.

**Senator SHERRY**—How many other informants do you have? I do not want the names, but approximately how many informants do you have?

**Mr Keelty**—I would have to take that on notice, but I also put on notice that I am not sure that it is in the public interest for us to reveal a specific figure.

**Senator SHERRY**—I understand the operation—

**CHAIR**—Senator Sherry, you are traversing matters that make it very difficult for Mr Keelty.

**Senator SHERRY**—I accept your call on that.

**Senator LUDWIG**—Just while you are there, what information was Mr Enniss provided with by the Australian authorities, including the AFP or the task force that has been set up about anti-people-smuggling measures? You have indicated that he has provided you with information. What information was reciprocated to him?

**Mr Keelty**—None, to my knowledge.

**Senator LUDWIG**—Would you like to check on that as well?

**Mr Keelty**—Certainly, but I have asked the question about Defence and Defence locations, if that is what you are alluding to. The AFP is not in possession of and does not know the deployments of Defence assets except for, say, on an odd occasion during peacekeeping



operations. Even then, it would be limited knowledge. The principle of working with an informant is that you do not give the informant more information than the informant is providing you, but I will ask the question of the informant handler.

**Senator LUDWIG**—When was the last contact that the AFP had with Mr Enniss? Do you know where he is now?

**Mr Keelty**—I will have to take the first part of that question on notice. The second part is that we have launched an investigation as a result of the *Sunday* program, as I mentioned before. I would not like to disclose the progress of that.

**Senator SHERRY**—We talked earlier about Mr Enniss's business activities, and you mentioned the fishing industry. Have you carried out a check to see whether it is a bona fide fishing operation?

**Mr Keelty**—I cannot answer that question specifically—the only persons who can answer that are the informant handler and the informant controller—but I can tell you in general terms that, before a person is engaged in activities with our organisation, a thorough check is made of their previous activities, their character and so forth. That dictates the way in which the relationship is developed. In terms of this relationship, as I mentioned before, everything has been documented.

**Senator SHERRY**—If you were checking out a person to determine whether or not they are running a valid business, I assume that one of the checks you could make is whether, for example, they pay income tax through the tax office. Do you have access to certain tax information from the tax office when you check an individual's background and whether their business is valid?

**Mr Keelty**—We would not seek that sort of information unless we were conducting a criminal investigation. We would seek as much information as possible about the individual, bearing in mind that the best placed sources are those who are involved in some way in criminal activity or who have been previously involved in criminal activity. That is why we have a set of guidelines that rule the way in which these people are engaged: the sorts of background checks that are required to be done and double-checking on the person to ensure that the information being provided is not for an ulterior motive.

**Senator SHERRY**—I understand that. But if he claims he is a fisherman, and you wanted to check whether he was validly involved in the industry of fishing, you could determine his turnover and whether it is a valid business—a bona fide business—by checking through the tax office, couldn't you? You could do that.

**Mr Keelty**—We would not have access to tax records for the purpose of getting information about a person unless we were conducting a criminal investigation into that person. In relation to Mr Enniss specifically, in the absence of talking to the informant controller, I cannot give you the detail of what background checks were made.

**Senator COONEY**—Mr Keelty, would it be fair to say that most investigations that end up with convictions are the result of information given by informants. Would that be a reasonable proposition? An example would be when someone uses the term 'from information received'. When asked where they got the information from, they respond, 'I can't tell you because it is against the public interest?'

**Mr Keelty**—I could not give you a breakdown. Some information comes from witnesses. An informant is a special category of person. An informant is someone with whom you have a formal relationship; they are in fact registered and allocated a number. A profile is kept on the

informant. There are six-monthly reviews of the relationship between the informant and the informant handler. It is very different from someone who comes and complains of an offence or points to the fact that an offence has been committed. He is not necessarily an informant but a complainant or a witness. There are also people who are 'contacts', who are never formally registered as informants. So there are a variety of means. Of course, we have other means that we discussed last night, such as telephone intercepts and listening devices that point you in the direction of an investigation.

**Senator COONEY**—Not only do you have people-smugglers involved but also unauthorised people coming down to Australia. Do you build a profile of unauthorised boat people? Do you build a profile of the sorts of people they are on the basis of informed information? If you do, we may be getting a very inaccurate account of the sorts of characters that these boat people are.

**Mr Keelty**—Separating boat people or asylum seekers from people-smugglers—

**Senator COONEY**—It is asylum seekers that I am talking about.

**Mr Keelty**—In other words, by separating the people who are being smuggled from the people organising and committing the crime of smuggling them, you build a profile from a number of means—one might be through informant processes; others might be through debriefing the people who have been smuggled themselves to how they got to where they were. So there are a variety of sources through which you build up a profile on how the operations are occurring in no different way from what you might do with drugs or other matters.

**Senator COONEY**—I am not asking you this as a matter of policy but simply as a matter of capabilities. If you had the resources, it would be well within the ability of the Federal Police to look after not only the people-smugglers but also the people smuggled. I am not saying that you would agree with this, but if the function performed now by the immigration department were transferred across to the Federal Police, you would be in a position to carry out the duties that are being presently carried out by the immigration department, wouldn't you?

**Mr Keelty**—We would not have that expertise. I guess we are talking hypothetically here. I am not aware—unless my minister is aware—of any plans to make our moves.

**Senator COONEY**—The only person suggesting this is me, but I just want to talk it through.

**Mr Keelty**—That is one of the reasons why we established a joint task force with the department of immigration. As the deputy commissioner pointed out, the task force has members of the AFP as well as the department of immigration. That, in my view, is giving the taxpayer and the Australian public the best value for their dollar.

**Senator COONEY**—Let me put this to you: you are the institution or the agency best equipped to deal with this. You are the people who have the experience with informants. You have been at it for years as a tradition. You know all about how to arrest people, how to detain them in a civilised fashion and then to bring them through until they are processed. You have all that experience, which I am not sure the immigration department has.

**Mr Keelty**—I cannot comment on that.

**CHAIR**—I do not think it is a matter on which Commissioner Keelty can really comment, Senator Cooney.

**Senator COONEY**—I am talking about the capability. Haven't you got those capabilities, Mr Keelty? Are you saying that you do not have the capabilities?

**Senator Ellison**—To clarify the question, are you talking about the capability for detention?

**Senator COONEY**—What I am talking about is people coming in by boat. You can perhaps explain to me the logic of this: when a boat comes in, there are the crew and the people who have organised it—the people smugglers. By whom are they dealt with? They are dealt with by the Federal Police. There are people called illegals—and unlawfully and all those sorts of things—on the same boat on the same journey, but they are dealt with by the immigration department. Why?

**Senator Ellison**—What you have got is a situation where—and we had this before when the question was asked about the arrest in Indonesia—the passengers are suspected unlawful arrivals and the crew are suspected people smugglers. People-smuggling is a crime—it carries a maximum penalty of 20 years in Australia, so it is a very serious offence. But in relation to the other people—the passengers—unless they have committed a criminal offence, they fall to be processed by Immigration because they are making out a claim for asylum. That is what they are saying, so it is appropriate that the department of immigration deal with that side of things. It is still not lawful to just arrive in Australia without going through proper channels, but the processing of arrivals is really the jurisdiction of Immigration, and Customs of course assists in that as well. But where there is a criminal offence then the AFP are involved.

**Senator COONEY**—You might want to comment on this: why then, if that is the situation, is there a tendency by the government and others as well to blur the distinction you are now making so that people smugglers and unauthorised arrivals are, if not explicitly, implicitly joined together and there is a certain character given to the people who are being smuggled which clearly, from what you say, should not be there?

**Senator Ellison**—I do not think it is blurred, with respect; I think it is made very clear. The other day, a people smuggler got, I think, eight years in Western Australia. The government have been very clear that people-smuggling is a distinct area of activity which is criminal, and we have increased the penalties in relation to that. It has always been made clear that the AFP, when they are involved, are going there to investigate who the crew are—who was involved in the people-smuggling. I do not think it has ever been the representation by the government that the AFP have been dealing in that way with the passengers. They have only been trying to find the crew. Of course, the crew and the passengers are both on the same boat. That is a bit hard, isn't it? You have got the AFP looking for the crew and DIMIA sorting out the others—

**Senator COONEY**—And you have the government and others saying, 'Here are these people smugglers with these unlawful, illegal arrivals.' There is no doubt that for political purposes, I suggest, a fusion is being made so that the public is then presented with the picture that these people smugglers and the people smuggled are very much of the same character. If that is the approach you are going to take, why shouldn't the AFP do the lot?

**Senator Ellison**—No, because again it is a different jurisdiction entirely. Again, we will have to agree to disagree. I do not think it comes across that way, because they are both on the same boat. You cannot avoid that; you cannot make it a fiction that they are not on the same boat. It is always made very clear in the statements I make that the AFP are investigating the people smugglers' crew. I have always talked about the crew being something quite separate and apart from the passengers.

**Senator COONEY**—Doing the investigation of these boats, you have a body, which traditionally has had the function of investigating and looking at issues such as those that are presented by the people smugglers, going to the same boat with people who are not experienced in investigation and who have not got the same ability as the Federal Police to do these things. That must be a waste of taxpayers' money.

**Senator Ellison**—No, I do not think it is. In fact, I think they supplement the task of the Australian Federal Police, because the Australian Federal Police are there to detect the crew and deal with them separately; they are extricated and dealt with separately in the process of the courts. In doing that, they are assisted with the Immigration officials, who are also there dealing with the passengers. It is very much a cooperative task, and I think it is entirely appropriate—it stands to reason.

**Senator SHERRY**—What is a bit like the discussion that is occurring here is the ongoing discussion I have heard about the demarcation between migration and quarantine officials. There is to some extent overlapping jurisdictions and trading of information, because it is necessary, but they do have different core functions.

**Senator Ellison**—And put Customs there as well.

**Senator SHERRY**—Yes, and Customs.

**Senator Ellison**—And often in remote areas you will have one officer doing the lot, because, again to save taxpayers' money, we do not want three officials where one can do it. But where you have people coming in in the numbers we have seen, it is appropriate that you have Immigration working with the Australian Federal Police, and it would be folly to do it otherwise.

**Senator COONEY**—Taking on Senator Sherry's suggestion that this is comparable to the Customs officers working with the police, the next thing that will be suggested is that the Immigration people be armed, like Customs. I do not know whether people are going that far.

**Senator Ellison**—No, I do not think there is that suggestion; I have never heard that suggested.

**Senator COONEY**—It was not made about Customs a few years ago, either.

**Senator Ellison**—Hang on! That was not done, though, was it?

**Senator COONEY**—They are armed.

**CHAIR**—Could I suggest that this is a very interesting policy debate, but in terms of its application to the consideration of the additional budget estimates—

**Senator Ellison**—Let us wait for Customs, and we can talk about it then.

**CHAIR**—Whilst it is highly diverting, Minister and Senator Cooney, I am not sure that it is assisting us.

**Senator SHERRY**—Senator Cooney is pointing out a deficiency. I do have a policy issue for you, Senator Ellison.

**CHAIR**—How about an additional budget estimates issue, Senator Sherry, just to test us all?

**Senator SHERRY**—In regard to people smuggling not being an offence in Indonesia, has the Australian government—in, for example, the Prime Minister's recent visit to Indonesia—taken up the issue with the Indonesian government? Have Indonesia been requested to make it an offence?

**Senator Ellison**—There has been some work done in relation to this. You could raise this when the A-G's department is called, because there has been some work done by officials.

**Senator SHERRY**—I have just one last point. You have a task force, I think you have mentioned, dealing with people-smuggling. What are the staff numbers in the task force, both in Australia and overseas, and what is the budget? You may have given it to the committee—if you have, just draw it to my attention; if you have not, could you provide us with that information on a historical basis, please.

**Mr Keelty**—I think the deputy commissioner described the number of people in the task force earlier on.

**Senator McKIERNAN**—You indicated earlier that there was going to be an inquiry into the allegations contained in the *Sunday* program. Will that inquiry deal only with the suspected criminal elements of the assertions or accusations that were made against Mr Enniss?

**Mr Keelty**—No, there will also be an audit of the activities of our offices in Jakarta to ensure that they have complied with our internal policies.

**Senator McKIERNAN**—Will the allegations that the information was passed back be included in that? I am trying to draw the distinctions of where the criminal line comes and the wider line is drawn.

**Mr Keelty**—The issue of passing back information is something that would be picked up in the audit of the dealing between the informant handler and Mr Enniss—so the answer is yes.

**Senator McKIERNAN**—There were allegations contained in the program that Mr Enniss was in receipt of information of where Navy vessels were stationed—I do not want you to respond to that now. How will accusations like that be handled, Minister? Will there be an expectation the AFP will be able to inquire of the Navy or perhaps of Customs vessels or of Environment vessels which patrol the north-west coast between Australia and Indonesia?

**Senator Ellison**—I think Commissioner Keelty said that the AFP were not in a position to know where naval vessels were.

**Senator McKIERNAN**—Yes.

**Senator Ellison**—Taking your question further, I am looking into this from a more whole of government approach. That is: could Mr Enniss have known where naval vessels were? Was this just a sort of grand claim of his with no substance? The question of arrivals on the Kimberley coast is another aspect which perhaps Customs and Coastwatch can assist us with as well. The AFP are conducting an investigation in relation to that, but I am looking at the wider aspects as well.

**Senator McKIERNAN**—From within your portfolio?

**Senator Ellison**—I am not the Minister for Defence. Without going into the detail and prejudicing any inquiry, it is obvious Mr Enniss has made a claim and the question has to be asked about what substance, if any, there is to it. Relevant inquiries should be made.

**Senator COONEY**—You would not want to base a case on his evidence, I would not have thought.

**Senator McKIERNAN**—The patrols that have taken place in that region of the world—the Australian coastline, Ashmore Reef, Christmas Island and Indonesia—have not only been naval patrols; there have been patrols by Customs vessels and other vessels.

**Senator Ellison**—Yes, that is all within the ambit of inquiry. That is what I have said—that we are looking into this. The Australian Federal Police have a focused investigation on a particular aspect. There is a wider aspect which necessarily does not relate just to the AFP, which the government will be looking at, and that includes other statements made by Mr Enniss. I think I have been on record as saying that to land large numbers of people on the remote coast of the Kimberley and have them go unnoticed is very difficult, I believe. They tried it in Exmouth twice and they were soon picked up wandering along the highway, which was the only road in that area. Having said that, we are still inquiring into it and we are not dismissive of anything that Mr Enniss has said.

**Senator McKIERNAN**—You are not ruling out that in 2000 a group of some 48 people landed on the Australian shores undetected and a vehicle was waiting for them.

**Senator Ellison**—All I am saying is that I think it is doubtful, but it will be looked into and investigated thoroughly.

**Senator McKIERNAN**—Commissioner Keelty, in his remarks earlier, said that the people who are coming in illegally of Middle Eastern origin have a tendency, or have had a tendency, to put up their hands and say: ‘I’m here. I want to claim refugee status. I want to claim protection in Australia.’ They want to be found. But, from the experiences that Australia has had with illegal entry on our shores, there have been a number of boats that have sought to arrive here undetected and the individuals have not handed themselves over. Isn’t that true?

**Senator Ellison**—I think that was in days gone by with a different situation. The Sri Lankans who landed at Exmouth did not try to conceal their whereabouts at all; they were wandering along the north-west highway trying to get to Sydney. I do not think that was really a covert attempt at entering Australia as such. In fact, I think in both cases—the two landings at Exmouth—they were fairly obvious. I think Commissioner Keelty’s point in relation to Middle Eastern arrivals is a good one: the reason they are coming here is to seek asylum, and they would seek that straightaway. I think that is a very good point.

**Senator McKIERNAN**—I am not disputing that; I accept that. But I am also asking: has it not been that other individuals arriving in this country unlawfully have sought to cover their entry into this country; they have had an organisation waiting in this country to pick them up and take them to a place where they could be looked after and then just slip into the community? That has occurred, hasn’t it?

**Senator Ellison**—According to my information, that was more in relation to Chinese entrants who adopted that course of action. These issues are perhaps best canvassed during the department of immigration’s appearance before this committee—I am more than willing to come back to it—because they will have all the detail of that. This is the Australian Federal Police, and you are talking about which entrants are likely to seek asylum and put their hand up and which are not. I think it is more an Immigration question.

**Senator McKIERNAN**—Point taken on that, Minister. But Mr Enniss was an informant for the AFP. He was recorded in an interview, which was telecast last Sunday, where he did give this information and I think it is quite within the competence of the AFP—

**Senator Ellison**—And I have said there will be an inquiry into it. I said that I have my doubts about the veracity of that, but that does not diminish—

**Senator McKIERNAN**—But you cannot rule it out.

**Senator Ellison**—Exactly, and that is why we are having an inquiry. We do not have a closed mind to it.

**Senator SHERRY**—Mr Keelty, you mentioned the arrest rate that you had attributed to Mr Enniss as 451. It would seem to me—and I put to you—that for a person to be so successful in the terms you have outlined Mr Enniss would have to have very good knowledge of people-smuggling. Therefore the argument that is advanced that he may have been involved in people-smuggling would seem to carry some validity. How would you pick up information otherwise that is so comprehensive and effective in terms of the 451 people who have been apprehended?

**Mr Keelty**—I agree. That is why we are launching the investigation. Again, it is like a drug trafficker: they get to know the game and the operations, and you can never dismiss the fact that they may also be involved in them while they are providing information to you.

**Senator SHERRY**—I have just one other point on the investigation: I think you mentioned earlier the payments to his account in Kupang. Will you be seeking the cooperation of the Indonesian authorities to ascertain the sources of income of Mr Enniss and payments he has made, through that account or other accounts in Indonesia?

**Mr Keelty**—We will be seeking assistance from the Indonesians generally to conduct the investigation, so that could cross a whole raft of issues.

**Senator SHERRY**—But it would seem logical that to follow the money trail in terms of income received and payments made through bank accounts in Indonesia would have to be one of the things you would look at—with the cooperation of the Indonesian authorities, obviously.

**Mr Keelty**—Yes. Without being specific, we would have to look at a large number of things.

**Senator SHERRY**—Have the Indonesian authorities been contacted on the investigation?

**Mr Keelty**—To my understanding, yes.

**Senator SHERRY**—Have they agreed to cooperate?

**Mr Keelty**—Yes. The AFP has a very strong relationship with the Indonesian National Police, built up over a number of years. In fact we have a memorandum of understanding with them.

**Senator SHERRY**—Do you have any officers based in West Timor?

**Mr Keelty**—No, we do not.

**Senator COONEY**—I suppose Mr Enniss would be a fairly typical informant—in other words, you are not going to get the most honest people in the world coming forward as informants—therefore he tells lies. I suppose the significant thing is whether the Federal Police have the ability to interpret why he is telling lies and what truth lies behind it. Do you think you are judging him right—not only him, but I suppose any informants, though he is the one we are talking about?

**Mr Keelty**—If I can talk in general terms, you are quite right. There are very few honest people who know a lot about crime. Most of the people who know the most about crime are criminals.

**Senator Ellison**—With the exception of the police!

**Senator McKIERNAN**—Not all police!

**Mr Keelty**—Most of the people who have the in-depth knowledge about the commission of crime and about who is involved are, in fact, criminals themselves. For that reason we have very strict guidelines in place for dealing with informants, including some of the psychological aspects and a lot of work around the motive of the informant in coming forward in the first place and then on the proper conduct of the relationship with the informant, which is reviewed independently, as I said, on a six-monthly basis. They are registered, every detail is documented and it is audited. I report to the minister on it once a year.

**Senator COONEY**—Are they used purely for intelligence gathering or would you test your arm every now and then and call them as a witness?

**Mr Keelty**—If you call them as a witness you then get into a witness protection matter. It has been done but, I guess, the strategy is to try and use them. If you use them as a witness you expose their relationship with the police so their value for informing purposes diminishes.

**Senator COONEY**—I suppose that is why you need as many informants as you can reasonably get, to gather all the information you get from them together and see what you can make out of it all—it might be truthful and useful.

**Mr Keelty**—That is a good point. You do not take the information from one source. You seek corroboration either through other informants or through other means.

**Senator COONEY**—Just because he said he was a people smuggler would not necessarily mean that he was. He might be just saying that to get a bit of credibility—through his lies, if you like—so that people say, ‘This fellow knows what it is all about; we can get some good information from him.’ It must be very difficult to tease out what is truthful with what these people say.

**Mr Keelty**—That is correct, and that is where a lot of the work is—in understanding the motive, understanding the veracity of information that is provided and also in understanding the character that you are dealing with. We spend some significant time training people in that and that is why there is such a significant oversight of that whole process as well, because you have got a relationship between a criminal and a police officer.

**Senator COONEY**—If you did not use the informant system, a lot of crime which is presently solved would not be solved. Is that a fair comment?

**Mr Keelty**—Yes, that is right.

**Senator COONEY**—To a certain extent this is a loaded question and I will tell you why: have you got a picture of the people who are smuggled? The reason I say it is loaded is that I then wanted you to say, ‘They are reasonable people.’ When Immigration comes along I am going to say, ‘The Federal Police say that these are reasonable people.’ Clearly, they are not the same as the people smugglers. One picture that is presented is of these illegals coming down here, ignoring nightclubs that they could attend as they come through Malaysia and Indonesia, to get to go to the nightclubs here. The other picture, which is the one that I tend to accept, is that they are people fleeing from real problems in Afghanistan and what have you. Have you got a picture or has the police department got any picture of that? Or would you prefer not to talk about that and leave it up to Immigration?

**Mr Keelty**—It is not within our purview to look at that. The only thing I will say though is that, whilst I have been careful to distinguish the people smuggler from the people being smuggled, the reality is that those people pay money to bypass the system. That is why the



system that is imposed is the way we need to encourage people to come to Australia, whether it be through the IOM or through whoever.

**Senator COONEY**—If I put it to you, though, that it is not so much that they are paying money to bypass the system as paying money to get a passage which in fact bypasses the system, would you cavil with that?

**Mr Keelty**—I am not sure that I can distinguish between the two.

**Senator COONEY**—What I am saying is that, in one case, it is a group of people who just flout Australian law deliberately and consciously and pay money to do it. The second position I am putting to you here is that it is a group of people who are fleeing from a place of devastation and to help them to flee they pay money to people that enable them to do that—in other words, they are not consciously going about the exercise of flouting Australian law; they are going about the exercise of escaping from a devastated country.

**Mr Keelty**—I understand the point you are making. My answer is that that is why we have international immigration organisations, that is why we have the UN: to facilitate the proper movement of people across borders.

**Senator COONEY**—I follow that, and I will go into this with Immigration. But, if you were doing a plea, you would prefer to say that these are people who are fleeing a situation and paying to get out of the desperate situation they find themselves in. You would put it that way, I think, rather than saying that here are some people who saw their main chance and paid money to get through the system. That is the way you would put your plea, isn't it?

**Senator Ellison**—We are straying away from the responsibilities of the Australian Federal Police with this question. I understand what Senator Cooney is driving at, but perhaps this is not the officer to be asking that sort of question of. Commissioner Keelty is dealing with law enforcement, and the sort of aspect that Senator Cooney has raised is better asked in another area.

**Senator COONEY**—To be fair, Mr Keelty introduced it, and properly so, but that is what I was cavilling with.

**Senator Ellison**—We will have officials from Immigration here shortly.

**CHAIR**—I appreciate the point you are making, Minister.

**Senator LUDWIG**—The report by Ross Coulthart on the *Sunday* program said that the Director of International Operations for the Federal Police, Dick Moses, categorically rejected any suggestion that any informant would ever have been authorised to involve themselves in people-smuggling. Is there a distinction between 'authorised', 'knew' or 'was aware of', or is that statement now incorrect?

**Mr Keelty**—The statement is correct. That answer to that question, from my recall, was specifically related to the question: 'Would you have authorised him to be involved in people-smuggling about which you had no knowledge?' Whilst it is not stated by Mr Coulthart, my understanding is that that was the sense of the question. The answer from Mr Moses is quite correct. As it would be with any informant informing on any criminal activity, they are not authorised to engage in criminal activity about which we have no knowledge—remembering again that the criminal activity referred to gets into that area of ambiguity about the laws in Indonesia and the laws in Australia. I assume that Mr Moses was saying, 'Categorically no; Mr Enniss was not authorised to smuggle people to Australia.'

**Senator LUDWIG**—He was not saying that he did not know that Mr Enniss was involved in the people-smuggling trade?

**Mr Keelty**—I think that was the thrust of his answers—he did not know of those allegations.

**Senator LUDWIG**—Thank you.

**Senator SCULLION**—I was actually interested in an answer you gave to Senator Cooney. I am just concerned about the interaction between the AFP and the department of immigration, ensuring there is no duplication of service. Perhaps you can share with me in an operational sense how you actually separate the crew from the asylum seekers. Do they all get bundled on a bus and are sorted out at Port Hedland or do they all end up at Woomera wondering which one is which? How do you actually go about that?

**Mr Keelty**—There are a number of ways. As you say, people are generally moved together, but at an early stage the persons on board the vessel who are seeking asylum will identify the crew of the vessel. So they are separated during that interview or debriefing process, which is largely done by the Immigration people.

**Senator SCULLION**—Where would that actually take place? Would it be at Woomera, or would it be on the vessel? At what sort of area would that happen?

**Mr Keelty**—It will depend largely on where the vessel arrives. Obviously, if it is on Ashmore Reef it will be somewhere closer to Darwin. If it is on Christmas Island it might happen on Christmas Island before they are moved to any detention centres in Australia. It is done at the earliest possible time so that we can commence the investigation and preserve any evidence.

**Senator SCULLION**—I noted and I understand that there are some 134 people smugglers that are now detained in the jail in Darwin, so obviously it is done fairly early in the piece. My other question relates again to a question that Senator Cooney put to you. I am also concerned about the nature of the actual people that are being smuggled. This committee has been very concerned, and rightly so, about the people who are being smuggled, the asylum seekers, particularly about their welfare. Can you tell me a little bit about them? I know that some of them have been on the public record, but, generally speaking, are the 450 people all males? Were they families? Can you tell us a bit about the demographics of the group?

**Mr Keelty**—On the 451 I have not got—

**Senator SCULLION**—I just want some general information. Are they families? Were there children, adults? What was the nature of the group?

**Mr Keelty**—It is a mixture. Are these the people prevented from coming here who remain in Indonesia?

**Senator SCULLION**—Yes.

**Mr Keelty**—It is the same profile as the people who actually made it through.

**Senator SCULLION**—So it is generally family groups. You talk about boats. They all were intending to come here on vessels, not planes or anything else? They were all intending to embark on vessels from Indonesia to land in Australia?

**Mr Keelty**—That is correct.

**Senator SCULLION**—Is there much you can tell me about the nature of these vessels that they are coming over on? Are they pretty flash looking units? What is the nature of the vessels?

**Mr Keelty**—Largely, they are not very sophisticated vessels. In fact, that is part of the ploy. Most of them are vessels which will only make it to Australia and not much further. Of course, we know of some tragedies where some vessels have not made it here, which is why in answering Senator Cooney's questions I said that if people come through legitimate channels they have got a much better rate of survival. Largely, they are vessels that are valueless anywhere else. Obviously, their strategy of bringing them from west Timor or the eastern part of the Indonesian archipelago is to shorten the distance between here and there.

**Senator SCULLION**—I note that on the front page of the *Australian* there is a ship that appears to be sinking. These incidents would be reasonably common with this sort of vessel, I would imagine.

**Mr Keelty**—We believe that the vessel on the front page of today's *Australian*, if it is a vessel that we refer to as SIEV4, was sabotaged once it was turned around to return to Indonesia.

**Senator SCULLION**—That puts a pretty interesting spin on placing your children in the water, I suppose: letting the water in the boat. Clearly, it is a pretty dangerous way to come here. So I suppose the conclusion can be drawn that not only have you saved us a fair bit of money but you have obviously participated in potentially saving the lives of some 450 souls. Thank you.

**Senator COONEY**—Does the informants system have its basis in legislation? I am thinking of Ridgeway and legislation following that. It is a policy question in one sense, but you might care to comment. Do we need legislation to underpin the informants system? Do we have it?

**Mr Keelty**—The controlled operations legislation protects the informant being involved in criminal activity. Largely, what we try to do is encourage the informant to tell us about the activity without actually getting involved in it—to be at arm's length—which was, I think, the answer that Mr Moses was giving to the *Sunday* program, that we do not sanction involvement in criminal activity where it is a crime.

**Senator COONEY**—The crew of the ships are by no means the masterminds. When you arrest the crew, they are just the villagers. Is that a fair comment?

**Mr Keelty**—You are right. Similar to a drug operation, they are not the actual organisers but they play a critical role in delivering the people to the country. They are like the people who play a critical role in delivering drugs to the country.

**Senator COONEY**—Would it be fair to say that, when the boats sink and the engines are sabotaged, et cetera, that is done by the people smugglers—the people who are actually part of the people-smuggling team, the crew, et cetera, rather than the asylum seekers?

**Mr Keelty**—It is difficult to say. Sometimes when people see the shoreline and then see the boat turned away, it can create, in terms of crowd dynamics, a different reaction. I am not specifically advised on each case, but it certainly has been the case that vessels have been sabotaged to prevent them from returning to Indonesia.

**Senator COONEY**—I am putting to you the evidence, insofar as there is evidence available to us, that indicates that it was the crew doing that.

**Mr Keelty**—In relation to SIEV4, I think that is correct.

**Senator McKIERNAN**—Senator Scullion has alerted our attention to SIEV4. With regard to the AFP's part of the task force on people-smuggling, how many photographs were you shown in October last year about the sinking of the vessels? Did you get access to all of the photographs or only to those that came through the office of the Minister for Defence?

**Mr Keelty**—We got access to two videos, which were copy videos. I will read from this document. It says:

On the 14th October 2001 AFP members travelled to Christmas Island and began investigation into the crew of SIEV4. As part of that investigation, naval personnel provided a copy of the HMAS *Adelaide's* log, a compact disc of photographs taken of the SIEV and two video cassettes marked 'SIEV4 on 6th October 2001'.

Through you, Madam Chair, can I just point out that the AFP has conducted its investigation into the crew of SIEV4. Four persons have been charged with offences under section 232(a) of the Migration Act. Three of the crew members appeared before the Perth Court of Petty Sessions on 4 February 2002, entering pleas of not guilty. They were remanded in custody to appear in the Western Australian District Court on 5 April 2002 to enter formal pleas and to have a trial date set. The fourth crew member has been found to be a minor by the Perth Children's Court and has been remanded in custody until 11 March 2002 for a status conference. As such, further answers about that aspect of the AFP's involvement will be sub judice in relation to those court matters.

**Senator McKIERNAN**—I understand the sub judice rule; I will not be pressing on that. I do, however, want to ask some questions about the age identification of individuals. I think this was the case where there was some dispute about the age of an individual and some X-rays were taken of their wrist. Charges were then laid on the individual as an adult but the court did not accept that.

**Mr Keelty**—That is correct.

**Senator McKIERNAN**—Perhaps because the matter is sub judice it is to be left for another day, but the committee has previously examined that age identification by X-ray.

**CHAIR**—We have indeed, Senator McKiernan.

**Senator McKIERNAN**—The AFP are an integral part of dealing with people-smuggling operations, but you have indicated that the AFP did not see these photographs until 14 October. What was the date of the sinking of the vessel?

**Mr Keelty**—On 6 October, the Royal Australian Navy vessel, HMAS *Adelaide*, was approximately 90 nautical miles north to north-west of Christmas Island when it observed the vessel flying an Indonesian flag and heading for Christmas Island. About 50 suspected unlawful citizens were seen on the deck of the vessel.

**Senator McKIERNAN**—When did the vessel sink?

**Mr Keelty**—On the information here, it would seem that it was on 6 October, because warning orders were issued on the SIEV and those orders were ignored. Subsequently, Navy personnel boarded the SIEV, advising the suspect unlawful noncitizens that they would not be allowed to enter Australia. On the advice provided to me, the suspect unlawful noncitizens became agitated and, following defusion of the situation on board the vessel, the vessel turned around and set course for Indonesia with HMAS *Adelaide* escorting it. The SIEV's engine was sabotaged and boarding by naval personnel occurred. The hull of the vessel was damaged and the vessel sank. All on board were taken by HMAS *Adelaide* and transported to

Christmas Island. It was identified that there were 219 SUNCs—that is, suspect unlawful noncitizens—and four Indonesian crew members, who are the four we have charged.

**Senator McKIERNAN**—My questions relate to the involvement of the AFP in the task force against people-smuggling. In this instance, when was the AFP made an integral part of that operation of turning them around, saving them and then apprehending them and transporting them to Christmas Island?

**Mr Keelty**—Apart from the involvement of the Australian Federal Police on Christmas Island—because we provide the policing service to Christmas Island—the people-smuggling team did not become involved until 14 October, when they travelled to Christmas Island.

**Senator McKIERNAN**—You did not become involved. When were you alerted?

**Mr Keelty**—I do not have a briefing on that, but I assume we were alerted on 6 October. We would have been alerted because the people were taken by HMAS *Adelaide* back to Christmas Island.

**Senator McKIERNAN**—Could you take this on notice and provide the committee with full details of when the AFP became involved in this. The matter became very public in that election environment at the time. Obviously an offence was being committed against Australia, so there was going to be AFP involvement in it. I would like to know exactly when you became involved and on what evidence.

It is my understanding—I am asking it from this point of view—that, when Coastwatch identifies a vessel that is in Australian waters that should not be there, information on that vessel is forwarded to Canberra. That is what activates the task force and the component parts of the People Smuggling Task Force. I am only asking about the AFP's involvement: when you become involved and, on this particular occasion, when you were involved and who informed you. I also ask you to take into consideration whether any information was kept from the AFP in the same way that it now appears that information was kept from ministers, from members of the government and, more importantly, from the Australian people.

**Mr Keelty**—I will take the first lot of those questions on notice as to exactly when we were notified. When you say 'we', I am presuming you are talking about the people-smuggling team as opposed to the police on Christmas Island who would have been dealing with the situation.

**Senator McKIERNAN**—Yes, indeed.

**Mr Keelty**—In relation to the latter part of the question, the naval personnel provided the AFP with material to assist the investigation of the crew, including statements taken from naval personnel, video cassettes and the photographic disks.

**Senator LUDWIG**—Were there any reports from the police on Christmas Island through you in relation to what is colloquially now called the 'kids overboard' incident that that was not in fact an incident that had occurred? Were there any reports from your local police about that?

**Mr Keelty**—No.

**Senator SHERRY**—Did the AFP have a representative on the coordinating task force that was set up within the Department of the Prime Minister and Cabinet?

**Mr Keelty**—Yes.

**Senator SHERRY**—Who was that?

**Mr Keelty**—Federal agent Shane Castles, who is our general manager of international operations.

**Senator SHERRY**—Is Mr Castles here?

**Mr Keelty**—No, he is not.

**Senator SHERRY**—Can he be made available to the committee?

**Mr Keelty**—It is an unusual step for us to put individual officers before the committee. I would encourage you, Senator, to seek any information you might be seeking through me.

**Senator Ellison**—I think that is normally done. In fact, Madam Chair, all the other questions that are asked involve a number of officers and the committee does not necessarily get the officer himself or herself before the committee; the question is asked of the commissioner. I think the commissioner's point is a very good one because the practice has been that questions are asked of the commissioner and of course the commissioner then gets that information through the Australian Federal Police, because all the information the commissioner gets and provides to the committee has been obtained from officers. It is not the case that the commissioner is hands-on involved in every investigation himself. I think that to get any particular officer involved in any particular matter before the committee is breaking with precedent and convention and for a number of sound reasons I would say that the question could be asked through the commissioner.

**Senator SHERRY**—We will see how we go. There is going to be another avenue in respect of this matter anyway, but we will see how we go. The Prime Minister has urged that all public servants involved in the issue be honest to the appropriate Senate committees. Let us see how we go.

**Senator Ellison**—There is no question of that. You have just had information given to you today which has come from the commissioner, but the commissioner has obviously obtained it from officers on the ground.

**Senator SHERRY**—Let us just see how we go.

**Senator Ellison**—I make that point because I think it is—

**CHAIR**—Minister, I take the point that you have made and in the operation of this committee, certainly during my period as a member and the chair of the legislation committee, that approach has been taken. As Senator Sherry said, let us proceed and determine how this proceeds.

**Senator SHERRY**—Let us see where the evidence leads us. Mr Castles is a member of this coordinating group within PM&C. Whom did Mr Castles report to?

**Mr Keelty**—To Deputy Commissioner Davies.

**Senator SHERRY**—Over to you, Mr Davies. Did Mr Castles report to you on what occurred at this working group task force?

**Mr Davies**—In the normal course of events obviously I am not briefed on every meeting or on every circumstance of a meeting. But issues that are relevant to where we are going operationally and so on would be generally reported to me.

**Senator SHERRY**—My question was: did Mr Castles ever discuss with you issues that were discussed at that working group?

**Mr Davies**—On some occasions, yes.

**Senator SHERRY**—What did he discuss with you about the working group within PM&C?

**Mr Davies**—Which particular aspect are we talking about?

**Senator SHERRY**—Let us take an issue of current public note: the issues relating to the allegation that children were thrown overboard. Did Mr Castles ever discuss this matter with you?

**Mr Davies**—Can I also point out that I do not believe that we have been at every task force meeting. Our role, obviously, is not as a key member. Our role is one of the criminal aspects: our involvement with the people-smuggling teams and disruption activities. So we are not in attendance at every meeting. I want to point that out.

**Senator SHERRY**—We know that Mr Castles from the AFP was on this working group. My question was: did Mr Castles discuss issues relating to the allegation—which was stated as a fact at the time—that children were thrown overboard? Did he discuss that issue with you?

**Mr Davies**—No. I do not believe that was discussed with me. No.

**Senator SHERRY**—Did he discuss any other issues with you?

**Mr Davies**—Only insofar as some criminal issues—with the crews. Obviously there is a whole of government approach which covers the whole aspect of arrangements. As I said, our involvement is limited to criminal issues; disruption activity and the charging of crews.

**Mr Keelty**—Senator, can I point out that we are trying to be helpful to you. You mentioned meetings of the task force of note that had been in the papers over the last couple of days. According to the instructions provided to me, Mr Castles was not at the meeting on 7 October. It might also be of some assistance to you to let you know that the video and the film disk were never provided to Mr Castles, in the same way as they were never really circulated within the AFP, because they were copies and they were actually taken for another purpose which has now become what some might see as a different purpose. Our investigators in Perth, who went to Christmas Island, took possession of them as part of gathering the material from the Navy for the prosecution that is now before the courts. So our involvement in looking at videos or photographs would only have been done by the case officer in Perth for the purposes of that prosecution, which did not involve Mr Castles's role with the interdepartmental committee.

**Senator SHERRY**—I am not making any accusations.

**Mr Keelty**—I am just trying to assist you.

**Senator SHERRY**—You are doing that pretty well. You say that the AFP officer in Perth received copies of the video and the photos. Who is the AFP officer in Perth?

**Mr Keelty**—He is the case officer for the matter that is now being prosecuted before the court. His name is Federal Agent Stoykovski.

**Senator SHERRY**—Do you know what date copies of the photos and the video were made available to him?

**Mr Keelty**—On 14 October.

**Senator SHERRY**—Were copies of the video and the photos made available to anyone in the AFP other than him?

**Mr Keelty**—A copy was made available to headquarters and was provided to the Department of Defence.

**Senator SHERRY**—A copy of the photos and the video?

**Mr Keelty**—No, only a copy of the two videos.

**Senator SHERRY**—A copy of the videos was made available to headquarters. Who in headquarters was it made available to?

**Mr Keelty**—They were made available to my office. I did not take possession of them. We provided them to the Department of Defence to ensure that the copy of the copy that we had was the same as the copy that they had.

**Senator SHERRY**—What date was it made available to headquarters—to you?

**Mr Keelty**—Could I take that on notice, Senator? I am not sure.

**Senator SHERRY**—Okay. What conclusions, if any, did you draw from the material that was made available to you?

**Mr Keelty**—I never looked at it.

**Senator SHERRY**—Who looked at it in the AFP?

**Mr Keelty**—As far as I am aware, the case officer looked at it for the purpose of determining whether it was a potential exhibit in the prosecution in Western Australia.

**Senator SHERRY**—Copies were made available to headquarters. Who carried out the liaison with the Department of Defence on the material made available to headquarters?

**Mr Keelty**—I did. I spoke to the Secretary of the Department of Defence. I advised him that we had a copy of the video that was taken from the Navy on Christmas Island and I provided him a copy of the copy that we had to ensure that they were aware of what was provided.

**Senator SHERRY**—Who was the person in the Department of Defence that you—

**Mr Keelty**—The Secretary, Dr Allan Hawke.

**Senator SHERRY**—Did you receive any feedback commentary about the veracity of the material that was made available?

**Mr Keelty**—No, I didn't. There was no need for me to receive that. In one respect we were just certifying, if you like, that the copy that the AFP had in its possession—that was potentially an exhibit for the prosecution—was a copy of what was already in the possession of the Department of Defence. I left it with them and I have never heard from Dr Hawke about it since. I assume what we actually provided them with was another copy of what they already had.

**Senator SHERRY**—You had this material which was to be used in a prosecution. Has that prosecution begun yet?

**Mr Keelty**—Yes, it has.

**Senator SHERRY**—What did you understand the material that you were provided with showed?

**Mr Keelty**—I guess I didn't need to turn my mind to that because it was part of material, including written statements from naval personnel, that was gathered by the investigators when they went to Christmas Island. Naval personnel were interviewed on Christmas Island



and statements were provided by them. That material—those statements together with the videotapes and the film disks—was then, as in the normal case, taken back to Perth as part of the evidence for the prosecution. The fact that we were in possession of the videotapes was as a result of a conversation between Dr Hawke and me. I undertook to him that we would provide a copy of the videotapes that we had—that were provided by the Navy in the first place—to ensure that that was the same copy that they had here. It was not an issue for the AFP, in one sense. It was not a major issue for us. We were concerned with the prosecution and this was a side issue.

**Senator SHERRY**—But in the context of the photos and the video provided, you would need to have known the date it was shown and what the relevance of the material was, surely, for the prosecution?

**Mr Keelty**—I would not, but the case officer would turn his mind to that, yes.

**Senator McKIERNAN**—Do you know the duration of the videotapes?

**Mr Keelty**—No, I do not, Senator.

**Senator McKIERNAN**—You still have not personally seen the content of the tapes?

**Mr Keelty**—No, I have not.

**Senator McKIERNAN**—Did you personally hand over copies of the tapes to the Secretary of the defence department?

**Mr Keelty**—No, I did not. They were delivered to my office and, in fact, I think Dr Hawke sent someone from his office over to my office to pick them up.

**Senator SHERRY**—Is that normal?

**Mr Keelty**—The relevance of the tapes at the time was not the relevance that they have today.

**Senator SHERRY**—It may be that you did not understand the relevance then, but Dr Hawke may have well understood the relevance then.

**Mr Keelty**—Sorry. I have just been reminded of something. The reason this came about was that there were statements by the Prime Minister on the *Today* show—and I apologise for this; I have just been reminded—that there were copies of the tape either in the possession of Customs or the AFP. So I then set about finding out whether the AFP had any copies of the videotapes. It was through that inquiry that we discovered that—and we did not know up until that point of time—the tapes were forming part of this brief of evidence that is currently before the court. It was at that time that I spoke to Dr Hawke and said, ‘Well, we’ve got copies of the tape,’ and offered to provide him copies of what I assumed to be something that was already in his possession.

**Senator SHERRY**—If you did not know you had copies of the tape, how did the Prime Minister know?

**Mr Keelty**—I am not sure. I can assume that he was briefed by somebody that people had been interviewed on Christmas Island and that all the material that was available on Christmas Island was provided to either Customs or the AFP.

**Senator SHERRY**—It did not strike you as a little odd that the Prime Minister would know and you did not?

**Mr Keelty**—Not in the circumstances, because the videotapes at that time were in the possession of the Department of Defence. I was not aware at that point in time of how widely

they had been copied, presuming that someone had released a copy to the media. So, when the Prime Minister had mentioned that, I presumed that someone had briefed the Prime Minister that the AFP had been on Christmas Island and had gathered material from the naval personnel on Christmas Island.

**Senator SHERRY**—Do you know whether the officer in Perth who was putting together the prosecution case understood the context and the dates and the meaning of the photos and the videos?

**Mr Keelty**—I am sure he did not.

**Senator SHERRY**—You are sure that he did not. Why are you sure that he did not?

**Mr Keelty**—Because he took possession of the tapes on 14 October, and it was much later that it became an issue. And after it became an issue, I then had to initiate a search to see whether we were in fact in possession of it. So the import of it meant nothing. There is good reason for that, and it is that the tapes were gathered for an entirely different reason.

**Senator SHERRY**—Have you spoken to the officer in Western Australia to determine when, on his examination of the material, in putting together the evidence for the prosecution, he became aware of the relevance, the context, the dates and those sorts of issues?

**Mr Keelty**—I have not spoken to him, but he put in a report on 14 December.

**Senator SHERRY**—And what does that report go to?

**Mr Keelty**—It describes the general circumstances of how the investigation was carried out; and the tapes formed part of that because they were, like the witness statements, potential exhibits.

**Senator SHERRY**—Does the report go to the context of the photos and the video and what it showed?

**Mr Keelty**—No, it does not. Again, I respectfully remind you that the purpose of the AFP's involvement in taking possession of this was entirely different from anyone else's interest. It was to do with the prosecution of the persons responsible for smuggling the people here.

**Senator SHERRY**—I understand that. Has anyone from the Prime Minister's office made contact with the Australian Federal Police about these issues?

**Mr Keelty**—No.

**Senator SHERRY**—Does that apply to Mr Castles as well?

**Mr Keelty**—I would have to ask Mr Castles, but the reason why that is probably so is that all we have ended up with in the AFP is a copy that was already circulating.

**Senator SHERRY**—You gave me a categorical no, but you are now not sure?

**Mr Keelty**—I am saying no, Senator. You asked me a question, and the question was, 'Has Mr Castles been asked?'

**Senator SHERRY**—Yes.

**Mr Keelty**—I cannot answer for Mr Castles, and I said that.

**Senator SHERRY**—Okay. Has anyone from the Prime Minister's department contacted the Federal Police about the videos, the photos and the issues surrounding them?

**Mr Keelty**—To my knowledge, no, and if any of my senior officers had been asked I am sure that in the current context they would have told me.

**Senator SHERRY**—You will check that with Mr Castles?

**Mr Keelty**—I will check that with Mr Castles, Senator.

**Senator SHERRY**—I think Mr Davies said—it might have been you; I am not sure—that Mr Castles was not present at the meeting on 7 October.

**Mr Keelty**—It was me who said that.

**Senator SHERRY**—So presumably you would know the meetings he was at?

**Mr Keelty**—We would do. We would have a record of the meetings that he was at.

**Senator SHERRY**—Could you give us the record of the meetings he was at?

**Mr Keelty**—The dates of the meetings he attended?

**Senator SHERRY**—Yes.

**Mr Keelty**—Yes, certainly.

**Senator McKIERNAN**—On what date was your meeting with Dr Hawke?

**Mr Keelty**—I do not recall. I think I have undertaken to provide that date. I did not meet with Dr Hawke. I spoke to him on the phone.

**Senator McKIERNAN**—You did not have a formal, face-to-face meeting?

**Mr Keelty**—No.

**Senator McKIERNAN**—Was that the same date as the videos supplied to Dr Hawke?

**Mr Keelty**—No. I think there was a delay in getting it from Perth. Because it was in Perth, I think it might have been some days later.

**Senator McKIERNAN**—They were not tapes that could be transferred electronically, were they; it was a physical transfer from Perth to Canberra?

**Mr Keelty**—That is correct. My understanding is that the tapes had to be copied and then transferred from Perth, so there was some delay before we actually got them over here to Canberra.

**Senator McKIERNAN**—That was not the case with the photographs, though. How many photographs were on the CD that you mentioned came into possession of the Federal Police?

**Mr Keelty**—I am not sure, but the photographs have never been anywhere other than in the possession of the AFP. They still form part of the exhibits for Perth. I am distinguishing between the photographic disk and the videos.

**Senator LUDWIG**—Did they move from Perth at all? Were they copied and sent to—

**Mr Keelty**—No, they were not.

**Senator McKIERNAN**—But the photographs that were in the AFP's possession are copies of photographs, are they not, or are they originals?

**Mr Keelty**—They are copies of photographs that must have been provided on Christmas Island.

**Senator McKIERNAN**—So it would be safe for me to assume that the photograph that appears on the front page of the *Australian* newspaper today is one of those photographs that

came into the possession of the AFP on 14 October last year. Would that be a fair assumption, do you believe?

**Mr Keelty**—That is a fair assumption.

**Senator McKIERNAN**—I accept what you said earlier about this issue being a much hotter issue now than it perhaps was then. Did you hear what I said then?

**Mr Keelty**—I think you are saying to me that this issue is a much hotter issue today than what it was at the time we came into possession of the video.

**Senator McKIERNAN**—And then I was going to go on to say that nonetheless it was a hot issue, it was a topical issue, it was an issue that was in the midst of an election campaign. It was a hot issue. I am not sure what terminology you use within the AFP. What briefings—and I do not want to know the content—and when, were given to your minister on the matters surrounding this matter?

**Mr Keelty**—I have never briefed my minister on the issue of the photographs because I only became aware that the photographs, the disk, were in the possession of the AFP yesterday. On the issue of the videos, certainly I provided the minister with no written brief. Certainly I provided the minister with a briefing that we were charging the people before the court, but to my recollection I am not sure that I ever told the minister about the AFP possession of the tapes. Again, it is a hotter issue today than it was then, and I acknowledge that it was a hot issue then. The AFP's role was for an entirely different reason, and especially since we only had copies of copies there was no need for us to raise it with the minister that we had possession of video tapes.

**Senator McKIERNAN**—The AFP were part of the people-smuggling task force. Your minister is a portfolio minister within a larger task force or interministerial body that looks at people-smuggling. We have an issue that surfaced—and I do not mean that as a pun—very early in an election campaign when politics were to the fore. It was not the AFP that made it a political matter because it was other individuals who made statements. Is there a person within the AFP who has a liaison responsibility with the minister or the minister's office to brief them on what I colloquially call 'hot issues'? If you have different terminology for that—that is the terminology used around different departments—please let us have it.

**Mr Keelty**—No, I do not have different terminology. Again, to put it in context, what the AFP had was secondary material. What we would brief the minister on is the fact that arrests had been made. The minister would not know—nor would I, for that matter—in the normal course what exhibits were seized from whom at what time for what prosecutions, or the relevance of those exhibits for prosecution. Whilst I can understand that people might consider in hindsight that these things were of much more import than the way they were treated within the AFP, first and foremost we got possession of them much after the event; secondly, the reason for taking possession of them was entirely different to the reason that other people might have had an interest in them; and, thirdly, they formed potential exhibits for a prosecution that I have said is currently before the court. So there is a whole raft of reasons why the minister might not know. As I said, there was no written brief to the minister, but it might well be that when the Prime Minister made a statement on the *Today* show that the AFP might have had possession of the tapes—either the AFP or Customs, I think the Prime Minister said—then the minister and I conversed about that.

**Senator McKIERNAN**—What date was that when the Prime Minister was on the *Sunday* program?

**Mr Keelty**—It was the *Today* program.

**Senator McKIERNAN**—The *Today* program; I am sorry.

**Mr Keelty**—I am not sure of the date, Senator.

**Senator Ellison**—I think it was after it was made public. The video was released I think on 8 or 9 November.

**Senator McKIERNAN**—With the election being on the 10th?

**Senator Ellison**—Yes, it would have been at that stage. I am sure it was the 8th that the Prime Minister said that it was going to be released and it was released on the 9th. The Prime Minister had said the AFP had a tape and the commissioner mentioned in a conversation that they had a tape for the case, that they had a copy of it.

**Senator McKIERNAN**—The second part of the question was about liaison with the minister and the minister's office within the Federal Police. I accept that this is quite a legitimate activity, that there be liaison, because you are a functionary of government. Can you explain the methodology to the committee, how that system operates? There is, I suspect, a system where hot issues are identified within the AFP and there is an obligation on the service to inform the minister and keep the minister's office informed—or indeed the department—of what these matters are. I am not saying that there is an interference in the operational matters or anything; I am not making any accusations—let us make that quite clear.

**Mr Keelty**—The normal course is that we have a departmental liaison officer in the minister's office for the purpose of facilitating liaison between the AFP and the minister's office. On some issues I will talk to the minister directly and on some issues he talks with me directly, but generally speaking the liaison officer is the person through whom we facilitate that arrangement. However, this was in caretaker mode, as I recall, and we had withdrawn our liaison officer from the minister's office—so there was a very ad hoc arrangement in place. The minister has reminded me that the statement from the Prime Minister on the *Today* show caused the deputy and I to instigate a search of our holdings to see whether we were in possession of the tape, because we had no knowledge that we were in possession of the tape. With respect to the link back to the IDC—the interdepartmental committee of the Department of the Prime Minister and Cabinet—they would not have known either. Mr Castles would not have known that we had this tape.

**Senator SHERRY**—You cannot be sure.

**Mr Keelty**—We would have to ask Mr Castles—but there is no reason why he would have known because even the officer involved in the investigation did not understand the import of the copy. So I would have subsequently discussed that with the minister.

**Senator SHERRY**—Your officer on the ground in WA, Stoykovski, was gathering evidence for a court case. I put it to you that he would have had to have understood the context of the photos, the video and, particularly, the witness statements?

**Mr Keelty**—The material is gathered for a different purpose.

**Senator SHERRY**—I understand that. I understand it was gathered for a purpose different from purposes other people put—

**Mr Keelty**—I am not drawing an artificial line. I am saying that all we had were copies of what everybody else had. We had a job to do in relation to the prosecution, and that was what was done.

**Senator SHERRY**—In relation to Mr Castles, who requested that an officer join this working group task force?

**Mr Keelty**—It is not an unusual step.

**Senator SHERRY**—No, I am not saying that. I am not even asking that. Who asked that—

**Mr Keelty**—I would have to take that on notice.

**Senator SHERRY**—Okay.

**Mr Keelty**—We would, at any given time, be a party to a number of—

**Senator SHERRY**—I understand that. Who put him on this group? Was it you? Was he asked for? Who put his name forward?

**Mr Keelty**—I think it would have been the former general manager of what we called international and federal operations—unless the deputy has contrary advice.

**Mr Davies**—No, I do not.

**Senator SHERRY**—You could check on that for me, please. You mentioned the gathering of witness statements by the officer in Western Australia. Those were statements from whom?

**Mr Keelty**—Naval personnel and also, as far as I understand it, some persons on the boat.

**Senator SHERRY**—Were they crew?

**Mr Keelty**—No, the crew are defendants. It would not be a witness statement from the crew; it would be an interview.

**Senator SHERRY**—I mean the crew of the boat.

**Mr Keelty**—I am sorry, Senator. Of the SUNC or the naval vessel?

**Senator SHERRY**—The vessel that sank.

**Mr Keelty**—There would be some statements ultimately taken from some of the persons on the suspect unlawful vessel, and there would be interviews conducted with persons who were crew on that vessel. They are the persons who are charged and are now before the court.

**Senator SHERRY**—So you received no report from your officer in Western Australia, based on the records of interview with naval personnel or based on his observations of the tape or the photos, about the context or the events?

**Mr Keelty**—No, and there is a reason for that. Just to give you an example of what we are dealing with here: in 2000-01, we arrested 178 crew; from 2001 to the year to date we have arrested 67 crew. So we do have a large number of these investigations on at any given time.

**Senator SHERRY**—I accept that that is likely in the normal course of events, but this was not the normal course of events.

**Mr Keelty**—With respect, Senator, there is a lot of emphasis placed on this event now, but at the time—

**Senator SHERRY**—There was at the time, too.

**Mr Keelty**—But there was not from the perspective that we were approaching the issue. In defence of the federal agent who was going about his proper duty of investigating an alleged crime, he has done so. He has also kept a separation of what we were dealing with from what other people were dealing with at the time.

**Senator COONEY**—Let me ask a question in that context. The policing activity goes towards investigating crime, which means identifying what may have been committed, accumulating evidence to support that and then sending it off to the DPP. That is how it works. If you were investigating a crime such as people-smuggling, you would not ignore evidence that would suggest another crime was being committed at the same time, or about that time, in the same context as the people-smuggling crime was committed in. Would that be a fair statement?

**Mr Keelty**—That is correct.

**Senator COONEY**—From the information you got—and from whomever you get the information from, plus all the other surrounding issues of evidence—there was never a suggestion that anybody could point to that would suggest an attempted murder had been committed by parents tossing their children overboard? Would that be a fair comment? Perhaps I am not putting it very clearly. The system was investigating a series of events that suggested that the crime of people-smuggling had been committed, so you gathered the events to take off to court to enable that to be done. In investigating that evidence, no evidence arose—even though it was in the same context—that would suggest that other crimes, in particular attempted murder and crimes akin to that, had been committed?

**Mr Keelty**—If other crimes were discovered in the investigation of the initial allegation, they would normally be investigated.

**Senator COONEY**—I would have thought that parents throwing their children into the sea would form a reasonable basis for a charge of attempted murder plus a series of other crimes. The people-smuggling happened in territorial waters, didn't it?

**Mr Keelty**—I think I read out before that it was approximately 90 nautical miles north-north-west of Christmas Island. What I am not sure about is where the jurisdiction for a Western Australian offence would end.

**Senator COONEY**—This could almost take you back to where you used to be, Minister: having the defence of somebody charged with attempted murder. That has never been suggested, has it? Right throughout all this, there has never been a suggestion that a crime had been committed by people throwing their children into the sea. The allegations are that they were thrown into the sea, but it was never taken to the point where people said, 'Yes, we will arrest these parents.' There was never a suggestion that the children be taken away from the parents.

**Senator Ellison**—There was never a suggestion of a prosecution for attempted murder.

**Senator COONEY**—Or for any crime down the line, from attempted murder down to assault, or for putting children at risk or for putting people at risk or whatever way you frame your laws in Western Australia?

**Senator Ellison**—I am not aware of any inquiry of that sort at the state level.

**Senator COONEY**—Were the children actually left with the parents when they were pulled out of the water and put on Australian ships?

**Senator Ellison**—That is an Immigration matter, Senator Cooney.

**Senator COONEY**—That is a fact, isn't it?

**Senator Ellison**—They would know that, not me or the officials here. What I am saying to you is that you can ask that question—

**Senator COONEY**—If it was a Western Australian matter—if it were a state matter—you would know whether the state authority intervened in any way?

**Senator Ellison**—I am not aware of the state government intervening in any way.

**Senator COONEY**—What I am putting to you is that it is interesting—if these events occurred in the way they are alleged to have occurred—that originally no action was taken. It would be one thing to not charge the people-smugglers because it was outside the jurisdiction or because the facts were not strong enough, but it is very peculiar that you have charged the people-smugglers but not the people who are alleged to have committed what I would call a more serious crime: murder is still at the top of the list.

**Senator Ellison**—That is a state matter as such. I cannot speak for the state authorities. In these situations, questions of intent and the circumstances are all relevant factors for anybody who is assessing an investigation or subsequent prosecution, but that is really something that the state authorities of Western Australia should answer. I am not aware of their carrying out any inquiry.

**Senator COONEY**—But the point is this: the Police Force and policing authorities talk to each other. There is a very intimate relationship—and so there should be—between the Federal Police, the state police and what have you. The old rivalry is fast disappearing. If there were evidence of a serious nature to suggest that a crime as serious as attempted murder had been committed, surely that would have been passed on.

**Senator Ellison**—I would imagine that in any investigation where you have the AFP and they detect the commission of a crime which is a state matter, that would be referred to the state police.

**Senator COONEY**—That is what I am saying. From my knowledge of the Federal Police, they are very cooperative with other forces and very good at investigation. If you have a set of facts that would suggest there had been a very serious crime committed, I would have thought those facts would—

**Senator Ellison**—I do not think anyone has alleged here any attempted murder. That has never been alleged.

**Senator COONEY**—Throwing children into the water?

**Senator Ellison**—Let us talk hypothetically. Their having life jackets—and depending on the sea—would not really constitute grounds for a prosecution in that regard, would it? I am talking to you as a lawyer now. It would be very difficult to found a prosecution.

**Senator COONEY**—The Prime Minister's impression—it was not that of the Prime Minister alone—when he saw these faxes was to say, 'You would not let these sorts of people into Australia.' That is the comment of an observer of these facts. He is outraged by them. Yet people who knew about the facts—in my view, they are highly responsible people because they are in the armed services or otherwise—were not moved in any way to relate that so as to cause an arrest to be made for a criminal offence.

**Senator Ellison**—Senator Cooney, the Prime Minister's comments are being dealt with elsewhere. But the motivation in any situation of children being thrown overboard could well be to convince authorities to change their course of action. There are all sorts of motives you could attribute to that. You are saying that, if this had happened, it should have been investigated as an attempted murder.



**Senator COONEY**—Good intentions, of course, do not excuse you. If you fatally shoot somebody because you want to put them out of their misery does not make it all right.

**Senator Ellison**—With attempted murder there is an intention. We are getting into the realms of a hypothetical situation. I simply say that there was no inquiry by the Western Australian authorities in relation to any charge, and that is as I am aware.

**Senator COONEY**—I will get off this. If you saw parents throwing their children into the sea, especially on the high seas, and you stood back and said, ‘There is no offence really,’ you would have to be fairly generous, wouldn’t you?

**Senator Ellison**—It again depends on the circumstances. What might be regarded by the public at large as being undesirable and inappropriate might not constitute the grounds for a prosecution for attempted murder. It depends on the sea, life jackets, the circumstances and help at hand. Those are all issues which would need to be taken into account. You are talking about contemplation of a prosecution for attempted murder. You know very well that, in order to found such a prosecution, any investigating officer would have to make sure there was a prima facie case. That is what they look at. They do not look at whether a well instructed jury would arrive at a verdict of guilty on the basis of beyond a reasonable doubt. But you still have to look at the elements of the contemplated defence or prosecution and make sure that they are all there and they can be made on a prima facie basis. Those are all the difficulties of any investigating officer and prosecutor.

**Senator COONEY**—This is the last point. When you look at a reasonable man—

**CHAIR**—This is well outside the area of budget estimates.

**Senator COONEY**—No, it is not. The judgment of a reasonable man—I take it that you would agree that the Prime Minister is a reasonable man—who sees this set of facts and says, ‘This is outrageous. This is not the sort of thing that you allow to happen,’ would conclude that a criminal offence may have been committed and therefore proceedings should be taken.

**Senator Ellison**—There are other authorities to deal with that, and that is what we have been talking about at this committee. The AFP involvement was one from a law enforcement angle—not from any other angle—and they went about their business investigating a people-smuggling situation. There is a prosecution before the courts, and we cannot go into it.

**Senator COONEY**—It is almost absurd—

**CHAIR**—You said that was the last comment, Senator Cooney.

**Senator COONEY**—All right. It is almost absurd to say that you investigate people-smuggling but not investigate facts which could well constitute attempted murder.

**Senator Ellison**—I do not think we can take that any further, Madam Chair.

**CHAIR**—I think the minister has made his responses in that regard, Senator Cooney.

**Senator SCULLION**—I just want to check some of the evidence to make sure that I heard it right. In response to Senator Kiernan, you indicated the operational circumstances under which this vessel sank. You said that the vessel was hailed, it turned back to Indonesia, shortly afterwards it was sabotaged and that there was ingress of water, et cetera. How did you establish that it had been sabotaged? You did not just assume it sank. Did you interview crew or debrief asylum seekers? How did you establish that?

**Mr Keelty**—Through the interviewing of crew, asylum seekers and naval personnel.

**Senator SCULLION**—So there was a formalised process of demonstrating that?

**Mr Keelty**—That is correct.

**Senator SCULLION**—Looking at the picture here, it strikes me that, as a consequence of that activity, we have people—children, families—in the water. What you are really telling me is that, as a consequence of a deliberate act of an asylum seeker, the children and others ended up in the water and their lives were put at risk—that you have evidence to demonstrate that?

**Mr Keelty**—Certainly that is the summation of the investigating officer.

**Senator SCULLION**—I have to support Senator Cooney in saying that we now have absolutely clear evidence—we may not have photos or videotapes—that it was an act of an asylum seeker or others that placed the lives of these people in danger.

**Mr Keelty**—That is correct. The one distinction I will make with some of the hypotheticals raised by Senator Cooney is the intent. In any criminal investigation you must establish intent. It is a question of whether the intent was to murder those on board—I suspect not—or to force the Australian authorities to take possession of these people and bring them back to the mainland; I suspect that was the intent.

**Senator SCULLION**—It is also interesting that some of the questions from my colleagues on the committee have related to the Prime Minister apparently attempting to mislead the public and associated issues. It would appear now that, in any event, those children ended up in the water because of a deliberate act by an asylum seeker. Your evidence clearly indicates that.

**Mr Keelty**—That is correct, and that is the summation of the investigating officer.

**Senator McKIERNAN**—I would like to follow up on the commissioner's statement. You are saying that the children were in the water, not as a result of the boat sinking but as a deliberate act of some adult people on board the vessel.

**Mr Keelty**—That is exactly right. They sabotaged the vessel and caused it to sink.

**Senator McKIERNAN**—They sabotaged the vessel and the vessel was sinking?

**Mr Keelty**—That is correct.

**Senator JACINTA COLLINS**—Mr Keelty, I apologise if I cover some of the ground that you have covered earlier. Please let me know if I have, because I have not listened to the full period. The first point following Senator Scullion's question that I want to clarify is whether the Australian Federal Police are aware of any evidence for the statement that children were, or a child was, thrown in the water.

**Mr Keelty**—No.

**Senator JACINTA COLLINS**—Over what period of time was the ship sinking?

**Mr Keelty**—I do not have that information before me.

**Senator JACINTA COLLINS**—So, with a big Navy vessel next to it, this ship could have been sinking for 24 hours?

**Mr Keelty**—I cannot comment; I do not know.

**Senator JACINTA COLLINS**—Are you aware of any evidence to the effect that asylum seekers were placed back on a vessel that the Australian Navy was aware could not be maintained afloat.

**Mr Keelty**—No, I am not.

**Senator JACINTA COLLINS**—Are you aware of any evidence that contradicts that statement?

**Mr Keelty**—No, I am not.

**Senator JACINTA COLLINS**—The main reason I wanted to clarify some issues with you is in relation to questions we have been asking with respect to Ms Bryant's report. Are you aware of that report?

**Mr Keelty**—No, I am not.

**Senator JACINTA COLLINS**—You have not read this report?

**Mr Keelty**—No.

**Senator JACINTA COLLINS**—What was the name of the officer that you indicated earlier was on the people smuggling task force?

**Mr Keelty**—Federal agent Stoykovski.

**Senator JACINTA COLLINS**—On this task force, Commissioner Keelty.

**Mr Keelty**—Sorry, Shane Castles was on the task force.

**Senator JACINTA COLLINS**—What was your misunderstanding about Stoykovski? Who was he?

**Mr Keelty**—He was the investigating officer of the crew responsible for bringing the people to Australia—the people who were on what is commonly now referred to as SIEV4.

**Senator JACINTA COLLINS**—I have noticed from a quick glance through the witness statements and other evidence collected by Ms Bryant—who, if you are not aware, is the officer of the Department of Prime Minister and Cabinet who conducted the report into the interdepartmental contacts surrounding this incident—that the Australian Federal Police are not listed. Do you understand whether the Australian Federal Police provided either any written or oral evidence or documentary evidence of a secondary nature to this inquiry?

**Mr Keelty**—I am not familiar with the report and it would appear on the advice just given to me that the reason I am not familiar with the report is that the AFP was not involved in the gathering of the material.

**Senator JACINTA COLLINS**—No, I am not asking about the gathering of material; I am asking about the provision of any evidence from the AFP perspective on the nature of the interdepartmental communications surrounding this incident—

**Mr Keelty**—No.

**Senator JACINTA COLLINS**—or any other material held by the AFP that was drawn upon in Ms Bryant's investigations.

**Mr Keelty**—No.

**Senator JACINTA COLLINS**—Can I ask that you take that on notice, because I can understand that it is a fairly broad question for you to necessarily be familiar with here and now and that it might take either you, because you are not familiar with this report, or the other officer who is advising you to confirm that that is the case.

**Mr Keelty**—Can I indicate, through Madam Chair, that if my answers are incorrect I will advise the committee.

**CHAIR**—Yes, Commissioner. Thank you very much for that clarification.

**Senator JACINTA COLLINS**—One further point: we were provided yesterday with a list of the task force meetings, and there were a considerable number of meetings.

**CHAIR**—The commissioner has undertaken to provide a list of meetings that the AFP's representative on the task force attended, if that is of any assistance to you.

**Senator JACINTA COLLINS**—Yes, it is.

**Senator Ellison**—It might assist you to know that Mr Castles was not at the meeting on 8 October—

**Mr Keelty**—The 7th.

**Senator JACINTA COLLINS**—It would be the 7th.

**Senator Ellison**—on 7 October, which has been the subject of great discussion, if that helps you.

**Senator JACINTA COLLINS**—Minister, there were two meetings on the 7th and both of them are very significant.

**Mr Keelty**—We did not have a representative on the 7th at all, Senator.

**Senator Ellison**—No-one on the 7th at all.

**CHAIR**—We are advised that Mr Castles was not at either meeting.

**Senator JACINTA COLLINS**—I think that will do for now.

**CHAIR**—Senator Cooney, did you wish to come back in this area?

**Senator COONEY**—No, I just want to clarify what Senator Collins has said: the only charge that it was ever contemplated should be laid against the crew was of people-smuggling, given the set of circumstances that surrounded this boat. That is right, isn't it?

**Mr Keelty**—That is correct.

**CHAIR**—So we will continue in this area, Senator McKiernan?

**Senator McKIERNAN**—It is in this area, but it is not about this particular boat. There was another boat that got into some difficulties off the coast and, regrettably, on this occasion two people ended up deceased as a result of it. Their bodies were then taken to Christmas Island. Whose responsibility is it to do a coronial inquiry on those bodies or to do an investigation into the bodies? I am asking that merely for information because I do not know whether it is a Western Australian responsibility—

**Senator Ellison**—It is Western Australia.

**Senator McKIERNAN**—Is there any Commonwealth involvement at all?

**Mr Cornall**—Not that I am aware of. That is a matter before the Western Australia coroner as to whether he holds a full coronial inquest or not.

**Senator McKIERNAN**—It is still before the coroner, is it?

**Mr Cornall**—That is my understanding.

**Senator Ellison**—It is mine too.

**Senator McKIERNAN**—Thank you. We may return to that at the next round of estimates for further information regarding that, but there is no direct Commonwealth responsibility.

**Mr Keelty**—I just point out that the Australian Federal Police would be responsible for preparing the report for the coroner by virtue of the role that we play in the community

policing of Christmas Island. In essence, it is the same as if it had happened on the Australian mainland: the community police in the jurisdiction would provide the report to the coroner.

**Senator McKIERNAN**—But there is no Commonwealth coroner, so it is a matter for the WA coroner.

**Mr Keelty**—That is correct but it is the AFP that reports to the state coroner.

**Senator McKIERNAN**—I am grateful for that information, Commissioner. Thank you, Minister.

I will move on to another matter—the proceeds of crime. It is mentioned in the annual report, at page 29, that training and education of staff is being undertaken before the introduction of the new proposed civil forfeiture of the proceeds of crime. Can you provide the committee with some details of what is involved in that training? Is it complete? Is it in readiness subject to those people being active when the bills pass the parliament?

**Mr Overland**—As you have correctly pointed out, the bill has not actually passed through the parliament yet. As I understand it, the training package is ready to go. Obviously, it needs to wait for the bill to pass before we can finalise the package—

**Senator McKIERNAN**—It has to wait.

**Mr Overland**—but we have taken it as far as we can, awaiting the finalisation of the legislation, when we will be in a position to roll the training out.

**Senator McKIERNAN**—It is good to know that we are waiting to see what the parliament decides. On page 37, under the heading of ‘Detention Centres’ it states that following a major disturbance at Woomera Immigration Detention Centre, where seven buildings were burnt, charges were laid by the AFP against 26 detainees. It then goes on to say that none of them was successful. It explains that the lack of success was mainly due to poor identification evidence and the refusal of detainee witnesses to provide evidence at trial. I take from that comment that there were no successful prosecutions as a result of those disturbances at Woomera?

**Mr Keelty**—That is correct, Senator.

**Senator McKIERNAN**—At Port Hedland there was a major disturbance in May of that year, which is also mentioned. It is mentioned here that some 22 people were charged with offences. It is said that on this occasion the damage was in the region of \$160,000. I understand that the Woomera damage was quite substantially more than the Port Hedland damage.

**Mr Keelty**—I do not have the figure for the Woomera damage but my recollection is that you are correct.

**Senator McKIERNAN**—Are we in a position to update what happened with those charges against the 22 people in Port Hedland?

**Mr Keelty**—I will try to get an answer for you while we are still here.

**Senator McKIERNAN**—Do you want to come back to that?

**Mr Keelty**—Yes.

**Senator McKIERNAN**—Thank you. I refer to page 41 of your annual report—physical surveillance activities. Can you update the committee on what has been happening in this area? The annual report notes that the recommendations of the review have been implemented.

**Mr Overland**—I think the review that you are referring to looked at a number of issues, both operational practice and also some human resource and industrial relations issues concerning surveillance as a distinct function within the AFP. My understanding—and I will correct this if it is not right—is that the recommendations of the review have been implemented.

**Senator McKIERNAN**—If there is anything further you can supply at a later time, I would be happy to receive that.

**Mr Overland**—Yes, Senator.

**Senator McKIERNAN**—While I have page 41 of the annual report open, it has a photograph on page 40 of Commissioner Keelty accepting the Silver Award from the minister, Senator Ellison, at Parliament House. I think it is appropriate that the committee also records its congratulations to the AFP for receiving that award.

**Senator COONEY**—Hear, hear!

**Mr Keelty**—Thank you.

**Senator COONEY**—They did not say, ‘Hear, hear!’

**Senator McKIERNAN**—I think the AFP surveillance team might have noticed that already!

**CHAIR**—It was page 41 we were referring to, Minister, and we were all saying, ‘Hear, hear!’

**Senator McKIERNAN**—That was about page 40 and the photograph, Minister.

**Senator Ellison**—That was the Public Service charter awards.

**Senator McKIERNAN**—We extended our congratulations.

**Senator Ellison**—Thank you. I was not the minister for the AFP then, I might say. So it was not as if I was biased in any way. It was in another role. Those Public Service charter awards are a very good thing.

**Senator McKIERNAN**—Hear, hear! I notice that he did not say, ‘Hear, hear!’

**Senator COONEY**—I did, just then.

**Senator McKIERNAN**—The report mentions the preparation for CHOGM. Of course, we all know that CHOGM then got cancelled. Are there any figures, within the AFP as an organisation, of the resources that were devoted to the preparation for that meeting which then were not used? I am not saying that they were wasted; nonetheless, there was a considerable amount of preparation that went into an event that did not occur, and there were other sections of industry very concerned about that. I would imagine that a lot of the preparation that the AFP undertook for the October CHOGM will be able to be put to use for the March CHOGM, but has that had any impact on the budget of the AFP—the extra resources now needed to service that meeting that was budgeted for previously? One could imagine that there was some expenditure made at the time which would need to now be repeated.

**Mr Overland**—There are no financial consequences for the AFP out of having to replan or prepare for CHOGM phase 2, if you want to describe it that way. We are in a sense dealing with this issue with the Department of the Prime Minister and Cabinet, which are funded through the budget for CHOGM. In effect, they reimburse us for our costs. It is true to say that there is additional cost involved, obviously, because CHOGM did not take place on the original date. We have now had to change plans, but—

**Senator McKIERNAN**—But it is not coming directly out of your budget.

**Mr Overland**—It is not coming out of our budget, no.

**Senator McKIERNAN**—Thank you. I have got a couple of questions about the proposed amalgamation of APS into the AFP. An announcement has been made that this is going to happen. Will this require legislative change, Mr Cornall?

**Mr Cornall**—There is a working group between the AFP and the department which is looking at the ramifications of the need for legislation. Not only is there AFP legislation but also there are, I think, two acts dealing with the Australian Protective Service. Certainly there is an act of parliament dealing with the Australian Protective Service, and in that act some responsibilities in relation to the administration of that organisation are vested in the secretary of this department. So there will be a need to sort out legislative provisions. The issue presently under consideration is whether or not as an administrative arrangement it could be put in place from 1 July, even if the legislation cannot be put in place until after that.

**Senator McKIERNAN**—So the amalgamation can go ahead even though the authority for it, from a legislative point of view, is not in place?

**Mr Cornall**—That is one of the things that the working group is looking at: to see how it can be done within the scope of the existing legislation.

**Senator McKIERNAN**—What is the urgency about the amalgamation? I understood what Minister Ellison said yesterday about counterterrorism and such but, if it is going to be done, it should be done properly, surely, and to do it properly would also mean amending the legislation in order to facilitate all of the changes that may need to be brought into being.

**Mr Cornall**—Yes, that is true. But it is equally undesirable to leave organisations in a state of uncertainty for a long period of time, particularly at a time when there is a lot of active responsibility and response to government initiatives by the APS. I think it is important that, if they are to be amalgamated with the AFP, the AFP quickly has an oversight of that, because it will be responsible for the ongoing administration of whatever decisions are taken over the next few months.

**Senator McKIERNAN**—But last evening we had the Office of Parliamentary Counsel inform us that it was able to bring forward a bill to the parliament on oral advice within a matter of hours. It is possible to work very quickly when the need is there or when the urgency is there. Why can't that be facilitated within the current sitting period of the parliament and so have the legislation passed by the required date of 30 June in order to fulfil the obligations that government have announced?

**Mr Cornall**—I am not saying that it is not achievable; I am just saying that, if it was not achieved by that date, we are also looking at whether it is possible to implement it as an administrative arrangement. But I think there is a very significant difference with the Border Protection Bill, which, as you pointed out yesterday, only had about 10 sections. This is an amalgamation of two significant organisations with quite detailed operational requirements, industrial relations differences and so on. As a matter of practicality, putting together two organisations of this size is a much more complex task at an administrative level than the drafting of the first Border Protection Bill.

**Senator McKIERNAN**—The first Border Protection Bill only had about 10 sections. The second one was slightly more comprehensive and took a different direction—but we will not repeat the discussion on that. But it is possible to bring a bill forward within the time. This announcement was made a couple of weeks ago, wasn't it, Minister?

**Senator Ellison**—Yes, it was.

**Senator McKIERNAN**—Have drafting instructions on an amending bill been issued as yet?

**Mr Cornall**—Not to my knowledge, but I can check that with the people concerned. My understanding is that the working group is not at that stage yet.

**Senator McKIERNAN**—You are probably as aware as I am of the very few Senate sitting days between now and 30 June.

**Mr Cornall**—That was another reason that I had in mind in terms of the availability of legislative time to address the legislation.

**Senator McKIERNAN**—But if there is a need for the changes to happen on 1 July, why is there not a priority being given to legislation to cover this area?

**Mr Cornall**—The date of 1 July is a target date. It does not have to be 1 July; it is just that, as the commencement date of a financial year, that is a sensible time for these sorts of arrangements to be put in place so that all of your accounting for both organisations is within that framework and so forth. But it is being advanced at the moment by this working group, and they are working towards that target date.

**Senator McKIERNAN**—There are a number of matters which will have to be dealt with and addressed, none the least of which—and I will be raising this with the APS later on—concerns the certified agreement that is in place with the APS as opposed to the other structures that are in place with the AFP. When you become one organisation it has got the potential to cause some difficulty.

**Mr Cornall**—I adverted to the industrial relations issues. And it is not a certified agreement with the APS; it is an industrial award that was made as a result of the section 170MX application last year. But that is one of the significant issues that needs to be addressed in the merger of the two organisations.

**Senator McKIERNAN**—I know a date of 1 July has been announced. Are you now, Minister, going to give any consideration to a deferral of that date? It seems to me that 1 July is useful for neatness, but there are a whole number of other government initiatives with start-up dates that do not necessarily need to fall on 1 July. There have been all the administrative changes that have occurred since November last year, some of which have impacted on the Attorney-General's portfolio—none the least of which were the royal commissions, and we had people from those before this committee yesterday. Would it not be better to work towards a later date by which the necessary legislative change can be done through the parliament?

**Senator Ellison**—We do not want to let this drift. Mr Cornall put it very well when he mentioned the concerns of the members of the APS and the AFP. I can quite understand any concerns they might have while this all remains unresolved, as we are working towards it. We want to put any uncertainty to rest. Quite obviously, for those officers in both organisations we want to have this resolved quickly, but we appreciate that we have to work through some issues—and you have mentioned those here. The government realise that only too well, and our working group is looking at that.

I do not think 1 July is that unrealistic. It is still four months away, and we want to impose on ourselves the discipline of having a target date. But of course we will deal with issues as they arise. As the secretary said, this is by no means just an arbitrary date. It is one that we think is achievable. It is the start of a financial year and it may well assist in the resolution of



other issues as well because of changing situations for staff and other things. So I think 1 July is a good target to maintain, and we are aiming for that. But we are certainly cognisant of those issues you have raised, and I think they are some of the more challenging issues we face in this.

**Senator McKIERNAN**—Have any briefings been offered to the spokespersons in the opposition parties and to Independents about the proposed changes?

**Senator Ellison**—Not yet, because the working group is still looking at the detail of this. I am confirming that there is not yet a report in my office from that working group—not that there is anything untoward in that, because that is being worked on at the moment. I think it is appropriate that I see the report first, but I will consider your point once I have that report.

**Senator COONEY**—Is this going to be put together or separated out?

**Senator Ellison**—Put together or separated out? I do not understand.

**Senator COONEY**—The APS and the AFP were separated in 1977, I think. Is this going to come back in much the same form? What I am getting at is that the AFP at the moment are principally a very highly developed investigative team that go around investigating the sorts of matters we have been talking about this morning whereas the APS is much more like community policing. How are you going to tie the two together?

**Mr Keelty**—Bearing in mind that our minister was not around in the days of the original Australian Federal Police, the creation of the APS in 1984—I think that was the date—is a different thing to putting it back in. Since that time, the APS has become an entity unto itself in the sense of the way it is structured, the way its award is and the way it creates revenue. It is not an entirely budget funded organisation. So the decision is to have the APS form an operating division of the AFP, and the detail of how that will actually be put into effect is, as Mr Cornall said, to be worked out by the working group. But obviously the way that it generates revenue or operates through its budget system is entirely different from the way that we operate, so that will have to be worked through, which was one of the reasons why we went for the beginning of the financial year.

**Senator COONEY**—It just seems that you have got the agency system set up whereby you send an agent off to investigate a tax fraud and off they go and do that as an agent whereas the APS do vital work at Woomera and at the embassies and things like that. Would it be possible to go from the position that you held in the APS to an agency position?

**Mr Keelty**—We will have to work that through.

**Senator Ellison**—As I have said, Madam Chair, I see this as an opportunity for both organisations and certainly for people in the APS who want a career path with the AFP. Certainly, in a state police force you have different sorts of functions. You have just mentioned tax investigation. Some of your state police forces will have people who are highly skilled in commercial investigations and yet have junior constables who are on the beat doing protection work or whatever. The different sorts of roles are present in a state police force and I appreciate the difference, that we have APS people who are not sworn officers, but I think that there is a benefit that can be felt by both organisations and their members.

**Senator COONEY**—I can understand all that, but just apropos what Senator McKiernan was asking when he said, ‘Will you be able to get it done in time,’ if I were to join the Victorian police force I would go down as a junior constable, get sent out on the beat and then work my way up. You have got people who are very senior in the APS. They will say, ‘Do I

get the same wage as an agent who is on a very sophisticated investigation? What are my chances of getting in there? It just seems that four months is a pretty ambitious time frame.

**Senator Ellison**—I stress that I was not classing the APS in the role of a junior constable; let me make that quite clear—

**Senator COONEY**—No. I understand that. The reason I said that was that that is how you normally do it—

**Senator Ellison**—because there are a lot of people in the APS who are highly experienced. I was highlighting the difference in the state police force and the different roles you get. I think that in the APS there will be an opportunity for people to go forward and to have career paths.

**Senator COONEY**—Into the sort of work that the Federal Police presently do?

**Mr Keelty**—This is some of the work that the working group is going through, bearing in mind that there will be transitional arrangements here. Whilst 1 July is a date that, as the secretary said, is convenient for financial purposes, I do not think anyone expects the whole thing to be completed by 1 July. There will be transitional arrangements and the issues that you are talking about such as career development and so forth—career opportunities, and whether we form a new outcome for the AFP which is a third outcome with output classes that are consistent with output classes that the AFP already has in protection services—that all need to be worked through. I think it will happen over a period of time, not by 1 July.

**Senator COONEY**—All I am saying, Mr Keelty, is that I would hate to see a group of very good men and women who are now in the APS and who I think perform a great service—I hope you understand what I am saying here; I am trying to think of a word—‘demeaned’ or given a lesser role, like Cinderellas in a very sophisticated force.

**Mr Keelty**—I think, as the minister pointed out, there are obvious opportunities that will arise out of this, particularly if we look at the outcome of the AFP and creating a new outcome, outcome 3. There are also the issues that you raised and I acknowledge that there are some very good people in the APS. Some of them might not have turned their minds to becoming police officers as yet. This will provide them with an opportunity to look at that as a career option. At the same time, the work of the APS in airport security, first response counter-terrorism and also in having a presence at different security establishments around Australia has to continue. As I mentioned, their budget arrangements are that they operate more of a business, which is quite distinctive from the way they operated when they were part of the AFP pre-1984. So there are a lot of opportunities here and we are just working through the detail of it.

**Senator COONEY**—I will just go on the record with this last comment. You might not want to answer it, or you may want to; it does not matter. I would again hate to think that people who are into their 30s and 40s would now be made redundant because of a new arrangement. I do not think you can answer that, but there are issues of people’s futures and feelings and all those sorts of things.

**Mr Keelty**—We are conscious of that. Again, as the minister pointed out and as I have pointed out, there are arrangements that have been worked through here, but neither the APS nor the AFP is in any danger of starting to lose positions. In fact, both organisations are in growth mode. So people ought to have confidence about their own future. The final arrangements will not have been worked through and we cannot give absolute guarantees that

everybody who is in both organisations today will be there tomorrow, but I cannot see any reason why that would not be, because they are both in growth mode.

**Mr Cornall**—I would just add that the APS has grown quite significantly over last year or so. Its services have been used in areas such as Woomera, when there have been difficulties there; and they have been used on overseas issues on Nauru. They have recently got a new contract to supply guarding services to the Department of Foreign Affairs and Trade. They are providing the air security officers, and obviously airport security services are in a heightened state of alert. So the APS is very much in growth mode, and I do not see that the concern you raised is a significant concern.

**Senator COONEY**—Yes. All I am saying is that on one level you have got community type policing and on the other level you have got a very highly trained investigative group. I have been through this before and I can see all sorts of problems. People say, ‘Now that I’m part of this, I should be able to go from one group to another.’ You know that the cultures are not exactly the same. People might want to transfer across to the APS, and all that sort of stuff. I am just a bit concerned about the people and how they are going to feel, and what have you.

**Senator McKIERNAN**—I have a couple of other matters from the annual report. I note, regarding community policing on page 58 and 59, that the objective of ACT community policing is the ‘creation of a safe and secure environment’ in the ACT. It makes no mention of the fact that they are also revenue raisers, but of course none of that revenue comes to the Commonwealth. But I did notice on the weekend—and this is the matter I want to address—that there is an AFP officer who is in the ACT community police and who is also the representative on Interpol, and that this is the first occasion that a country has had successive terms on the governing advisory body of Interpol. Can you elaborate on that, Commissioner?

**Mr Keelty**—Yes. It is a transfer of staff, the former general manager of our international federal operations, who transferred across as the Deputy Chief Police Officer of the ACT. In other words, it shows the advantages of the AFP and the ACT policing component being one organisation, as there are career opportunities, and many people have moved from one area to the other and vice versa. They bring the expertise in their positions and the experience that they have learned in the national and international arena back to community policing. In fact the AFP is a unique organisation in that regard; there is no other police agency in the world that has that capability.

**Senator McKIERNAN**—Are there any negatives in that, in the sense that the officer is a member of a very small—and probably the smallest—police force in Australia, even though it is part of the Australian Federal Police?

**Mr Keelty**—I do not know that it is the smallest; I am not sure that Tasmania is not smaller. Anyway, without debating the figures, there are advantages both ways, and we will see how that develops.

**Senator McKIERNAN**—Thanks, but the honour of two successive terms on Interpol is something that will probably stand Australia in some good stead, and that is why I mention it.

**Senator COONEY**—Hear, hear!

**Senator McKIERNAN**—I asked you earlier about the detail contained in appendix 4 about the outposting of an AFP person to a private company. Are you in a position to provide any information at this time in regard to that?

**Mr Keelty**—I apologise, Senator. We cannot find the detail of that at the moment. May I take it on notice? I do apologise, as it seems a simple question, but apparently we are having trouble getting in touch with it.

**Senator McKIERNAN**—It struck me as being somewhat unusual when I was reading the report. I am not sure I have ever noted it before. I cannot recall ever seeing that there has been an outposting of police to a private company. I was going to go on and ask questions—and I will ask you now to take these on notice—about whether there are any operational difficulties arising because of this outposting. For example, where would the particular officer fit into a chain of command? Would they be responsible to the chief executive officer of the private company or would they be responsible to their superior, or indeed to you or your deputy in the Australian Federal Police? How would that work when the officer is outside of the immediate work of the Public Service in its broadest terms?

**Mr Keelty**—It would be no different to the normal outposting of officers to other Commonwealth government departments. The chain of command still comes back to the AFP. It is not unusual to post officers with private enterprise in special circumstances such as with high levels of insurance fraud, when a state police force might place a fraud investigator with an insurance company because of the crime sitting behind the actual insurance claims or the way insurance claims have been produced. That is why I sought some clarification of this. I have some recollection that this might have been in relation to computer crime, which might well have been for a similar reason, where there would be obvious benefits to the Commonwealth for there to be some liaison with the company. I undertake to come back and give you a response.

**Senator McKIERNAN**—Thank you.

**Mr Keelty**—You asked me another question about Port Hedland, about the 22 people, at page 41 of the annual report. Twenty people were charged, as you alluded to in the report. Three were juveniles who have been referred to the juvenile justice team. I do not have any further information on how that has progressed. The 19 adults have been found guilty and are serving sentences of between six and 11 months. Last night Senator Ludwig asked me some questions on leaks. Senator, I can give you the statistics you asked for last night. Madam Chair, may I respond to this question from last night?

**CHAIR**—Yes.

**Mr Keelty**—From 1 July 1997 to 31 December 1997, there were nine leak inquiries and all were finalised. During the 1998 calendar year, there were 20 leak inquiries, all of which were finalised. In 1999, there were five. In 2000 there were nine, and in 2001 there were 10.

**CHAIR**—I might seek some clarification from Mr Overland on an issue we discussed briefly last night. On page 89 of the portfolio additional estimates statements, there is an extended reference to funding in relation to Melanesia—\$1.346 million in the current financial year, I believe, working towards a total of \$9.488 over three years. Mr Overland, can you advise the committee whether that is new money to the AFP or money that is redirected from the aid budget more generally, or how has it come about?

**Mr Overland**—No, it is new money to the AFP.

**CHAIR**—Finally, I understand from your web site—which I see has been revamped and I might say it is much easier to navigate—that Australia is responsible for hosting the 2002 Women and Policing Globally Conference in October this year in Canberra. How do the

Australian Federal Police fare, in relation to the representation of women at senior levels, in comparison to comparable police forces?

**Mr Keelty**—I would have to take that on notice, but the hosting of the conference is in promotion of our own women's network. We have been very active in encouraging women not only into the organisation but also into senior positions.

**CHAIR**—It is a commendable initiative.

**Mr Keelty**—We will have officials from the International Association of Women Police here next month in the lead-up to the conference, which we believe might attract almost 2,000 people, so it will be quite a large conference.

**CHAIR**—Who is responsible in the AFP for the conference itself?

**Mr Keelty**—There is a committee.

**CHAIR**—We could not do it without a committee, could we!

**Mr Keelty**—It is chaired by Commissioner Christine Nixon of Victoria Police. Within the AFP, Audrey Fagan and Charmaine Quade are the key players. So it is an Australian conference but the AFP in Canberra is the host.

**CHAIR**—The topics that are noted on the web site include international trends for women and policing; global issues for women and justice; defending women's human rights; gender and policing; international networks for immigration, customs and quarantine services; women in the criminal justice system; and improving the status of women in policing. Will Australian police services, but more specifically the AFP, be involved in making presentations in all of those areas?

**Mr Keelty**—I am not sure whether we will do in all of them, but certainly we are making presentations and, through the committee, we are doing the work on those now.

**CHAIR**—It might be of interest to the committee if your representatives on the organisational committee for the conference had any further information. If they would like to provide us with it, in addition to that you have provided today, it would be very helpful.

**Mr Keelty**—Certainly, we will.

**Senator McKIERNAN**—Following up on the series of questions we asked of the DPP yesterday with regard to allegations made against ministers and certain members of parliament: we talked about some of the allegations that were made against Minister Tuckey in a report that was given to the DPP, and their decision not to prosecute. Along with those allegations concerning Minister Tuckey, certain allegations have been made against Senator Crane. Without going into operational matters, what can you inform the committee about what is happening with regard to the allegations against Senator Crane?

**Mr Keelty**—First and foremost, the allegations against Senator Crane were the original investigation that we undertook. In the course of the investigation into Senator Crane an allegation was raised in respect of Minister Tuckey. The DPP found that the essential matter in terms of the probative value of the issues under consideration during both investigations was essentially the same. In relation to Senator Crane, an operational brief was provided to the DPP. I am not sure whether we have had a formal reply back from the DPP in writing in relation to Senator Crane, but it is my understanding that the verbal advice is that there will be no offence to be prosecuted, because essentially the evidence in both matters is materially the same.

**Senator COONEY**—That investigation into Senator Crane has been ongoing for a long while now. It must have been very difficult for him to keep his duties going with that sort of thing hanging over his head. Is there any way that these matters can be resolved a lot quicker? Without knowing all the details, it seems unfair that a person should be kept swinging for the length of time that he seems to have been kept swinging. I am not criticising; I am simply making that point. Knowing you, I am sure there are really good reasons for it, but it does seem pretty hard on him.

**Mr Keelty**—I just want to place on the public record that it was nothing within the control of the AFP that delayed the outcome of both these investigations. Senator, you are quite right: the investigation into Senator Crane commenced in August 1998. In December 1998 search warrants were executed on his premises. He lodged a claim of privilege, which took some time to resolve in the courts. In December 2000 the Senate ordered a former Secretary of the Attorney-General's Department, Stephen Skehill, to examine the outcome of the court matter. On 23 August 2001 Mr Skehill completed his examination, and 1,355 documents were then provided to the AFP to develop a brief for consideration by the DPP. In a sense, it is fair to say that everybody did the best they could.

**Senator COONEY**—He is a man of impeccable reputation, but that reputation was questioned to some extent and he has had to put up with that for some years. He missed out on preselection. I do not know if this had anything to do with it; it would be a terrible shame if it had. As you say, these matters must be investigated, but I often wonder about the human cost of all this.

**Senator McKIERNAN**—With regard to both investigations, were the briefs to the DPP from the AFP sent at the same time?

**Mr Keelty**—No, they were not. The brief regarding Crane was sent to the DPP on 20 November. The DPP recommended that further inquiries be made and advised that it would be beneficial for both the Crane matter and the Tuckey matter to run in tandem for the reasons that I explained earlier. Given that the facts were relatively the same and they involved the same witnesses, it was thought that they could be progressed rather quickly. The difference between the two then came later. From 22 to 25 November further preliminary inquiries were made in relation to Mr Tuckey, and the 27 November plans and completion date were put together for that. On 11 December a final report was submitted to the DPP, and on 12 December consideration was given by the DPP to the matters.

**Senator McKIERNAN**—Was there different treatment given to the investigation of Minister Tuckey as opposed to that of Senator Crane?

**Mr Keelty**—No, not essentially; that is, not until the point when Mr Tuckey had been identified as a potential minister at the time. Recalling that, when these issues came forward, we discovered the allegations against Mr Tuckey during the investigation into Senator Crane's activities. In the normal course, the government was advised by us of that allegation against Mr Tuckey. When it was identified that Mr Tuckey may have been considered for a ministerial posting, I raised the issue of where both investigations were at, and the issue of Mr Tuckey was then dealt with separately.

**Senator COONEY**—I suppose it is just the system, and there is nothing you can do about it. No proceedings are going to be taken against Senator Crane now—and it is not only him, I suppose, but also his wife and family and what have you. It is very worrying, minister, that this should happen.

**Mr Keelty**—I simply point out—and I think I did say this—the matters involving Senator Crane are not complete; the matters involving Minister Tuckey—

**Senator COONEY**—Is there any chance of them being completed in a reasonable time? I accept absolutely that you have done all that you can, but I just get concerned at times.

**Mr Keelty**—We are doing the best that we can in the situation that we face.

**Senator COONEY**—When would it be completed? I perhaps should not ask that.

**Senator LUDWIG**—In respect of that area, I noticed a report in the *Sunday Telegraph* of 17 February 2002 entitled ‘MP’s paper trail followed’. Following that, on 18 February 2002, the Attorney-General released a press release entitled ‘Investigation into allegations against Mr Richard Evans and Senator the Hon. Chris Ellison’. The upshot of it is that the AFP advised that the investigation failed to reveal any evidence to support the allegation. Which allegation is that? Does that relate to both matters, the Evans matter and that Senator Ellison knew about the issue, or only to the latter issue?

**Mr Keelty**—I am not sure what Senator Ellison knew. The matters were essentially the same. The allegations against Mr Evans were also levelled against Senator Ellison.

**Senator LUDWIG**—So the paper have it wrong. They say:

Police are also looking into allegations that justice minister, Chris Ellison, knew about the alleged rort.

Are you now saying that he was also party to the alleged fraud?

**Mr Keelty**—I am saying that the paper is wrong.

**Senator LUDWIG**—That is helpful in clearing that up. Perhaps you can tell us about the press release of 18 February. Your information to the Attorney-General is that the investigation failed to reveal any alleged rorts that the paper describes by either Mr Evans or Justice Minister Chris Ellison. Is that right?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—There is also another issue that came up in that paper. It states:

One person interviewed by police told the *Sunday Telegraph* an officer suggested not making a statement because police believe the allegations were based on hearsay and could not be proved.

Then it goes on:

The witness said, ‘The officer appeared reluctant for the matter to progress and had warned the consequences of making a statement would involve speaking in open court.’

It then states:

The officer would not comment.

What do you say about that? Is that usual practice for the AFP?

**Mr Keelty**—That is absolute rubbish. We have looked at the allegation that was raised by the journalist, Kearney. The investigator was contacted by Kearney and refused to comment to Kearney. My reading of this is that Kearney has either been provided with information by one of the witnesses whom we interviewed or by the complainant. But I am satisfied that the AFP acted properly throughout the whole process, even to the point where Senator Ellison has never been briefed on this matter.

**Senator LUDWIG**—In relation to Senator Crane, there was a press release some time ago, on Sunday, 16 December 2001, by the same reporter. The upshot of it is that:

It was officers of the Australian Federal Police themselves who advised our client to claim parliamentary privilege.

That was contained apparently in a letter from John Davies and Co., barristers and solicitors representing Senator Crane, as I understand it. That is not the germane issue, of course. As we now know, it is clear what happened there—at least as far as you are concerned. I am interested in whether or not the Australian Federal Police, as an operational procedure, advise parliamentarians that they can and/or should claim privilege in relation to information they have in their possession.

**Mr Keelty**—No, the AFP does not advise, necessarily, that someone should claim that. Again, if it is from the same journalist, I am not sure where he gets his information. I suspect he makes most of it up. We would hope that people would seek proper legal advice in those sorts of situations.

**Senator COONEY**—It starts to get a bit beyond what is reasonable, I think. Senator Ellison's name is dragged—and I use that word advisedly—through the system. People said, 'When I looked into this there was not sufficient evidence to go further.' It could leave a taint on people. I am just a bit concerned about these sorts of investigations. Why shouldn't Senator Ellison be left complete with the very good and outstanding reputation that he has. I think it gets to be a bit poor. He has to sit there saying nothing, because if he says anything people will say, 'You're just trying to influence things.' It is a really bad system, in my view, and I think that some way around it ought to be found.

**Mr Keelty**—I agree. It places the police in a very difficult predicament, because if people cannot achieve their means by one end they will often come back, report to the police and then report to the media that they have reported to the police. I agree with you that Senator Ellison has, at all times that I have had any dealings with him, acted with the utmost integrity. Even in this matter, he was not advised that it was under investigation. I have never spoken to him about this matter. It is the first time in his presence that I have discussed the matter. I have to say that the Attorney—another person of utmost integrity—has the same view as many people have.

**Senator COONEY**—He probably goes home to his wife, who says, 'What's happening,' and he will say, 'I didn't do anything but I don't know whether I'm going to go to jail; but we'll go out and have an evening together and enjoy things.' The situation is impossible; it seems to drag on and on. The politics of it all go the way they have, and I just think it is pretty poor stuff for somebody. As you say, it has an impact on reputation.

**Mr Keelty**—It requires us to do a thorough investigation on each and every occasion so that there is no imputation that the police force is politicised by it as well.

**Senator COONEY**—If you do not do it, your reputation is at stake. People will say that you did not push your investigations to the point you should. I do not know what you are supposed to do. You cannot do other than what you have done. You have acted, I would have thought, with impeccable rectitude. The whole situation is so created that your reputation, Senator Ellison's, Senator Crane's, somebody else's or everybody's reputation is tainted—and for what reason? Your reputation is a big thing.

**Senator Ellison**—Madam Chair, I think it is appropriate to put on record, unless my silence be taken as acquiescence, that I totally reject the allegations. They are totally without foundation; they are rubbish.



**Senator LUDWIG**—May I say that my line of inquiry was not so much about the report in relation to Senator Ellison. That is why I mentioned the news release—to make a complete record. The procedures of the AFP in relation to advising of parliamentary privilege were my concern. Unfortunately, we had to go as quickly as we could through some things that are unfortunate.

**Senator COONEY**—An article in the *Age* about David Hicks reports that the federal government says its investigations show Hicks was an al Qaeda fighter. The Federal Police has not had anything to do with that. I do not have to pursue a line of questioning about David Hicks with the Federal Police, do I? Have you interviewed him or had anything to do with him?

**Mr Keelty**—Yes, we have. This is on the public record. The AFP and ASIO travelled to Afghanistan and interviewed Hicks whilst he was on board the vessel the USS *Peleliu*. You may be interested that we confirmed that he was in good health at that time, but that was December last year. Obviously now on the public record is the fact that he is in the US naval base at Guantanamo Bay in Cuba.

**Senator COONEY**—Have you approached the DPP in reference to Mr Hicks?

**Mr Keelty**—Yes, we have. The investigation from our perspective is to establish whether Mr Hicks has committed an offence against Australian law.

**Senator COONEY**—Without going into it, is there any evidence that would cause you to think that the matter ought to be investigated further?

**Mr Keelty**—The investigation is complicated and these are unique circumstances, not the least of which is the circumstance of gathering evidence from Afghanistan. At this stage, it would be inappropriate for me to comment on where this is going, except to simply state, which is what I think is already on record from the Attorney-General, that this is a complicated matter and a difficult matter and we are working on it.

**Senator COONEY**—Later I will say to Mr Cornall that the Attorney has made statements that would perhaps make it difficult if we were to prosecute Mr Hicks in the immediate future. Perhaps we should have been a bit more moderate in our language. That was the reason I was asking the questions now.

**Senator McKIERNAN**—Is further questioning taking place of Mr Hicks at Camp X-Ray in Cuba?

**Mr Keelty**—It is uncertain at this time.

**Senator McKIERNAN**—Is the AFP engaging in any further interrogation of him?

**Mr Keelty**—Not at this point.

**Senator McKIERNAN**—To your knowledge, has any authorisation been given to law enforcement bodies in the United States to question Mr Hicks on behalf of the Australian Federal Police or any other law enforcement body from Australia?

**Mr Keelty**—We are the only law enforcement agency, to my knowledge, that is dealing with Mr Hicks. We have not applied to seek to re-interview.

**Senator McKIERNAN**—We will address this matter further when we come to the Attorney-General's Department.

**Senator GREIG**—I would like to explore briefly two issues. First is the question on the gay and lesbian contact officers program that I understand the AFP facilitates. Is that program

of training courses still offered to members of the AFP to undertake? I understand Sue Thompson from New South Wales was involved in that.

**Mr Keelty**—I am sorry, Senator, I did not hear you.

**Senator GREIG**—Can you tell me a little about the gay and lesbian contact officers—the GLLOs—program? Is it still ongoing? Is it still being offered to AFP members?

**Mr Keelty**—Yes, it is. In fact, we participated in the march in Victoria just recently. We are participating in the march in Sydney with our own display. We have communicated with the New South Wales police. We are actually going to do our own representation there and separate ourselves from the New South Wales police—not for any reason other than we have got a critical mass in numbers, so to speak, and it will be good for the organisation to be represented as an entity in its own right. Mr Overland might have some more detail about the actual meetings of the network, but we have been quite successful. I have spoken in fact to the Victorian police commissioner, Christine Nixon, who is very appreciative of the support that she received from the AFP in the pride march in Victoria held recently.

**Senator GREIG**—Mr Overland, I will ask you directly. I know that at a state level where gay and lesbian contact officers exist they have appointed people and they advertise in an appropriate way—usually in the gay press or whatever—so that people are aware of the existence of these points of contact. Does this also happen with the AFP? Is there a national approach in terms of having contact officers in the states and territories?

**Mr Overland**—Certainly inside the organisation that is the case. The contact officers are identified. If you are asking from the point of view of people outside the organisation, I would have to check that. I am not sure whether we publicly identify those people outside the organisation. I think we do to an extent, but I would have to confirm how formalised that is. I can say, though, that one of our general managers has become the designated representative of GLLO on the national management team, NMT, the peak decision making body in the organisation, made up of the commissioner, the deputy, me, the chief police officer and our general managers. They are there to make sure that issues that are important to GLLO are being fed into the peak decision making body.

**Senator GREIG**—Thank you. I compliment you on the ongoing initiative in that area. There is a second area I want to touch on briefly. I heard some mention here earlier of airport security and I was interested to know what area of interest or jurisdiction the AFP has in relation to airport security. I understand that at most airports you have subcontracted people in terms of baggage screening and baggage loading. Where does the AFP fit into that in terms of airport security?

**Mr Keelty**—Our role at the moment does not include airport security, outside the Canberra airport through our community policing role here in the ACT. The discussion earlier was about the role that the Australian Protective Service has in airport security and also in counterterrorism first response at airports.

**Senator GREIG**—Has the AFP ever expressed the view to the government either way about the fact that none of the hold baggage—that is, suitcases and stuff that goes into planes—in domestic travel in Australia is screened?

**Senator Ellison**—I may be able to help you there. The APS has prime responsibility for the physical security of airports, but you also have two other players—namely, the airport owners and the airlines. Qantas has announced recently a \$10 million initiative in relation to increased security, which we are talking to Qantas about, in relation to their screening of

baggage. When you go through those detectors, you are screened, as well as what you are taking on by way of hand luggage. That is done by the airport not by the APS. You will see officers wandering around who are armed, and they are APS. They have the counterterrorism first response capability which we previously had only at Melbourne and Sydney but are now bringing into nine other airports—all capital city airports plus Coolangatta, Alice Springs and Cairns.

We are continuing discussions with the airlines and the airports in relation to security, and the issue of screening hold luggage is something that I am taking up and that has been the subject of comment by me previously. It is an issue that has been raised, and we have had good cooperation from the airlines. Our air security officers that you have heard about are now in operation. They were in operation on 31 December last year. We are hoping to expand that from 23-odd officers to 111 officers by the end of the year. It is an ongoing effort working with the airport owners and the airlines. The question you raise in relation to the luggage going into the hold is a matter which is under discussion.

**Mr Cornell**—Can I just add that the APS is a service provider. Within government all responsibility for aviation security rests with the Department of Transport and Regional Services. While we have got all of the interest that the minister has indicated, key policy responsibility rests with that aviation security—

**Senator GREIG**—I think I understood that, but thank you for the clarification. I guess my particular question was in terms of advocacy—had the AFP suggested anything in terms of this. Minister, you referred to responses to terrorism and counterterrorism and it just struck me as odd that, while there seems to be heightened security concerns and consciousness at airports, the screening seems to me to be inadequate. Perhaps this is not the forum to raise that. But it struck me as odd that you will have your toenail clippers removed from you when you go through the airport but your bag will not be checked for a bomb.

**Senator Ellison**—That has been raised, and I understand the point you are making. The prime target was of course to deal with a situation, as in the September 11 incident, where you have a weapon carried on board and someone can then use it to hijack an aircraft. Of course, you can have a bomb in the hold, but it has to be accompanied luggage and that then is a situation where you have a suicide bomber—and we do not rule out that possibility. It is a legitimate question and one we are addressing.

**Senator GREIG**—If I am not off the point, I want to ask whether the AFP is aware of or has expressed concerns about the level of training provided to these private contracted security officers. I have heard, for example, that some of the officers on these X-ray machines have had as little as two hours training and in fact 40 hours is mandated.

**Senator Ellison**—That is provided by the airport again. That has not been raised with me as an issue. But certainly we can take that up on your suggestion and have a look at it. I might say that the training for our APS is very good. That is, of course, separate. They are the people I have mentioned, the officers who are armed. We put together a training program for our air security officers which other countries not have expressed an interest in. But that is in relation to the area that I have responsibility for. In relation to those baggage screeners, I will take that up and see what the position is.

**Senator GREIG**—Thank you.

**Senator McKIERNAN**—I have two questions in regard to Mr Hicks. How long did the AFP interview—if that is the correct terminology—or question Mr Hicks in regard to the

allegations that are made against him? Does the AFP now have an open line of communications with Mr Hicks to pursue any lines of inquiry?

**Mr Keelty**—Can I take the first question on notice. I know that the team was away for some considerable time—in the order of two weeks, I think. Some of that might have been taken up in travel, getting to and from the US vessel. I will have to take the second part of the question on notice as well. I am not sure what sort of access we have at this point in time.

**Mr Cornall**—Can I deal with a second part of that question? The arrangements we have with the United States are that we can have access to Mr Hicks when we require it, but at this stage we have not sought that second access. So the access we have had to him was for the interview that Mr Keelty has referred to, and we have not sought access since. But the arrangement with the United States is that we can seek access when we wish to have it.

**Senator McKIERNAN**—How long is it since that last interview with Mr Hicks on board the United States vessel?

**Mr Cornall**—I do not recall the exact date.

**Senator McKIERNAN**—We are coming back to this matter under the department at a later time. I was only asking that question while we had the AFP here. Perhaps we can deal with these other matters when we return to this issue later on.

**CHAIR**—Is there anything further to add?

**Senator COONEY**—Has the DPP still got the matter under consideration, or was that just a matter of advice and the DPP now has passed out of any active interest—or any interest at all—in it at this point? Can I just explain the context of why I am asking this. If the DPP has got it, I am going to put to you that a lot of the comments that have been made in the paper are a bit untoward. That is why I am asking you.

**Mr Keelty**—I cannot comment on that final aspect, but—

**Senator COONEY**—That is why I am asking about whether the DPP might still have it.

**Mr Keelty**—From the AFP perspective, we have gone to the DPP because, as I mentioned before, it is a unique set of circumstances and it is highly complicated.

**Senator COONEY**—To see whether or not there are any charges that could be brought in the circumstances. Would that be for some advice?

**Mr Keelty**—Not only charges but also availability of evidence and the practicality of the obtaining of that evidence—issues of that nature. We are well short of a brief of evidence.

**Senator COONEY**—So it is not as if the DPP would be in a position to contemplate laying charges on the basis of any evidence that has been put forward by the AFP. In other words, there is not sufficient evidence at this stage, in your view, to justify the DPP contemplating laying charges. The reason I ask that is that what I will be doing is criticising some of the comments that have been made in the paper. Of course, depending on what point any prosecution or any contemplation of prosecution might have got to then those comments are either apt or otherwise.

**Mr Keelty**—The answer to the question is no. As I understand it, the only real evidence that we have got is the interview with Mr Hicks. One would presume that, if the DPP decided one way or another, there would have to be other avenues of inquiry to be pursued.

**Senator LUDWIG**—Given the sensitivities that Senator Cooney referred to earlier in relation to questioning about parliamentary privilege and the associated parliamentarians that

might be involved, can you tell us, as far as you are able, whether there are any other allegations of impropriety—if I use that word generally—that involve federal parliamentarians where that claim could have already been used or where the suggestion is that it could have been used because of information supplied by the AFP, for example, and whether or not that has been investigated?

**Mr Keelty**—I will have to take the question on notice. To answer the first part of your question, have any AFP advised parliamentarians to claim—

**Senator LUDWIG**—There are two issues to the question. There is one as to whether or not there are any other allegations on foot in respect of federal parliamentarians, because I suspect the book is almost closed on that now but you will know better than I. The second question relates to this issue of parliamentary privilege being raised. It is legitimate, obviously, for a politician to raise it but the question is about whether the AFP officers, in the conduct of their investigations, advise people to use it. That is part of the issue I am particularly interested in now. You have said ‘no’ in relation to the other matter but I was then going to go on further and find out whether or not it has been an issue in other matters that you might have in your basket.

**Mr Keelty**—Not to my knowledge, but I will check and provide an answer.

**CHAIR**—Commissioner, will you take one question on notice from me which relates the number of Australian police currently deployed in East Timor? How many of those are federal police and how many of those are on their second or further deployment?

**Mr Keelty**—There are 53 federal police and 27 state and territory police currently in East Timor. Of the 53 Australian Federal Police, I will have to take on notice the question of their deployment.

**CHAIR**—If there are no further questions to the Australian Federal Police I thank the Commissioner and Deputy Commissioner and Mr Overland very much for their assistance both last night and all morning in the committee’s consideration of additional budget estimates. We are grateful for your assistance in that regard.

#### **Proceedings suspended from 12.49 p.m. to 1.59 p.m.**

**CHAIR**—We will reconvene the Senate Legal and Constitutional Legislation Committee’s consideration of additional budget estimates for the Attorney-General’s Department.

#### **Australian Customs Service**

**CHAIR**—We will begin with questions from Senator Ludwig.

**Senator LUDWIG**—With respect to the use of Australian Customs Service resources with regard to more particularly the *Tampa* but also the Pacific solution, were any of Customs’s resources utilised or mobilised in any way in connection with activities surrounding asylum seekers around that time, around late August 2001, and, if so, what resources were used, what type of vessels?

**Mr Woodward**—The sound is not terrific. Was the second issue you mentioned in relation to the SIEV4, the Pacific solution generally?

**Senator LUDWIG**—Yes, the Pacific solution.

**Mr Woodward**—In relation to the *Tampa*, the vessel was actually sighted by the Coastwatch aircraft. The report was forwarded back to our surveillance centre. We alerted AusSAR, the relevant search and rescue authority. While we continued to have a watching

brief, in large part our role in relation to the *Tampa* was over at that point. In relation to resources generally, we have Coastwatch aircraft, obviously, which are used for coastal surveillance. Following the *Tampa* and government decisions on the way in which resources would be best disposed between the Defence Force and Customs, the longer-range responsibilities were vested in the Defence Force, centring on Christmas Island. There is a heavy focus of P3 aircraft and the heavier naval vessels. The Customs concentration was closer to Ashmore and the approach to the Australian mainland; in other words, the north-west. I can describe it as a layering, with Defence having prime responsibility for the longer range because they had aircraft and vessels which were better equipped for longer range, combined with Customs, with patrol boats obviously, focusing more on the closer approaches to Ashmore and to the north-west of Australia. Obviously we have had continuing involvement in a number of interdepartmental activities—but I am not sure of your definition of the Pacific solution.

**Senator LUDWIG**—In respect of the vessels, rather than individually is there a description of their type and size and the number that were deployed from about late August 2001 in addition to what you would normally regard as your ordinary operational field of interest?

**Mr Woodward**—Yes. We have concentrated our surveillance aircraft—leaving aside those which are specialist helicopters designed for and used in the Torres Strait. Our effort has been focused on the north-west and on the Torres Strait because there remained a residual potential for illegals to enter through that area. But it has had an impact from the Torres Strait to Brisbane and a far more significant impact on Coastwatch capabilities between Brisbane and southabout through to Broome.

**Senator LUDWIG**—You might want to take it on notice if you do not have it at your fingertips, but I am particularly interested in the additional resources, such as the number of boats or aeroplanes, that you would have deployed in addition to your usual deployment. You have said that you have concentrated on the north-west?

**Mr Woodward**—The focus of our aircraft and of the Customs vessels has been on the north-west and in the Torres Strait, but you will see in the additional estimates that there is a very significant response to that. We embarked upon a program to double the number of staff in our marine fleet, which is quite sensible because we had enough hulls but we were only using them for 150 days a year. We worked on the basis that by aiming to double our marine crew we could move from closer to 150 days a year of sailing time to 300, which is very high usage.

**Senator LUDWIG**—If I recall.

**Mr Woodward**—The second part of it, which is also in the additional estimates, is that moneys flowing through from additional estimates would provide us with an additional 1,600 hours of Dash 8 flying time, which will certainly help in terms of our ability to manage the coastline.

**Senator LUDWIG**—In the portfolio overview for additional estimates, the ACS will receive an additional \$23.6 million in 2001-02 for increased border protection. How will that additional \$23.6 million be spent on border protection? Is part of the issue that you have already been canvassing where the money will be spent?

**Mr Woodward**—There are three components. Going to page 63, where there is a reference to unauthorised arrivals and \$22.9 million, the break-up is: \$4.7 million for Coastwatch, which is that 20 per cent increase in Dash 8 flying time; \$17.8 million for the marine fleet,

which in large part is the doubling of our marine crew capability, but because we will be using the boats more intensively there is additional maintenance, and we are planning against the possibility of reaching the end of the sailing life of those vessels so there is an additional depreciation cost; and the third component of the \$22.9 million is an additional \$0.4 million which is for Christmas Island, where we now have a Customs presence which we did not have until around August or September last year.

**Senator LUDWIG**—What is that Customs presence now? What does it consist of?

**Mr Woodward**—Two Customs officers.

**Senator LUDWIG**—This is in relation to the matter that I think was raised at the last estimates in May, when we went through the number of hulls and the number of crew. You have then said to us today that you have effectively doubled the crew to increase your capacity so that your vessels can then be operated more frequently.

**Mr Woodward**—The government has provided funding which will allow us to double the number of crew. Obviously hoping that the government might agree to that, we actually started the process of recruitment some months ago, but we are not yet up to the full numbers.

**Senator LUDWIG**—How many people were you considering employing? What is the target number?

**Mr Woodward**—In addition, there is one vessel that I did not mention. We have our Bay class vessels and I think there was a bit of confusion at our last Senate estimates in relation to another vessel we have—the *Samson Explorer*, which, in essence, has been used for ferrying duties between Ashmore and principally Darwin but also Broome, in earlier days bringing back those that we found on Ashmore. We have a capacity for eight officers for that particular vessel, even though it is a chartered vessel. The reason for them being marine crew—and again I think this was perhaps explored at the last meeting—was that there was an occupational health and safety issue raised. Flowing from that we took a decision that we ought to have marine crew people because they are trained by the AFP in defensive—and offensive, if necessary—activities. There are eight who are attached to the *Samson Explorer* and my recollection is that we will be aiming for about 168 other marine crew staff.

**Senator LUDWIG**—So that will be funded out of the additional money that you have sought?

**Mr Woodward**—That is picked up in the \$17.8 million for the marine unit, which is on page 63. I stress that there are other components; not all of that money relates to staffing; there are other expenses obviously in running vessels more frequently, including travel by our crews, organising of our crews, fuelling of the vessels, maintenance of the vessels, and increased depreciation.

**Senator LUDWIG**—Is that going to be an ongoing amount or is it finite? For how long is it proposed to be additional?

**Mr Woodward**—We have been given funding for this year and the government is yet to consider the later year figures. We are optimistic, but it will be for the government to decide in the budget context.

**Senator LUDWIG**—Your target employment strategy is for an additional 100-odd people in your current year.

**Mr Woodward**—The aim is, from the point we started at, to increase an additional 98 staff. So, when we decided that we needed to increase our numbers, we moved in the direction

of 98 additional. From the last I saw, we would be probably around the 100 mark in terms of numbers, and maybe higher than that now. But I stress that, when you actually get a person, that does not mean you have got a trained person. We have to go through training, including weapons training, for all of the people. So you have people on board who are not actually able to perform in a fully operational way.

**Senator LUDWIG**—And therefore, for their ongoing employment, they are contingent on additional funding coming your way: would that be a fair comment?

**Mr Woodward**—It is a fair comment; but I had no discouragement from my assumption that people would be able to remain after 1 July. In fact I am quite confident that we will get the money, but the government has not formally taken such a decision.

**Senator LUDWIG**—All right. So we would expect that in the May budget, then.

**Mr Woodward**—I would certainly hope so.

**Senator McKIERNAN**—The persons on the vessel who were rescued by the *Tampa*: was it from the *Aceng*?

**Mr Woodward**—That rings a bell.

**Mr Drury**—It was not the *Aceng*, Senator; it was the *Palapa 1*.

**Senator McKIERNAN**—Where was that vessel heading for, when it was spotted by Coastwatch?

**Rear Adm. Bonser**—The vessel was heading towards Christmas Island when it was sighted by a Coastwatch aircraft.

**Senator McKIERNAN**—The scope of patrols by Coastwatch has been expanded. They used not, in a normal routine, to go as far as Christmas Island or past Christmas Island, did they?

**Mr Woodward**—We do go out to Christmas Island periodically, and Rear Admiral Bonser might be able to give a clear indication of how often; but I stress the layering that took place at the government's request. Following that, I doubt very much if we have been out to Christmas since then.

**Rear Adm. Bonser**—We conduct routine, occasional surveillance patrols out to Christmas Island, and on that occasion the aircraft was out there conducting one of those routine surveillance patrols. That particular SIEV was detected by the Coastwatch aircraft. In fact it apparently had been heading towards Christmas Island but, at the time it was detected, it appeared to be broken down and was stopped in the water. That was reported back to the appropriate authorities in the Australian Search and Rescue.

**Senator McKIERNAN**—And that is when the *Tampa* came on the scene. I note in the additional estimates statement under the revised outcomes on page 66 that the *Tampa* is named the *Tampa Bay*. Is that a misprint, or is that the proper name of the vessel? Or are we talking about a different vessel?

**Mr Woodward**—No. I think that is wrong. It is the same vessel, and it has certainly been known as the *Tampa*. I am not sure how the word 'Bay' got in as well.

**Senator McKIERNAN**—You also describe, in that same sentence, the '*Tampa Bay* refugee crisis'. Does this indicate a split in government thinking on these matters? It has not been referred to by any other source in government as being a 'refugee crisis'—not from government—until this comment now.



**Mr Woodward**—No. It is a word that I lighted on myself in the last week or so. It is a word that should not have been used. The people on board were not refugees. They were unauthorised arrivals. There is a formal process—which our Immigration colleagues will be able to elaborate on and which you know of already, Senator—that results in either a determination of refugee status or not. That word should not have been used. It should have read ‘following the *Tampa* crisis’ rather than ‘the *Tampa Bay* refugee crisis’, and I apologise for that.

**Senator McKIERNAN**—Has that been the normal means of describing the issue within Customs?

**Mr Woodward**—No, it has not.

**Senator McKIERNAN**—It is just a glitch that has slipped in?

**Mr Woodward**—It was a mistake that slipped in and I apologise.

**Senator McKIERNAN**—Thank you. I think that will be noted. It states here that the 1,600 additional flying hours are only for the Dash 8 aircraft. But there are a number of other aircraft that are operating from Coastwatch in different areas. That extra money is only for that particular aircraft? Is that one of the aircraft recently acquired by Customs?

**Mr Woodward**—We have had Dash 8s since the beginning of this contract. You will probably recall that, following the landings on the east coast and the task force deliberations, we received enough money to have an extra two. So, if my recollection is correct, there are now an extra five Dash 8 aircraft. This provides additional flying hours as distinct from an additional aircraft. It is like the boats: we have a piece of gear there but we can fly it more because we have the money—because they are contracted, of course—to provide pilots and observers for the additional aircraft. So we are not getting an extra aircraft; it is 1,600 more flying hours from the existing aircraft.

**Senator McKIERNAN**—Okay, I understand that, Mr Woodward. But there are other aircraft in the Coastwatch fleet?

**Mr Woodward**—Yes.

**Senator McKIERNAN**—They will not be increasing their flying hours as a result of these additional budget estimates?

**Mr Woodward**—The view that the experts have taken is that the capabilities of the Dash 8 are such that the best way of getting increased coverage at least cost was to increase the flying capacity of the Dash 8s rather than to attempt to increase the hours of the smaller aircraft which obviously have a shorter range. The Islanders, of course, do not have anything like the same capability in terms of radars.

**Senator McKIERNAN**—I will never forget the boat that came down the eastern states. I recognised at the time that it was one of the things that motivated the Prime Minister to get an inquiry going and additional resources devoted to surveillance activities. Many boats had landed on the Western Australian shores; but when they came east that then became important and we noted the increased activity at that time.

**CHAIR**—When it comes to making a parochial point, Senator McKiernan, you are indeed the expert.

**Senator McKIERNAN**—Thank you. Following that activity from the Prime Minister’s office and the report that was delivered to him, quite a substantial amount of additional resources were devoted to the protection of Australian borders and, in particular, funding for

additional aircraft, including helicopters, was allocated at that time. In previous estimates committees questions have been asked about where those aircraft had been domiciled and part of the response to those questions was that there may have been some located on the eastern or some northern parts of Australia where there was an ability for them to move west if there was a need for them to move west. Without putting too much on the public record and giving information to even AFP informants who might read the Senate *Hansard*, can you indicate where the various aircraft are now located? Are they located in positions where they can target that north-west area of Australia, which, in recent times, the boats have been targeting to come to Australia?

**Mr Woodward**—Admiral Bonser could be more specific. I again emphasise the point that, since this all began, our focus has been on the north-west and the Torres Strait. There has been significantly reduced surveillance between the Torres Strait and Brisbane, and not a great deal between Brisbane around to Broome. Virtually all of our effort has been in the north-west and in the Torres Strait. But as to where the aircraft are normally located and how we have been disposing them, Admiral Bonser is best equipped to answer that.

**Rear Adm. Bonser**—The aircraft are normally disposed in bases at Broome, Darwin, Cairns and in Torres Strait, Horn Island, near Thursday Island. None of that basing, other than for one aircraft being relocated, one of the Dash 8 aircraft currently being relocated from Cairns to operate out of Darwin to increase our rates of effort there, has changed. That is the only change that has been made in basing to effect what we are doing in increasing our rates of effort in the north-west. It is the location of the sorties and the detail of the surveillance plan which I would not wish to go into in detail now, but we have increased that and focused on that area in the north-west using those aircraft that are normally based in Broome and Darwin, plus the one aircraft moved from Cairns across to Darwin.

**Senator McKIERNAN**—Where is the helicopter based?

**Rear Adm. Bonser**—The helicopters are both based in Torres Strait.

**Senator McKIERNAN**—Not the Australian mainland—an island off the mainland?

**Rear Adm. Bonser**—Yes. They are at Horn Island where the airport is, and they operate out of there, and they are very effective in amongst the islands, being able to move law enforcement officers from different islands, and also conducting surveillance between the islands of a night. The new helicopter up there with its night surveillance device has proved very effective at night-time up there amongst the islands. That mobility to land in small, confined spaces is very effective in that environment.

**Senator McKIERNAN**—Can you explain the ‘very effective’ terminology you have just used? What is the measurement used to determine what is very effective? I have not heard any reports of illegal or non-citizens seeking to enter Australia through the Torres Strait areas. I am not saying it has not happened.

**Rear Adm. Bonser**—The improvement in effectiveness that I was talking about was the helicopter having a night observation device which meant that it was able to see and conduct surveillance at night-time, which had not been able to be done before, so it had gone from a daytime only capability to a day and night capability.

**Senator McKIERNAN**—There have been reports at the weekend, and we have asked questions of the Australian Federal Police before you, about allegations being made by a person who was an informant to the Australian Federal Police that he has had arranged the landing of up to three vessels carrying unlawful non-citizens to Australia, and the AFP have

made some inquiries. Has the Customs Service made any inquiries into this matter as to whether or not your surveillance, Coastwatch's surveillance, off Australia's shores has been breached in any way? Are you in any position to further the inquiries of the committee in regard to this matter?

**Mr Woodward**—Can I start to answer that question? We provide publicly available information not only on our successes but also on our failures, and our annual reports over the years have indicated the number of vessels that we know have landed illegally. I listened to the discussion with the commissioner, and I accept that you don't know what you don't know, so that, if a vessel landed and no-one knew about it, it cannot be counted in statistics. But we do know that, since 1997, which was a date that was mentioned in that coverage, there had been 10 landings that we know about in the north-west, involving, I think, about 182 people. Since records began in about 1991, my recollection is—and Admiral Bonser will correct me—that we are aware of something like 24 vessels that have landed with maybe something like 700 or 800 people involved. We are obviously disappointed that those vessels would have got through the net, but I suppose we are reassured that while we had a couple of years that do not bring great cheer to me—I think in 1998-99 we had a 74 per cent success rate and the previous year something like 89 per cent—the last figure we have has gone up from 96 per cent to 100 per cent. Again I do not make too much of that because one vessel landing can make a big difference to your percentages.

What I am saying is that we have acknowledged that there have been failings in our system in the past. On each occasion there is follow-up investigation. We will be looking at the *Sunday* program reports to see if there is more that we can or should be doing in relation to the alleged instances.

**Senator McKIERNAN**—Do you take the statements that were made on that television report seriously? Are they something that could just be dismissed?

**Mr Woodward**—I cannot talk about the AFP component or about international law. I take the Customs aspect seriously because we know that there have been landings in the north-west—it is not mere conjecture. What we are trying to do is to see if we can relate our known landings with the alleged landings and see whether or not we know about them and to then follow up with our colleagues in other agencies. So we do take that seriously.

**Senator McKIERNAN**—What will Customs do now to further inquire into this matter? What can you do?

**Mr Woodward**—The first thing to say is that it is not all that long ago. What we have started to do is have a close look at the transcript to try to relate the dates or times as best we can—and also the locations, because we watched the bearing that was alleged to have been used by the vessels and the allegation of a particular landing point. There certainly have been landings in that broad area, but at the moment I am personally not able to say whether we can match those landings that we know about with each of those alleged incidents in the program. So that is where we have started from. In other words, the starting point for anything is: what are the facts? Against that background, there was a fair bit of generality in some aspects of that program.

**Senator McKIERNAN**—There was generality, but there were also some specifics. One of the boat captains, who was secretly recorded, described the operation as a 'dump and run'. That is something that Australia has experienced in the past, including at Ashmore Reef and other parts. Plans were made for the vessel to come to Australia and offload the passengers—in other words, dump them—and then the vessel would run.

**Mr Woodward**—It is true; we know that. My recollection—and I am sure Admiral Bonser or one of my officers will correct me—is that on a night last year or so a vessel landed with some Sri Lankans. It dropped them off and then ran into some difficulties—I think it was around Cocos Island. As a result, the vessel was apprehended. I am not sure what happened then. There would have been action initiated by the AFP, but I do not know where that is at the moment. So, yes, we agree—people do that.

**Senator Ellison**—That was one of the Exmouth landings that I mentioned earlier.

**Senator McKIERNAN**—And the vessel had not been detected, even when it left the shore. It was some time after—

**Senator Ellison**—It was detected some time after—and, I might say, there was action taken pursuant to that, and the crew have been arrested and charged.

**Senator McKIERNAN**—I am aware of that.

**Senator LUDWIG**—In relation to the Enniss matter, were you involved in that operation at all? Did the AFP liaise with you about that operation?

**Mr Woodward**—I personally had never even heard the name until I saw the program. I am not sure whether anyone else knew the name or had any information. Obviously we know that the AFP uses informants—

**Senator LUDWIG**—It is not the question of whether they know; it is just in relation to that operation—

**Mr Woodward**—It is new knowledge on my part.

**Senator LUDWIG**—Perhaps you could have a look. I take it your answer is ‘no’, but let us know if something comes to light.

**Mr Woodward**—If, when I check, I need to change it, I will come back to you and correct it.

**Senator LUDWIG**—Thank you. You were not a party to the AFP-DIMIA task force, were you?

**Mr Woodward**—The task force concept came in after the People Smuggling Task Force that followed the east coast landings. Those task forces are DIMIA and AFP. We are not members of those groups, but we are heavily involved—obviously—in most instances.

**Senator LUDWIG**—No, it was a specific question.

**Mr Woodward**—Not in relation to those task forces, no.

**Senator LUDWIG**—In relation to the AFP, do you have a liaison officer or someone whom you go through between the two organisations to talk about operational issues, about where you might be patrolling, where your vessels might otherwise be? Do the AFP make that request to you or do you have an interagency liaison officer who might hold that information?

**Mr Woodward**—Can I just ask for one point of clarification first: when you say ‘patrolling’ do you mean marine patrolling, aircraft patrolling or both?

**Senator LUDWIG**—I am sorry?

**Mr Woodward**—You said ‘patrolling’. Do you mean boats or aircraft?

**Senator LUDWIG**—Boats, aircraft in particular areas.

**Mr Woodward**—There are different mechanisms, and that is why I wanted to be quite clear.

**Senator LUDWIG**—I guess they both patrol, in a sense.

**Mr Woodward**—We have quite a sophisticated intelligence capability within Coastwatch, and one of the reasons we have an admiral running it is to enable us to have access to quite sensitive intelligence systems of other agencies. We use that information—and we also get some from other law enforcement agencies, including the Federal Police—and it is analysed, digested, churned around and discussed with the relevant agencies to assist in planning our longer- and medium-term and operational taskings for Coastwatch aircraft. There are similar, although slightly different, arrangements in relation to the marine unit, but again there are taskings in both involving host organisations such as Immigration—and there is a lot of information we either gather ourselves or get from other sources. Those task forces you are talking about are one of the set of sources of information that we use for both.

**Senator LUDWIG**—I think I can guess all that. The question was, though—and perhaps I will rephrase it—does the AFP make a request to your organisation, and has it made a request to your organisation, about where your planes and boats will be on a certain day? Does it do that or does it have the ability to do that?

**Mr Woodward**—It certainly has the ability to ask.

**Rear Adm. Bonser**—The answer is no. Really, the AFP do not have a need to know the day-to-day detail of what the aircraft are doing, and they probably would only have that information when we were conducting a specific task in direct support of them for a particular operation, like drug interdiction.

**Senator LUDWIG**—Does the Customs Service have an officer in Jakarta?

**Mr Woodward**—No.

**Senator SHERRY**—There was a working group set up in the Department of the Prime Minister and Cabinet. Was Customs part of that working group? Did it have a representative?

**Mr Woodward**—I would like to make one introductory comment and then pass over to my colleagues. There was not one working group; we have been involved in a number of groups in relation to people-smuggling. The one that has received most recent attention we initially knew as the high level reference group, which was—

**Senator SHERRY**—Sorry—what was the name of it?

**Mr Woodward**—It was initially called the high level reference group, then it was known by some as the task force and then known by some as the IDC. At the most senior levels—and that was at the level that was chaired by Ms Halton—it met on many occasions and on many occasions we participated in that. There are other working groups associated in many ways with it—loose formations and groups formed and re-formed—and to describe it as one group is probably not accurate, from my understanding. But I make a point that Customs was at neither of the meetings that took place on 7 October.

**Senator SHERRY**—Let us just talk about the group chaired by Ms Halton. Who from Customs normally attended the meetings?

**Mr Woodward**—Most of the meetings were attended by Mr Drury, many of them by Admiral Bonser and a couple of them by Mr Hawksworth, who is our National Director, Border. I imagine that there were some meetings called which did not necessarily involve us. In those cases we did not attend; you do not attend a meeting if you are not invited, and we

may not have known that some of them were actually being held. Our information relates only to those which we were invited to attend and attended, but Mr Drury was present at many of them.

**Senator SHERRY**—What was the practice? Did Ms Halton request a representative or representatives from Customs? Did she name people? Who determined who went?

**Mr Woodward**—I am going from memory: it was clear that, when it was known that it was going to be run at a deputy secretary level out of the Prime Minister's department, there would be a need for very senior level representation. I think Mr Hawksworth attended one or two early on in the process—

**Senator SHERRY**—Who was that?

**Mr Woodward**—Mr Hawksworth, who is our National Director, Border—division head status. Early on I formed the view that the nature of that work was such that it deserved deputy status, and Mr Drury from that point attended most of the meetings and Admiral Bonser, because of his role as the head of Coastwatch, attended many as well.

**Senator JACINTA COLLINS**—Would you take on notice the same question that the Federal Police have taken on notice—that is, which meetings of the task force did you attend and who attended them?

**Mr Woodward**—You want a listing of which meetings and who attended? Yes, we can do that.

**Senator JACINTA COLLINS**—Thank you. From the evidence that we received yesterday in the PM&C Senate estimates, I can confirm precisely, as Mr Woodward has been indicating, that there is a series of these committees. I am talking quite specifically about the People Smuggling Task Force, which I think was the second one which had been chaired by Jane Halton. We understand that it met in the period, if this assists you, from 26 August 2001 until February 2002.

**Mr Woodward**—We will list from 26 August to the present the dates of meetings and the names of officers who attended those groups chaired by Ms Halton. Is that what you want?

**Senator JACINTA COLLINS**—Yes, that is right.

**Mr Woodward**—Yes, we will do that.

**Senator JACINTA COLLINS**—As well as that, I am still not quite clear from Senator Sherry's questions how Customs understood whether or not they were required to attend the task force meetings. The information that we have been provided with lists a number of members of the task force and then a series of co-opted members. I had originally made what may well be a poor assumption that members participated pretty much throughout the course of the task force, but you seem to imply—and correct me if I am making an incorrect implication—that there were occasions when it seemed relevant to Customs and occasions when it was not. I am interested in understanding when and how those assessments were made.

**CHAIR**—I am not sure whether the officers will know what you are referring to.

**Senator JACINTA COLLINS**—Do you know, Mr Woodward? To clarify: this document was provided to us in PM&C Senate estimates yesterday.

**Mr Woodward**—I have not seen that document.

**Senator JACINTA COLLINS**—No, and I know you wouldn't have, but I am looking for a clarification.

**Mr Woodward**—I have the general drift of your question. I will answer on the basis that I have not seen the document and, if I go off at a tangent, perhaps you will correct me. I think there was a certain fluidity in the way in which the meetings were called. The point that the commissioner made very clearly was that this was a very hectic period and meetings were going on—frankly, they were going on in relation to a whole series of things because counter-terrorism started to get a head of steam at about that time also. I am not sure that there was the degree of formality that you might have hinted at in your question, on the basis that I think the secretariat within PM&C, and probably Ms Halton, worked out the major items that were going to be considered and then took a decision as to whether or not Customs were in any way relevant to it. My guess is, and it is only a guess, that we attended most of the meetings chaired by Ms Halton, but we now know that there were two meetings held on 7 October that we were not invited to. I am not saying that there is anything sinister in that. The vessel was detected not by Coastwatch; it was detected by an Air Force aircraft. The response was by a Navy vessel. So the principal players were from Defence. Not only did we not attend but I am not sure, from checking more recently, that we knew there was a meeting on until some time after the event. But things moved very quickly at the time, and it was a Sunday as well.

**Senator JACINTA COLLINS**—My interest obviously pertains to the 'children overboard' incident. Did Customs have any direct involvement at the time of the 'children overboard' incident?

**Mr Woodward**—I will reinforce what I have said. We now have two officers at Christmas Island. At about that time there was one officer present who was just starting to take up duty. Most of our work prior to that was done for us by the AFP. We did not detect the vessel—it was an Air Force aircraft—and the response was not by us. Apart from one person being there at that time, Customs had no presence.

**Senator JACINTA COLLINS**—The only indication we have of Customs's involvement, as I understand it at this stage, is what is reported in Ms Bryant's report at page 30:

Material prepared by the Customs District Manager for the Indian Ocean Territories—

Is this the Christmas Island person you referred to?

**Mr Woodward**—Yes.

**Senator JACINTA COLLINS**—It continues:

Mr Stuart Clifford, indicates that he was present at the initial discussions between officials and the crew of HMAS ADELAIDE.

**Mr Woodward**—That is right.

**Senator JACINTA COLLINS**—Is there any other involvement in the incident than this one here reported?

**Mr Woodward**—The only other point that is relevant is that some time after the event—and I will have to pass over to others who are more across the details than I am—our officer and an AFP officer went on board the *Adelaide*, and the video was played, at least for a period.

**Senator JACINTA COLLINS**—I think we are referring to the same incident.

**Mr Woodward**—Yes.

**Senator JACINTA COLLINS**—I am asking if there were any further incidents to this one.

**Mr Woodward**—No, there are no other incidents. I am just elaborating on the point. I will leave it at that. There were no other incidents off Christmas Island. Obviously, later, there were other incidents involving suspect illegal entrant vessels and people known as SUNCs who were in the sea. One of our vessels rescued, I think, 96 people and took on board one of the deceased. Two deceased were then taken to Christmas Island. We have been involved in many other incidents—but, of the kind you are talking about, no.

**Senator JACINTA COLLINS**—I wanted to exclude that possibility before I focus on the one report that we were referring to. The report indicates that material was prepared by Customs indicating this. How was it conveyed to Ms Bryant?

**Mr Woodward**—I received a letter from Mr Moore-Wilton, indicating that the Bryant investigation had been setting up, obviously looking for cooperation. I have no recollection of Ms Bryant asking to see me, although I have not been across the detail, and that did not surprise me. She saw Mr Drury and Admiral Bonser together—my understanding is for something like 45 minutes. She questioned them on what they knew and, to the best of my understanding, they responded positively and quickly to all of her questions. I think their names are clear enough in the attachment to the report you are looking at.

**Senator JACINTA COLLINS**—You may wish to correct me; my understanding is that the letter was sent by Ms Bryant rather than Mr Moore-Wilton.

**Mr Woodward**—That could be right. It may have been that what I saw was a letter from the Prime Minister to Mr Moore-Wilton. That may have been how I had Mr Moore-Wilton in my mind. If that is true, I apologise.

**Senator JACINTA COLLINS**—Can you clarify that?

**Mr Woodward**—I will let you know whether we got one from him or one from her. I am probably wrong.

**Senator JACINTA COLLINS**—Aside from those contacts with PM&C, are there any other communications, either to Customs or from Customs, about this incident?

**Mr Woodward**—Anywhere?

**Senator JACINTA COLLINS**—Yes.

**Mr Woodward**—As we were not involved, as I mentioned before, there was no exchange that I am aware of at that particular time. The only other piece of information that I now have is that, in a search to establish whether we had any information of relevance to the Senate inquiry which will soon get under way, we have established that one of our managers sought information in October to update the imagery holdings they had and received a copy of 18 images of, I think, something like four or five SIEVs, as we call them. We have now established that, of those 18 images, I think seven were of SIEV4. Four of those were taken before the vessel sank—they were just images of a vessel on the seas—and three of the images related to the vessel at about the point of sinking. I think that is the only relevant information that I can pass on to you at this time.

**Senator JACINTA COLLINS**—From where was that information sought and provided?

**Mr Woodward**—I stress that it was not for this purpose. It was sought to update our intelligence holdings of vessels generally, and it was just part of that. The request was made of Northern Command, and the information was provided by digital means, transmitted by



secure mechanisms, and has been retained in a secure facility and not passed on to anyone else. I stress that, until yesterday, I did not know—nor did the admiral know—of the existence of this material, but it was part of our search to see whether there was anything that we might be asked to provide to this committee or to the next committee.

**Senator JACINTA COLLINS**—Can you please tell me the name of that manager and the date that information was acquired?

**Mr Woodward**—The manager is Mr McKenzie, who was in our Coastwatch analysis unit. The information was provided on 29 October.

**Senator JACINTA COLLINS**—I take on board what you have said about the purpose of acquiring that information. With respect to this once incident that was reported in Ms Bryant's report, was any action taken by Customs with respect to the information acquired at the time?

**Mr Woodward**—Can you elaborate? I am not quite sure what you mean.

**Senator JACINTA COLLINS**—Have you read this component of the report?

**Mr Woodward**—I have read the report. I do not have the report with me.

**Senator JACINTA COLLINS**—Let me refer precisely to it so that we understand each other:

... Mr Stuart Clifford indicates that he was present at the initial discussions between officials and the crew of HMAS *Adelaide*. He was also present with the AFP at discussions in Commander Banks' cabin later on 9 October, during which Commander Banks said that he was very concerned about some of the information that had been presented by the media during the previous 24 hours ... The CO made it quite clear that he did not wish the contents of the tape, which he attempted to play, or comments of his crew to be relayed to other persons.

I appreciate that that is the only element of Mr Clifford's advice that we have access to at this stage, and you may be aware of broader components of that statement which we are not privy to at the moment. At least from this small component of the information, it would have been obvious to Mr Clifford that the Commander of HMAS *Adelaide* was very concerned about media presentation of the incident. I am asking whether Customs took any action with that information.

**Mr Woodward**—The critical point was that, until a date in November, in the course of another report—it was either 8 November or 9 November—neither I nor any of my colleagues were aware that Mr Clifford had been on board the vessel and had seen the video. It was at about that same time that the Prime Minister passed a comment that implied that either the AFP or maybe Customs might have seen a video, and we started hunting. Our hunting produced an acknowledgment from the person, who was then on Christmas Island, that he had actually seen the tape. Until that point, neither I nor any other senior officer that I have spoken to was aware of that at all. We had no knowledge.

**Senator JACINTA COLLINS**—I am not solely directing this to the senior officers. I am seeking to understand—because we do not have Mr Clifford's full statement—whether Mr Clifford took any action with respect to that information, other than this small piece that is reported here.

**Mr Woodward**—The answer is that he took no further action. He clearly did not see it as something assuming the significance that it now has. If he could turn the clock back, I am sure he would have arrived at a different view, but he was an officer from Western Australia out on Christmas Island and saw things a bit differently, I suspect, from people in Canberra.

**Senator JACINTA COLLINS**—Mr Woodward, please do not misunderstand me. There is no suggestion in my questions that Customs has done anything other than is reasonable with the information that we are talking about. However, there have been some indications in other areas that contacts have been made from the Prime Minister's office, for example, to ascertain information. You ruled out earlier that such incidents occurred within Customs.

**Mr Woodward**—The information was passed to Ms Bryant. No-one in the Prime Minister's office has at any point spoken to me. I am sure that if my senior officers had been contacted they would have told me.

**Senator JACINTA COLLINS**—It has been reported that all present at the task force at the time signed off on the memo, which was then presented to ministers, about children having been thrown overboard. Correct me if I am wrong, but you have excluded Customs from having been present at that meeting and indeed from having signed off on such a memo.

**Mr Woodward**—We were not there. We could not have signed off, and we did not sign off.

**Senator COONEY**—SIEV4 was one of a number of boats that had come down over the years. Is that so?

**Mr Woodward**—Yes. Not a large number were going to Christmas Island, but in recent years we have had a very large number going to Ashmore. It tended to be a little larger. They have changed a bit on Ashmore as well but, yes, we have had significant numbers.

**Senator COONEY**—I am sure you have told us about this in past estimates, but what happens about the boats bringing people down to Australia—unauthorised arrivals? How many boats would there be, just roughly? It is not a dozen; my impression is that it is a lot more than that. I just want to get a picture of the pattern of boats coming down with unauthorised people on board.

**Mr Woodward**—We can quickly find the numbers. Obviously they vary from year to year. In the last two full financial years, the numbers of people landing at Ashmore and Christmas Island exceeded 4,000 for each of the years. There were 87 vessels in 1999. In the year 2000, there were 50; and in the year 2001, there were 48. Some of the other figures are in financial years, but I think they are calendar years.

**Senator COONEY**—So we have a pattern of the boats coming down. What sort of processes did Customs take in reference to them. Did they take photographs of them? Did they ring up about them? Did they try to intercept them? What would Customs do? Here I am coming down in a boat; what would be the usual pattern of action by Customs?

**Mr Woodward**—It depends very much on whether you are talking about the old pattern or the new pattern. If it is what used to happen prior to *Tampa*, it is rather different from what now happens. There has been far more emphasis on Defence control and greater emphasis on attempting to ensure that vessels do not land on Ashmore or Christmas Island. In some cases, vessels are towed back to Kupang or in the vicinity of Kupang if the vessel has come from Ashmore. Prior to that, we had mechanisms for warning vessels as they were approaching of Australian Migration Act requirements. Standard messages were passed to the crew of the SIEVs. The language difficulty was taken into account with interpretation. There may have been recorded messages as well—I am not 100 per cent sure of that—but we certainly covered the fact that they may not be able to speak English.

If there was an insistence—and I am talking about those over which we had control, and given that most of the vessels were headed for Ashmore, as distinct from Christmas Island—the vessels would end up finding their way there. For the last couple of years, except for the

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he vessels would end up finding their way there. For the last couple of years, except for the cyclone season we have had a vessel—the *Wauri*—stationed on Ashmore. It used to be based on the Torres Strait for a while. We now have a Bay class vessel. Alerts would be sent out and the principal focus from that point would be the health and safety of the people. Secondly, we would make contact with Immigration as to where they would be taken back to. Obviously we would make contact with the AFP in relation to action against crew members. As I mentioned before, we have had a vessel over the last couple of years which we have used as the principal means of transporting them back to Australia. Is that enough?

**Senator COONEY**—Yes, thank you very much. There was a change in that process. When did that change take place?

**Mr Woodward**—It was after *Tampa* and after changes that subsequently took place in relation to migration law.

**Senator COONEY**—Just pause there. There was a change in the processes brought about by a change in the migration law.

**Mr Woodward**—Well, no, the change took place as a result of a government decision. The government decision, in essence, was —

**Senator COONEY**—And then the change in the law took place after the change in the government decision.

**Mr Woodward**—A change took place after the government took a decision—and there are others better capable of putting this coherently than me—that there should be discouragement of landing and that the offshore islands should be treated as not forming part of Australia for Migration Act purposes—that is it in summary—and action be taken to more actively deter vessels from landing and/or to escort them back to Indonesia.

**Senator COONEY**—So you have a pattern of ships coming down and Australia's attitude being one of primarily ensuring that the health and safety of those people was looked after. And for that purpose a ship was designated to bring them to Australia. That pattern changed to one where we decided to send them back to where they came from.

**Mr Woodward**—You have picked up one point, our primary concern. One of the things we have been concerned with obviously is health and safety, but we have had a major deterrent role, and so have the Navy through patrol boats. For years now we have been issuing vessels with warnings, attempting to prevent them from coming in, but in more recent times there has been a more aggressive approach to the vessels than there was earlier.

**Senator COONEY**—There was a difference in treatment of a significant kind around the time of *Tampa* or at the time of *Tampa*.

**Mr Woodward**—It was about that time. I stress that you are stretching far beyond my responsibilities within Customs.

**Senator COONEY**—I understand.

**Senator Ellison**—Madam Chair, I think these are really issues for the department of immigration—

**CHAIR**—We will be coming to that department, one hopes, later today.

**Senator Ellison**—Customs was not involved in this policy-making area.

**Senator COONEY**—I understand what you are saying, Minister. These are some of the people who were able to observe what was going on. That is all I am saying. I think Mr

Woodward has created a picture of a pattern that Australia followed up to a particular time, and then that pattern changed in a significant manner.

**Senator Ellison**—I think that is a matter of public record. Legislation was introduced and action was taken by the government.

**Senator COONEY**—At that time.

**Senator Ellison**—It is obvious that there was a decision by the government that the matter needed to be taken in hand—and it was.

**Senator COONEY**—Senator, I will just engage in a bit of conversation. Yesterday, Senator McKiernan asked Hilary Penfold from—

**CHAIR**—the Office of Parliamentary Counsel.

**Senator COONEY**—She is a QC—no, SC.

**CHAIR**—She is a QC, actually, Senator.

**Senator Ellison**—What is an SC?

**Senator COONEY**—Senior Counsel. He is a republican and he asks me what SC means.

**CHAIR**—A Senior Counsel in the republican states.

**Senator COONEY**—She said that she had to get legislation prepared in a very short period of time. The picture you get from that is that you have a pattern whereby Australia is handling these ships coming down and then a decision is quite suddenly made which requires legislation to be got ready in a very, very short period of time. That is all I am putting. That seems to be the situation, and I am simply describing it. It is probably proper to ask other people what the reasons for that are.

**Senator Ellison**—That is really an area for the Attorney-General's Department and their people who assist us quite well on that. It is not so much a Customs question, if I can put it that way.

**Senator COONEY**—I understand that.

**Senator Ellison**—Action was taken—you are right—and there was a decision made and legislation was introduced.

**Senator COONEY**—Yes; but the pattern of how the shipping was treated changed, and that is a matter of fact. But, as you say, everybody accepts that.

**Senator Ellison**—Yes. There was certainly a change in the way things were dealt with.

**Mr Woodward**—Could I just add one point in terms of humanitarian considerations? The *Samson Explorer*, which has not been used for a while now to transport illegals back to the mainland, has been used very extensively to get food and, I suspect, clothing—but certainly blankets, medicinals et cetera—out to those who are at Ashmore. We also obviously have a responsibility, because we have a permanent presence there, in relation to assessment of the state of the vessels that land there and maintaining them or, if they cannot be maintained, ensuring for a whole series of reasons, including danger to shipping or for environmental reasons, that we destroy them.

**Senator COONEY**—But the boat that used to bring the people in for humanitarian purposes continued to be used for humanitarian purposes but in reverse—

**Mr Woodward**—A different sort of humanitarian reason.

**Senator COONEY**—You are going in the reverse direction and taking out the medicine and the clothing.

**Mr Woodward**—Yes. That is right.

**Senator Ellison**—Madam Chair, I think it is important to note that there were occasions where Customs officers acted to save the lives of people. In one instance in particular, there were two in the surf—I think it was at Ashmore—and there was some very good work done by some Customs officers in saving the lives of two people.

**Senator COONEY**—They deserve credit for that, but Customs has been doing that forever, hasn't it—saving lives and doing good deeds? I say that in all seriousness.

**Mr Woodward**—That is true, but some circumstances are more difficult than others. In the one I alluded to, which was Arnhem Bay—and I hope I am right in terms of numbers—a crew of eight rescued 99 people. One person was deceased. With a 38-metre boat, to actually get that number of people on board and get them back safely was a pretty remarkable feat.

**Senator Ellison**—I think it demonstrates the priorities of saving life and limb.

**CHAIR**—I understand the point.

**Senator Ellison**—They are quite dramatic examples.

**Senator SHERRY**—I have a couple of questions. Going back to the discussion earlier with my colleague Senator Collins, for the meeting that took place that Mr Clifford was not at and that no-one else from Customs was at, there was a note signed off. Did Mr Clifford or other members who attended those meetings sight copies of those notes at subsequent meetings?

**Mr Woodward**—I am a bit confused. Mr Clifford was our Christmas Island person. Which note is that?

**Senator SHERRY**—Sorry. It was not Mr Clifford. It was the other officer on the People Smuggling Task Force.

**Mr Woodward**—Mr Drury attended meetings. As to the minute that was signed off on 7 October, which I have now heard about, I repeat that we were not there and we clearly did not sign off on any minutes of the meeting.

**Senator SHERRY**—Okay. I accept that. Mr Drury, did you attend meetings after 7 October?

**Mr Drury**—Yes. I think the next one was 9 October.

**Senator SHERRY**—Okay. At that meeting or any other subsequent meetings, was there any discussion about the issues relating to the alleged throwing of children overboard?

**Mr Drury**—To my recollection, no.

**Senator SHERRY**—Do you know the dates of the meetings you attended?

**Mr Drury**—They are not in my head. There were literally scores of them, but I can certainly recall that prior to the 7th the meeting I attended was on the 4th. After the 7th, the next meeting was on the 9th, so there was a gap between the 4th and the 9th—which covers the 7th—and we have already heard evidence that I was not called in on that day. There were two meetings on that day and I did not even know about them until the 9th.

**Senator SHERRY**—What was the process? Were you formally told there was a meeting on the 7th or did you just pick that up by conversation?

**Mr Drury**—By conversation. What would happen is that PM&C would ring my secretary and say that there was a meeting—they were usually at three o'clock—and so I would turn up. In normal circumstances Admiral Bonser and I went together, or if he was not available his deputy would come with me.

**Senator SHERRY**—So there were generally two of you there?

**Mr Drury**—I represented the Customs angle—boats, relief supplies, things like that—and Admiral Bonser covered off the Coastwatch matters, the aircraft patrols and the like.

**Senator SHERRY**—Perhaps I will ask you, Admiral: can you recall any conversations about the issues relating to the allegation that children were thrown overboard?

**Rear Adm. Bonser**—No, not at any of the meetings that I attended after the 7th. The first one that I attended after that was also on the 9th.

**Senator SHERRY**—Mr Woodward, going back to the *Adelaide*, did you say earlier that there was a Customs officer on the *Adelaide*?

**Mr Woodward**—No. What I said, and I think it was alluded to in the report that Senator Collins was reading from, was that we discovered, I think on 9 November, that our officer on Christmas Island, in the company of an AFP officer—I do not know whether there were others—went on board the *Adelaide* for a number of, for us, Customs related activities, and saw at least some if not all of the video. He then obviously left the *Adelaide*. He was there for Customs business; he was not posted on the *Adelaide*.

**Senator SHERRY**—Was that the video that the Prime Minister subsequently referred to as being held by Customs or the AFP?

**Mr Woodward**—That is the video, as I understand it. That is the same video.

**Senator SHERRY**—Do you know how the Prime Minister's office came to know that Customs—and, from earlier questioning, the AFP—had a copy?

**Mr Woodward**—As we did not know until—

**Senator SHERRY**—That is why I ask. You did not know, but apparently the Prime Minister did.

**Mr Woodward**—I would need to go back and see the transcript. It may have been a throwaway line or it may have been something like 'perhaps the AFP'. I need to check the words. I do not know how they knew.

**Senator SHERRY**—It just struck me as a bit odd that the head of the AFP and you, as the heads of your respective organisations, did not know, but the Prime Minister's office knew.

**Mr Woodward**—I cannot add to that.

**Senator McKIERNAN**—What normally happens when a SIEV is located? The Coastwatch aircraft takes some photographs. Is that your phone? We have an aversion to mobile phones because it breaks the chain of thought.

**CHAIR**—This is apparently the royal 'we'.

**Senator McKIERNAN**—We have made announcements that mobile phones should be turned off.

**Senator SHERRY**—I cannot see anyone moving their hand towards their mobile phone.

**Senator McKIERNAN**—I suspect they are cowards. Hopefully they are all off. What occurs when a suspected illegal entry vessel is spotted by a Coastwatch aircraft? I know,

because I have been in a Coastwatch aircraft, which was an experience that I thoroughly enjoyed and learned a great deal from. Are those pictures or images, if that is the correct terminology, beamed through to Canberra?

**Mr Woodward**—We are trying to improve our technology so what we do now will be a bit different a bit further down the track. I will leave it to the admiral to answer.

**Rear Adm. Bonser**—We do not have the capability to send the images back from the air, Senator, but we now have digital cameras in the aircraft so we are able to download images after the aircraft lands and send them back to the Canberra headquarters afterwards.

**Senator McKIERNAN**—So they are recorded whilst the aircraft is in the air and then, when the aircraft lands, that is when the transmission to Canberra or wherever can occur.

**Rear Adm. Bonser**—Yes, those that are taken with a digital camera. Otherwise the film has to be developed and that takes several days, perhaps.

**Senator McKIERNAN**—So it is a film that is recorded when a vessel is spotted and it is a film that is recorded from the nose of the aircraft. It was the nose of the aircraft that I was on where the cameras were located.

**Senator COONEY**—On the nose?

**Senator McKIERNAN**—I have been on the nose a few times!

**Rear Adm. Bonser**—That is the high definition TV and forward-looking infrared system which is under the nose of the aircraft, and that can actually record video either of thermal imagery or TV, and that is recorded on normal video cassette. That then has to be mailed back or couriered back from wherever the aircraft lands so that it can be played. The only other means we have of getting imagery back in a more timely fashion is by using a hand-held digital camera from which we can then download the images and transmit them back by email.

**Senator McKIERNAN**—When the *Adelaide* reached this vessel when it was in difficulties and in trouble, did the surveillance aircraft maintain contact with the vessel whilst the rescue operation was in process?

**Rear Adm. Bonser**—Is that the SIEV4 you are talking about, Senator?

**Senator McKIERNAN**—Yes, indeed.

**Rear Adm. Bonser**—There were no Coastwatch aircraft or Customs vessels there. That was purely Defence. I am not sure of the detail of what occurred at the time as far as the Defence P3 was concerned.

**Senator McKIERNAN**—When a vessel is spotted and images are made—be they photographs or videos—are they normally, as a matter of course, shared with other bodies who are part of Coastwatch border protection or the People Smuggling Task Force?

**Rear Adm. Bonser**—We collect any imagery that we take, whether it be of illegal immigrant vessels or foreign fishing vessels for that matter, and Coastwatch provides it to our client agencies so that they can use it as well for their purposes.

**Senator McKIERNAN**—But on this particular vessel, the SIEV4, was there no Coastwatch imagery available at all?

**Rear Adm. Bonser**—No, there was no Coastwatch aircraft within 1,000 miles.

**Senator McKIERNAN**—Thank you.

**Senator SHERRY**—Admiral, isn't it technically possible to maintain continuous surveillance of a particular area of coast or the sea off that coast using satellites?

**Rear Adm. Bonser**—I think you would need an awful lot of satellites to be able to do it, Senator. Geostationary ones might, but I am not certain about the nature of the sensors that would be in them. Most of the commercially available information that I have seen comes from orbiting satellites that pass over an area every few hours or so, so it is not continuous.

**Senator SHERRY**—Most of my information comes from watching movies of American spy technology, which seems to be able to do remarkable things. I just assumed it would be technically possible to continue to carry out continuous satellite surveillance of all vessels and transmit their location back to a point from which you could then notify the dispatch of vessels to intercept.

**Rear Adm. Bonser**—I do not know.

**Mr Drury**—I just reminded the admiral that often you would not want to intercept but you are still not sure of the identity of the vessel. So you might have to send aircraft out there to do the job regardless of the satellite interception.

**Senator SHERRY**—Yes, but I would have thought, at least with some satellite technology, you could actually get information as good as you could get from aircraft. You have never done any work on this?

**Mr Woodward**—Can I go back to the Public Accounts Committee report where we presented papers on directions in which we might go so far as aerial detection is concerned. We explored a whole array of options, from use of satellite technology, surface wave skimming radar to tethered arrays—all sorts of options. Well before the Coastwatch contract expires, we will be looking—and obviously we will be heavily dependent on government decisions on funding—to see whether there are ways of doing our job better than we do it currently. We will be looking at each one of those options, and others.

**Senator SHERRY**—I assume you keep an eye on what is happening in other jurisdictions?

**Mr Woodward**—Obviously we do. Admiral Bonser is across some of them, and the admiral's predecessor, Rear Admiral Shalders, spent quite a bit of time looking at the US. He certainly went to Japan and, as I recall, some European nations as well to see what technologies they were currently using—and obviously they were some of the leaders. We are looking at American options, among others.

**Senator SHERRY**—Do you have any indicative costs on those sorts of systems?

**Mr Woodward**—Some of the costs, from the point of view of someone who has been in financial management for some time, are astronomical and probably beyond the reasonable realm of possibility. I think others are possible. One that we have been exploring is unmanned vehicles with radar capabilities. Some of them are deployed now. As I recall, one that we had a look at—that Defence brought out—was something like \$25 million for one aircraft. So, yes, we are looking at an array of options; we are not just working on the assumption that how we do things now is the way we should be doing things years down the track.

**Senator SHERRY**—It just seems to me if we are as serious as we say we are about protecting borders that it is a cost we will have to pay.

**Mr Woodward**—That will be for the government to decide. We will put a range of options, many of which we explored with the Public Accounts Committee and the



government, when we are in a position to advance it realistically. I guess probably in the next 12 or 18 months we will look at all of that.

**Senator SHERRY**—Is there any documentation available on the options and the costings?

**Mr Woodward**—The PAC report has got—

**Senator SHERRY**—I am sorry, I have not read the report. I will have a look at it.

**Mr Woodward**—That is probably one of the gospels on options.

**Senator COONEY**—This has obviously been answered, no doubt ad nauseam, but do the videos we are talking about and the photographs we have seen come from a practice of taking photographs either because of legislation or because of directions from Customs or from somebody else, do you know, or is this just a sort of one-off video and one-off set of photos? What I am trying to get to is: was this a fortuitous taking of pictures, either by video or camera, or was this part of a duty which arises from either practice or legislation or regulations or whatever else?

**Mr Woodward**—I think the admiral has mentioned what we do in relation to aircraft. Obviously, we cannot talk about Defence policy. But as a matter of policy insofar as Customs is concerned—and that picks up the marine side and certainly Coastwatch itself—I have said that we have to move as quickly as we can to improve our photographic and video coverage of actions that we are involved in. This is not for media purposes. Firstly, it could be in part for evidential purposes, for others who may be looking at it, and, secondly, to ensure that there are no accusations levelled against Customs and its officers which we could have dealt with had we had better on-the-spot evidence.

**Senator COONEY**—What I was leading up to is, and I want to get your comment on this: is there an expectation that an event like the throwing of children overboard, or even a sailor falling overboard or some other event of note, will be captured on film, either media film or a—

**Mr Woodward**—I know your point, and can I answer it by making a point which does not put me in a good light. When that vessel was sinking in the Arnhem Bay and, as I recall, at least one other patrol boat was there furiously trying to save people, I said, ‘Are we taking photographs, is there a record of all of this?’ The appropriate response came back that they were trying to save people’s lives and did not have time to do what I, sitting in Canberra, would have thought was desirable.

**Senator COONEY**—I can follow what you are saying—and I think you have got to the point I am making—but, for example, in shopping malls and so on now you have got cameras, you seem to have cameras all over the world now, and if something happens they say that you should go and get the photos. Remember, there was some criticism of the Northern Territory police—and we have two cameras in this room here—in the case of the young British backpacker who was out here and went missing, where they were asked, ‘Why didn’t you go to the camera and get those photos?’ What I am getting at is: are there any cameras like that on a boat—or on a plane—that you would expect would be taking photos? I do not imagine there would be, because you would have to have the whole ocean covered with cameras, but I just want to get from you whether there is any practice along those lines so that people can say, ‘Look, if this happened, there should be a photographic record of it somewhere.’

**Mr Woodward**—We do, as I understand it, have stationary videos in the interviewing rooms on our vessels. I am not sure—I think you would have to ask the technologists—about

whether you can actually have a camera that works, going up and down and sideways and turns on with voice control or whatever. I do not know whether it is technologically possible.

**Senator COONEY**—Can I just—

**CHAIR**—Perhaps that is a discussion for another day, Senator Cooney. I am just concerned that we are spending a great deal of time—

**Senator COONEY**—I know, but I just want to get the context of this video, if I can. People knew about the video, as I understand it, and they said, ‘That is not terribly important.’ As you say, when you look back now, with hindsight, it becomes terribly important. What I am trying to get, if I can, is why wasn’t it important then, who took it, was it some sailor that was doing this casually, how did it come about and why is it that some significance was not paid to it there and then. As you say, as we look back now it is tremendously significant.

**CHAIR**—As I understand it, your question is one for Navy, Senator Cooney, which is in estimates on Thursday. I am sure they will be very pleased to hear from you then.

**Senator COONEY**—I want to ask it now, just in case we get there on Thursday and they say that that is a question for Customs.

**CHAIR**—Senator Cooney, I will ask Mr Woodward to answer the question to the best of his ability at this stage, and then could we move on?

**Mr Woodward**—I cannot put myself in the mind of a commanding officer or a sailor on a vessel in that circumstance. I do not know.

**Senator COONEY**—Admiral, you can’t help either?

**Rear Adm. Bonser**—Not with the specific event.

**Senator COONEY**—But with the practice?

**Rear Adm. Bonser**—A general practice is that if there are cameras available then perhaps they would be wishing to take photos for records. As to whether that is done routinely or not, I could not confirm that at the moment.

**CHAIR**—I understand that questions in that area for Customs are concluded.

**Mr Drury**—Can I just assist by spelling ‘Palapa’? The full name of the vessel was *KM Palapa 1*.

**CHAIR**—We will have a test on that later to see whether my colleagues were paying attention—probably at about five to 11 tonight, just to motivate us all.

**Senator McKIERNAN**—I move to strict liability guidelines. The Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill was passed on 20 June 2001. The guidelines to assist the ACS in exercising its discretion to impose strict liability infringement notices are currently being developed by the ACS. We are now some eight months beyond that June date. Why is this now just continuing to be developed?

**Mr Woodward**—Again, I will have my colleagues add to this in a moment, but we took a conscious decision that this was regarded as so important by the parliament that we wanted to consult properly. We released the sets of principles that we would be using, discussed them with industry, got the responses back and then went ahead to prepare the guidelines. They are on the web site now, and we are in a process of talking further with industry representatives about them.

**Senator McKIERNAN**—I was not aware that the guidelines were on the web site now. That was going to be my next question, leading into a series of other questions—when they would be available and what processes are—

**Mr Woodward**—They are available now. As for what is in them, we have been talking for many months about the principles that would underpin those guidelines, so the principles are all there; it is the filling out of them that industry will now see.

**Senator McKIERNAN**—That is additional information that I did not have. Thank you very much, because that will curtail some of the questions that I have got. Can I ask you now if you, from a Customs perspective, are confident that the guidelines will be ready for implementation on the due date of 1 July 2002.

**Mr Woodward**—My recollection is that they are out. You may think we are overconsulting. We have consulted on the principles, we are now consulting on the guidelines. Unless anything comes out of the woodwork that causes us to change them, I am not sure of anything that would prevent us meeting that deadline.

**Senator McKIERNAN**—Excellent. Thank you very much. On 19 November 2001, a contract was entered into between the Customs Service and Saville and Holdsworth Australia for some \$2 million for recruitment and selection services. This was then described as an estimate based on previous recruitment activity. The annual report at page 9 describes an additional 500 staff to be employed by Customs funded from an increase in the May 2001 budget of \$238.8 million. There is a media release from Senator Ellison on new ACS staff to be employed in New South Wales. We would like to clarify that the contract was in fact part of the process involved in recruiting the extra staff promised. Importantly, the size of the tender seems extremely high because, after all, they were only the recruiting agency. We would be interested to know what services are being provided for that money. Can you confirm, first and foremost, that that contract for \$2 million was entered to with that company, Saville and Holdsworth?

**Mr Woodward**—It is true, but I think you have brought together two unrelated points. The 500 that you talk about is, I think, the 598 staff equivalent being recruited following the government's decision on foot-and-mouth disease. Of course, there will be more recruitment that will need to take place. Quite independently of that, consistent with the government's approach to having a close look at what we do and at whether it should be done in-house or by other agencies, we looked at ways in which we could improve our recruitment process in terms of quality and to see if it could be done more cheaply. That was put, as I recall, to a selective tender, and Saville and Holdsworth were successful. So the \$2 million does not relate to 598 people; the \$2 million relates to recruitment arrangements for a staff which is heading towards 5,000. So it is total Customs wide and not related solely to that 598.

**Senator McKIERNAN**—What was the problem that caused Customs to see the need to go outside for this advice?

**Mr Woodward**—There were a number of reasons. Firstly, it is government policy that we should be looking at the things we do within the organisation to see whether they can be done better or more cheaply outside. It was certainly guidance we had from the government and the department of finance that we should look very closely at everything in the corporate services area—and this is in the corporate services area. So in part we were doing it to satisfy a government requirement, and—as is described in our annual report—we are looking at other areas to outsource.

Secondly, I have had some concerns about whether we could have improved our recruitment processes in any case. I did not think that we had the most economical and best results in our own internal recruitment arrangements. So I was driven two ways: first, by my own feeling that we could improve and, second, by a government decision that says we should look closely at all of these sorts of activities and certainly corporate services.

**Senator McKIERNAN**—Have you done any calculations of the amount of money you may have saved by going in this other direction?

**Mr Woodward**—The contract has only recently been signed, so I think we will need to wait a little while to see the results of it.

**Senator McKIERNAN**—Do you think you will be in a position to do so in June?

**Mr Woodward**—Given the size and nature of the change, I would think it would be more likely to be about this time next year before we would be able to make an assessment. I think you would need 12 months to give it a try.

**Senator McKIERNAN**—In your earlier answer, did you confirm the figure of \$2 million? I know there was a discrepancy—

**Mr Woodward**—It was a contractual figure of \$2 million over an initial period of two years. There is a contract-renewable provision in there, so \$2 million over two years or an average of \$1 million a year.

**Senator McKIERNAN**—So has this gone through a tendering process?

**Mr Woodward**—It went through, as I recall, a selective tender. Our staffing experts are not here but, if I need to correct that, I will get back to you. My recollection is that it was a selective tender.

**Senator McKIERNAN**—When you say ‘selective’ does it mean that some other body to you identified a small number of companies—

**Mr Woodward**—We check around on a smaller number of firms that we know are in the game, particularly with public service recruitment. Rather than putting it out entirely, we satisfy the contractual tender requirements.

**Senator McKIERNAN**—Was the Saville and Holdsworth tender the cheapest of those that you received, and how many were there?

**Mr Woodward**—I cannot tell you whether or not they were the cheapest. They are certainly a reputable firm. As I think a number of members have reinforced in this committee previously, the cheapest solution is not always the best.

**Senator McKIERNAN**—So you had an adopted criteria that you used in the selection process?

**Mr Woodward**—There would have been a process, value for money, which underpins all that we are able to do, as well as the acknowledged reputation and work in the area and the ability to bring together the team of people of the right skills and background that would be necessary. I am sure there are others, but they are the sorts of factors that would be taken into account. If you are looking for precision on that, we can provide it to you separately.

**Senator McKIERNAN**—Can you inform the committee of the type and range of positions that were being recruited and whether those positions were solely for the purpose of the extra funding promised in the budget for the protection against the threat of foot-and-mouth disease?

**Mr Woodward**—I am not sure that I understand the question. Are you asking whether this firm was used in relation to foot-and-mouth disease?

**Senator McKIERNAN**—Yes.

**Mr Woodward**—The contract has only just been let, but can I stress that we have used, I think, a number of companies—we have certainly used Saville and Holdsworth—previously for individual recruitment exercises but without the long-term continuing contract that we are now talking about. I would need to check. It is quite possible that Saville and Holdsworth has been involved in that exercise but not as part of the longer contract. It was fortuitous, but I will need to check.

**Senator McKIERNAN**—The committee would appreciate your providing any information you get in relation to that. Thank you, Mr Woodward. Just on a related matter of the \$274.4 million for extra funding to facilitate the legitimate movement of goods across the border while intercepting prohibited and restricted imports and exports, I am particularly interested in the targeting of 2½ million letter class and other articles and bags of 1½ million and then the bills and number of international aircraft and so on. Electronic media are also targeted, 2.6 million of them, and a manual targeting of some 20,000 objects. Is the purpose of this targeting to in any way open the mail or the parcel that may be coming in?

**Mr Woodward**—To deal with mail first, obviously we are very interested in what goes through the mail. In some cases it is intelligence but in large part there has been X-ray. Dogs have been used because of the heavy Quarantine presence at mail centres as well as with some of the articles of interest to Quarantine as distinct from the particular Customs interest. In practice, the opening of all of those parcels is by Australia Post employees. Some changes were made but I do not think there is any practical impact of that. Is that accurate? My officers are hinting that I am answering the wrong question. Am I on the right track or not?

**Senator McKIERNAN**—I am very interested in what you are saying, Mr Woodward, so I think you are on the right track.

**Mr Woodward**—I am just asking because I am being told that it is wrong, and I am not getting—

**Senator McKIERNAN**—Perhaps we can hear Mr Jeffrey respond to the other answer.

**Mr Woodward**—I will let you ask your question again, Senator.

**Senator McKIERNAN**—Are you sure you do not want to complete the answer?

**Mr Woodward**—I think I have answered, and no-one has told me that the answer that I gave to the wrong question was wrong so perhaps I will let you ask the question again.

**Senator McKIERNAN**—I was referring to page 68 of the portfolio additional estimates statements and the \$274.4 million to Customs for the facilitation of the legitimate movement of goods. From the performance information contained in the middle column, I identified the target number of parcels, bags, letters and so forth and then asked about the protocols of opening and examining the contents of those items.

**Mr Woodward**—I thought that was in fact the question that I answered. We do not open the parcels at the postal facility. They are opened by postal employees. Is that right, John?

**Mr Hawksworth**—Yes.

**Mr Woodward**—Mr Hawksworth is the expert on this. He will correct me.

**Mr Hawksworth**—Senator, the figures you are pointing to are the work flow. They are the total volume of parcels passing through the international mail exchanges and equivalent type things for airway bills and so on. We screen and select a very small proportion of those for further examination. The further examination in the case of mail involves Australia Post employees opening a small number of parcels and us looking at the contents of those parcels and then their being resealed by the Australia Post people and going on their way. In recent times we have got a lot of additional resourcing as a result of the foot-and-mouth exercise, which we are utilising in part to increase the proportion of these items which are subject to X-ray examination. So a very large proportion, heading towards 100 per cent, of the mail will go through an X-ray process. We will continue to look at a small proportion physically and refer a proportion to the quarantine service. I was concerned that you thought we were opening umpteen million parcels ourselves, which is not the case.

**Senator McKIERNAN**—I am so concerned you might be doing that. I will come to that in a moment. If there was a suspicion before or following an X-ray of an item going through the mail, it would not be Customs officers who would open that package or envelope to see whatever it contained. Is that correct?

**Mr Hawksworth**—That is correct. Customs would select the parcel. It would then be opened by an Australia Post employee, and Customs would look at the contents that were revealed by that opening. If everything was okay, it would be resealed by the Australia Post employee and sent on to the addressee.

**Senator McKIERNAN**—Is there an ability either by Customs or, to the best of your knowledge, by Australia Post to identify target addressees of items coming through the mail? I am asking that in the context of the information that came to hand earlier in the year about certain electronic communications being intercepted. It was alleged that that was an illegal interception; nonetheless, it was done. The content of the electronic interception was passed on to hands that should not have naturally got it, because the interception should not have occurred in the first instance. The mail system is another form of communication. I am wondering if there is an ability by Customs as an agency of government to also undertake that type of activity, and what safeguards are there to prevent that.

**Mr Hawksworth**—The basic safeguard is the Australia Post people being the openers and closers of things. We do have the ability to look at any mail but we are looking for the physical contents not the information that is in there. We are looking for the packet of pills that is in the letter rather than the words that are in the letter. Of course, if we find a packet of pills, the letter then becomes evidence and we become very interested in it.

**Senator McKIERNAN**—Thank you very much. That is all I have on that particular area. I am surprised you did not bring your own Customs cups and mugs to the hearing today. Do you have your own Customs Service mugs with Customs Watch logos on them?

**Mr Woodward**—We have Customs Watch memorabilia that we do hand out and, in my view, most profitably, particularly in isolated areas.

**Senator McKIERNAN**—Is this a marketing tool?

**Mr Woodward**—I think we are entitled from time to time to say we have done things well. We do have a responsibility for informing the broader community, and there is a pay-off from all of that that sometimes we get very useful information. I am not suggesting we gave them Customs mugs, but some of the very good information we have got on actual landings that have occurred came out of the fishing community in Western Australia, and I think a mug is a small reward for that.

**Senator McKIERNAN**—I would not suggest that you give the fishing community in Western Australia a mug with a Customs logo on it, but you would not necessarily give a Western Australian fishing identity a rugby league football either, would you? If that is for a marketing tool, why is it not something of national significance? Rugby league is something essential to the eastern states, is it not?

**CHAIR**—You have made a big mistake, Senator McKiernan. You are looking for an afternoon tea break; I am a New South Wales senator and, well—

**Senator LUDWIG**—I have got a team in rugby league as well.

**CHAIR**—St George Illawarra Dragons—what more can I say?

**Senator McKIERNAN**—Let the record state that I was a member of the Western Reds rugby league team. It no longer exists. We do not get direct telecasts either—not that we get direct telecasts of some of the others. But let us not divert Mr Woodward.

**CHAIR**—We would not want to do that.

**Mr Woodward**—Was there a question I did not answer?

**Senator McKIERNAN**—You scored on that one. There was actually. I asked why would you give a rugby league football as a reward to a Western Australian person who had provided you with information. You have got mouse mats with the logo on it; you have got watches with the logo on it; rugby league footballs, as I have identified; resealable plastic promo bags with the logo; black china mugs; black peaked caps; and plastic pens. That type of material with logos on it is generally, but not strictly, used as a marketing tool by commercial enterprises to promote their particular product. Is the ACS using these products as promotional tools or, as you stated earlier, as rewards?

**Mr Woodward**—Apart from open days. I think there is a very significant pay-off—I do not have the amount of money, but it is not a huge amount of money that we spend—for the reasons that I mentioned, first of all, community relations generally. It is important that we develop closer relationships with communities, particularly isolated communities. One of the spin-offs from that is that not just the fishing communities in Western Australia but also the Aboriginal communities have been and continue to be very helpful to us in passing on information and extensive use of the 1800 number, in the sense that if there is something suspicious out there then ring in on the 1800 number. We get numerous calls each year, many of them range from bogus through to not terribly productive but some of them are extremely productive, and I think that sort of investment is well worth while.

As far as the footballs are concerned, I think quite seriously it is a fair point. They are very useful, say, in the Torres Strait, where you have got a lot of people interested in rugby league. But the minister and I have agreed that we will have a fundamental look at Customs Watch and Frontline to see whether we can improve what we currently do in relation to both of those—Frontline is obviously more directed to port authorities, forwarders et cetera—to see if we can improve on what we do. I certainly give you my guarantee that as part of that we will have a look to see whether Australian rules footballs might be part of the—

**Senator Ellison**—I have been at two Customs Watch events where Australian rules footballs were handed out—one was at Tiwi Islands up near Darwin, rather famous, and the other one, I think, was One Arm Point in Western Australia—and I must say they went down a treat. Those communities have been very helpful. In fact, the Tiwi Islanders helped detect the biggest seizure of heroin in the Northern Territory—that boat in the harbour which they noticed that came as a fishing boat. They gave us some excellent information, it was then kept

under surveillance and that resulted in a very large seizure. So that was a very small investment for a great return. There have been Australian rules footballs, Senator McKiernan, and we will ensure that they are appropriately distributed in the states like Western Australia.

**Senator McKIERNAN**—I certainly hope so. I just wonder what would have happened if you had been at Lombadina or One Arm Point and handed out rugby league balls

**Senator Ellison**—It would not have been good.

**Senator McKIERNAN**—Perhaps that is the reason why your communications might have been cut off before.

**CHAIR**—I may need to multiskill—perhaps the committee needs an advocate on behalf of Australian rugby union at this point. But do go on, Senator McKiernan.

**Senator McKIERNAN**—Why would they?

**Senator Ellison**—There are no takers.

**CHAIR**—I was volunteering myself, as it happens, Senator.

**Senator McKIERNAN**—I think it is a very good point that the minister makes because, just as we speak, two Western Australian AFL teams played last weekend and for the first time in a long, long time both of them won. It is actually unusual for even one of them to win.

**CHAIR**—One assumes they did not play each other, Senator.

**Senator McKIERNAN**—I have got a figure here, Mr Woodward—back to the seriousness of the business—for that particular contract and the items I went through before. I am not going to repeat them again but I have now been told that the Customs Service also gives out AFL footballs—do you do key rings as well?

**Mr Woodward**—I was going to read it out. I have got some records here which indicate all of the things that we hand out, including 31 Australian rules footballs—

**Senator McKIERNAN**—Only 31?

**Mr Woodward**—But it says May 2000 and, frankly, I do not know whether this is over a year or not. We have handed out quite a few key rings—floating rings, plastic rings and pewter rings. I cannot tell where, but in all the areas—

**Senator McKIERNAN**—Be assured I am not going to follow you around the country checking. I have got a figure of some \$44,170 on the items that I identified earlier—contracts which were with a company called NPM marketing. Could you provide the committee, on notice, with the details of other such items that are produced as marketing, as rewards, or as promotional material by ACS?

**Mr Woodward**—We have listings here but I think we had better organise it and so relate it to a period and have numbers and amounts involved added to it. We can provide that to you.

**Senator McKIERNAN**—It shows how parochial we are in all of that that nobody mentioned the world game on the way through but that is, perhaps, because Australia did not make it to the World Cup. Next time around, I guess, we might change that. I will have an interest in the World Cup, however, because the country where I was born did actually make it to the World Cup, so the interest will continue. There is no harm in skiting from time to time!

Foreign owned vessels operating in Australia is the theme I want to move to next. The *CSL Pacific* has been shipping cement between Adelaide and Melbourne and Melbourne and Brisbane for a considerable period of time. The vessel is foreign crewed and it flies under a



foreign flag. Has that vessel been granted a special permit visa in order to enable it to undertake domestic voyaging?

**Mr Jeffery**—The decision to provide that with a single voyage permit or a continuous voyage permit is the department of transport's area, so they would be the ones that would decide whether it had a permit to operate on the coast. Transport provide permits to vessels to operate on the coast on either single or continuous voyages. We would have to check with them whether they have done so. I am not aware and neither is anyone here.

**Senator LUDWIG**—Notwithstanding that, though, do you monitor the vessel? It is a vessel that is flagged in the Bahamas, it is sailing between Brisbane and Melbourne and back again and it is operating in Australian waters. Do you board the vessel, check the vessel or see what the vessel is doing? Why wouldn't you find out whether it did have a continuous voyage permit? Or don't you see it as your responsibility—Australian waters with a foreign ship floating in them?

**Mr Jeffery**—In principle, yes, we do. We are advised and we check all vessels coming in and out of the country. I cannot say for this particular vessel whether it has got a permit but we would obviously monitor and check.

**Senator LUDWIG**—Have you? That is the question.

**Mr Jeffrey**—On this vessel?

**Senator LUDWIG**—Yes. Have you boarded it? Have you monitored it? Are you aware of whether it has a CV certificate? You just said, 'It's the department of transport's area; ask them.' But I am asking you. You are the people who look after our shores.

**Mr Jeffrey**—If they have issued a permit—and I can't answer whether or not they have—if it visits our shores we will board it. We will monitor it. Whether we are treating it as a vessel that is allowed to operate on the coast or not, I can't answer you at the moment because I just don't have that information.

**Senator LUDWIG**—All right.

**Mr Jeffrey**—I can check that and let you know.

**Senator LUDWIG**—You will take all that away and come back and tell us.

**Mr Jeffrey**—Yes.

**Senator LUDWIG**—What process do you have to ascertain whether foreign vessels are operating in Australian waters and whether they are operating under permits pursuant to the department of transport? Do you check with the department of transport? Do you say, 'Give us the list; we'll find out where these are; we know where they are'? Or do you simply fly by and spot a vessel and say, 'We'll find out about that later'? I am not being flippant; I really need to find out how you ascertain this.

**Mr Woodward**—I think—and my colleagues will correct me—that we know in advance of every foreign vessel that is arriving in Australia. Once we know that a vessel has arrived, if there is a need for any authorisations to be given by others—and transport authorities are just one; there are many other authorities that are needed—they would be ticked off as part of the normal customs processes.

**Senator LUDWIG**—Yes, I didn't expect it to be a difficult question.

**Mr Jeffrey**—Vessels have an obligation to report. If a foreign flag vessel reports to us they will then tell us whether or not they have a permit to operate on the coast. We will check that

with Transport and know whether they have a permit to operate. There is an obligation under the act for them to report to us when they first enter Australian waters. We will check it then. They would, I think, at that time tell us that they had permission. We would obviously check that with Transport. If I am not correct in that, I will let you know.

**Senator LUDWIG**—What about the *CSL Yarra* which operated, as I understand it, under similar conditions. This issue was raised with you in January.

**Mr Jeffrey**—I have heard about the *CSL Yarra*. There have been a number of reports in the press. I do not have any particular information on whether that has a permit or not. I can check that and let you know.

**Senator LUDWIG**—What happens if you find that they do not have a permit? What do you do then? Do you take any action or do you refer it back to the department of transport?

**Mr Jeffrey**—Can I take that on notice, Senator? I can't answer that question. It depends what they are going to do. If they leave the coast, obviously they are entitled to leave. If they continue to operate, they would not have a permit to operate on the coast.

**Mr Burns**—The issue if they do not have a permit is whether they are imported. If they are imported then there is a set of procedures whereby the vessel is imported. If the vessel is not imported then obviously the vessel leaves the coast and Australia.

**Senator LUDWIG**—If it is imported, what happens then?

**Mr Burns**—They go through the same process as anybody who imports goods into Australia. They enter the boat, enter the goods, pay the duty, pay the GST and go on their way.

**Senator McKIERNAN**—Are there fees attached to this importation—or might there be?

**Mr Burns**—Well, there might be customs duty. There might be GST.

**Senator McKIERNAN**—If a vessel has been operating for a period of time—as I understand that particular vessel has been—could it be a means of avoiding importation duty? If that was the case, would that be of interest to the Customs Service?

**Mr Burns**—The issue between ourselves and the department of transport in relation to vessels operating on our coast is that the department of transport has the policy responsibility for those issues. They issue single voyage or continuing voyage permits and we liaise directly with them in relation to the operation of those vessels.

**Senator Ellison**—Just on whether or not the sums involved would be significant in terms of duty and GST, Mr Marshall might be able to elaborate on that.

**Mr Marshall**—The rate of duty on imported vessels is free—so there is no duty on an imported vessels. If the vessel was imported before 1 July 2000 there would be no GST implications.

**Senator McKIERNAN**—With a vessel continuing to operate in Australia which has come in as a foreign vessel and then operates on our shores, their motivation would not be the avoidance of customs duty or even GST—which is here now, isn't it?

**Mr Marshall**—Yes. If a similar vessel was imported now, all the formalities would need to be completed and GST paid.

**Senator McKIERNAN**—This is perhaps subject matter for a different department dealing with the GST. But no customs duties would be applicable to such a vessel if it was imported to Australia and flew the Australian flag?

**Mr Marshall**—No. They are duty free.

**Senator McKIERNAN**—What is the process? Would Transport inform Customs as a matter of course that a foreign flag vessel was operating on our coastline with a continuous voyage permit? How would you know, other than by the captain of the vessel reporting to you at each port on entry? Is that the way it happens?

**Mr Marshall**—When we receive notification that a vessel is in Australian waters, Customs' interest would be firstly, 'Is the vessel going to be imported' and secondly, 'Is it carrying any international cargo which is to be discharged in Australia?' If it is not carrying any international cargo then our interest is not so high. Then we would have our ordinary obligations to Immigration to ensure that none of the crew members were disembarked.

**Senator McKIERNAN**—Would you have records of the number of ports a particular vessel called into—or would it be because a vessel and its cargo was of no interest to Customs that that would not be logged and recorded?

**Mr Marshall**—I am talking from memory now. Certainly, in relation to all vessels on international voyages, we would have records of which ports they entered and cleared. In relation to vessels that were not on international voyages, I doubt that we would keep records of those. But we would be able to get records from port authorities.

**Senator McKIERNAN**—Customs would be able to get records from port authorities—and from the department of transport?

**Mr Marshall**—I suspect that the department of transport would also get their records from the port authorities.

**Senator LUDWIG**—Being deemed under section 49A of the Customs Act, does that operate automatically? If the vessel does not have a continuous voyage permit, does 49A apply, or is there a trip mechanism for 49A to apply—in other words, for it to be deemed? Or do they declare themselves deemed and notify you accordingly?

**Mr Marshall**—I am not familiar enough with 49A to be able to make a comment, I am sorry.

**Senator LUDWIG**—Mr Woodward, do you have someone who is?

**Ms Grant**—The provision of the legislation that you have referred to, the section 49A power, gives us the ability to deem that a vessel or an aircraft has been imported into Australia on a certain date. Customs does not have an automatic trigger for that particular provision, but during the course of an investigation—or if information has come to us which leads us to look into the circumstances perhaps of an importation and see what has occurred—if we think it is appropriate, we issue such a notice.

**Senator LUDWIG**—You actually have to issue a notice?

**Ms Grant**—Yes. There is a particular—

**Senator LUDWIG**—If a vessel like the *CSL Pacific* does not have a continuous voyage permit and has been plying the waters for the last five months, is that a situation which, if brought to your attention, would cause you to act in that way?

**Ms Grant**—We would need to examine the circumstances. You would expect imported vessels that have entered the commerce of Australia to be imported before they entered the commerce of Australia in the normal course of events, so it could be a circumstance. I am not familiar with the facts of that particular case that you are referring to, but it is possible that, if

it was not entered, it should not be working here, so we would need that vessel to be entered before it could be operating in the commerce of this country.

**Senator LUDWIG**—I am just trying to work out whether or not a ship can sail between the waves. If it is not deemed under section 49A and it does not have a continuous voyage permit, then does it just continue on until someone decides to do something about it; or is nothing done about it as nobody cares; or do you say that they should have a CVP, notify the department of transport and ask them to deal with it? I am unfamiliar with the process; I am just trying to understand it and then we will leave it at that.

**Ms Grant**—All vessels have to report before they arrive in Australia. They give us an impending arrival report, which is then followed up by an arrival report. At that point in time, Customs will assess whether the vessel is on an international voyage or whether it has arrived here and should have a permit to operate in coastal waters. If the vessel has told us its intention is just to discharge cargo and then depart, we believe that. It is only if further evidence arises down the track that indicates that that did not occur that we would investigate further. The 49A power, I should say, is not automatic. We issue the notice, and then the recipient of that notice has 30 days in which to either enter their vessel, pay any duties and taxes that may apply and get appropriate permits or depart Australia.

**Senator LUDWIG**—In your answer to me, Mr Woodward, could you include the details of when the vessel first arrived, whether it notified you and what port it arrived at, so that at least we have got the sequence of events?

**Mr Woodward**—Can I just be sure of what we will follow up: is it in relation to the principle or this particular vessel that you would like us to explore, or both?

**Senator LUDWIG**—Effectively, both. We started with the principle, but I think we have ended up with the boat. I want to explore the issues surrounding the *CSL Pacific*, particularly its arrival. I would like to know about the notification of the paperwork and how it then operates. Did you check whether or not it had a continuous voyage permit, and if you did not check, what information did you have on hand about it? Were you notified about it operating in Australian waters, and what have you done about it? Did you check with the department about whether or not it had a continuous voyage permit and what date it was? What subsequent action did you then take? How long can it operate if it does not have a permit before you decide, in principle, whether you are going to follow up the vessel and issue a 49A? That is the information I would like.

**Mr Woodward**—I have the drift of what you are looking for. We will provide the information to the committee.

**Proceedings suspended from 4.14 p.m. to 4.24 p.m.**

**Attorney-General's Department**

**CHAIR**—We move on to the Attorney-General's Department, beginning with outcome 1, an equitable and accessible system of federal civil justice.

**Mr Cornall**—There were number of issues adverted to in the course of the earlier part of this hearing which may come within different outputs. I wondering if there were any general questions senators wanted to address first, or will we just work our way through the outputs as they arise?

**CHAIR**—I am in the hands of my committee. I thought we would start at outcome 1, but if there are further questions of a general nature we can pursue those.

**Senator COONEY**—There has been a number of reports about David Hicks, and I am just going from one which seems typical: the lead story in the *Age* of 9 February 2002. It is clearly the result of inquiries by the journalists, and it says such things as:

A spokeswoman for Attorney-General Daryl Williams said how Hicks was detained was “a matter for the US. The Attorney-General’s view is that he is a member of al Qaeda. That’s based on our investigations to date and the fact he was captured with them”. The spokeswoman said a decision on whether Hicks would face charges under Australian or international law was still pending. “We are still collating evidence and conducting inquiries.”

As I understand it, no charges have been laid at the moment against him insofar as Australia is concerned. It becomes an issue of whether there may be; and indeed there may be. Is it of any concern to the Attorney-General’s Department that the department, and indeed the minister, should be making comments which are highly—I would have thought—inflammatory, should this person ever be tried?

**Mr Cornall**—It is obviously difficult, in matters of this nature that are the subject of considerable press interest, to avoid commenting on them altogether, but I agree that the less said about a matter that is likely to be investigated or under investigation and could possibly result in criminal charges the better until the matter is ready for proper presentation.

**Senator COONEY**—In this article it is said that it was:

The Attorney-General’s view is that he is a member of al Qaeda.

The article itself says that he trained with Al-Qaeda. I do not know to what evidence we could point to say that, but it seems, from what was said by the Federal Police, that there was a statement made by him; whether that was contained in the statement I do not know. Other than that, the evidence seems to be pretty flimsy. It seems that if Al-Qaeda is the highly trained organisation that we take it to be, it would be unlikely that this person was trained by it because, as I understand it, he has a background as a poultry farmer—did I get that from somewhere? The article reads:

Hicks, a former poultry worker ...

Not that I am—poultry workers are very good. But his background does not seem to be one that would suggest that he is a member of the Al-Qaeda, rather that perhaps he was over there fighting for the Taliban. It is just that sort of background that has you concerned about the way he has been dealt with and whether the Attorney-General’s Department could make a statement as to that fact or whether it just lets the situation run or what.

**Mr Cornall**—I understand the comments you are making, and I think it is an issue that is best not discussed while it is in a state of some uncertainty.

**Senator COONEY**—As to whether or not there ought to be access to him, I suppose that is a matter for Foreign Affairs, isn’t it, rather than Attorney-General’s? Our relationship with the United States is interesting in this context. We seem to be saying, ‘Whatever the United States wants to do with David Hicks, so be it. We’ll stand aside and let them do it.’

**Mr Cornall**—The government’s position at the present time is that Mr Hicks is being held by the United States as a detainee from the conflict on the battlefield in Afghanistan, and at this stage that is an appropriate position to be maintained.

**Senator COONEY**—If I am getting beyond the responsibilities of Attorney-General’s, please tell me, but we had the example of the two Australians caught up in old Yugoslavia where we fought, correctly in my view, hard and desperately to get them released, and in fact

we did in the end. Is there any reason that you can think of why we should treat David Hicks differently from how we treated them?

**Mr Cornall**—I do not have the details of that matter at my fingertips, so I cannot comment on that.

**Senator Ellison**—I think Foreign Affairs was involved in that, that it was the Minister for Foreign Affairs who was dealing with that one.

**Senator COONEY**—That is what I am asking. If you feel it is a matter for Foreign Affairs, just say so.

**Senator Ellison**—I think it really is more so in that it comes under consular assistance and so on, and it is certainly the Minister for Foreign Affairs who has carriage of that.

**Senator COONEY**—It just worries me that I cannot take this any further. Mr Cornall has answered the question well, but it just worries me that you have an Australian—there is no doubt about that—from South Australia who is now locked up in fairly rigorous conditions, to use a neutral term, in a foreign country as the result of action by a foreign country. It then becomes a matter of what he, as an Australian citizen, is entitled to and what our attitude ought to be to that. The attitude at the moment seems to be—I am sure it is not, but it seems to be—let him stew in his own juice. But we are not too sure what his own juice is. We do not quite know who he is in terms of his position in Afghanistan—was he in fact a member of Al-Qaeda, was he a member of the Taliban or was he there in some other capacity? We have one statement from him which we cannot release—or we do not release, in any event—and he is just left there, it seems to me, without us as a country paying as much attention to him as we should.

**Mr Cornall**—I do not think there has been any lack of attention to Mr Hicks's situation. The government has been able to confirm that he is in good health and held in humane conditions. Given the nature of the war on terrorism, the fact that it follows the attack on the United States on September 11 and that Mr Hicks was detained on the battlefield in Afghanistan, this is a very unusual situation and it is not entirely clear how it is best resolved.

**Senator COONEY**—That is the other thing: we cannot quite understand what evidence ties him to September 11, his having been found on the battlefield in Afghanistan. It would help a lot if we could—and I do not think anybody can do this—get the evidence that at least suggests that that was the situation. All we have got at the moment is allegations. I do not know whether that can be improved at all.

**Mr Cornall**—I think the government is satisfied that he has had extensive training with Al-Qaeda.

**Senator COONEY**—But that is what happens again and again with these sorts of things: the government says this, you can trust the government—of course you can trust the government, although people seem to be having some doubt about that with the boat people and the children overboard. That is the only thing you are able to tell us, isn't it: 'We're satisfied as a government that this person is being treated properly'? But we as parliamentarians cannot really test that beyond saying, 'Well, that is a judgment that you make and we have got to trust the judgment.' I do not say that in any sort of derogatory sense. We have got to trust the judgment in the sense of having to accept it without knowing what the facts are upon which that judgment is made.

**Mr Cornall**—The judgment was made after having had an interview of Mr Hicks on the *Peleliu* by the representatives of ASIO and the AFP—but that was not an interview which

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was recorded in accordance with criminal law requirements, so there is no record of interview in a criminal law sense—and also after considering correspondence and so forth that Mr Hicks had sent to his parents in Adelaide. So it is not a judgment based on no grounds at all.

**Senator COONEY**—The problem that arises is whether in determining their attitude to David Hicks Australia has given too much weight to the importance of keeping on the right side of the United States, on the importance of us seeming to be tough on anybody that is connected with the Taliban and Al-Qaeda and the fact that we want to be up there with everybody else in the war against terror and not enough weight to the fact that he is an Australian citizen who is entitled to the rule of law and who, it seems, has not been charged with any offence at the moment but, nevertheless, has been held in custody and, in terms of Australian law in any event, is in a position where no defined charge can even be suggested at this stage as appropriate to be laid against him. That is the worry that I have got—in other words, how those various factors are to be judged and what weight has been given to them. I just feel that too much weight has been given to factors that perhaps should not be given weight.

**Mr Cornall**—There are two things to say in response to that. The first is that Mr Hicks is one of a number of detainees from a number of countries held at Guantanamo Bay, and I think all other countries are in much the same position as we are and are taking, I think, at this stage much the same approach. The second is that this is not seen as a criminal law enforcement situation. This is a situation which has arisen in a conflict battlefield and therefore is not in the same category of circumstances.

**Senator COONEY**—I do not want to pursue this too far, but it then becomes a question of whether we should be insisting that the Geneva conventions be extended to him. I do not know whether they have been. Have they?

**Mr Cornall**—The United States has said that they will apply the conventions to members of the Taliban, but exactly what that application is going to mean in practice remains to be seen because the conventions have very extensive provisions on how you will treat prisoners of war, for example, and just what aspects or whether all of those aspects are intended to be applied is not clear from what the Americans have said so far.

**Senator COONEY**—Are we as a country taking an active part in that? Are we saying, ‘Yes, we want this issue determined and we will help the United Nations.’ Is the United Nations doing it?

**Mr Cornall**—No, the United States. It was a changed position by President Bush over the last few weeks.

**Senator COONEY**—Is he asking for our help in determining that, or are the United States going to determine that within their own jurisdiction using evidence that they themselves choose—and I do not use that in a derogatory sense either—to use?

**Mr Cornall**—I understand the President’s announcement of the changed approach to the Geneva Convention was a matter that was determined entirely within the United States. But we are in constant contact with the United States about the treatment of Mr Hicks.

**Senator McKIERNAN**—On the same matter, the interview that was done with Mr Hicks by ASIO and the Australian Federal Police was a non-criminal interview?

**Mr Cornall**—It was an interview which was conducted in circumstances where you could not create a record of interview that would be admissible in evidence.

**Senator McKIERNAN**—What was the reporting of those interviews back to Australia? Did ASIO personnel and AFP personnel report to the Attorney-General directly or to the Attorney-General's Department who in turn reported to the Attorney-General?

**Mr Cornall**—I do not know the answer to that question. I am not sure if Mr Peter Ford has the exact process by which that was done. I think the interview commenced on or around 24 December. I was on leave over the Christmas period, so some of these things occurred when I was not in the office.

**Senator COONEY**—On 24 December? That is enthusiasm!

**CHAIR**—It sounds like Mr Ford is enthusiastic.

**Mr Ford**—My understanding is that the results were reported directly to the Attorney-General. I can check on that if you wish.

**Senator McKIERNAN**—Yes, if you would. What is Mr Hicks's status at the moment as an Australian? He is not a prisoner of war; he is not under any criminal charges. What is the status that he is held under?

**Mr Cornall**—I think that question illustrates the difficulty that we are facing in endeavouring to determine that. We have a very unusual situation that was certainly not contemplated by the Geneva Convention in 1949 or 1950 about prisoners of war, because the convention talks about soldiers having a card which identifies their rank, their serial number, their division and so on. When you read the convention it is clearly envisaging war between countries and more or less the Second World War situation. It had not contemplated the sort of situation that was confronted after 11 September and in Afghanistan, and the fact of the matter is that a lot of the provisions of that convention are hard to translate to the situation that now exists.

**Senator McKIERNAN**—So what is Mr Hicks's status?

**Mr Cornall**—I think Mr Hicks's status is that he was detained on a battlefield by the United States in the war against terrorism and he is being held while his status and the outcome of his detention are being determined.

**Senator McKIERNAN**—From the words of the Attorney—and I do not actually have them in front of me—I understand that the Attorney is saying that Mr Hicks is an active member of a terrorist organisation, the Al-Qaeda movement.

**Mr Cornall**—I think you would have to look closely at what the Attorney has said about that, Senator.

**Senator McKIERNAN**—Has he said it? Are you saying that my interpretation of what was said is not a correct interpretation?

**Mr Cornall**—I think the current position that the Attorney takes is that Mr Hicks has had extensive training with Al-Qaeda and that he was detained on the battlefield in Afghanistan by the United States.

**Senator McKIERNAN**—Is this an informed comment that has been gleaned from the ASIO and AFP interviews of Mr Hicks?

**Mr Cornall**—I think it is the Attorney-General's current view of the position.

**Senator McKIERNAN**—That is still not confirming that it is an informed comment that came via interview, interrogation or questioning of Mr Hicks.



**Mr Cornall**—I think it is taking into account all the information that the Attorney presently has available to him.

**Mr Ford**—Madam Chair, can I just correct what I said before? The record of interview was not given to the Attorney; the reports by the people who did the interviews were made to their agencies and the records of interview are with those agencies. What has been said to the Attorney since is not the full record of interview.

**CHAIR**—Thank you for clarifying that, Mr Ford.

**Senator McKIERNAN**—We are seeking information through this course so the correction of the record is important. The war against terrorism is a new war—I accept that from the point of view of the events of 11 September and the events that occurred thereafter. However, 11 September was not the first time that an act of terrorism has been conducted in any place throughout the world and indeed we have had acts of terrorism in Australia as well. There are laws in place in a variety of countries, including the United States, to deal with acts of terrorism. Why have none of those laws been brought to bear on Mr Hicks, an Australian national?

**Mr Cornall**—By Australia or by the United States?

**Senator McKIERNAN**—He is not in Australia at the moment, is he? By anybody. There have been no charges laid against Mr Hicks. He is being denied a number of fundamental human rights.

**Mr Cornall**—There are two issues in bringing criminal charges. The first is to determine what the facts are and what evidence can be adduced and then what charges those facts and that evidence may support in a criminal sense. One of the significant difficulties that is faced in this matter is the very situation in Afghanistan, where Mr Hicks was detained on the battlefield in a country which is in a state of war, where there is very little operational infrastructure and not the normal opportunity to collect and obtain evidence, witness statements and so forth that we are used to here in Australia. So one of the very significant difficulties is, firstly, to determine the facts and then, secondly, to fit those facts into a criminal structure that did not completely contemplate the present situation. If we are drawing any parallel with the Geneva convention, the Geneva convention makes it clear that prisoners of war are held until the cessation of hostilities without any charge whatever. Then at the end of hostilities they are to be repatriated.

**Senator McKIERNAN**—But the Geneva convention has not been actioned in this instance and Mr Hicks is being held in a cage at Camp X-Ray in Guantanamo Bay in Cuba, an American territory in another country.

**Mr Cornall**—President Bush has said that the Geneva convention will apply to the detainees, and one of the issues—

**Senator McKIERNAN**—When did he say that?

**Mr Ford**—I think I have got the date. Just bear with me.

**Senator COONEY**—The Geneva convention.

**Mr Cornall**—Yes, he did say that.

**Mr Ford**—I think it is 7 February, but I will check that again.

**Mr Cornall**—The point I was trying to make is that when you are in a conflict situation the Geneva convention recognises that it is different from a criminal law enforcement

situation and the convention itself has a clear statement that people who are prisoners of war will be held under the conditions contemplated by the convention until the cessation of hostilities and then repatriated. So detention is a central concept in the Geneva convention.

**Senator McKIERNAN**—I accept that, but under the Geneva convention on prisoners of war certain rights apply to the individual as well. At this stage it is my understanding that those rights are not being applied to the individuals who are being held by the United States at Camp X-Ray in Guantanamo Bay in Cuba.

**Mr Cornall**—Not strictly under the convention, but the principal concern that Australia has had has been to ensure that he has been held and is being held in humane conditions, including appropriate shelter, appropriate food, right to exercise, access to medical treatment and so forth. We have been assured that that is the case. I understand that an international committee of the Red Cross either has visited or is about to visit Guantanamo Bay to conduct an independent assessment to ensure that that is the case.

**Senator McKIERNAN**—We have seen some media photographs of the accommodation at Camp X-Ray and they have been described as a cage, and I would so describe them from the media photographs that I have seen. Have you seen similar press photographs of that accommodation?

**Mr Cornall**—I have seen the photographs.

**Senator McKIERNAN**—Would you describe them as humane accommodation?

**Mr Cornall**—I have not been, obviously, to Guantanamo Bay, so I cannot make an assessment of the whole situation, and I do not think it is sensible to make an assessment from a press photograph.

**Senator McKIERNAN**—What other information have you got then that would assure you or assure the Attorney-General's Department, which in turn would assure the Attorney-General, that the living conditions of those people, including and particularly Mr Hicks, are indeed humane?

**Mr Cornall**—That would be based on an assessment of the advice given to us by the United States and observations made about Mr Hicks's health and general condition prior to going to Guantanamo Bay when he was interviewed by ASIO and AFP officers. It will also be reassuring to have the report of the visit by the international Red Cross.

**Mr Ford**—Could I just confirm what I said before. On 7 February this year the US stated that it will apply the Geneva convention to members of the Taliban but not Al-Qaeda.

**Senator McKIERNAN**—Has that been actioned yet, bearing in mind that was on 7 February and it is now 19 February? Do you know if that has happened yet?

**Mr Ford**—I do not know.

**Senator McKIERNAN**—Is the Attorney-General's Department comforted by that assurance that it will happen some time in the future? Have you pressed the United States authorities to find out when it will happen and have you asked if those provisions will apply to the Australian national Mr David Hicks?

**Mr Cornall**—Some of these issues, as the minister has just pointed out to me, are in the operational realm of the Department of Foreign Affairs and Trade, because they do the direct discussions with the United States on many of these issues. So some of these questions may be best directed to them.

**Senator McKIERNAN**—They are on tomorrow.

**Senator Ellison**—How one of our nationals is kept overseas and detained is really in the Foreign Affairs area. There are some legal questions you have asked which have been appropriate, I agree.

**Senator McKIERNAN**—I accept that, but the Attorney-General, the first law officer of the Commonwealth, has made statements on this matter and in that sense I think there is legitimacy in addressing questions in regard to that to the department that is funded to support the first law officer. Were they informed comments that the first law officer was making? That is the theme of the questions and we are teasing them out from there. I accept what you say, Minister. I am not disputing that at all. It is a Foreign Affairs role to go and make arrangements for Australian nationals who are detained in overseas countries and who are charged in overseas countries, I accept all of that, but this is a particular instance where the Attorney-General has seen fit to enter into the public domain. He actually has issued prepared press statements, but the comments that he made I do not think came from a prepared press statement about which group Mr Hicks was a member of. Under normal criminal law provisions, the individual would have a right to see what evidence has been stacked up against him and be able to refute that evidence.

**Mr Cornall**—Of course.

**Senator McKIERNAN**—On this occasion the individual has not been charged with anything. I understand he does not have access to a lawyer, does not have access to family members. I do not know if communication has been made available between family members here in Australia and overseas, and that is a matter that can be pursued with Foreign Affairs. As for protection of the human rights of Australians, I think there are some obligations on the Attorney-General's Department to address these issues and not have the human rights and civil rights of Australians who are overseas, who have not been charged with anything, trodden into the ground.

**Mr Cornall**—I agree entirely, and that is why we are trying to answer your questions as fully as possible.

**Senator McKIERNAN**—Recently a number of Australian nationals were imprisoned in overseas countries—Senator Cooney has referred to Mr Pratt and one other and an adviser who were held in the former nation state of Yugoslavia. Did Attorney-General's have any involvement in that issue?

**Mr Cornall**—I did not realise before when you referred to this case that you were talking about the Care workers.

**Senator McKIERNAN**—The Care workers, yes.

**Mr Cornall**—Sorry, I just did not recall the matter. Ms Pidgeon has advised me that we provided some legal assistance for the Yugoslav lawyers for the Care workers but otherwise we did not have any involvement in the matter.

**Senator McKIERNAN**—Can you recall whether they were under any charges or whether they were held under the Geneva convention on prisoners of war?

**Mr Cornall**—No, the allegations against them were to do with preaching Christianity.

**Senator COONEY**—No, that was the one in old Yugoslavia. They had photographic equipment.

**Mr Ford**—He was charged with espionage.

**Senator COONEY**—Yes.

**Mr Cornall**—Sorry, Senator.

**Senator McKIERNAN**—You have reminded me of the other ones as well now, Mr Cornall.

**CHAIR**—There is a whole range from which to choose.

**Mr Ford**—As we were saying, Mr Pratt was charged with espionage and—

**Senator McKIERNAN**—He was charged?

**Mr Ford**—Yes.

**Senator COONEY**—And convicted I think.

**Mr Ford**—I do not recall all of the details.

**Senator COONEY**—Then he was jailed and released.

**Mr Ford**—Yes.

**Senator McKIERNAN**—Did the Attorney-General's Department have an involvement in that case from a legal point of view?

**Mr Ford**—Not that I am aware of.

**Senator McKIERNAN**—You mentioned that other pair of Australian nationals who were charged with preaching Christianity in Afghanistan, one of whom was from Perth. Did the Attorney-General's have any involvement in that case?

**Mr Ford**—Not that I am aware of.

**Senator McKIERNAN**—The Danes were another couple—in Laos, I think this was—only on this occasion it was criminal charges that these people were facing and in fact I believe they were actually convicted of some charges that were laid against them.

**Mr Cornall**—Yes, they were convicted.

**Senator McKIERNAN**—Did the Attorney-General's have an involvement in that?

**Mr Cornall**—No, we did not. That was a matter involving criminal charges, and the Department of Foreign Affairs and Trade obviously had a very close involvement in that matter.

**Senator McKIERNAN**—To the knowledge of the Attorney-General's Department, have there been any other Australian nationals apprehended in Afghanistan or in the region of Afghanistan who are currently in custody of either the Northern Alliance forces or the United States?

**Mr Ford**—I am not aware of any.

**Senator McKIERNAN**—There have been some media comments that there may be.

**Mr Ford**—I am aware of the media comments but, as I recall your question, it was: 'Are there any who have been arrested and are being held?' To the best of my knowledge, the answer is no.

**Senator McKIERNAN**—Are there protocols in place whereby if another Australian national was in custody of the United States or the Northern Alliance forces there would be obligations to inform Australia of the detention of any Australian national?

**Mr Cornall**—I do not know the answer to the question about protocols, but I think the situation is that we would certainly expect to be notified immediately should someone else be detained in Afghanistan who was Australian.

**Senator COONEY**—It worries me that, if you read the story in the *Sydney Morning Herald* on 9 February and generally if you look at the parents on the television, the picture you get, or the picture that I get, is of a fairly simple person who was a poultry worker before he went off to become a soldier—hardly a picture of a person you would expect to be in command of forces or planning terrorist acts. He might help carry them out but you would hardly picture him as a person of great sophistication; rather, as a foolish young man. He is accused of threatening to kill Americans while he is at Camp X-Ray. That is again a picture of somebody who is a foolish young man, perhaps with a loud mouth, rather than a sophisticated operative. You then begin to wonder just why he is being kept. The *Sydney Morning Herald* says, and I will get your comment on this:

The Australian Security Intelligence Organisation is understood to be following up information provided by the 26-year-old Muslim convert in the initial interview. Sources close to Sydney's Muslim community said ASIO and Australian Federal Police agents raided several homes last month ...

I then become concerned about whether or not pressure is put on this person, who is reasonably simple, to provide information which may or may not be correct in that context and off we go and raid people in Sydney on the basis of that information. I am particularly concerned about the follow-up of that information when you read in the *Age*:

US Defence Secretary, Donald Rumsfeld, said last month that Hicks' future was "closely linked" to any information he provided.

Is there any concern in Attorney-General's and the various departments that they are interested in, such as ASIO, that such pressure has been applied to this person as would lead to raids on Muslims in Sydney—I do not know whether there are any elsewhere but here it says in Sydney—and thus to, perhaps, quite unjust and worrying outcomes for people in Sydney?

**Mr Cornall**—I think there are a few things that need to be said in response to that. The first is that the Australian investigations into this matter are continuing. The second is that Australian officers have not spoken to Mr Hicks since that first interview. The third is that Australia, as are all the allies, is pursuing a range of inquiries and so forth in regard to the war against terrorism which, I think, are quite appropriate. We are not aware of any undue pressure by the Americans being put on Mr Hicks while he is in detention or on any other detainee.

**Senator COONEY**—Have you seen this article? They put it in quotation marks where it says here in the *Age*:

US Defence Secretary Donald Rumsfeld said last month that Hicks' future was "closely linked" to any information he provided.

That would seem to be consistent with them applying pressure on him. The next paragraph says:

The Australian Security Intelligence Organisation is understood—  
and this sounds like a leak—

... to be following up information provided by the 26-year-old Muslim convert

And it goes on to say that several homes in Sydney's 'Muslim community' were 'raided last month'. That is a nasty sort of inference there, that this is all about following up Muslims and if you are a Muslim you are going to be in a bit of trouble.

**Mr Ford**—Senator, I answer it in this way: there are obvious difficulties in us commenting on a matter which is operational from an ASIO perspective—

**Senator COONEY**—For that reason I did not ask ASIO.

**Mr Ford**—But the various legislation which would apply to it has in it appropriate tests which would have to be satisfied before a warrant could be issued, for example, for a search or something of that nature. So, from our point of view, I think the law sets a framework within which those kinds of facts can be evaluated before any action is taken.

**Senator COONEY**—What I am a bit worried about, though, is the sources of the three journalists who were writing this article. They are very responsible journalists and the whole of the article seems to be well sourced, although they will not reveal the sources, being good journalists. But they sound almost like official sources. If that is correct, then those official sources are talking about 'Muslims' and what have you. So if the official sources come from within the departments and that was the sort of language that is being used then isn't that a matter for worry? That is what I am asking.

**Mr Ford**—I have not seen the article.

**Senator COONEY**—It is from 9 February—you can have a look at it. I think that is a fair comment, by the way. I am going on an article which is not as safe as it might be to make the sort of comments that I am making.

**Senator McKIERNAN**—I have a comment before we leave; it is not really a question. Unlike what happens in Australia, on this occasion with Mr Hicks there is an assumption of guilt being applied to him and, regrettably, there is no mechanism available to Mr Hicks or, indeed, his family for them to refute those assertions. He is being deprived of his liberty and he has not been charged with anything and, further, he has not been given the opportunity of responding to any charges which, of course, have not been made. I do not know how he is being held. I can only rely on media photographs because I, like you, Mr Cornell, have not been to Camp X-Ray in Guantanamo Bay in Cuba and I have got a concern that criminals were not even brought to mainland United States. That is an issue that has lodged in my mind and is causing me some concern.

Australia in turn is addressing, and legislation is foreshadowed to address, terrorism and terrorist activities in Australia. There have been expressions of concern that that legislation might in turn deprive Australians of some of their long-sought and long-fought for and highly regarded human rights. I think the Hicks instance, in which it would seem that Australia is complicit with the United States in holding him without any charges or without the benefits of the convention on prisoners of war, is food for thought for those of us who will be looking at that anti-terrorism legislation on the way through. The question I want to ask is this. Interviews have been held by ASIO and the AFP with Mr Hicks in December of last year. Are you aware of any further plans by any Australian law enforcement authorities to further interview Mr Hicks?

**Mr Cornell**—Not at this stage, Senator, no.

**Mr Ford**—Through you, Madam Chair, could I just add to something that Mr Cornell said? The Red Cross have in fact visited the base, from the point of view of making an

assessment of the conditions and so on, and a letter has been transmitted from Mr Hicks to his family by that means.

**Senator McKIERNAN**—Has the Red Cross made any report about the conditions in that detention centre?

**Mr Ford**—No. I am informed not. No, it has not.

**Senator COONEY**—But the *Age* referred to that letter, Mr Ford, and said:

... Hicks, a former poultry worker, has apologised for the anxiety he has caused his family and pleaded for legal assistance.

“It has been a great comfort to the Hicks family to receive this letter from David, in which he apologises for the anxiety he has caused them,” ...

It has not got the ring of a hard and calculating mind, has it? It has got the ring, rather, of a foolish young man who was gone off to fight in battles and who has converted to a particular religion and gone off as a foot soldier rather than as a general of the army.

**Mr Ford**—I do not think I should comment, Senator.

**Senator SCULLION**—Mr Cornall, I know that you just a little while ago gave evidence that apparently there are other countries in a very similar situation, in that they have foreign nationals that are currently held at Guantanamo Bay. What are those countries?

**Mr Cornall**—The United Kingdom and Canada have nationals detained at Guantanamo Bay, but my understanding is that there is quite a range of others as well. I am sorry, but I just do not have the list.

**Senator SCULLION**—That is okay. I just meant in a general sense. Do you know if any of the other people have either been approached by their country, or if they have been released and repatriated?

**Mr Cornall**—It is my understanding that they are in the same situation as Mr Hicks.

**Senator SCULLION**—Okay. I was looking for some assurances that, effectively, if we are in some way perceived to be removing the rights of any individual who is an Australian citizen, at least until this complexity is resolved, it would be fair to say that we are at least consistent with the rest of the world?

**Mr Cornall**—With the one qualification that we do not yet know how President Bush’s changed position on the implementation of the Geneva convention will apply to the people in Guantanamo Bay; but otherwise, yes, we are in the same position as other countries who have people detained there.

**Senator SCULLION**—Thank you. My other question is to Mr Ford. I was concerned, as Senator Cooney related that he had some concerns, in regard to this reference to people being interviewed on the basis of their religion: ‘They are Muslims, and so obviously we need to check into it.’ They would obviously have to visit Muslim communities and talk to people about this. So I would obviously share his concerns. With your very close association with Hicks, in terms of the interview, could you confirm with me that you were not questioning him on the basis of his religion, or that you would not think—

**Mr Ford**—Absolutely. No, I certainly was not.

**Senator SCULLION**—It is a very fast moving feast in the legislative sense. As an Australian I am very curious, so bear with me just for a hypothetical question: let us say we have a young man on the street. You pull him over for whatever reason and you find out that

he has been trained by this Al-Qaeda network. Let us say you cannot demonstrate that he has got a history in the poultry industry, so he gets out of the exemption for terrorism. In Australia, would you have the capacity to hold him here? What would you do now on the same thing in Australia? Here is a guy who just fell out of the blue; he clearly has a background of being trained by a terrorist organisation and you recognise it. What would be your activity then? Would you lock him up? Would you interview him and pursue investigations, right at the moment?

**Mr Ford**—Just training with Al-Qaeda by itself is not a criminal offence in Australia, so of itself that would not constitute a criminal offence or grounds to lock him up.

**CHAIR**—If there are no further questions for this area, we will move on.

**Senator McKIERNAN**—I have a few questions on the department's annual report. I will hopefully move rapidly through them. On page 38, regarding the principal executive officer structure, is there any estimate anywhere in the body of the report of additional funding that is required because of the restructuring of the operational lines of the department?

**Mr Campbell**—Mr Hine will correct me if I am wrong, but my expectation is that, no, there is not, because it was more moving principal executive officers to a total remuneration package employment basis, rather than a salary plus benefits package. It was more restructuring the way the principal executive officers were remunerated rather than significantly increasing the remuneration.

**Mr Hine**—Any changes would be absorbed within existing operating expenses.

**Senator McKIERNAN**—Thank you very much. I appreciate that assurance. Being parochial, again, on page 69, under the third paragraph under human rights—and I will return to human rights in a moment—it mentions that 50 superseded Apple Macintosh computers have been distributed but I notice none have been distributed in the state of Western Australia! I just note it for the record.

**Mr Cornall**—We went through a process to allocate these computers and—I am sorry, I cannot recall the process—it seemed to us fair and reasonable at the time from an east coast perspective!

**Senator McKIERNAN**—Can I say that the annual report of the department has reached the west coast and it has been noted, and I would ask you to take that notation!

**Mr Cornall**—Ms Leigh tells me it was on the basis of applications received but she is not sure whether we received any from anyone in Western Australia.

**Senator McKIERNAN**—Thank you. I now move to page 84, regarding the pro bono taskforce. In the light of statements or more importantly actions last year by the Attorney following the actions in the full Federal Court—and then I think it went on to the High Court—is there any change to the policy surrounding the pro bono task force under 'concept of pro bono work?'

**Mr Cornall**—No. Not at all. The pro bono task force was directed towards promoting pro bono legal services by members of the legal profession, and the Attorney was not in any sense critical of the lawyers who provided pro bono services in the *Tampa* case—which is what I think you are referring to. The issue there was that the mere fact that someone has a pro bono lawyer does not mean that a litigant such as the Commonwealth should not seek cost orders against another litigant. That is how the cost orders were sought.



**Senator COONEY**—But in the *Tampa* case, in the Federal Court there were two judges for the Commonwealth and two against and it balanced out so that the two for the Commonwealth were in the full court, and I think the Chief Justice was for the *Tampa* people, if I can use that very broad expression. There was a two-two split, yet the Commonwealth pressed on for costs. Why?

**Mr Cornall**—I am not sure that is quite right. The Commonwealth was taken on appeal.

**Senator COONEY**—Yes, but the appeal was to the full court of the Federal Court.

**Mr Cornall**—Yes.

**Senator COONEY**—The split was two to one in favour of the Commonwealth, but one of those who was in favour of the Commonwealth said that this was an action that was highly commendable—even though he found against it—and in the highest traditions of the law, where you went forward and battled for a great cause. So there were, in effect, three judges all saying that the people had done a good thing. I am not sure what the other one said—he probably said nothing. In spite of that, the Commonwealth pressed on for costs.

**Mr Cornall**—The fact is that, as a result of the process, the Commonwealth's position was endorsed by the court and therefore the Commonwealth had been put to considerable legal costs in justifying a position in court which it was entitled to take. It is quite appropriate in those circumstances for the Commonwealth to seek costs against the opposing litigant. If the court chooses, as was ultimately the case, not to make a court order, that is a matter for the court. But in terms of responding to Senator McKiernan's original question about whether there is any difficulty with the policy, I think there is none whatsoever.

**Senator COONEY**—Can I just pursue this a bit. I think the thrust of what the full Federal Court was saying was, 'That is two to one; you win.' But then there is always the issue of costs, which usually but not invariably follows the event. I am putting to you that to simply say, 'The Commonwealth won; therefore, we ought to get the costs,' is too sudden a jump. You have got to go through the exercise of asking, 'Is it appropriate, even though we have won, to ask for costs?'

**Mr Campbell**—Could I say something in response to that. I understand what you are saying, that we lost at first instance, but the fact of the matter is that the full Federal Court found in our favour. It is not a question of saying there is two one way and two the other. The matter was also appealed to the High Court and leave to appeal was declined.

**Senator COONEY**—And the High Court said no order as to costs.

**Mr Campbell**—It simply said no order as to costs. That is what it said. It is true that we did not win on the issue of costs, but certainly on the issue of costs the minority judge said:

Whilst the fact of pro bono representation may be important for other purposes in the administration of justice, it cannot bear on the specific question of the allocation of costs between the parties.

That is what Justice Beaumont said. Admittedly, he was in the minority, but I think that is the point that was being made earlier.

**Senator COONEY**—Who were the three judges in the Federal Court? There was Chief Justice Black—

**Mr Campbell**—Justice French and Justice Beaumont.

**Senator COONEY**—But, if you look at Justice French's judgment, right at the end he says that, even though he is finding against them, this was a case taken in the highest traditions of the legal profession. Have you got the judgment there?

**Mr Campbell**—I have not got the judgment.

**Senator COONEY**—Have a look at the bit when he sums up. You have a situation where even though one judge finds for you he says that what these people have done is in the highest traditions, taking forward an issue on behalf of the poor and the downtrodden. I would have thought that a reasonable sort of litigant, particularly one in the position of the Commonwealth, would have looked at that and taken note of that. That is all I am saying. Why was this overlooked? I would go as far to say you did overlook that.

**Mr Campbell**—I do not accept that that was overlooked, Senator.

**Senator COONEY**—I will put it this way to you, with the greatest kindness: you giving that answer shows the fixed mind with which the Commonwealth came to this matter.

**Mr Campbell**—No, I am just pointing to something that Justice Beaumont said. I am not pointing out to fixed minds at all, Senator.

**Senator COONEY**—I am looking at Justices Black and French. You are looking at Beaumont, the one tough judge in this. He has a reputation of being fairly tough, I suggest. Why do you quote him and not the other two?

**Mr Campbell**—I am quoting him simply to say that he supported what was said earlier about pro bono and its place in the allocation of costs between the parties.

**Senator COONEY**—I suggest the fact that somebody does a thing pro bono does not thereby disentitle the other side to get costs. You can't say, 'Look, I've done this pro bono; therefore, if I lose, the other side can't get costs from my client.' That has never been the proposition. But I think you will find that the proposition being put in this particular case—given the attitude with which people went around it and given its significance—was one where I would have thought the Commonwealth was almost compelled to say, 'We shouldn't claim for costs even though we might be entitled to them.' I do not think the Commonwealth in this instance can claim high ground in any way on the question of costs.

**Senator Ellison**—That, Senator Cooney, is a matter of opinion on which the government and you perhaps have a different view.

**Senator COONEY**—I agree with that entirely. It is just a matter of how people look at it and say, 'Well, who's correct?' Look at Justice North's judgment. He says, '*Tampa* wins.' The Chief Justice says '*Tampa* wins.' Two judges then held against it. Mr Justice Beaumont, as Mr Campbell says, was one of them. But Mr Justice French, who went along with Mr Justice Beaumont in concluding that the Commonwealth ought to win, made that statement, which was ignored. I invite you to read the comments of Mr Justice French at the end of his judgment and perhaps later on or tonight to come back to me and see if you still stick with what you are saying now. Can you do that for me? If you don't want to, don't, but I invite you to.

**Mr Campbell**—I will read it, Senator.

**Senator COONEY**—Thank you very much, Mr Campbell. You have always been most gracious over the years.

**Mr Cornall**—Madam Chair, Mr Ford just wants to make one clarifying remark to make sure that Senator Scullion is not under any misapprehension about the evidence Mr Ford gave a minute ago.

**CHAIR**—Yes, Mr Ford, please do.

**Mr Ford**—Thank you. It was pointed out to me that perhaps Senator Scullion was under the impression that I was one of the interviewing officers for the interview with Mr Hicks. I was not, so I just thought I should clear that up.

**CHAIR**—Thank you for clarifying that. While we are on the question of pro bono, it has been raised with me by constituents, broadly speaking, that there are some concerns in the profession that willing participants in the pro bono process, who may find themselves representing a litigant against a government department, may then find themselves on the receiving end of a very adverse view from government as to whether the firm of which they are a member ever receives government work again. Do you have a response or a comment to make on that, Mr Cornall?

**Mr Cornall**—I am not sure if anyone else wants to comment on it but obviously departments and agencies nowadays make their own choices of lawyers in all but cabinet work or tied work, and so to form any view about that you would have to discuss it with all of them, to see how they make judgments about the lawyers they use.

**CHAIR**—I raise it here because in fact it has been raised with me completely separately on several occasions by practitioners in New South Wales. I find that quite concerning. I would be sure that would not be the view of government. After all, pro bono exists for a reason.

**Mr Cornall**—It is my understanding that the bigger departments have panels of solicitors. I imagine that the work is just given to the members of that panel. If you are not on the panel, I imagine you would not get it.

**CHAIR**—I would not like to see it lead to a situation where solicitors or barristers were hesitant to take on pro bono work for individuals because they felt their firms might be adversely affected.

**Mr Cornall**—I would agree with that.

**Mr Govey**—Perhaps I could add one thing. I do not think we are aware of that being a policy of the agencies to which the secretaries refer to make their own decisions about this. We can say from our point of view that this is not a policy that is applied within the Attorney-General's Department.

**CHAIR**—Perhaps I will encourage my constituents to take it up more actively through me.

**Senator LUDWIG**—The Pro Bono Task Force which you mention on page 84 also states: The Attorney-General has endorsed this recommendation and work has begun towards establishing the Centre.

Where is that up to?

**Ms Pidgeon**—We are currently in negotiations with the Public Interest and Advocacy Centre in Sydney to establish the pro bono centre. A contract has not been signed yet, but we are discussing the contractual provisions at the moment.

**Senator LUDWIG**—How much money has been earmarked for that and how long is the contract for? Is it a three-year contract or a two-year contract? What services will be provided and what process will the centre be required to operate under? Are you able to discuss that here?

**Ms Pidgeon**—It is proposed that there will be two contracts in fact—one is initially with the Public Interest Advocacy Centre to do the establishment work and the other contract is with the centre itself to proceed after that. The budget allocated for the pro bono centre is basically \$1 million over four years, which includes the establishment costs of it.

**Senator LUDWIG**—Has the Attorney-General's Department drawn up the rules as to how it will operate or are they going to be developed by the centre itself?

**Ms Pidgeon**—That will be part of the contractual agreement between the Attorney and the centre, and therefore that will be mutually developed.

**Senator LUDWIG**—If information on how the rules will work and how the centre will operate could be made available to the committee, that would be appreciated by the committee. I understand there might be some commercial-in-confidence matters at the moment if it has not been signed, so perhaps you could look at what you can make available so that you can apprise the committee of how the research centre will operate.

**Mr Govey**—The successful contractor was chosen after a tender process, so we can certainly make available all the documentation that provided the criteria that you are talking about.

**Senator LUDWIG**—I was trying to second-guess your answer on commercial-in-confidence—that was all.

**Senator McKIERNAN**—On page 91 of the annual report, the fourth paragraph down from criminal matters tells us that negotiations on the draft international transfer of prisoners treaty with Thailand was completed during the reporting year. The reporting year ended in June last year. I understand that the formal adoption of the treaty was delayed, firstly, by elections in Thailand and, secondly, by elections in Australia. We have now had two clear months since those elections. What has been put in place to bring that treaty into being?

**Ms Blackburn**—As you recall, we have received reports from the JSCOT on both the Thai treaty and the Council of Europe Convention in relation to transfer of prisoners. There is an executive council process to be gone through in relation to the Thai treaty and there is a formal process with the Council of Europe Convention to be gone through. At the moment, the target date for having all these processes completed to enable proclamation of the legislation is 30 June 2002.

**Senator McKIERNAN**—With a treaty between Australia and Thailand, why would Council of Europe be involved?

**Ms Blackburn**—Council of Europe is not involved in the treaty with Thailand. The treaty with Thailand is a bilateral treaty. The arrangements we are making for transfer of prisoners involve a bilateral treaty with Thailand and the Council of Europe convention, which will enable transfer of prisoners between a range of other countries.

**Senator McKIERNAN**—Negotiations for the Thai treaty were resolved by June of last year, and the treaty is still not in place. Is there anything that is holding up the bringing of that treaty into being, therefore enabling the transfer of prisoners from Thailand to Australia and from Australia into Thailand?

**Ms Blackburn**—Two issues have delayed matters, or have needed to be dealt with. The first is the completion of the processes through the parliament for confirmation of the treaty. My recollection is that the JSCOT report on the Thai treaty—

**Senator LUDWIG**—Are you saying that delayed things?

**Ms Blackburn**—No, I did not say it was a delay. There has been a process.

**Senator LUDWIG**—You used the word.

**Ms Blackburn**—I did retract that and say that there were just processes to be going through. I made no implication whatsoever that the delay was caused by the Joint Standing Committee on Treaties. The treaty was referred to the joint standing committee in accordance with processes this government has for taking treaty action, and my recollection is that the JSCOT report on that treaty was completed towards the end of last year. The second matter under continuing negotiation is that Commonwealth legislation requires administrative arrangements to be entered into between the Commonwealth and the states for the return of prisoners to Australia. Those arrangements have been under negotiation for some time and they will be completed very shortly.

**Senator McKIERNAN**—JSCOT reported in September of last year.

**Senator Ellison**—But look at what has happened in between. From a government point of view, we went through caretaker provisions and then the appointment of new ministers, so there was a period there when a lot of things across government stalled for a while, because we had an election and then new ministers being sworn in.

**Senator McKIERNAN**—That was a further cause for delay. Are there any impediments in place at the moment that would stop this treaty coming into force in a very short time?

**Ms Blackburn**—There are two impediments. There is the completion of the executive council processes required for the finalisation of the treaty arrangements, there is the conclusion of the administrative arrangements with the states and then there is a process for proclamation for the Commonwealth legislation to come into force. I think it is fair to say that they are procedural matters which need to be completed. They are not fundamental impediments to the scheme coming into operation.

**Senator McKIERNAN**—What legislation is awaiting proclamation?

**Ms Blackburn**—The Commonwealth International Transfer of Prisoners Act.

**Senator McKIERNAN**—That has not yet been proclaimed, you say?

**Ms Blackburn**—No.

**Senator McKIERNAN**—Do you know when that went through the parliament? Are you aware, Minister?

**Ms Blackburn**—1997.

**Senator Ellison**—It went through some time ago.

**Senator McKIERNAN**—That is what I understand. What is delaying the proclamation of it?

**Ms Blackburn**—In the absence of any concluded treaty arrangements, the act would have nothing to operate on.

**Senator Ellison**—This is a matter which I have mentioned to the minister for justice in Thailand when I visited Thailand. I have supported this initiative over a period of time. We can take on board the committee's concerns—this is more for Madam Chair than just Senator McKiernan—and get back to you with a detailed assessment of where we are at with the more procedural matters. Obviously we need the cooperation of the states, because the Commonwealth government do not have prisons; states have prisons. That was always the stumbling block for transfer of prisoners. It is something that I am keen to see in place as soon as possible, I can assure you.

**Senator McKIERNAN**—I am reassured by those words, Minister, and thank you for them. I will give perhaps just a brief explanation and then we can move on. I had expectations that this treaty would come into force early last year, but then there were intrusions because of the elections in Thailand and the problems about the appointment of ministers there, and then we had problems as to whether the JSCOT proceedings would delay things from Australia's point of view. Things were bedded down and put in place early and yet we are in February 2002 and the treaty is not yet in place. There are reasons why the treaty was negotiated and there are people in the community with expectations of what may result from the treaty, so I have concerns—although 'concerns' is probably too strong a word.

There have been delays in the process and it would appear now, from what you have told us, Ms Blackburn and Minister, that those delays are at a bureaucratic level rather than because of negotiations with the states. But I understood that there were no impediments from the states on this matter, that there was cooperation being offered by the states prior to Australia embarking on the treaty negotiations. That was my understanding early in the piece. It is now a matter of just tacking things down, one would hope, and I am assured by the minister and would hope that that matter will come into fruition in a very short period of time.

**Senator Ellison**—As I say, I share your interest on this matter—as do others—and I will undertake from the Commonwealth's point of view to move this along as earnestly as we can. I take your concerns on board and your question on notice, and I will get back to the committee and keep you advised.

**CHAIR**—That would be very helpful. Thank you.

**Senator LUDWIG**—I did not want to prolong the issue for too much longer, and I understand Senator Ellison's remarks. But two things concern me as part of this process. Firstly, in respect of the national interest analysis that was presented to the JSCOT and the questions that were asked by the JSCOT in relation to whether there were any impediments, were they informed that there were two impediments, as you have now outlined to this committee? Were they informed that, firstly, it required state cooperation—and were they informed as to whether or not state cooperation was gained or whether there was an omission completely in respect of that issue—and, secondly, it was also contingent upon the proclamation of the earlier mentioned piece of legislation in the national interest analysis? I cannot recall. Although I have some recollection that the question was asked in relation to whether the states were going to cooperate and the answer was, from memory, in the affirmative, I will not hold myself to that. I will go back and check the transcript in relation to those proceedings.

Secondly, the question was asked as to whether there were any impediments to the treaty being called into operation, and my recollection is that the answer was no. That is what the JSCOT committee asked. Also, I will not put myself under the test of a clear recollection of that; I will go back and check, but you might like to do the same because you are now saying something different.

**Ms Blackburn**—I cannot comment on the details of the national interest analysis, or on what was said during the course of that process—you have the advantage over me there in having participated in it—and I will check those. But I would like to clarify; if I misused words, I apologise for misleading you. I do not believe, nor am I stating to this committee, that there are impediments to the bringing into force of this. What I did say, and what I say again, is that there is a process which is not yet complete. In relation to the process, in terms of the negotiations with the states, again, I do not believe there is any fundamental

impediment being put forward by the states. The Commonwealth act requires that administrative arrangements be entered into with the states, as the minister mentioned, because the Commonwealth does not run prisons; returned prisoners under this scheme will need to be placed in state institutions.

The legislation provides for administrative arrangements to be entered into. We have prepared draft administrative arrangements. They have been sent to all of the states for comment. I am fairly confident in saying we have comments back from all of the states and they are now being taken into account in revision of the administrative arrangements. I am unaware of any of those responses raising substantive issues which would amount to an impediment to putting this into place.

**Senator LUDWIG**—Thank you, that has been helpful. Page 67 of the annual report, under the heading ‘Copyright’, reads:

Other recommendations are under active consideration.

That is, recommendations from the *Report on the jurisdiction and procedures of the Copyright Tribunal*. I understand one of the recommendations was for an extra tribunal member and that has been picked up. Can you give me a short brief about where you are up to in respect of what active consideration of these remaining recommendations actually means. I am quite happy to take that on notice if you want to come back and detail what is happening on each of those recommendations and where you are up to.

**Mr Ford**—Could we take it on notice.

**Senator LUDWIG**—I turn to privacy, on page 74. The Privacy Commissioner gave the committee quite a good overview of where the implementation of that of legislation is at. Freedom of information, which follows on page 76, is an issue that seems to be tied in with that occasionally. I note that the Queensland government has had both privacy issues and freedom of information issues raised, and there is a recent report by a parliamentary committee in Queensland. Do you as a matter of course, when you examine your freedom of information legislation, take on board other parliamentary committees’ recommendations, the direction they are going, with a view to uniformity or a view to ensuring that the current Commonwealth freedom of information legislation is the best it could possibly be? Is that part of the brief that the Attorney-General also undertakes?

**Mr Ford**—Yes, it is.

**Senator LUDWIG**—It is a very recent report from a Queensland parliamentary committee.

**Mr Ford**—I am not across the details but we do try to keep up with developments in the states and ensure that federal law is kept up to date.

**Senator LUDWIG**—I turn to a decision by Justice Wilcox last Friday week in relation to determinations made under the native title regime in Queensland. I suspect that the appeal time has not run as yet, and if it has not then obviously you are still in the process of determining where you are with that. I am curious as to whether Attorney-General’s has formed a view as to the response that you will mount in respect of that case.

**Ms Horner**—As understand it, you asked about the recent decision of Justice Wilcox on an AD(JR) application and whether the Attorney-General had formed a view about whether the Commonwealth would wish to appeal?

**Senator LUDWIG**—Yes.

**Ms Horner**—We are in the process of—

**Senator LUDWIG**—I was not sure if the appeal time had run out yet.

**Ms Horner**—No, it runs out on 1 March. We are in the process of preparing a brief for the Attorney-General on the matters at the moment.

**Senator LUDWIG**—It is still in the pipeline then?

**Ms Horner**—Yes.

[5.44 p.m.]

**CHAIR**—We are going to continue with the programs, beginning with output 1.1.

**Senator McKIERNAN**—Oh well!

**CHAIR**—And I gave you a coffee break and everything!

**Senator McKIERNAN**—You are not blaming me for the delays, are you? In the Attorney-General's speech to senior officers on 5 February he said, on the matter of human rights:

While Australians can and should be proud of our human rights record, I am concerned that there is a view among sections of the community that the Howard Government is not committed to human rights.

How would he get that perception? Is that on advice from the Attorney-General's Department?

**Mr Cornall**—No, Senator. You would have to ask the Attorney-General.

**Senator Ellison**—I suppose you have been reading a few newspapers! There are various views on this across the board and I do not think any government really has everyone saying that it is 100 per cent in this area, no matter which government is in power.

**Senator McKIERNAN**—Mr Williams goes on to say:

I would like to address this misconception during the third term.

The first priority in this area will be to introduce age discrimination legislation.

**Senator Ellison**—I think it is a very good idea!

**Senator McKIERNAN**—You and I have got a vested interest in it but I know somebody else who has got an even greater interest in it! But we will leave that for the moment.

If there is a concern or a perception in the community about a commitment to human rights, surely it is not coming within this area. Isn't it coming within other areas? Wouldn't it arise because of a number of other controversial matters that are of concern within the community rather than the issue of age discrimination?

**Senator Ellison**—I think sometimes the more controversial matters are not really reflective of what the mainstream of the community are thinking. Sometimes they achieve notoriety or publicity and it is a small sector that manages to get their message across. But I think that in the mainstream community generally across Australia, particularly as the country is ageing as it is, this is a growing concern. There are people who might think they still have got a lot to offer and who are getting on in years and people still want someone who is aged 16 and experienced—you know the old job advert. I think that something which came across in the Year of the Older Person and in some other areas is that maybe across the board there is a growing sentiment that age should not be used as a means of discrimination.

**Senator McKIERNAN**—Yes, but it would seem to me that the problems that might have led to that perception in sections of the media or sections of the community would be in the



areas of sex discrimination, human rights discrimination and particularly racial discrimination. If I am correct, none of these are mentioned within the ongoing paragraph from the Attorney-General's speech. I do not want to delineate all the areas where criticism arose; Ms Leigh would probably know of some of them, because in committees we have talked about the subject matters of legislation coming forward.

The matter of racial discrimination has always been an issue from within certain sections of the community, as has been human rights, of course. I am not seeking to misrepresent the Attorney-General; he certainly does mention the Human Rights and Equal Opportunity Commission and the restructuring, but he does not mention addressing the possible areas where those misconceptions may have come from during the life of the preceding government.

**Senator Ellison**—Sex discrimination and racial discrimination are areas which have received a great deal of attention and I think there has been some good work done in those areas. I think what the Attorney-General is saying here is that there is a new initiative, and that is why he has singled this out, because it is something which has really not achieved much attention before—discrimination against age.

**Senator McKIERNAN**—But he is not addressing those areas where those misconceptions may have come into being, is he?

**Senator Ellison**—I think the government has been addressing those. We have mentioned it in our policy on human rights. It says:

The Coalition takes very seriously allegations of discrimination and condemns discrimination in all its forms.

It goes on to mention, in particular, the legislation for age discrimination, because this is a new initiative, but it also talks about reforming the Human Rights and Equal Opportunity Commission and the coalition pushing for changes to the international treaty committee system to ensure it works fairly and effectively to promote international stability, security and fundamental human freedoms. Privacy was also mentioned—a whole range of issues on privacy which we would argue that people have a right to. So in the coalition policy in the last election there were a range of things mentioned, and the Attorney-General had responsibility for those. I do not think that not mentioning them means any lack of resolve on his part, especially with an Attorney-General who is noted for his stand in this area.

**CHAIR**—Indeed, Minister.

**Senator McKIERNAN**—Indeed, and we well recall the sexual discrimination legislation of last year. I do not want to debate those specific issues. If indeed the Attorney is going to seek to address those misconceptions and the areas whence those misconceptions arose—through the media or whatever areas—you need resources to do it. One can imagine, from this uninformed point of view from this side of the table, where it will be done from—which leads me to the next question. We have heard those great statements that were in the policy document; now we have the implementation. How are they going to be implemented and what resources are going to be devoted to the human rights branch, in particular, to address those and put those fine objectives into place?

**Mr Cornall**—All we can say about budgetary matters is that they are matters for the budget process.

**Senator McKIERNAN**—Give us some figures then so we can measure the performance when we come back in the budget estimates in June—I will be applauding if it goes up. What

is the current staffing level of acting, temporary and permanent employees in the Human Rights Branch?

**Ms Leigh**—As I think I have mentioned previously to the committee, there are actually two branches in the division which are working on human rights matters. One branch is working entirely on human rights matters, and that is the branch that we have previously discussed in relation to this issue. There are 15 staff in that branch currently working on human rights matters and there are an additional three staff in the other branch who are working either full time or part time on human rights matters, which makes 18 all together.

**Senator LUDWIG**—Is that full-time equivalent or bodies?

**Ms Leigh**—Bodies.

**Senator McKIERNAN**—What is the full-time equivalent?

**Ms Leigh**—The 15 staff that I mentioned are all full time, and in the other branch there are three staff who are working on human rights. One of those is full time and is fully allocated to human rights and the other two are full-time officers but they are partly allocated to human rights.

**Senator McKIERNAN**—That gives us a baseline that we can come back and measure.

**Ms Leigh**—In relation to that, you will notice that that is an increase from the previous figures. The reason for that is that we have been able to use some funding that we had not spent in the first half of this financial year to employ some additional staff for the second half of the financial year, so I would not expect all of those staff to be ongoing. When we come back in June we will still have them, I expect. It is not that any decrease in funding is expected; it is simply that I have used money that we did not spend in the first half of the year to employ some additional staff in the second half.

**Senator McKIERNAN**—Ms Leigh, we have just had the minister raise the expectations from the Attorney's speech and the policy document, and here you are putting a dampener on that. We have not got to APS yet either! You said it was an increase—it was an increase from 14, though, wasn't it?

**Ms Leigh**—I believe there were 13 full-time staff in the branch that were fully occupied with human rights matters at the time of our previous committee hearing. Prior to that, I think there had been 14, I think, but two of those officers had only been part time, and that was converted to one full-time position, which led us to 13 full-time staff.

**Senator McKIERNAN**—Is that the branch that would be addressing and preparing responses to complaints made against Australia to the Human Rights Committee?

**Ms Leigh**—No, that is dealt with in another division.

**Senator McKIERNAN**—What is the staff turnover in the branch? Obviously you have extra new people in there, but what has been the mobility of people? Has there been continual movement?

**Ms Leigh**—I will have to take any precise details of that on notice.

**Senator McKIERNAN**—Please do that and please also provide us with some figures on the sick leave that has been taken within the branch and compare it to the departmental—

**Ms Leigh**—I am actually prepared to do that now if you like.

**Senator McKIERNAN**—Are you?

**Ms Leigh**—You had asked that previously, so I got the figures. The figures that we had discussed previously were first of all the sick leave, which included absence on workers compensation leave. I can tell you that for the period from June last year to December, which completes the year since we last met, that branch had a 1.6 per cent absence rate for those matters. The departmental rate was five per cent.

**Senator McKIERNAN**—So it is dramatically below?

**Ms Leigh**—It is. You are talking about fairly small numbers, so you can always get blips, but those are the figures for that period.

**Senator McKIERNAN**—Indeed.

**Ms Leigh**—In relation to annual leave, the rate for that branch was 2.6 per cent and the department's rate was 5.6 per cent. In relation to miscellaneous paid leave, that branch had none and the department had 0.4 per cent. In relation to long service leave, that branch had 1.2 per cent and the department had 1.3 per cent.

**Senator McKIERNAN**—Thank you very much for that.

**Senator COONEY**—Who looks after disputes that the Commonwealth might be in with its citizens over human rights, where the proceedings are taking place in Geneva or through Geneva?

**Ms Leigh**—That would mainly be dealt with in the Office of International Law.

**Senator COONEY**—How many actions is the Commonwealth fighting against its citizens at the moment?

**Mr Campbell**—I would not exactly characterise it like that.

**CHAIR**—A good endeavour on your part, though, Senator Cooney!

**Senator COONEY**—I thought it was a fairly reasonable description of the situation.

**Mr Campbell**—These are communications made by people in Australia to three committees in Geneva—one being the Race Discrimination Committee, one being the Committee against Torture and the other being the Human Rights Committee. At the present time, there are 19 ongoing communications to the Human Rights Committee, but some of those stem back to 1997-98. There are no outstanding ones under the racial discrimination convention and there are seven outstanding ones to the Committee against Torture.

**Senator COONEY**—Are there any in respect of age, for example?

**Mr Campbell**—Yes, there is one in relation to age.

**Senator McKIERNAN**—Is that the oldest one?

**Mr Campbell**—No, it is not the oldest one.

**Senator COONEY**—Is the Commonwealth resisting its citizen there?

**Mr Campbell**—In that particular case it is not a complaint involving the Commonwealth, though it is the Commonwealth that actually has the responsibility, because it is the state which has the responsibility of responding to the communication. But that is not one against the Commonwealth.

**Senator COONEY**—Are there any other ones like that?

**Mr Campbell**—Like age—

**Senator COONEY**—With the Commonwealth being party to the convention.

**Mr Campbell**—This particular one was a—

**Senator COONEY**—I think I know it, actually.

**Mr Campbell**—I hesitate to mention it.

**Senator COONEY**—I know what it is, because I made a good speech about this one.

**Mr Campbell**—But the other ones are relating either to the Commonwealth or to actions taken by the states or territories.

**Senator COONEY**—In respect of?

**Mr Campbell**—For example, in respect of incarceration in a state prison or something like that.

**Senator COONEY**—How many instances over the years would you have where the complaint was between, in effect, two citizens—whether the citizen was a corporation or not—where the matter ended up in Geneva?

**Mr Campbell**—There would not be many of those. I could take that on notice and get back to you.

**Senator COONEY**—They would have been resolved by now, I suppose.

**Mr Campbell**—I think most of the ones like that have, but I can take that on notice.

**Senator COONEY**—On this topic, there have been some criticisms of Australia over the last 24 months. Do we do anything about that, other than answer it politically?

**Mr Campbell**—In terms of responding?

**Senator COONEY**—To criticisms by the commissions—any of them.

**Mr Campbell**—In relation to communications, if the committee expresses a view about Australia being in breach, then generally we are required to respond to that within three months. I can only speak for the committees which this department is responsible for reporting to, but generally speaking they like the issues to be addressed in the next report to the committee.

**Senator COONEY**—Would they then give you an adjournment, as it were? Would they allow you to answer in six months or nine months if you do not come back in three months? Is there any adverse result from not answering in three months? You say that they want you to answer in three months.

**Mr Campbell**—Generally speaking, there have not been that many communications in which the committee has expressed views. There have been a couple of notable ones. A lot of them are either declared inadmissible or withdrawn, and we do not have to respond to those. It is only those where the committee expresses its view that Australia is in breach where we have to go back. In a very few of those, if we are beyond three months we would notify the committee as to the reason and then give them an answer subsequently.

**Senator COONEY**—So in terms of our promptness, the commissions or any other commissions in Geneva would not have any cause for complaint?

**Mr Campbell**—Not at this point in time. This department is not due to report for a number of years: in relation to the Convention on the Rights of the Child we have until 15 January 2003; for the International Covenant on Civil and Political Rights, the next report is 31 July 2005; and in relation to the convention against torture, it is 16 November 2004. There are seven communications on which Australia is yet to respond. One of those was due on 31

January this year, but we will not be responding until March because of circumstances. But we have notified the committee of that.

**Senator COONEY**—The other thing I am interested in with respect to those actions brought by the people of Australia—either against somebody else or against a government of Australia—is how quickly the committees react to that. If I made a claim, what could I expect from the committee? Could I expect a turnaround within weeks, months or years? I am really asking you about how the committees operate.

**Mr Campbell**—The Human Rights Committee has a substantial backlog at the moment in its communications. I think that is in part because of the resources available to it, the need to consider country reports and things like that. Unless they make a request for a state to take interim measures such as not deporting somebody pending determination—that sort of thing, which they can do quite quickly—generally speaking matters that get beyond the admissibility stage do take some years to finalise.

**Senator COONEY**—Regarding this issue of age, by the time the person got some sort of result from the committee, he or she may be so old that they cannot either enjoy whatever he or she gets or they have died in the meantime. I wonder whether we ought to be looking at the procedures of the committee.

**Mr Campbell**—We are looking. As you know, the government has had an initiative relating to the procedures of committees and how they deal with matters.

**Senator COONEY**—Would one of those issues that the government wants to raise be the issue of timeliness for the committees to act?

**Mr Campbell**—There is an issue of timeliness. To be fair, as I understand it, the Human Rights Committee is looking at that particular issue, but Australia has raised suggestions in the past about how that might be dealt with—for example, dealing with communications in chambers of the committee as opposed to the whole committee and things like that.

**Senator COONEY**—How often do the members of the committee change over?

**Mr Campbell**—I believe it is every three years; I would have to check that.

**Senator COONEY**—There is not much corporate memory there, you would not have thought.

**Mr Campbell**—But some of them are re-elected on a number of occasions, so there is a good deal of corporate memory there.

**Senator COONEY**—It is hardly security of tenure.

**Mr Campbell**—No, they are subject to election every three years. I think that is the case with the Human Rights Committee. I am not sure of the length of time for the other committees, but I can find out.

**Senator COONEY**—I suppose you would have to say that Australia has the odd one, like this age one. What is the profile of the committee's work around the world? Do we know how many of these claims come from various nations?

**Mr Campbell**—I am not sure that those statistics are available. We are not the only one that has communications going to the committee; other developed nations have them as well.

**Senator McKIERNAN**—I am very conscious of the time. I have a number of questions relating to communications, the expensive criminal cases fund, community legal centres, family law, reform of the marriage celebrants programs, further questions on pro bono, and a

couple of questions about the International Criminal Court. With the agreement of the committee, I would seek to put these on notice. Apart from some questions, and hopefully some explanations about the domestic violence perpetrator programs, I would not have any more questions to be directed to the Attorney-General's Department other than in the area of the APS, Australian Protective Service.

**Senator COONEY**—Can we do the APS very quickly?

**Senator McKIERNAN**—I want to ask some questions of the APS. I do not know how long the domestic violence perpetrators program would go. I doubt very much that we would be able to finish the APS between now and half past six. How much do you have with the APS?

**Senator COONEY**—I simply want to ask about the conditions. I have a few questions for the APS; I would be about five minutes.

**Senator McKIERNAN**—Maybe it would be safer to put these other questions on notice. They are on a range of matters I have explained about. Could I ask just a few questions, for background, on the domestic violence perpetrators program, and then we will see how we go with the APS.

**Senator COONEY**—That sounds a good idea.

**Mr Govey**—I wonder whether I could come back—seeing as we are not going to otherwise go to output 1.3—and respond to questions yesterday about legal assistance for the royal commissions. I can table the information that was sought yesterday about the number of applicants and the amount of money that has been allocated in respect of each applicant.

**CHAIR**—That was in relation to a question from Senator Carr, I think.

**Mr Govey**—I think that is right, yes. I also indicate that there have been no applications for assistance that have been refused to this time. The information is all set out in this documentation.

**CHAIR**—Thank you, Mr Govey, that would be very helpful. The secretariat will collect that from you.

**Senator McKIERNAN**—In regard to the domestic violence perpetrators programs—and I am trying to cut short the series of questions that I have here—can I ask first that there be an explanation on the record of the nature and content of the perpetrators programs. Could you explain whether participation in these programs is mandatory. And could you provide some details of the facilitators of the program—who facilitates and where—and how those facilitators are accredited.

**Mr Cornall**—We are not quite sure which program you are referring to.

**Senator McKIERNAN**—I understand this would come under output 2.1.

**Mr Cornall**—Is it a Prime Minister and Cabinet program?

**Senator McKIERNAN**—Not according to the information that has been given to me. I am asking a question on behalf of another colleague.

**Senator LUDWIG**—Unless the legal community service is funded by the Attorney-General's budget.

**Mr Carnell**—We did some time ago do some work in the Crime Prevention Program about programs for perpetrators of domestic violence. We produced a report and we had a forum on it, but the forum indicated that there were significant deficiencies and differences between

programs. One of the key themes in it was that when attendance at a program was mandated by a court there were much better outcomes than when it was purely voluntary. We have not actively worked in that area within crime prevention for some time. It has been the focus of interest in Prime Minister and Cabinet, and Ms Heriot has some knowledge of that work. But it has not been recent active work in our crime prevention program within AGD.

**Senator LUDWIG**—I think the nub of the issue is this: they are federal grants to state-based organisations. Without going to the actual detail of it, when they are perceived to not run fairly, appropriately or equitably or deal with issues on a proper justice model, then what happens? The problem, of course, is that it comes back to the agreement that you might otherwise have in the provision of the grant—whether or not it provides that the grant moneys be used appropriately and in accordance with the grant contract. That is one issue.

The second issue, of course, is whether or not the legal service has been operating under relevant New South Wales or Victorian legislation, and then it becomes almost a dual responsibility. Of course, I think what happens—and this is only conjecture—is that sometimes the buck gets passed between. They say, ‘It is not our fault; it is the federal government’s fault.’ ‘It is not the state’s fault because we do not fund it and our law does not deal with it.’ I think what is being raised here is this: where there is a problem that is raised, who deals with it? In this instance they have sent it to both the Attorney-General and the New South Wales Attorney-General to try to resolve it and highlight the issue. The issues are that this particular network lacks skilled facilitators. There is no mandatory attendance or reinforcement of the criminality of domestic violence. There has been no consultation with the existing women’s domestic violence service and there is no monitoring or evaluation. Now they are rather pointed concerns that require attention. I know this is rather long winded, but does your grant process assure that those matters are dealt with?

**Mr Carnell**—They are not our grants.

**Senator LUDWIG**—You could have butted in earlier then.

**Mr Carnell**—I was going to but I did not want to seem rude.

**Senator LUDWIG**—I would have stopped, I promise you.

**Dr Heriot**—There are a number of projects under the portfolio of Prime Minister and Cabinet under the Partnerships Against Domestic Violence Initiative that deal with perpetrator matters, so they are not primarily for service provision. There are some grants under the Indigenous Family Violence Grant Program, again in that portfolio, which will deal with family violence and perpetrator matters. There are some programs under the Family and Relationships Program in FACS which fund programs that work with perpetrators, so they may or may not be group perpetrator programs as they are commonly denoted. But by and large perpetrator programs are funded by state and territory governments under very different regimes and with very different degrees of focus. I note that New South Wales is looking at piloting some but it does vary and there is not a large Commonwealth investment in them.

**Senator LUDWIG**—Thank you, we will go and find out what the position is and we will not trouble you any further.

**Senator McKIERNAN**—I am indebted to both Dr Heriot and Mr Carnell on that. When I identified 2.1, I was looking at page 40 of the additional estimates statements, the second dot point. I am very grateful for the information that has been imparted; and, as Senator Ludwig has said, we ourselves will do some further work on this matter and follow it through. Thank you very much.

**CHAIR**—Thank you very much. Dr Heriot, just to clarify it, as I understand it from Senator McKiernan and from Senator Ludwig, we have finished with matters relating to the department, and so those officers can leave. We have the APS to continue with.

**Senator Ellison**—I confirm that the last matter to deal with under A-G's is APS

**CHAIR**—Thank you, Minister, for confirming that. I think we will start that and see how we go.

[6.19 p.m.]

#### **Australian Protective Service**

**Senator Ellison**—Will we do APS before dinner?

**CHAIR**—I think we will start that and see how we go. With the questions in relation to the APS we will begin with Senator Cooney. Welcome, Mr Studdert.

**Senator COONEY**—Can I just put a proposition—

**CHAIR**—Senator, it is quite difficult to hear you. I am sorry to interrupt, but the closer to the microphone the better for all of us.

**Senator COONEY**—Can I just put this proposition to you. APS is going to join up with the Australian Federal Police, on the present plan, in the second half of this year. Would you be aware of that, Mr Studdert?

**Mr Studdert**—Yes.

**Senator COONEY**—I want to ask you about how well trained the APS are in their policing duties so that when they come to join up there will be a happy marriage, as it were. Do the APS get training in 'judo language'? Do you know what that means? It has been suggested that they have been trained up on the basis of being able to use batons and firearms but not in terms of being able to talk people into giving up the situation in a peaceful manner.

**Mr Studdert**—I think I can speak to that. I think you are referring to 'verbal judo', which is a generic technique which is about talking people down in situations. So in terms of a continuum of the application of force, it is the low point on the continuum. That is, it is completely unarmed. It is about body language; it is about the use of language—those sorts of techniques. The answer is that my people are trained in that technique.

**Senator COONEY**—You have taken on new duties, so I am told, in recent times. People have gone off to Woomera and to Nauru. Is that right?

**Mr Studdert**—Those are not new duties in terms of functions but certainly I have had people in both those locations recently.

**Senator COONEY**—When you say it is not their duty, what are they doing there, I wonder?

**Mr Studdert**—I am sorry, they are not new duties.

**Senator COONEY**—Do they get paid for going those distances?

**Mr Studdert**—A contingent that deploys to either of those locations or other remote locations has a series of allowances that they receive for that trip.

**Senator COONEY**—I think Senator Ludwig asked you the time before last time about a certified agreement. Has that been accomplished?



**Mr Studdert**—In November last year the Australian Industrial Relations Commission brought down an award for the Australian Protective Service under section 170 MX of the Workplace Relations Act. It is known as a 170 MX award and that award sets the conditions of service for the Australian Protective Service for a period of three years.

**Senator COONEY**—Does that include travel allowance to places like Perth and Nauru and those places that are distant from the base where these people are stationed?

**Mr Studdert**—Not explicitly, except that it does accommodate normal public service allowances such as travel allowance. So the mechanism for the receipt of travel allowance, as an example, is the Public Service Act rather than, specifically, the award.

**Senator COONEY**—Are people getting that? Are there any complaints that people are not getting that?

**Mr Studdert**—No, Senator.

**Senator COONEY**—What about equipment? Is everybody getting their proper equipment when they join?

**Mr Studdert**—Yes, Senator.

**Senator COONEY**—So you have heard no complaints from anybody about lack of proper equipment or clothing?

**Mr Studdert**—No, Senator.

**Senator COONEY**—Nor about training?

**Mr Studdert**—No, Senator.

**Senator COONEY**—Is there any money set aside to train each officer or is the training by job lot?

**Mr Studdert**—In our budgetary process we get a submission from each station, which includes a request for an allocation of money for station training on the basis of the number of individuals that have to be trained in that station. In addition there is a central training fund which is produced by our national training centre. That is a more collective amount of money that is linked to formal courses that are conducted at the national training centre.

**Senator COONEY**—Was there any disturbance to that during the crisis following 11 September? Did the work that your members were doing change, and if so was there training given for that change and proper compensation given?

**Mr Studdert**—After September 11, there was a significant increase in the amount of work that we were asked to do, principally by the Protective Security Coordination Centre, in relation to the protection of diplomatic and consular residents around Australia and also in relation to airports, where additional security measures were imposed by the Department of Transport and Regional Services. So there was a significant amount of additional work being done around the place.

**Senator COONEY**—How did you cover that—with new members or with an increase in overtime?

**Mr Studdert**—There was a significant increase in the amount of overtime that was done. In some places we contracted rosters to allow more staff to be available for the extra work. In some places where those measures did not provide enough staff, we employed state police to fill in where we had vacancies. And we began very soon after 11 September to increase our

recruiting so that we would have additional staff in place to ease the strain on the existing staff.

**Senator COONEY**—Was everybody happy to do the overtime, to fill in the time needed to meet the crisis following the September 11 incident?

**Mr Studdert**—As a general statement, yes, they were. In fact, they responded very well to the request.

**Senator COONEY**—And they were paid overtime for that?

**Mr Studdert**—Of course.

**Senator COONEY**—Are they now in a situation where they can blend in with the Federal Police, fully trained and with adequate wages?

**Mr Studdert**—I need to make a distinction here between a police function and a protective security function. The people in the APS are not police officers, and I would not see them converting or blending into a function of being police officers. They are protective security officers. Their levels of training are different; the type of training is different. They do not, for example, have investigative or prosecution skills or training, and I guess by definition that is what prevents them from being police. So I would not see them being converted to federal agents, to use a general term. They will remain in their current function with their current levels of training and will become an operating division of the AFP rather than be subsumed into the broad number of federal agents.

**Senator COONEY**—I would have to look at the *Hansard* closely on this, but I rather gathered from what we have been told so far that there would be more of a blending than you seem to suggest. Have you been party to discussions about how the joining is going to be done?

**Mr Studdert**—Yes. I heard the commissioner speak this morning. I think what he was saying, and he will correct me if I am wrong here, was that as the relationship evolves—inevitably initially there will be a little bit of discomfort about it—there may well be some crossover of individuals between the two broad streams, that is, national operations and protective security.

**Senator COONEY**—So you see that the APS will pretty much continue as it is?

**Mr Studdert**—Yes.

**Senator COONEY**—I began the questioning on the basis that there really was not going to be all that much because the APS and the Federal Police would join together and the questions that would be appropriate to the Australian Federal Police would be appropriate here come May-June next year, but if we are going to keep it separate perhaps we will—

**Mr Studdert**—Perhaps I need to clarify that. The direction was that the APS would become an operating division of the AFP. What that means is still to be defined in detail but my understanding of how the commissioner sees it, and the parameters that he has given the working group, is that, for the reasons he enunciated this morning—for example the reason of the budgetary difference that we are currently cost recovery—it would not be a question of converting the current APS officers into federal agents and absorbing them into the full range of tasks of the AFP.

**Senator COONEY**—I understood that, but I had not understood that that part of the Federal Police that is going to be the APS will still rely on cost recovery.

**Mr Cornall**—It is very clear that it is very much the intention that it will continue to be a cost recovery service.

**Senator COONEY**—Sorry, Madam Chair, but I think that this will take me a bit longer.

**CHAIR**—How much more time, do you think, Senator Cooney?

**Senator COONEY**—Half an hour?

**CHAIR**—I was hoping that we could finish with the APS and then take a dinner break and begin afresh with DIMIA.

**Senator Ellison**—Who has got questions? I understand that Senator McKiernan has questions too.

**CHAIR**—Yes, although not a large number.

**Senator Ellison**—So we could go past 7 o'clock then.

**CHAIR**—I do not want ago past 7 o'clock.

**Senator COONEY**—All right. Perhaps I could get some questions on notice, given that. In other words, the position on APS officer is not going to change all that much, and so we will have to ask questions about the enterprise bargaining agreements and things like that. I must confess that I quite misunderstood what was going to happen there.

**Mr Cornall**—Can I comment on that? Senator, at the moment, the APS is a division of the Attorney-General's Department, just like the Civil Justice Division or the Office of International Law, but it operates as a freestanding division. It has its own industrial award now, has its own management structure and operates outside the budget and is cost recovery. What is envisaged initially is that that structure will effectively be picked up and put across to the AFP, and it could largely continue on that basis but under the broader AFP structure. In time, there may well be ways in which career progressions can come up through the APS and into the federal agent structure and so forth.

One of the significant issues initially is, of course, the different qualifications, training and skills of the APS officers who have been selected and trained for the protective security function, and of the AFP officers who have been trained for an entirely different function. Initially, we will have to maintain that separation in the operation, in terms of having it as a separate division, even though in the longer term it may become much more one organisation. In the original phase of the program or in the implementation of the proposal, I envisage that it will very much operate as it presently does but, instead of being under the umbrella of the Attorney-General's Department, it will be under the umbrella of the AFP.

**Senator COONEY**—Yes, but the AFP is within the portfolio of the Attorney-General. The other thing I was a bit worried about was whether the training is going to be adequate, and all the sorts of questions I asked take on a different point of view. But perhaps questions on notice might be the thing to do.

**Mr Cornall**—Maybe. In terms of funding, the APS is a cost-recovery organisation and it is expected to continue to provide services to its current customer base and to recover its costs by doing so.

**Senator COONEY**—It sounds a bit awkward. I might leave it up to people who can question on these things much better than I can. Senator McKiernan and Senator Ludwig, I have to go. Could you be more penetrating and more lucid than I obviously am?

**CHAIR**—Senator Cooney, I do not think it is the case that your colleagues can question better than you but, if you have an other appointment, then we understand.

**Senator COONEY**—I wish you weren't cynical!

**CHAIR**—Too late, I am sorry, Senator Cooney!

**Senator McKIERNAN**—I am actually quite pleased that the briefing notes have gone to my colleague Senator Ludwig. I had actually assumed a lot of questions. I am not so sure that we would be able to finish before 7 o'clock. I have a range of questions regarding the additional estimates and the upgrading of the airport security, as well as some on the theme that Senator Cooney is attached to. I also had some questions about the APS's role in Nauru and some of the media comments that emanated from that role from an industrial relations point of view, and also the role of the APS during and following the disturbances at Woomera and Port Hedland detention centres—well, not so much Port Hedland, because I think that it has not been anything in this current financial year, not since 1 July. But certainly there has been APS activity associated with the Woomera centre. I do not know; it is hard to say—

**Senator Ellison**—In view of that, Madam Chair, I think that those are comprehensive areas that Senator McKiernan is talking about and that it might be best if we break now and come back and deal with the APS after dinner.

**CHAIR**—I am in the committee's hands, but I agree with the minister in terms of the breadth of the areas. Mr Studdert, I think that is the best route for us to take at the moment. Thank you for your patience. Thank you, Minister and the Attorney-General's Department.

**Proceedings suspended from 6.34 p.m. to 7.41 p.m.**

**Australian Federal Police**

**Senator Ellison**—I just want to clarify something on behalf of Commissioner Keelty in relation to evidence given earlier today by him. I will just quickly refer to the notes that he has provided me with and asked me to put on the record. He states:

I need to correct my evidence earlier today of what caused me to make inquiries about the AFP being in possession of the video tapes of the SIEV 4 incident. I said this morning that I initiated the inquiry after hearing the Prime Minister say that he thought the AFP or Customs had copies of the video tapes during an interview on the *Today* show.

I have now had an opportunity to read the transcript of the interview with the Prime Minister on the *Today* show and the transcript clearly shows that it was the interviewer, Steve Liebmann, who said that there were reports that "... all tapes were handed to Federal Police and Customs when *Adelaide* returned to port ...". These words formed part of a question put to the Prime Minister. It was not the Prime Minister who raised the possibility of the tapes being in the possession of the AFP.

Therefore, I was wrong in my recollection of who actually raised the proposition of the AFP having possession of any tapes but it was the *Today* program which prompted me to ask the question of my staff. That program went to air on 9 November, 2001.

Having now also read a copy of an article in the *Australian* of the same day, I believe that the article titled "Children swam for their lives" is the source of the suggestion contained in the question asked by Mr Liebmann of the Prime Minister.

I apologise for not recalling the report directly but I reaffirm that it was the interview on the *Today* show that led me to make inquiries of my organisation and the events which followed as described in my evidence.

This is a slight clarification but, nonetheless, something that the commissioner wanted to put before the committee. Essentially, his evidence remains the same, that it was an interview on

the *Today* show which caused him to make that inquiry. It was merely Steve Liebmann, not the Prime Minister, who mentioned it.

**CHAIR**—Thank you, Minister. We appreciate that clarification. If you would thank the commissioner, we would be grateful. As I was saying, we are now going to complete questions pertaining to the Australian Protective Service, and I ask Senator McKiernan to begin that.

[7.44 p.m.]

#### **Australian Protective Service**

**Senator McKIERNAN**—You want to complete them now, but you asked me to begin them—somehow I understand what is behind that logic.

**CHAIR**—That is because you are Irish, and I was hoping that you would be brief.

**Senator McKIERNAN**—I will endeavour to be. Thankfully, on this occasion, Mr Studdert, we do not have to address, from a service point of view, industrial relations within the APS. There is now an award operating for some personnel employed by the APS. I welcome that. It was a long time coming, and I do not think the generation of that award did the APS any credit over the years in which the disruption occurred. Nonetheless, it is there, and it is important that those of us on this side of the table, who from time to time are critical of processes, also compliment when the need arises. I just put those comments on the record.

I want to move on from that to the situation in Nauru and some of the media comments that emanated from the early service of some APS personnel on Nauru after Nauru became a place of detention for persons seeking to enter Australia unlawfully. You would be, I think, aware of the media comments I am talking about. There were some industrial relations problems which required hearings and determinations in the Industrial Relations Commission in Queensland about the conditions of employment of those APS personnel. Could you brief the committee on those things? I have put that into a package in order to speed the processes through, rather than asking individual questions along that line.

**Mr Studdert**—I appreciate that. I think you will find that the concerns about the pay and the conditions of people working in Nauru were in relation to the Chubb staff who were there, that it was not in relation to the Australian Protective Service staff who were there.

**Senator McKIERNAN**—It was not APS staff at all?

**Mr Studdert**—Correct.

**Senator McKIERNAN**—Okay. My excuse for raising it is that I did have a media clipping about this which, regrettably, among the pile of things here and in my office I am not able to find, so I apologise for that. Are there any APS staff in Nauru or on Manus Island or, indeed, on Christmas or Cocos Islands—at any of the overseas detention facilities?

**Mr Studdert**—There are no APS staff currently on Christmas or Cocos Islands. There is one APS officer on Manus Island and there are nine APS officers on Nauru.

**Senator McKIERNAN**—What is the chain of command in regard to the guarding responsibilities at the detention facility at Nauru?

**Mr Studdert**—Inside the processing centres the security is provided by Chubb, although they are not security officers per se; they are there as facilitators inside the perimeter of the compound. Outside of the perimeter there is a mix of Nauruan constabulary and APS officers

who provide security at the checkpoint at the entrance to both of the camps that are located on Nauru island.

**Senator McKIERNAN**—Are the APS personnel responsible to or accountable to Chubb? How does that relationship work?

**Mr Studdert**—No, they are not.

**Senator McKIERNAN**—There are no links at all?

**Mr Studdert**—Correct.

**Senator McKIERNAN**—Who then are the APS responsible to? I understand that, on Nauru, IOM—the International Organisation for Migration—has responsibility for the processing in the centre. What is the overall body, responsible on Nauru for that facility, that APS responds to, is accountable to or takes directions from?

**Mr Studdert**—I guess there are two parts to that. Firstly, we are employed by DIMIA. They are paying the cost of having APS on the island. Secondly, we are working in conjunction with and have special constable status with the Nauruan constabulary. From an overall, on-the-ground, day-to-day management point of view, we have a command and control link with IOM. So we respond to tasking by IOM, which is responsible for management of the processing centres. But, clearly, there is an input from DIMIA and there is a link with the Nauru constabulary as well.

**Senator McKIERNAN**—I think you said there were nine personnel.

**Mr Studdert**—Yes, at the moment.

**Senator McKIERNAN**—What is the gender mix of those people?

**Mr Studdert**—At the moment they are exclusively male.

**Senator McKIERNAN**—Have there been any females employed?

**Mr Studdert**—Yes, there have.

**Senator McKIERNAN**—What is the period of service the APS persons do on Nauru—is it a fortnight, three weeks, four weeks?

**Mr Studdert**—Three months.

**Senator McKIERNAN**—What are the working hours of the people while they are based on Nauru?

**Mr Studdert**—They are working on an eight-hour shift system, but they are of course on call, so if there was a disturbance or something they would be called in. But their standard working routine is an eight-hour shift system.

**Senator McKIERNAN**—Five days a week or six days a week?

**Mr Studdert**—I would have to confirm that. It is probably not quite as simple as five out of seven. It is over a longer period of time that they would work to a basic 40-hour week.

**Senator McKIERNAN**—Thank you. On Manus Island you have told us you have one person?

**Mr Studdert**—Yes.

**Senator McKIERNAN**—Who are they responsible to? It is not IOM on Manus Island, is it?

**Mr Studdert**—No, it is not. My sergeant who is there providing advice and training works to the DIMIA representative and also to the representative of the local Papua New Guinea governance of Manus Province.

**Senator McKIERNAN**—You told the committee that you do not have any personnel on Christmas or Cocos Islands at the moment. Have there been APS personnel there during the period that the detention centres were operating there?

**Mr Studdert**—There has not been on Cocos Islands for a considerable amount of time. There has been an APS presence on Christmas Island broadly during the period of the *Tampa* crisis.

**Senator McKIERNAN**—During or following?

**Mr Studdert**—They were there from the period 24 August to 9 September.

**Senator McKIERNAN**—So they did not have a guarding responsibility for those persons? The *Tampa* people did not come off on Christmas Island, did they?

**Mr Studdert**—That is correct.

**Senator McKIERNAN**—But other SIEVs, suspected illegal entry vessels, did arrive and the people were offloaded to Christmas Island. Did the APS have guarding responsibilities for those people?

**Mr Studdert**—No, they did not. The functions that my people conducted during that period on Christmas Island related to some vehicle control, some crowd control on the wharf during the visit of the Norwegian Ambassador and some access control to the camp that was occupied by the Special Air Service Regiment.

**Senator McKIERNAN**—So you had no involvement at all in the temporary detention facility that was established on Cocos Islands?

**Mr Studdert**—That is correct, during that period.

**Senator McKIERNAN**—Thank you very much. In regard to all those activities concerning the unlawful non-citizens who are in Australia, has the APS made a bid for the guarding at the mainland detention centres run by DIMIA?

**Mr Studdert**—Not yet, Senator.

**Senator McKIERNAN**—Not yet?

**Mr Studdert**—No, Senator.

**Senator McKIERNAN**—Is that still under active consideration? It was under active consideration previously. It was said that APS were among a number of other companies—including the company that does it now—that were going to make bids.

**Mr Studdert**—That is correct. The situation is that DIMIA have put out an exposure draft of a request for tender. They put that out before Christmas. We provided comments on that and submitted it back to DIMIA on 18 January. We are now awaiting DIMIA's putting out the request for tender, at which time we will be putting in a proposal for management of the mainland immigration detention centres.

**Senator McKIERNAN**—Will the proposed amalgamation with the AFP have any impact whatsoever on that intent to make a bid for the guarding of the mainland detention facilities?

**Mr Studdert**—I do not believe so. It is an issue that I have discussed briefly with the commissioner. I specifically asked him that question. His response was that he did not see any

reason why it should. I put the condition on that that this was in the very early days of planning for the amalgamation with the AFP. Something may come up, but I cannot predict what that is and I do not have an expectation that it will affect it.

**Senator McKIERNAN**—I want to move to some matters that are contained in the annual report. Because of events that have occurred since the end of the financial year, you can make comments on the provision of emergency support to DIMIA—or DIMA, as it was then—detention facilities at Villawood, Port Hedland and Curtin for the last financial year if you wish, but I am more concerned about the developments this financial year, with the exception of the disturbance at the Port Hedland facility in May last year, about which we got evidence from the AFP this morning, that charges that were laid against some of the offenders who participated in the disturbance on this occasion were successful, which is quite distinct and different from the earlier disturbance that had occurred at Woomera, where charges were laid and there were no convictions as a result of those charges. Do you have any comments in regard to the information that is contained in the annual report regarding the nature of the emergency support that APS had to provide during the last financial year—the year that is addressed within the annual report?

**Mr Studdert**—I do not have any particular commentary except to say that we provided contingents at each of those locations at the request of DIMIA and in support of the relevant detention centres. Really, it was as simple as that from our perspective.

**Senator McKIERNAN**—Was the APS in any way involved in the collection of evidence to assist with the charges that were laid against the offenders for the very serious disturbances that occurred at Woomera in the course of that financial year? I have not got the actual date in my head at the moment.

**Mr Studdert**—We deployed on 25 May, and we provided services from 26 May to 3 June last year.

**Senator McKIERNAN**—That was a very major and serious disturbance. DIMIA will give us the precise information on the amount of damage that was caused during that. Do you have that information?

**Mr Studdert**—No, I do not.

**Senator McKIERNAN**—Then I will not press it here with you. Were you involved in the collection of evidence?

**Mr Studdert**—No, we were not.

**Senator McKIERNAN**—What was the nature of your involvement in the pretty serious demonstrations that have occurred in Woomera this year? There were some 100 APS personnel deployed to Woomera, or was that in the previous financial year?

**Mr Studdert**—That was the previous financial year—it was 50.

**Senator McKIERNAN**—Fifty this year?

**Mr Studdert**—No, 50 in the previous financial year. That was at the major riot at midyear when a significant number of detainees broke out of the detention centre and moved into Woomera township.

**Senator McKIERNAN**—What was the nature of your deployment in the course of this financial year—I think it was the back end of last year—with those major disturbances again at Woomera?



**Mr Studdert**—There have been three occasions in the last calendar year and this year when APS officers have deployed to Woomera. The last of those was on 26 January this year.

**Senator McKIERNAN**—Was the APS in any way involved in the collection of evidence that would assist with charges being laid against any of the offenders who were part of those disturbances?

**Mr Studdert**—No.

**Senator McKIERNAN**—Was the APS role outside the barriers of the Woomera facility?

**Mr Studdert**—Yes.

**Senator McKIERNAN**—Completely and utterly outside?

**Mr Studdert**—Yes.

**Senator McKIERNAN**—Were any of your personnel armed with firearms during the course of those demonstrations?

**Mr Studdert**—No.

**Senator McKIERNAN**—There is the ability for APS to be armed, is there not?

**Mr Studdert**—Yes, there is.

**Senator McKIERNAN**—Was it a strategic decision by APS not to have armed people on call?

**Mr Studdert**—It is a standard provision when we are asked by DIMIA to provide support that we provide that support unarmed unless they specify the taking of firearms.

**Senator McKIERNAN**—Thank you. In the deployment of staff in such emergencies, where do they come from? What areas then are left without guarding facilities in order to fulfil the requests that are made by DIMIA at a place like Woomera?

**Mr Studdert**—They come from all over—that is the short answer—but the majority come from the ACT region. That is because we have got a number of stations here in pretty close proximity. But there are no stations that have skills additional to those at other stations, as is the case in Sydney and Melbourne. Because there is a fair concentration of APS officers here, we draw from here, and the gaps left behind are most easily covered. But they come from all over.

**Senator McKIERNAN**—Is there a protocol, a memorandum of understanding or some other formal agreement between the APS and DIMIA for your support in terms of emergencies such as those disturbances that we have been talking about?

**Mr Studdert**—There is no document. But, just by practice, there is a pretty well-established procedure whereby we make it happen when the request comes.

**Senator McKIERNAN**—When there is a disturbance, who is in charge? Who is the top of the line of command?

**Mr Studdert**—From a law enforcement point of view and in the broader sense it is the senior state police person. For example, at Port Hedland we worked to the Western Australian police service. Clearly, there is input from all of the interested agencies, but from a straight command point of view it is normally the state police officer.

**Senator McKIERNAN**—And that was repeated during the course of the Woomera disturbances during the New Year period and Australia Day?

**Mr Studdert**—In that instance there were South Australian police in evidence, and they had responsibility from a law enforcement point of view for the incident.

**Senator McKIERNAN**—From an APS point of view, do you calculate a cost for the provision of those services in emergency situations?

**Mr Studdert**—Yes, we do. We have an hourly rate that we charge, and there are a number of recoverable costs associated with travel et cetera that go on top of that.

**Senator McKIERNAN**—Have you a figure then—and I will ask it for the last financial year—for the major disturbance in May of last year at Woomera?

**Mr Studdert**—I do not have that with me, but I could obtain it.

**Senator McKIERNAN**—Could you do so? Is it an unreasonable request for me to ask for a figure for those disturbances that occurred this year—that is, the more recent ones just after Christmas and around New Year and then later on around Australia Day?

**Mr Studdert**—I am happy to have a look at it. There is a bit of a lag between the incident and the bills arriving but I will certainly see if I can get you that information.

**Senator McKIERNAN**—How long will it take to get the information for last year?

**Mr Studdert**—I think I could have that tomorrow.

**Senator McKIERNAN**—Could you?

**Mr Studdert**—Yes.

**Senator McKIERNAN**—That is a matter I am going to pursue with DIMIA when they appear before the committee, and it would be useful to get all of the information in regard to those matters.

We want to move on to different areas, but before I do there is an associated matter which we addressed earlier, the matter of Ms Larkins, the ABC journalist who was arrested at Woomera. I am aware there are court proceedings afoot so there is a sub judice issue that we have to be conscious of, and I have in a different area addressed some questions in regard to that. What further information can you put on the record, Mr Studdert, in regard to this matter, without putting the matter to trial, as it were, or saying anything that might in any way influence the court proceedings, the charges that are afoot?

**Mr Studdert**—I appreciate your mentioning the sub judice issue, and clearly that is a limitation. If it will be helpful, I can perhaps give you the lead-up to the specific incident for which Ms Larkins was arrested, just so you have got the context of where it happened.

**Senator McKIERNAN**—That is what I am seeking.

**Mr Studdert**—We were informed by DIMIA on 25 January that they would require some support from the APS, and I deployed six officers at 6 o'clock on Saturday the 26th, Australia Day. Upon their arrival they were briefed by ACM and by the DIMIA representative there and by the Department of Defence representative, who was the Woomera area manager. While that briefing was occurring, the incident where the detainee fell onto the razor wire occurred, and my staff went across to try and assist with that situation. I mention that because it was a significant factor in the judgment that my OIC, officer in charge, took in relation to the positioning of the barricades. The OIC and the detachment were briefed. In the early stages of that brief, my officer in charge conducted an appreciation of the protective security measures that were in place at Woomera—again, that is a standard procedure for any officer in charge

when he gets to an incident site. Then this incident occurred where this individual fell onto the razor wire.

During the course of that incident one of my officers was hit on the back of the head with a rock that was thrown by the detainees. At that stage, my OIC made an operational judgment and recommended to the other management of the detention centre that part of the problem, one of the things that was causing or exacerbating the disturbance within the detention centre was the clear line of sight between the detainees of the centre and the media contingent, who were positioned at the barrier. My inspector recommended that in order to ameliorate the disturbance within the detention centre more distance should be put between the detainees and the media contingent, and he recommended a movement of the barrier a distance of some 200 metres further out so that it broke the line of sight between the media contingent and the detainees. That occurred. Warning was given to the media representatives and the barrier was moved. Really, that led up to the incident for which Ms Larkins was arrested.

**Senator McKIERNAN**—Again continuing to respect the sub judice matter, I have been into Woomera on a couple of occasions to visit, and I would not say I am an expert on the terrain surrounding the detention facility, but I do recall that the actual barrier of the Commonwealth land is quite some distance away from the detention facility itself and there is—or there used to be at least when I was last there—a gate, which was not a very effective gate because there was no fence either side of the gate. It was just a gate on the road which you could easily just walk around and move through. You would never see the likes of that where I grew up! But that is what was there and there was an expectation—and this is going back some period of time—that that was the barrier of the Commonwealth land surrounding the facility. Obviously, a decision had been made by somebody earlier in the piece that that barrier did not count for much and that the media contingent could assemble on Commonwealth land a lot closer to the facility.

**Mr Studdert**—My understanding is that the gate to which you refer is the position from which the barrier was pushed back. So that gate was where the media contingent was located and they were moved back from there. I hope we are talking about the same gate; I think we are.

**Senator McKIERNAN**—That is not my recall. I thought it was a considerable distance. I would not have thought it would be within a stone's throw of the facility.

**Mr Studdert**—No, it is not. If we are talking about the same gate, it is within 200 metres of the perimeter of the actual detention centre.

**Senator McKIERNAN**—So it would be in the line of sight, but one would not get a particularly clear detail of what was happening behind the fences or on the roof without the benefit of some telescopic equipment?

**Mr Studdert**—If you had reasonable eyesight I think you would see what was happening—you would see the detail of it—but I accept that it is a couple of hundred metres back, so you would not get the colour of the buttons but you would get the detail of what was happening.

**Senator McKIERNAN**—Was I correct in my assumption that that gate marked the boundary of the Commonwealth land and that, from the other side of the gate, it marked the open area of the town, which of course is still on Commonwealth land because it is still a Commonwealth facility.

**Mr Studdert**—I do not think that is the case. I think that gate marks the outer perimeter of the detention centre precinct. Beyond that, there is Commonwealth land as well. The reason I say that is I believe that in an earlier disturbance that question was asked and the limits of Commonwealth land had been indicated to be well back from that gate to which you refer.

**Senator McKIERNAN**—So the decision to move the journalists back from where they were assembled was not something that was taken with a public interest in mind; it was taken for a different motive?

**Mr Studdert**—It was taken in the public interest from a broad sense—that is, there was a significant disturbance occurring inside the detention centre and that that, from a public interest point of view, was undesirable. The measure that was recommended by my OIC, and put in place by my OIC—officer in charge—was taken with a view to ameliorating that situation.

**Senator McKIERNAN**—So the influence on your OIC's mind was that the presence of the media within the line of sight was contributing to the escalation of the disturbances within the detention facility?

**Mr Studdert**—That is correct.

**Senator McKIERNAN**—I will not develop this any further at this time other than to say that it was my memory—I am getting old, like Senator Cooney—that there was more than 200 metres, but I am not going to argue on that point. If it had been there previously it was still there at the time. If there were errors to be made in regard to this, it was about allowing the people to assemble there in the first instance rather than at a later time. Anyway I will not comment further, because there is the matter of sub judice. Is the matter going to happen in the Magistrate's Court in South Australia in early March?

**Mr Studdert**—That is correct.

**Senator LUDWIG**—What was the charge?

**Mr Studdert**—The particulars of the complaint were that the defendant refused to leave Commonwealth premises—namely, the front gate area of the Woomera Immigration and Processing Centre—on being directed to do so by a protective service officer.

**Senator LUDWIG**—What section of the act is that?

**Mr Studdert**—It was contrary to subsection 12(2)(c) of the Commonwealth Public Order (Protection of Persons and Property) Act 1971.

**Senator LUDWIG**—And how often have you used that in the past?

**Mr Studdert**—I cannot give you a specific number.

**Senator LUDWIG**—In the last 12 months, say, how many times have you charged people under that?

**Mr Studdert**—In the last 12 months I would be pretty confident to say that these two occasions were the only two occasions.

**Senator LUDWIG**—Before that—say, the 12 months before that?

**Mr Studdert**—I would have to check that.

**Senator LUDWIG**—Maybe you could go back three years?

**Mr Studdert**—Yes.

**Senator McKIERNAN**—I heard you say it was the front gate of the Woomera detention facility.

**Mr Studdert**—Yes, Senator. It says ‘the front gate area of the Woomera Immigration and Processing Centre’. That is why I think that gate represents the precinct perimeter rather than the detention centre perimeter.

**Senator McKIERNAN**—Thank you for your assistance. Is there now a fence that adjoins that gate that blocks access and egress in area surrounding where the gate is?

**Mr Studdert**—I have not been there for some time, but the last time I was there it was as you described—that is, there is a gate with no extension of a fence on either side. But that is the principal access road.

**Senator McKIERNAN**—The APS are the summoning body. It was an APS officer that summonsed, so they would be the complainant.

**Mr Studdert**—Correct.

**Senator McKIERNAN**—Is it the will of the APS or the individual officer to proceed or not to proceed with these charges?

**Mr Studdert**—I would want to get some legal advice on that. I am not a lawyer.

**Senator LUDWIG**—Is it correct that in respect of the guarding duties at the detention centres, the new responsibilities that you now seem to have gotten, you do not directly get any extra funds, that you charge to the various agencies and the money comes back that way? Or do you get additional funds as well for the new duties?

**Mr Studdert**—Do you mean at the immigration detention centres?

**Senator LUDWIG**—Yes.

**Mr Studdert**—No, we get no additional—

**Senator LUDWIG**—They are charged out.

**Mr Studdert**—They are charged to DIMIA.

**Senator LUDWIG**—We have had that confusion before. Does the training that you give your Australian Protection Service officers include how to make arrests and what information they should have in their possession and give to people who they arrest?

**Mr Studdert**—Yes.

**Senator LUDWIG**—Were the arresting officers in this instance long-term officers, or were they new officers?

**Mr Studdert**—The arresting officer was a long-term officer.

**Senator LUDWIG**—Do you call your overseas officers guards or do you call them Australian Protective Service officers?

**Mr Studdert**—Protective security officers.

**Senator LUDWIG**—Were they immunised and do they have a program to explain to them the different things that they would need for going overseas? Did they go through a course or training?

**Mr Studdert**—They were certainly briefed and prepared to deploy overseas. They were given preparation for going to the locations that they went to, both to Nauru and to Manus Island. They were given some medical preparation in relation to Manus because of the danger

of malaria up there. To the extent possible, and I must say we were a little short of time, with the deployment to Nauru we talked about some cultural issues and attempted to give some cultural training specific to Nauru.

**Senator LUDWIG**—Thank you.

**Senator McKIERNAN**—The portfolio overview for additional estimates states that an additional \$6.8 million has been allocated for a diplomatic guarding as a result of September 11 and that an additional \$20.7 million has been allocated for enhanced aviation security arrangements. Specifically, how will this funding will be spent in each of the individual areas?

**Mr Studdert**—I can only speak on the \$20.7 million because that has been allocated to the Australian Protective Service. The other figure—I think you said \$6.8 million—is related to the Protective Security Coordination Centre and Mr Tyrie or the secretary should speak to that.

**Mr Carnell**—The \$6.886 million is a further contingency amount for diplomatic guarding. We have a base amount of \$12.7 million and originally for this year we had a contingency amount that was available on top of that if needed. That amount has proven to be far too little, so this is an additional \$6.886 million contingency. When I say ‘contingency’ I mean money that we are able to draw upon if the need is there. If we do not use it all then it will return to general revenue. Because the demands of diplomatic guarding fluctuate considerably, we need that ability to access a contingency amount. When we use it, it will be by commissioning the APS. Since September 11 particularly we have had additional guards on US, UK, Israeli and Pakistani interests. The cost of that guarding has been provided mostly by the APS and we have been able to draw on this contingency amount. So potentially the total we have available to us for diplomatic guarding and guarding of holders of high office this financial year is \$24.586 million.

**Senator McKIERNAN**—Thank you, Mr Carnell, for that information. Would there be an expectation that the majority of that funding would be required in the Canberra region as opposed to other parts of Australia? Does the forthcoming CHOGM have any impact on the possible usage of that funding?

**Mr Carnell**—No, there is not a crossover in the funding. In terms of where it is spent, I could not give you a feel for the proportions, but it is certainly not just Canberra. It includes UK and US interests in Sydney. If you just give a minute I can find the locations.

**Senator McKIERNAN**—Perhaps while you are looking for that Mr Studdert could address the other part of the question.

**Mr Studdert**—There are two components that make up that \$20.7 million. The first is an amount that has been allocated for an upgrade of the existing APS function at airports and the second is an amount has been allocated to the development and operations of the air security officer program for this financial year.

**Senator McKIERNAN**—Thank you.

**Mr Carnell**—In addition to Canberra, Brisbane, Melbourne, Perth and Sydney are the locations where additional guarding has been arranged. For the sake of completeness I should add that in some locations if the APS is not able to meet the requirement we use, on a fee for service basis, officers from the state police service. We have those cooperative arrangements.

**Senator McKIERNAN**—Will the upgrade of airports to advanced first response status by July of this year require an upgrading of the fitness levels of APS officers, Mr Studdert?

**Mr Studdert**—Part of the different competencies between counterterrorist first response and advanced first response is a physical fitness test, yes.

**Senator McKIERNAN**—What assistance is being given to current officers of the APS to assist them to meet the new requirements for these enhanced operations?

**Mr Studdert**—This week there are visits occurring to all of the stations that will be affected by this. One of the things that the officers will be briefed on is that assistance will be available to them to work on their fitness. There are a couple of things there. The first is that they will be given some pretty significant warning, several months worth of warning, before they are required to undertake the fitness test. They will be given the opportunity to draw on experts—gym instructors, to put it in simple terms—to tailor a fitness program to passing the test. I should make the point that the test is a base level test. It is not a high level of fitness required. It is a function based test—that is, it is linked to the tasks that our APS officers are involved in—that has been developed by some physical fitness experts over time.

**Senator McKIERNAN**—I think you told us that individuals will be told what the requirements are, and that there will be gym trainers who will be able to advise. Are they going to be given any more assistance than that in order to reach this level of fitness?

**Mr Studdert**—There is none planned at this stage. I am open to requests.

**Senator McKIERNAN**—I think sometimes some of your officers actually do read the *Hansard*, and you might actually get the request. If officers were injured in attempting to reach an enhanced fitness to meet these new requirements, would the normal workers compensation provisions apply?

**Mr Studdert**—Yes.

**Senator McKIERNAN**—I have just one more question, in regard to a matter that is contained in the annual report under evaluations, at page 125, ‘Review of financial processes and pricing structure’. There is some report there about what has occurred with the extensive internal review, and then we get a paragraph which gives a little information. Could you either now in brief or later on notice provide some more detail of what is contained in that review of the pricing structure, and tell us whether there is an overall dollar cost to the total?

**Mr Studdert**—I can give you some information on that now. You are interested in the second paragraph on page 125, are you, the bit about a strategic level review of the APS financial situation?

**Senator McKIERNAN**—That is what I was talking about, yes.

**Mr Studdert**—That was a review into the financial processes and pricing structure, which was conducted by a representative from PriceWaterhouseCoopers. He gave the secretary a report, which was copied to me, which provided a strategic overview of the financial situation in the lead-up, particularly, to the MX award that we knew was coming down the track. We wanted to have a feel for the financial status of the organisation in the context of that award, because obviously we knew that there would be a significant pay rise involved. That was why the review came through.

**Senator LUDWIG**—In respect of the MX pay case, does that now resolve all the outstanding industrial relations issues, such as travel allowance, claims for petrol receipts and the like? Has it all been put to bed now?

**Mr Studdert**—I do not think we will ever have complete industrial peace. The nature of the work—shift work, the number of penalties, allowances, et cetera—lends itself to a certain

amount of dispute in that area. However, I can say very clearly that the organisation has got over that very unpleasant industrial disharmony that had been there for a number of years, and that the organisation is a happier place since the bringing down of that award.

**Senator LUDWIG**—So you can assure me that there are no outstanding travel allowance issues still floating around?

**Mr Studdert**—No, there are no travel allowance issues. There is one dispute at the moment in relation to remote location airfare entitlements.

**Senator LUDWIG**—Where is that up to?

**Mr Studdert**—I believe that that is coming up for consideration in Darwin before the AIRC early in March, I think—it is very soon.

**Senator LUDWIG**—You have already dealt with it through your ordinary processes, and you are before the commission, so I will leave it. What about the clothing issue? That is currently outsourced, is it not? Do you outsource your clothing requirements?

**Mr Studdert**—The provision of our uniforms is outsourced, yes.

**Senator LUDWIG**—Are there any problems with that outsourcing or is that running smoothly? Do people get their uniforms on time, in the quality and type that they require?

**Mr Studdert**—Generally speaking, I think the provision is pretty reasonable given the geographic diversity and spread of the organisation. There are certainly incidents, particularly in the remote stations, where the timing of getting uniforms is a bit slower than I would like. I must say that the service provider is working hard to improve that, but it is certainly not perfect.

**Senator LUDWIG**—What about the Gore-tex winter clothing that they might require coming up to winter, although it is not yet here. Will that be taken care of?

**Mr Studdert**—Yes, it will. There is a supply problem with getting the Gore-tex material into Australia and the provision of Gore-tex cold weather gear. It is exacerbated a bit by the fact that we have recruited quite a number of staff since September 11, and so the reduced supply and the increased demand has led to a shortage. We are working very hard to try to get that in place before winter.

**Senator LUDWIG**—So, with some qualification, you can assure me that it will be taken care of before winter bites?

**Mr Studdert**—Certainly it will. It may not be with Gore-tex, although we will try for that. If it is not with Gore-tex, other measures will be put in place for protective clothing.

**Senator LUDWIG**—Since the September 11 incident, has there been an increased amount of overtime and the like required of APS officers?

**Mr Studdert**—Definitely—a very significant increase.

**Senator LUDWIG**—Have there been any support mechanisms put in place to make sure the APS officers are coping with that increased workload and hours?

**Mr Studdert**—Yes, there have been. I am very aware of the fact that this is an extended period of officers working long hours. The most important one is that we have tried to recruit a significant number of people, so there are more staff on the ground. We have taken a number of steps to bring back into the organisation people who have separated from the organisation quite recently—in the last 12 to 18 months—so that there is a minimum



requirement for training. Of course, with new recruits there is a three-month period before we can get them on the ground.

We have also tried to adjust our rosters at each of our stations to best accommodate these additional hours. What I mean by that is that, where possible, we have tried to give breaks between shifts, on a weekly basis, as long as we possibly can. So, if people are working five or six days of an eight-hour shift or a 12-hour shift, we try to give them a two-day or a three-day break before they start up again.

**Senator LUDWIG**—Thank you.

**Senator SCULLION**—I am interested in the evidence you gave in regard to the disturbance at Woomera. You say that your officer in charge decided to move this barrier because he believed that the proximity of the press to the detainees was the principal issue. Is that right?

**Mr Studdert**—It was a factor in the disturbance that was occurring in the precinct.

**Senator SCULLION**—So, irrespective of the other issues associated with the detention of the journalist, what happened after the barrier was moved?

**Mr Studdert**—I do not have a specific description of that.

**Senator SCULLION**—With regard to the disturbance that was happening at the time, did it escalate or did it die down as a consequence?

**Mr Studdert**—I would need to get some information from the OIC. The information that I have leads up to the point where the barrier was moved. But I can get you that information, if you wish.

**Senator SCULLION**—I think we can probably deal with it in a general sense. You say that your officer in charge was a very experienced chap. He moved the barrier because there was an escalating disturbance. You did not have a report that the disturbance had died down, but I presume it was not still going. So at some stage—I am just trying to evaluate—he made a decision to move the barrier. It seems like a fairly sensible decision to me but, when you were giving the evidence, we did not go on to see whether that decision to move the barrier and the press further away was successful.

**Mr Studdert**—I understand what you are saying.

**Senator SCULLION**—You can answer it just in a very general sense.

**Mr Studdert**—I am just looking to see if there is any indication of a specific date when the bulk of the APS officers were removed. They were certainly there on the Monday. They were there for some days after that. I do not have the detail of whether there was a gradual reduction in the amount of disturbance. It certainly did not stop as soon as the barricade was moved.

**Senator SCULLION**—Perhaps you could take that question on notice. I would certainly be interested in the association between the proximity of the press and the detainees.

**Mr Studdert**—I can certainly get some data on that for you.

**Senator SCULLION**—Thank you for that. I am very new at this, so perhaps you can help me with my next question. I understand that section 12 relates to trespass on Commonwealth property.

**Mr Studdert**—Yes. Section 12 of the Public Order (Protection of Persons and Property) Act deals with a legitimate direction by a Commonwealth officer to leave Commonwealth premises or Commonwealth land.

**Senator SCULLION**—The feeling that I had from evidence yesterday was that this was simply a matter of trespass, where you simply moved the area. It did seem, I must say, a little unreasonable to move a barrier from one place to another and for people who were somehow caught in that move to be arrested. But section 12 specifically deals with a failure to obey an order from an authorised officer.

**Mr Studdert**—Correct. Section 12(1) deals with the trespass and section 12(2) deals with failure to comply with a legitimate direction.

**Senator SCULLION**—If it is not sub judice, would there be an assumption that there would then be two sets of issues associated with that arrest?

**Mr Studdert**—That is right.

**Senator SCULLION**—Thank you. I am interested also in your efforts to ensure that the airports are better protected since 11 September. You say that for the advanced first response status the officers will have physical fitness tests—and I must say that it is tremendous that they are in airports; they are as Australian as all of us. Going to this level and having the physical fitness test will certainly give a lot of comfort to travellers. What other types of training are associated with coming to this advanced first response status?

**Mr Studdert**—There are enhanced firearms competencies and enhanced competencies that relate to dealing with offenders—that is, the full range of use of force, everything from verbal judo right through to the use of batons et cetera. They are enhancements of the competencies that make up the counterterrorist first response.

**Senator SCULLION**—So the advanced first response status specifically refers to a whole suite of competencies in regard to antiterrorist activities?

**Mr Studdert**—That is correct.

**Senator SCULLION**—I cannot quite recall whether you are actually going to answer a question on notice in regard to this, but I understand that, whilst a decision has not been made, the Australian Protective Service in a commercial sense may be—and you have indicated ‘may be’—competing for the task of providing a detention security facility in the future. It was indicated that you may even be competing with the current provider, which I understand is the ACM.

**Mr Studdert**—That is right.

**Senator SCULLION**—I have been a businessman of one sort or another for most of my life and I understand that today you are here and you are going to tell us and put on the public record exactly what you charge for everything. Is that right?

**Mr Studdert**—No.

**Senator SCULLION**—To what extent will you be providing those details? I understood that you just took a question on notice, and I cannot quite recall it.

**Mr Studdert**—Senator McKiernan asked for the cost of the APS support provided to DIMIA on the occasions that we supported them at the immigration detention centres. I will be providing a gross figure, the full deployment of the contingent cost that we charged

DIMIA. So there will be a whole bunch of components of that that will make up a gross figure, and that will not be able to be broken down into an hourly rate.

**Senator SCULLION**—I am pleased, because I have confidence you have some possible chance. Thank you, Mr Studdert.

**CHAIR**—If there are no further questions to the Australian Protective Service, thank you very much, Mr Studdert, for your assistance this evening, and thank you very much for your patience in waiting to appear.

That, as I understand it, brings to a conclusion the consideration of additional estimates 2000-01 for the Attorney-General's Department and associated agencies. Mr Cornall, on behalf of the committee I thank you and your officers very much for your extended attendance during these two days. We are very grateful for your assistance. If you would convey our thanks to your officers, I would be grateful. I would also like to thank the minister very much for his assistance.

We will cease momentarily to begin the introduction of Immigration, Multicultural and Indigenous Affairs. Before I do, can I say that the committee has noticed the absence of one Mr Geoff Dabb in these estimates. It has been, even in my short term on the committee, a great pleasure to work with Mr Dabb and to have his assistance in this process. We hope he is enjoying his current activities, which I am sure are far more interesting and diverting than Senate estimates.

**Mr Cornall**—Madam Chair, thank you for your remarks, and I will pass them back to officers of the department. I thank the committee for the consideration it extended to officers during the questioning. It was much appreciated by us. I will send Mr Dabb a copy of the transcript, which will probably end up hanging on his wall.

**Senator Ellison**—Can I share those sentiments too. Thanks to the committee for their cooperation.

**CHAIR**—Thank you, Minister.

**Proceedings suspended from 8.41 p.m. to 8.51 p.m.**

## **IMMIGRATION, MULTICULTURAL AND INDIGENOUS AFFAIRS**

### **In Attendance**

Senator Chris Ellison, Minister for Justice and Customs

#### **The Migration Review Tribunal**

Mr Steve Karas, Principal Member

Mr Noel Barnsley, Registrar

#### **The Refugee Review Tribunal**

Mr Steve Karas, Principal Member

Mr Philip Green, Deputy Principal Member

Ms Jill Toohey, Registrar

#### **General Questions - Immigration and Multicultural Affairs**

##### **Departmental Executive**

Mr Bill Farmer, Secretary

Mr Andrew Metcalfe, Deputy Secretary

Mr Ed Killesteyn, Deputy Secretary

Outcome 1: Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people.

Output 1.1, Non-humanitarian entry and stay

Output 1.2, Refugee and humanitarian entry and stay

Output 1.3, Enforcement of immigration law

Output 1.4, Safe Haven

Output 1.5, Offshore asylum seeker management

Mr Abul Rizvi, First Assistant Secretary, Migration and Temporary Entry Division

Mr Phil Thurbon, Acting Assistant secretary, Temporary Entry Branch

Mr Bernie Waters, Assistant Secretary, Business Branch

Mr Chris Smith, Assistant Secretary, Migration Branch

Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch

Mr Vincent Giuca, Acting Assistant Secretary, Humanitarian Branch

Mr John Okely, Assistant Secretary, International Cooperation Branch

Ms Philippa Godwin, First Assistant Secretary, Unauthorised Arrivals and Detention Division

Ms Christine Sykes, Assistant Secretary, Unauthorised Arrivals and Detention Services Branch

Ms Rosemary Greaves Assistant Secretary, Detention Policy Branch

Me Greg Kelly, Director, Detention Operations Section

Mr Vince McMahon PSM, First Assistant Secretary, Detention Infrastructure and Corporate Facilities Division

Ms Mary-Anne Ellis, Assistant Secretary, Detention Infrastructure Branch

Ms Lesley Daw, Acting Assistant Secretary, Detention Strategy Branch

Mr David Knight, Director, Overseas Facilities Taskforce

Mr John Moorehouse, Acting First Assistant Secretary, Border Control and Compliance Division

Ms Nelly Siegmund, Assistant Secretary, Border Protection Branch

Mr Des Storer, First Assistant Secretary, Parliamentary and Legal Division

Mr John Matthews, Assistant Secretary, Legal Services and Litigation Branch

**Outcome 2: A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably**

Output 2.1, Settlement services

Output 2.2, Translating and interpreting services

Output 2.3, Australian citizenship

Output 2.4, Appreciation of cultural diversity

Mr Peter Hughes, First Assistant Secretary, Citizenship and Multicultural Affairs Division

Mr David Doherty, Assistant Secretary, Citizenship and Language Services Branch

Mr Peter Vardos PSM, Assistant Secretary, Settlement Branch

Dr Thu Nguyen-Hoan PSM, Assistant Secretary, Multicultural Affairs Branch

**Internal Products**

Mr Steve Davis, Acting First Assistant Secretary, Corporate Governance Division

Ms Louise Gray, Acting Assistant Secretary, Resource Management Branch

Mr Douglas Walker, Assistant Secretary, Visa Framework Branch

Mr Matt Kennedy, Acting Assistant Secretary, Ministerial and Communications Branch  
Ms Cheryl Hannah, Acting Chief Information Officer, Business Solutions Group

**Australian Government Solicitor**

Mr Ian Deane, Special Counsel (Immigration)

**CHAIR**—Good evening ladies and gentlemen. I call the committee to order and we will begin the consideration of additional estimates. The committee will now resume this public hearing of the Senate Legal and Constitutional Legislation Committee with the examination of the proposed expenditure for the Immigration and Multicultural and Indigenous Affairs Portfolio. On 14 February 2002, the Senate referred to the committee the particulars of proposed additional expenditure for the year ending 30 June 2002 for the Attorney-General's and Immigration and Multicultural and Indigenous Affairs portfolios. The committee will consider the portfolio in the order in which it appears on the revised agenda beginning with the Migration Review Tribunal, the Refugee Review Tribunal and then general questions in the area of immigration and multicultural affairs.

The committee has authorised the recording and re-broadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. Keeping in mind the imminent budget estimates in May, the committee has agreed to the date of 2 April 2002 for the receipt of answers to questions taken on notice and any additional information. I would remind everybody present to please either turn off or turn to silent your mobile phone while in the hearing. Senator McKiernan has been known to drop them in jugs of water.

I welcome Senator the honourable Chris Ellison, Minister for Justice and Customs and Minister representing the Immigration, Multicultural and Indigenous Affairs Department and associated agencies. When officers are called upon to answer a question for the first time, I request them to state their full name and the capacity in which they appear. Please speak clearly and directly into the microphones to assist the *Hansard* reporters recording the proceedings. I would also remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees, unless the parliament has expressly provided otherwise. I draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, procedures to be observed by Senate committees for the protection of witnesses and, in particular, to resolution 1(10) which states in part:

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

And resolution 1(16) which states:

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

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege and I would also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Minister, do you or Mr Farmer wish to make an opening statement.

**Senator Ellison**—Madam Chair, I do not have an opening statement and I do not believe the secretary has either.

**CHAIR**—Thank you very much, Minister. Mr Farmer, may I thank you and your officers. I know that the time for the commencement of this part of the proceedings has been moving, as is the want with these committees, and I do appreciate your assistance and your patience in that regard. We have before us to begin these estimates the Migration Review Tribunal and I welcome Mr Steve Karas the principal member and Mr Noel Barnsley the registrar of the tribunal. We will begin with questions from Senator McKiernan.

**Senator McKIERNAN**—Thank you Chair. Welcome, Mr Karas. I expected you to come in here wearing your hat as chair and principal member of the MRT and then you remove that one and put on the other hat. Can you tell the committee how you break down your time serving both tribunals? There has been an expectation from this committee particularly that there was an onerous task to be the principal member of the Migration Review Tribunal or, indeed, the Refugee Tribunal but here we have yourself doing both of them—hatless.

**Mr Karas**—Hatless, yes. It is true that I divide my time between both tribunals. Within each monthly period, I spend time at each of the registries of the tribunal. I am here in Canberra for a week now; I was in Melbourne for part of last week and in the Sydney registry of the RRT, and all next week I will be at the registry of the Migration Review Tribunal. Before my appointment as the principal member of both of the portfolio tribunals, if I recall rightly, there were a number of members who had cross-appointments and who do sit as members of both tribunals as such. But in my role I rely as well, of course, on the advice, support and assistance of the registrars, of the Deputy Principal Member of the Refugee Review Tribunal and also of other senior management people within the tribunals.

As you would appreciate travelling—as you do across from the west from time to time—can be wearing and tiring. To a lesser extent, I do something similar because, as I have already indicated to you, I try to divide my time adequately between both tribunals and rely, as I said, on the assistance which is provided by senior management and generally speaking the staff and members there.

**Senator McKIERNAN**—Some of the statistics contained in the report would lend one to the view that more time ought to be applied to the MRT by the principal member than only half the time. It is not what one would call the most glowing report that has come from the MRT, both in terms of the processing of applications before it and the waiting times of persons who have applications before the tribunal.

**Mr Karas**—Yes. I did note from the annual report for 2000-01 that there was a reference to the matters that you have raised. I think it would be true to say, from my recollection, that we have been addressing matters in relation to processing times and the completion of decisions on the part of the tribunal. In relation to that the tribunal, because it is a nationally focused tribunal, it has on occasions moved cases from one registry to another to try and cut down on the times, and also to lead to more efficient processing of applications that come before the tribunal. I think, again, it would be true to say that we have had an increase in the number of applications that are coming before the Migration Review Tribunal for the current year.

**Senator McKIERNAN**—One of the distractions you would have had in the tribunal during the course of this financial year was the development of, and work towards, the establishment of the Administrative Review Tribunal, a review tribunal that the parliament decided not to proceed with. I note in the report, and in the other report, that you said the Senate; I draw your attention to that. I also note under 2.8 it states:

During 2001/02 the Tribunal will also be working with the Attorney-General's Department, the Administrative Appeals Tribunal (AAT), Social Security Appeals Tribunal (SSAT) and the RRT to identify efficiencies ...

I do not have a problem with identifying efficiencies between the tribunals, but I would hope that the tribunal is not seeking to flout the decision of the parliament which was, of course, to reject the amalgamation of the four tribunals in together.

**Mr Karas**—No. The tribunals would not be looking to flout the imprimatur of parliament, of course. But I understand there had been some meetings between the registrar of the Migration Review Tribunal and others from the tribunals which you mentioned in relation to discussions and consideration of efficiencies. I have not attended those meetings, but I am sure Mr Barnsley, who is seated here with me, may be able to expand a little on those and give some indication to the senators regarding the meetings that have been held.

**Mr Barnsley**—The tribunal operates within its legislation, as do the other tribunals in both this portfolio and the other portfolios. Of course we are required to operate in accordance with the law laid down in those enactments. At the same time, it is clearly the intention of the government—and the Attorney has made statements relating to looking at administrative arrangements—for the tribunals to work closer together under the current enactments. That is currently the intention of this government, and we are obliged to do what we can within that context.

**Senator McKIERNAN**—But you are established by the parliament?

**Mr Barnsley**—Yes.

**Senator McKIERNAN**—And the parliament has expressed a will in regard to the Administrative Review Tribunal?

**Mr Barnsley**—Yes. I am not questioning that.

**Senator McKIERNAN**—But I note that nonetheless. In terms of efficiency, it is not a report that the tribunal would be proud of. It is not the best report that has ever come from the MRT, which has had only a short life, or what it was in its previous life. Wouldn't you be better putting your resources into the job that you are supposed to be doing, rather than meeting the will of the government, who does not have the parliamentary endorsement for what has been proposed?

**Mr Barnsley**—All I can say to assure you is that our main focus is on the work of the MRT. I can give you that assurance. The hugest part of our resources go towards that.

**Senator McKIERNAN**—I will ask this final question and then move on, as we are pressed for time. The annual report in 3.9, the Commonwealth disability strategy, gives the reason for the MRT not accepting the Commonwealth disability strategy: you were to merge with the other tribunal. I put it to you, Mr Karas and Mr Barnsley, that that is a cop-out, that that really is not good enough in the year 2002, with all our antidiscrimination legislation on the books. I think that government agencies should be taking the lead on these matters. Irrespective of the will of government to form a new tribunal, you should be putting legislative requirements into effect, particularly in the area of disability, those who are less fortunate than others. I think it is a distinct cop-out, and I would hope that by the time this comes around next year—amalgamation or no amalgamation—the MRT will be addressing the Commonwealth disability strategy.

**Mr Barnsley**—We certainly will be, I can assure you.

**Senator COONEY**—Can I just follow on from the point that Senator McKiernan is making, which is that you should accept the will of parliament. I ask Mr Farmer and Mr Metcalfe: do you take seriously the processing of applicants through the various stages, from the primary decision maker up to Mr Karas's tribunals and further on? Do you think that is an important process, that people should be able to review their appeals?

**Mr Farmer**—Yes, manifestly, we think that is right.

**Senator COONEY**—If there is a law—and this is, I think, what Senator McKiernan is putting—do you think it ought to be obeyed by the department?

**Mr Farmer**—Of course.

**Senator COONEY**—And do you think it is the task of the department, say, in the interests of government, to take actions that would frustrate the will of parliament?

**Mr Farmer**—I have never thought of doing that.

**Senator COONEY**—The reason I ask that is because of a statement by the Chief Justice of the Federal Court, Michael Black, a very eminent jurist. In his report of the Federal Court for the year 2000-01, dated 24 September 2001, he said:

Many applicants for review are in immigration detention, and are dependant on those maintaining the detention centre for the provision and transmission of forms to enable the applicant to seek review in the Court. There have been a number of instances during the reporting year where, through no fault of the detainee, the application for review was received by the Court outside the 28 day period. In these cases the Court was required to dismiss the application without regard to its merits ...

He then quotes the case.

The inability of the Court to grant an extension of time in an appropriate case may result in significant injustice.

What the Chief Justice of a very eminent court is saying there—and I think Mr Metcalfe would agree with what I am about to say—is that he is most concerned about the conduct of migration matters and that through processes used by the agent of the immigration department the will of parliament is frustrated. I wonder why that lawless element is coming in.

**Mr Farmer**—Senator, clearly this does not relate to the tribunal but to the department, and we can address that question if you like.

**Senator COONEY**—The reason I am asking you questions in this context is that it is of some importance in the lead-in to my questions for me to get some idea of what the department's attitude is to the very serious words of the Chief Justice. I suggest to Mr Karas that the department does not take seriously appeals and reviews of its decisions and that that attitude infects the Migration Review Tribunal and the Refugee Review Tribunal.

**Ms Godwin**—I am aware of a small number of cases that come into the issue that you have just alluded to. We are aware of them. In a couple of instances the court actually found that the actions of the detention centre were in a sense understandable. In one case the application had been provided to the office late on the very last day and was not picked up by the office until the next day. Nonetheless, there have been a couple of instances of the sort that you mention and, as a result of that, we have changed the procedures in each of the detention centres to make sure that forms are provided to detainees who may be interested in applying to the Federal Court as early as possible in the period that they have to apply and that when those forms are provided back to the office that they are faxed immediately to the Federal



court. I think that the changes have resulted in no further instances of the sort the court referred to.

**Senator COONEY**—Ms Godwin, I wonder why you use phrases like ‘the small numbers’ and ‘in a couple of cases’, which I put to you treat these matters much less seriously than the Chief Justice treats them, who thought, I suppose by dint of his conscience, to mention these matters. The phrases he uses are ‘there have been a number of instances’—which is more than a couple, may I suggest. I wonder why you, representing the department, should tend to demean—and I use that word advisedly—the situation whereas the Chief Justice tends to treat it as a very serious situation.

**Mr Farmer**—Senator, if I could comment on that. I think that there are obviously two things. One is the factual and, if you like, quantitative matter that I think Ms Godwin referred to. On the qualitative matter, I do not think there is any disagreement with what I understand to be the brunt of your comments, namely, that each individual has his or her rights. There is an obligation on the department to ensure that each individual receives those rights, and if we fail on one then we fail, and that I think is—

**Senator COONEY**—But there are more than one. Can I suggest a couple of things that would be consistent with what has happened here. This is consistent, the Senate having refused to pass the department’s bill introducing privative clauses into the law, with the department trying to get to the same result by another means—by resorting to lawless methods. That is one thing consistent with what has happened here. The other thing consistent with this is that there is pressure placed on the tribunal to such an extent that they are not able to fully discharge their duties.

**Mr Farmer**—I was in the midst of saying that if we fail in respect of one individual then we fail. So I was really agreeing with you that any failure is, by definition, a negative—and I would not be happy about that. To that extent, I agree with you. I do not think you made a suggestion that we were doing things of a particular character; I think you were suggesting that the situation was consistent with a point of view. I certainly do not accept that what we are doing proceeded from that impulse at all. That would be quite out of character with anything I understand of departmental practice and attitude.

**Senator COONEY**—It is also consistent—and I am going to return to this; this will be a theme that I am going to come back to right throughout these estimates—with an attitude endemic in the department; that is, that people locked up in these detention centres are less worthy human beings than other human beings.

**Mr Farmer**—Again, I do not think that attitude is there at all.

**Senator COONEY**—But just say that it is consistent with it—you would have to agree with that?

**Mr Farmer**—No, I just do not agree with the characterisation. I want to say something as the secretary of the department. I work with a lot of public servants who work in a very difficult environment. As you know, they work in circumstances which are sometimes dangerous and very often contentious. They are public servants working, in my view, to the highest traditions of the Australian Public Service and doing so in the light of a number of difficulties. One of the things that we go to a great deal of trouble to try to get right is in our duty of care towards people in detention. That duty is taken extremely seriously. We spend a lot of effort both in developing the regimes that we operate under and policing them to see that they are administered properly and in rectifying any problems that we find. I really do not

think that it is fair on a group of, in my view, very dedicated public servants to characterise what they say in that way.

**Senator COONEY**—You are being—and properly so—very passionate in defending your staff, which you always are. I have noticed over the years that you are very passionate in defending members of your department. I wonder if we can get people to be quite as passionate as that for the people that we are talking about here now. How are we to know that these appeals would not be successful—that, if they had been successful, somebody or a number of people would not have been granted refugee status? But they have not been because of the action of your agent. They could now be back home being persecuted and perhaps even being put to death.

**Senator Ellison**—Madam Chair, can I say something here. This is the problem I think Senator Cooney referred to in the previous hearing we had, and that was the time limit being finite and there being no provision for any intervening cause or something which prevented the lodgment of the application. I think the Federal Court indicated that if, for instance, their fax machine was down and someone tried to lodge an application and could not get it through then it would be just too bad. I think Senator Cooney will remember that line of questioning. That really is not a reflection on the department. In fact, Ms Godwin has mentioned how they have taken steps to address the situation to ensure that people can get their application in on time. But the principle that Senator Cooney is raising, as I understand it, is the fact that there is not even an exceptional circumstance allowed for someone who is prevented, not by their fault but by the means, from getting their application in on time, thereby being deprived of an opportunity for having their application heard.

Time limits are in the law. In all areas there is a time limit for filing something. We live with those time limits. But Senator Cooney is saying that normally you do have a recognition that where something extraordinary happens you would be allowed some accommodation. I think Senator Cooney is saying that that is provided elsewhere but not here. Senator Cooney, I will undertake to take this up with the minister. You raised it with me earlier in the Attorney-General's estimates, and I hear clearly what you are saying. I do not think, with respect, that it is the implementation by the officials from the Department of Immigration and Multicultural and Indigenous Affairs. I think your point is more that there should be some means of accommodating an extraordinary circumstance.

**Senator COONEY**—The next question—you will understand what I am saying—will influence what attitude I take. When these matters came on before the court, did the department take the bar as a defence to the action? Was the bar argued? Was the time limit argued in the court case, Mr Metcalfe?

**Mr Metcalfe**—I think I can assist somewhat in the response to that question. I will have to take on notice what arguments may have been put before the court by counsel for the Commonwealth. I do have some information that, essentially, there was an issue before the court as to whether or not it was possible to extend the 28-day time period to allow late applications to be made. I understand that the judge at first instance found that he was unable to conclude that officers of the department set out to deliberately prevent the applicants from exercising their right to seek review by the court. However, he found that in a practical sense the right of review had been frustrated. As a result of that, the judge followed Federal Court authority, which indicates that the court has no discretion to extend the 28-day time limit. What is important, though, is that I understand His Honour granted leave to appeal his decisions—in other words, his decision that the time limit could not be extended—and that that matter is to be heard by the full Federal Court in Melbourne on 25 February.

**Senator COONEY**—I would have thought that the appropriate thing for the department to do was just waive the issue.

**Mr Metcalfe**—I think there is a question, and I would need to take advice on this and come back to you, as to whether there is any discretion in the legislation as enacted by the parliament to allow waiver to be offered or granted, and that is probably an issue that was before the court. But if I can add anything further on notice I will. There is an issue, though, of what happens when the full Federal Court decides upon the matter. I think, as a general proposition, that if it was found that an individual was disadvantaged in this way there are other ways of enabling further consideration of their claims to be made. That is certainly an issue that a minister could consider.

**Senator COONEY**—You would not send it back to the Refugee Review Tribunal, though?

**Mr Metcalfe**—This is hypothetical and I am not speculating that a minister would do this: you are aware of provisions in the act that do allow the minister to permit a further application for refugee status to be made, which would basically start the process over again. Those are matters for the future, I think, but right at the moment we actually have a matter that is before the full Federal Court.

**CHAIR**—Having dealt with that matter, Senator Cooney, in relation to the MRT—in a slightly extended fashion, if I could observe—I do wish to continue with questions to the Migration Review Tribunal.

**Senator COONEY**—Mr Karas, under section 2.11 you say:

The MRT fosters and promotes review procedures that are informal, accessible and non-legalistic. It is also not bound by technicalities, legal forms or rules of evidence and acts according to substantial justice and the merits of each case.

How can your tribunal act according to substantial justice if it disregards all those protections built up by the legal system over the years? You toss out legal forms, you toss out rules of evidence and you toss out technicalities. What sort of guide do you get? You are sitting under the palm tree, are you? And is the palm tree justice decent justice?

**Mr Karas**—The Migration Review Tribunal provides a final merits review in relation to an administrative decision made by the department in relation to visa applications and cancellations of visas. Parliament has directed that it provide a mechanism of review that is fair, just, economical, informal and quick. I think that is section 353 of the act, Senator, if my memory serves me correctly.

**Senator COONEY**—You are right.

**Mr Karas**—I think it does go on to say that it is not bound by legal forms, technicalities et cetera, as you have indicated. The reason for that is, I suspect, that the tribunal is not a judicial body; it is a quasi-judicial body charged with the review of administrative decisions. The objective of providing a mechanism of review in the terms as framed by parliament is one in keeping with other tribunals that also deal with the review of administrative decisions made by a department.

**Senator COONEY**—I understand that. But if you have not got some sorts of rules, some sort of guidance, I think you are going to be infected—I say this with all seriousness—by that mood in the department that says certain people should be treated in a way that is not equal to the way other people are treated.

**Mr Karas**—Parliament has provided in the legislation that we do adhere to strict time limits as well. It is the practice of the tribunal when a decision is communicated to an applicant that we do set out in the letter that accompanies the decision—if it is a negative decision, in other words, one that has affirmed the decision of the department—that if the person needs to consider it further there are time limits. I do not have the exact wording of it, but we do refer to the right for the matter to go on if in fact the person who has received a decision feels so disposed. It is contained in the letter that accompanies the decision and, from what I recall, it is also contained in the literature that we do hand to applicants.

**Mr Farmer**—I repeat: there is no departmental mood. We operate in accordance with the law and other instructions.

**Senator COONEY**—You have got to say that, Mr Farmer.

**Mr Farmer**—I do not have to. I do not have to say some things. You did me the courtesy, Senator, of saying that I defend my colleagues passionately and I do. There is no mood. We are administering very complex law in, I think you would agree, quite complicated circumstances and we try to do that as public servants should.

**Senator COONEY**—The reason I use the word ‘infected’ is that, if you look at section 2.12.2, under the heading ‘Performance of purchaser/provider arrangements’, it says, ‘The Tribunal purchases some corporate services from DIMA,’ and then it sets out the amounts that were charged to the tribunal. So here is a tribunal that is carrying out an administrative review for a department which provides it with corporate services.

**Mr Barnsley**—The service we purchase from Immigration is purely the use of their computer system for our accounting and human resources—our payroll and so on. We do not buy any other corporate services. DIMIA staff do not actually pay the tribunal; we do our own payroll. All we are buying is an agency service from the department for providing a computer system for managing our accounts and our payroll. It is likely that in the next six months we may even separate that tie and go it alone on our own HR and our own financial management system.

**Senator COONEY**—But you continue to liaise, as you say on page 21:

The MRT has continued to liaise with DIMA in order to be able to better predict variations in application rates and to ensure that it has sufficient notice of legislative changes that may impact on the Tribunal.

You have a pretty close relationship with this department.

**Mr Barnsley**—Yes, there must be a relationship between the tribunal and the organisation whose decisions it is reviewing. That relationship is at arm’s length. We need to understand what the department has planned in terms of legislation that may create extra work for the tribunal, because those cases will start coming through the tribunal, and we need people who are able to handle them. We also need to do our best to estimate the likely impact of the department’s activities on the tribunal so we can have some idea of the number of applications likely to come our way and the nature of those applications so we can look at our resourcing appropriately. Our members are independent statutory office holders, and they very jealously guard their independence from the department.

**Senator COONEY**—But you have trouble as it is in retaining and attracting staff, haven’t you?

**Mr Barnsley**—It is not easy. Small agencies generally have difficulty attracting staff, because you just cannot offer them the same opportunities.

**Senator COONEY**—But there is a particular reason why your tribunal has to some extent an inability to attract and retain staff, isn't there?

**Mr Barnsley**—I am not sure what you are referring to.

**Senator COONEY**—I am referring to the proposed ART.

**Mr Barnsley**—That has not made the job attracting staff any easier, certainly not. I cannot disagree with you there.

**Senator COONEY**—And that is put in the report.

**Mr Barnsley**—Yes, absolutely. The ART is still out there somewhere—although not legislatively. The legislation has not happened, and I do not know what the government is going to do next.

**Senator COONEY**—You are part of the system that the government are hankering after, with the ART. They are almost passionate for it. They cannot conceive of the world going on without an ART. Since they cannot quite conceive that, you are getting a problem retaining staff and attracting other staff. It is because of this penchant for the ART, I suggest to you. Not only do I suggest that but that is what Mr Karas writes in his report.

**Mr Barnsley**—It was certainly a factor during that financial year.

**Senator COONEY**—I take you to page 11 of the report:

- When the Tribunal receives an application for review, it is assessed by registry staff to ensure it meets eligibility requirements.

The registry staff performs a gatekeeping role, does it?

**Mr Barnsley**—To some extent, yes.

**Senator COONEY**—So, if I am a migrant coming in here, before I get anywhere near a merits review I have to go through the gatekeeper, who will assess it on the papers; they will not refer to me. Is that right?

**Mr Barnsley**—The staff do do some initial assessment of whether the application has been lodged within the required time frame.

**Senator COONEY**—So the registry can toss out anything. They can just say, 'I don't like the look of Noel Barnsley here, we'll toss that out.'

**Mr Barnsley**—No, it does not work that way at all. Staff are required to operate within the legislation. The legislation sets out and defines what is a valid application to the tribunal. They will make that initial assessment on the more straightforward issues, such as whether the application was lodged on time and whether the fee was paid within time, and they will deal with essentially those issues. If they identify more complex issues, they may refer it to more senior staff—at times we have even referred it to a member to arbitrate on that issue.

**Senator COONEY**—It goes off to the case officer, who examines the file and assembles the relevant documents—the relevant documents in his opinion, I suppose?

**Mr Barnsley**—Someone has got to make a judgment at some point on the case.

**Senator COONEY**—Exactly. That is just the phrase I wanted: somebody has got to make a judgment. You make a judgment according to the law, don't you?

**Mr Barnsley**—Absolutely, Senator.

**Senator COONEY**—And you want to stay within the law?

**Mr Barnsley**—Yes.

**Senator COONEY**—And up until September last year you had a court, the Federal Court, that, as it were, could apply quality control to your processes.

**Mr Barnsley**—Yes.

**Senator COONEY**—Now you have had that taken away, so the system is now allowed, in effect, to go about this task with no rules of evidence and judge it according to palm tree justice. There is nobody there to keep you in check at all. That is the situation, is it not? That is a fair comment, is it not, Mr Karas?

**Mr Karas**—If there are ambiguities or any difficulties on the part of the person who has received an application, it is usually referred on to a member. The members are qualified people of experience who are completely independent in their decision making—to the extent that I cannot direct them as to what decision they may make. The minister cannot direct them. Under the legislation no-one can in fact direct them. I think the statistics reflect the fact that over 50 per cent—53 per cent, if I recall—of the applications that come before the tribunal are set aside.

**Senator COONEY**—Mr Karas, I am a qualified person with great experience. You would not want me sitting on your cases, would you? I should imagine nobody here would want me sitting on their cases.

**Mr Farmer**—Senator, you are on our case all the time!

**Senator COONEY**—If you would trust yourself to me—and I know you would not—

**Mr Farmer**—We do have qualified people with training in the law. The training aspect I think is very important, and that is something that clearly is of importance in both the tribunals as well as in the department.

**Senator COONEY**—I am not going to pursue it anymore. You are doing the right thing. You have now got a system where you have got some very nice people like Mr Karas and others who go about it without any sort of rules of evidence and without any procedure, with palm tree justice, deciding about matters that could involve people, if it is wrong, going back to persecution or even their death. We now have not even got a court sitting above them to ensure that they at least follow the law. But, as Mr Karas says, he feels confident to be able to do that. Lots of other courts seem to require an appeal system.

**Mr Farmer**—Senator, again, I do not understand the characterisation of the system. I would not accept that characterisation. Some bits of what you have said to me are a bit inexplicable.

**Senator COONEY**—You will not have to worry about the Federal Court soon, but it would be nice to obey the law as it was. Then Ms Godwin will not even have to come in and try to sort of diminish the seriousness of the offence. She will not even have to come up and say, 'It is just really not important, Senator Cooney. It's just a couple of people about whom there has been the odd mistake made. We cannot appeal about that. If they have got to go off wrongly—why, it is just bad luck.' You will not have to say that next time, Ms Godwin, because there will be nothing there to obey.

**Ms Godwin**—Senator, I do feel that I have to speak up in my own defence on this point. I was not trying to diminish the seriousness. In fact, the very fact that we noticed those cases was the reason we changed the procedure, so that it would not happen. I agree with you: it is a serious outcome for those individuals.

**Mr Farmer**—And we would certainly share your hope, Senator, that we would not have to be talking about such a case again. We will do what we honestly and sincerely try to do. In an organisation that clearly makes millions of decisions each year we will make mistakes, and in administering other aspects of our operations we will make mistakes. I think you would acknowledge that we are pretty honest about that, in the sense of looking to see what we have done, why we went wrong and what we can do to do better. So I do share your hope that it will not be a matter for future comment.

**Senator COONEY**—I cannot retaliate.

**CHAIR**—It would be fair to broadly acknowledge that these are going to be very extended periods of questioning and I think the officers of the department and the MRT have endeavoured to answer your question, Senator Cooney, very well.

**Senator BARTLETT**—As a general assessment of what you have got in your annual report, it seems to me that, as you summarised, you started the year with a lot of applications, got better at finalising them but then got even more applications coming in and ended the year with even more than you started with. That is basically the situation. That says to me that that is making it harder and harder for you to process all those applications for review in a timely fashion particularly and also to give proper attention to them. Have you got any views about how that situation can be redressed? Why is it that you are getting more new applications, for example?

**Mr Barnsley**—Maybe I will work through it in sequence—the application rate, the finalisation rate and what we have got on hand. The application rate for the tribunal is continuing to grow this financial year and, whereas last year we received 7,211 cases, this year we are on target to receive over 8,000. And, it could even be higher than that depending on what happens in the last couple of months of the year when there tends to be a surge in activity of the department that flows through to the tribunal.

The big areas of change have been the number of bridging visa cases of people in immigration detention and that has gone up quite significantly. The number of visa cancellations, particularly relating to students, has gone up substantially. The number of partner visa refusal cases has gone up to a considerable expense and that was already a very large case load. Offsetting that so far this year, the major change has been the substantial decrease in the number of student visa refusal cases coming into the registry in New South Wales. With the ups and downs we are seeing an increase of approximately 800 extra cases likely to be lodged this financial year. Offsetting that, last year we finalised 6,579 cases and our target for this year—and I think we are on track for that target—is to finalise of the order of 8,700 cases this year. That is the maximum number we expect we might get in for the year. If the number coming in is lower, that will mean that we have done even better in terms of clearing backlogs. We have gone up by about 150 cases so far this year compared with the end of the last financial year. At the same time, the percentage of cases—I provided the committee with some figures back in May in response to a question from Senator McKiernan in May on processing times, age of cases—over 12 months is coming down from 38 per cent to 36 per cent. The percentage in the 9 to 12 month range is coming down from 12 per cent to 9 per cent. And processing times in the major areas I have sampled have also come down despite that growth in the case load.

Despite everything, we are doing not as well as we would like to. We would like to do a lot better, but we are achieving some progress in the right direction in the number of old cases and in the amount of time we are taking to progress cases. Some of the growth, I understand,

is from increased compliance activity generally within the department, but there has also been a considerable push within the department to clear a lot of their older cases, particularly in the spouse area, and that is flowing through the tribunal and that, I would hope, is a transitory situation for this year. And next year, hopefully, we may return to a lower level of activity within the tribunal. With the current infrastructure, I would hope we do better than 8,700 next year. So, by the end of next financial year, I would hope that we will be in a much better position in terms of our backlog of cases and the time taken to process them.

**Senator BARTLETT**—According to the statistics that you have got in here, the percentage of cases that are either remitted or set aside in, for example, visitor visa refusal has been 70 per cent or higher for the last couple of years. Student visa refusals are up close to 70 per cent as well. Overall, across all categories in this most recent financial year, the figure has climbed above the 50 per cent mark. That seems to me on the surface a pretty large percentage of decisions that are basically not in agreement with those made by the department originally. Are those percentages of concern to you, particularly in those areas up around 70 per cent, or do you think they are reasonable in the circumstances?

**Mr Barnsley**—I will not comment on the reasonableness because it is a matter for members to make judgments on individual cases. But certainly with spouse cases, where we are doing cases that have been in the system for some time, of course the applicant and therefore the tribunal have a lot more information available to make that decision. As a general comment, a lot of the cases turn on having access to a lot of new information rather than on any endemic problem within DIMIA decision making.

**Senator BARTLETT**—Why is that—because the applicants did not put in enough information to start with?

**Mr Barnsley**—Yes, I think a number of times applicants do not realise that it is up to them to make their case to the immigration decision maker, particularly at overseas posts. It is only when they get to the review stage that they may engage, if they are an offshore person, the assistance of a family member or a migration agent and therefore put a lot more information in a more structured way to the tribunal.

**Senator BARTLETT**—It seems to me, on the face of what you are saying—and this may be something that might draw in comment from departmental officials—that your core problem at the moment is that you are getting more and more people coming in and that is creating a big workload and it is hard to deal with them. I will get on to the issue of the time it takes in a moment. Surely, in terms of reducing the numbers that are coming in, steps can be taken—as far as the tribunal can see or the department can see—that will get all that information there in the first place so that the correct decision will be made or will be more likely to be made first off, thus reducing the numbers that are coming across to you?

**Mr Barnsley**—That is really a matter for the department. I do not want to speculate on what the department may or may not do in that context.

**Senator BARTLETT**—Can I ask the department officials if they are able to provide a response to that?

**Senator Ellison**—I am attending to that now rather than take it on notice. Perhaps if you have another question then you could move to that.

**Senator BARTLETT**—I will come back to that because I think it is fairly important in terms of the efficiency of the tribunal and the costs involved. The other issue concerns the average mean time for finalising decisions that you have set out here on page 19. For



temporary business and permanent business visa refusals, which involve about 800 plus cases, the mean time is 437 to 476 days; for skill link visa refusals, which involve 300-odd cases, the mean time is 627 days; and for partner visa refusals, the mean time is 422 days for 1,273 different cases. If you add family and partner together, that is 2,000-plus cases easily—2,100—with mean times well into the 400s. That is a long time to wait for a review of a decision when you are talking about visas relating to families getting together, to partners or even to visitors—that mean time of 200 days often can encompass people wanting visitor visas for weddings or special events. They seem to me to be long waiting times. The table does not have a comparison with previous years. Are they dropping significantly?

**Mr Barnsley**—I will pick just a couple of categories. First is the point about the visitor visa. There is a legislative requirement that the tribunal commence work immediately on visitor visa cases when there is a time specific event and it is reasonable for the tribunal, if it is able to start work immediately on the case, to finish it before that event occurs. We do give priority to that kind of visitor visa case. Picking up on your point about the partner cases, they are now rounding out to 15 months. Last financial year they were down to 14.1. That is not a huge improvement, but it is an improvement. It is getting better. Picking up on your point on visitor visas, the average is down from seven months to 4.2 months. So that has come down quite a bit because we have been pushing those cases through harder. The time frame for temporary business visas has come down marginally from 15.4 months to 14.8 months. So the numbers are starting to come down, Senator; but, you are right: it is a long time and we are doing our best to improve on that as much as we can.

**Senator BARTLETT**—In terms of the time taken overall—as far as I can see, it is not in the report—can you tell me if there has been an improvement on the previous financial year?

**Mr Barnsley**—The previous year was our first full year of operation when we had a lot of new staff and a lot of new members; it was very much a gearing-up year. I do not think that you can really compare it to that year because it was not what I would call a normal year, although I have got figures that did go up slightly to some extent during 2001 from 1999-2000. But it is now starting to come down again, and I expect that trend to continue.

**Senator BARTLETT**—Just going back to what I asked before, these figures show that close on half the decisions are remitted back to DIMIA to reconsider. Obviously, in terms of your time, it is better for you not to have to spend time reconsidering things. What mechanisms are you putting in place to try to reduce both the number that come back to you and the number that go to the tribunal in the first place to help reduce their workload?

**Mr Farmer**—Yes. In other words, learning lessons from the exchange—that is the nub of it. I would like to ask Mr Risvi to say something about that.

**Mr Rizvi**—There are a number of dimensions to this. The first dimension is that the rising workload in the MRT has a link to the fact that at the moment we are probably dealing with, over the last three to four years, dramatic increases in our own workload, and to some degree the increases in our own workload are going to flow through to the MRT. I will just give a couple of examples. This year—that is, 2001-02—will deliver the largest migration program in a decade. That is going to lead to implications for the MRT. For the last two to three years, we have delivered new records in the number of visitor visas, in the number of student visas, in the number of working holiday-maker visas and in the number of temporary business entry visas. So there is a very substantial rise in the volume of applications that we are actually dealing with, and to some degree that will flow on to the MRT. I think that partly explains the

rise in the case load of the MRT. In terms of our learning lessons, that is certainly a very important dimension to what we do.

There are perhaps three or four measures that we are taking to try to learn from what is happening within the MRT context. Towards the end of last year, we completed a three-month exercise where we had a very senior officer in the department sit down and go through the cases at one of the MRT registries and do an assessment of those cases to see what kinds of mistakes are readily able to be picked up from an examination of those cases. That was a very useful exercise in which we learnt a fair amount. We use those sorts of exercises to try to inject that into our training. We will continue to do that. That exercise was very successful and what we propose to do is to extend that to other MRT registries to see if we can learn from that.

The other initiative we have taken is to introduce an arrangement whereby we now meet regularly with Mr Karas and Mr Barnsley about every three to four months to discuss what issues are coming up through the MRT that they are aware of—that is, things that they are seeing where we can learn from their immediate reactions. We are certainly doing that and hopefully through the combination of those measures we will improve our decision making.

**Senator BARTLETT**—In terms of one of the specific comments that I think Mr Barnsley made about oftentimes it being people providing extra information down the track, do you think those measures that you have talked about are then likely to address that adequately, to make sure you get all the information the first time around?

**Mr Rizvi**—There are two dimensions to that, Senator. The first dimension is where when we make our decisions that evidence actually existed. Where the evidence actually existed and we were not able to elicit it from the applicant is something we need to improve on and hopefully we will be able to get that information. The second dimension to what Mr Barnsley was referring to was actually evidence that emerges after our decision—that is, more evidence emerges about the relationship because the relationship has existed for a longer period of time and, therefore, there is more documentary evidence to back up the relationship. There is nothing we can do about what might happen in the future.

**Senator BARTLETT**—I have a final question which is probably an on notice one. In terms of all the visitor visa refusals and student visa refusals that you deal with, are you able to provide a breakdown of which countries those come from?

**Mr Barnsley**—I have not got those figures with me, Senator. We could provide that. I am sure we have got that report back at the tribunal.

**Senator BARTLETT**—Thank you.

**Senator McKIERNAN**—I am conscious of the time and I am very anxious that the RRT appear and conclude their evidence this evening. We have kept them hanging around all day. In saying that, I am only going to make one comment and perhaps invite a further response from the principal member and Mr Barnsley. I am pleased that you did defend the report and the detail contained in it. I would, with more time available, seek to take you to task on how you rate the report, as opposed to how I rate the report, and its contents and the service that it is delivering. I am pleased, nonetheless, that you were willing to defend it and the time lines and so forth contained in it and also that you were willing to point out some of the things that, perhaps, you are not doing so well.

I hold a different view to you. I think it is not a very good report. I think it is not a very good display of the delivery of a service that your tribunal has been set up to deliver. We are

not able to do a real comparison on it because last year, as is indicated in the report, was a year of consolidation after the amalgamation of IRT and MIRO. That, in itself, brought together some difficulties and caused a blow-out in processing times because you were short of members and there was a lot of uncertainty around in the tribunal. I would like more time to go in and explore and point out where I see there are inadequacies, but for the moment, with those pressures on time, I am not able to do so.

I would hope, though, in the intervening period of the four months that are left of this financial year that the efforts of the tribunal will be directed into the work of the tribunal, notwithstanding the minister's request to you. I appreciate the difficulty you have got but, nonetheless, you are set up by the parliament and the parliament has exercised a decision in regard to the ART and the concept of that. I do not think that you should let the minister's instructions and the minister's will and the government's will about the formation of a new tribunal get in the way of delivering the services that you are supposed to deliver in the tribunal. I do believe that that is part of the reason why this report has not met its optimum and I hope that next time around there is improvement. As you have detailed, Mr Barnsley, already some improvement has been recorded. I do not know whether the witnesses want to give any response.

**CHAIR**—It is a matter for Mr Karas.

**Mr Barnsley**—Your comment is noted, Senator.

**Mr Farmer**—I know there is a quite understandable concern, and one we share, about processing times generally. I am perhaps a little bit out of place here because I am not referring particularly to the Migration Review Tribunal processing times, but the departmental processing times are also a cause of concern in some areas. At some stage or other, it might be of interest to the committee if we were to make available a statement of some of the things that we are trying to do, in Australia and overseas, to address the question of waiting times, and integrity in the case load and consistency across the case load. We are really looking at how we are going to do our business, including in some very high-growth markets, in the next five to 10 years. We are trying to establish some foundations for doing that more effectively, with integrity and with better client service. If that would be of interest to the committee, we could make some information available to the secretariat. We have put a lot of effort into this and it is a story I would like to tell.

**Senator McKIERNAN**—I would be interested in developing that further when the department appears. However, at this juncture we have an independent review tribunal in front of us, and that is where I am directing this attention to. I think that the work of that tribunal has been distracted by other areas and I have said so. I have got concerns about that and I will be addressing it again when Mr Karas puts his different hat on in that area. That is not to dismiss your suggestions, Mr Farmer.

**Mr Farmer**—I was not seeking to distract you, either, Senator.

**Senator McKIERNAN**—I am sure you have not.

**Senator SCULLION**—Mr Farmer, unlike my colleagues I do not have the benefit of a huge corporate history in this or, in fact, a number of other matters. Perhaps you could help me. I note with interest Senator Cooney's description—which I would probably describe as outrageous—of what you actually do. It is not so much that he was being outrageous; it is more that I was extremely concerned that your response leaves me in some doubt about whether or not you actually decide things in the pub or at smoko. Would you give me some comfort that there is in fact a very rigorous process in regard to the Migration Review

Tribunal. Perhaps in the interest of brevity you could take that question on notice and provide me with a brief outline of the processes and procedures. Mr Farmer, is it correct that you do actually have some processes?

**Mr Farmer**—We have extensive processes, Senator. We certainly have extensive processes for helping decision makers to take lawful decisions. That is the essence of our approach. We are administering the law and obviously we aim to do that lawfully and reasonably. We would be very happy to arrange a briefing if you would like an introduction to the area. We would be very pleased to do that. We could do that bilaterally if you wish.

**Senator SCULLION**—Certainly, I would. Thank you.

**CHAIR**—Thank you, Mr Farmer, for those offers of assistance. We will now thank Mr Karas in his Migration Review Tribunal capacity and Mr Barnsley for their assistance with the examination in that area.

[9.59 p.m.]

### Refugee Review Tribunal

**CHAIR**—Welcome, Mr Karas, Mr Green and Ms Toohey. We will begin with questions from Senator McKiernan.

**Senator McKIERNAN**—Mr Karas, we had made arrangements for interstate agencies from the DIMIA portfolio to appear first. I had forgotten all about this dual thing—that you are now actually a Canberra person. You are now a resident because of your new role in Canberra, are you not?

**Mr Karas**—No, I spend more time in Sydney. That is where the principal registry of the Refugee Review Tribunal is, as well as the largest registry of the Migration Review Tribunal in relation to case load et cetera.

**Senator McKIERNAN**—You would spend most of your time at that particular registry. Is home there or is home still in Brisbane?

**Mr Karas**—My home is still in Brisbane. I travel when I can backwards and forwards. That is why I said that I had a degree of sympathy for you and your other colleagues from Western Australia in the travel that you have to do from your home to parliament here.

**Senator McKIERNAN**—I have got a limp as well, so there can be further sympathy. The report, I might say at the very beginning, is somewhat better in terms of time lines than the earlier report we were talking about, but I do have concerns about the will of the parliament and how that has been exercised. I note in the third paragraph of your introduction to the report that you comment about the minister asking the tribunals to work closely together with a view to achieving administrative efficiencies. I do not have a problem with achieving efficiencies, but I do have a problem with the tribunals, the minister and the government seeking to overcome the will of the parliament. The decision of the parliament was reached after extensive scrutiny by the elected members of the parliament. I would not like to see the minister or the government undertake actions to bring about an administrative amalgamation of the tribunals in direct opposition to the will of the parliament. I do not want to labour the point here any more—unless Mr Farmer, the minister or you want to come in and further defend it. I want to move on because I know time is pressing.

You then go on in your next major paragraph to highlight the independence of the tribunal. I, because of my long association with the migration area, this committee and other committees of the parliament, understand what you are talking about. However, if the tribunal

and the principal member of the tribunal, who is also principal member of the other tribunal, are going to act in accordance with the instructions and the will of the minister and the government, that will certainly bring the independence of the tribunal into even more question than is the case at the moment. I stress the words 'into even more question' on the basis of the evidence that was referred to the Senate Legal and Constitutional References Committee when we were inquiring into the refugee determination area, a report which we presented in, I believe, June 2000. That was the subject matter of many of the submissions put to us.

They are my opening comments. I believe that you should have the right to respond to some pretty serious suggestions that I have put on the table in front of the minister and the secretary of the department.

**Senator Ellison**—I take it that was a statement, was it?

**Senator McKIERNAN**—I just wanted to see if you wanted to refute the suggestion I am making that the tribunals, at the instruction and request of the minister, are seeking to overcome the will of the parliament in the matter of the formation of the Administrative Review Tribunal.

**Mr Farmer**—I would make a couple of comments. I think it is important to note that new members, who were appointed recently, were appointed for three years. That is obviously a medium- to long-term appointment as these things go, not a short-term appointment. You can draw some conclusions about that I would think. I think that is an important thing to state.

**Senator McKIERNAN**—But nonetheless, in the Administrative Appeals Tribunal—the membership of which appeared before the committee yesterday—the matter of the will of the minister, which was in your policy statement, about the formation of the ART is still there. That is the will of the government, which went to an election on it. Nonetheless, parliament has determined—and the parliament set up these tribunals—that there will be no amalgamations of these tribunals.

**Senator Ellison**—Well—in the form that was proposed by the government in that bill.

**Senator McKIERNAN**—But is the government seeking to have an administrative amalgamation of the tribunals rather than a legislative amalgamation of the tribunals, which was proposed last year and the year before?

**Mr Farmer**—That is not my understanding. I do not think that we should exclude, in effect, efficiencies in the operations of the tribunals if those do not interfere with the work of the tribunals. So some of the things that on a practical working level are done, for example, by the department or tribunals do not appear to me to be, in effect, cementing in anything that heads in the direction that you are talking about. I hope that is just a commonsense point.

**Senator McKIERNAN**—I think it is, but I think the efficiencies should be handled within the tribunal itself. Remembering my critical comments to the representatives when they were at the table of the MRT on where the efficiencies should begin, I think the efficiencies should be made within the MRT, but the MRT should also be delivering a service—a service which the parliament set up the tribunal to provide. I think the parliament has an expectation that tribunals will deliver.

**Mr Farmer**—I think that, in terms of what is happening, the statement is that the tribunals will continue their normal operation. Mr Metcalfe has obliged me by pointing to a statement on page 5 of the departmental additional estimates statements. It makes the point that:

The establishment of the Administrative Review Tribunal (ART) has been delayed beyond the planned 1 July 2001 commencement date due to the Senate not passing the necessary enabling legislation. The

Attorney-General is pursuing discussions with interested parties with a view to securing passage of the legislation.

**Senator McKIERNAN**—But that is not an accurate statement. That statement is factually incorrect.

**Mr Farmer**—That is the advice we have from the Attorney-General's portfolio.

**Senator McKIERNAN**—It may very well be the advice you got, but it is factually incorrect. There was a proposal before the parliament to amalgamate the four review tribunals into one, and the parliament decided it was not going to happen. The parliament did not seek to delay it; the parliament said it was not going to happen—and that was done on a vote of the floor of the parliament.

**Senator Ellison**—Two things: that was the previous parliament, and subsequent parliaments are not bound necessarily by previous ones; and in the report it says that, 'The Attorney-General is pursuing discussions with interested parties ...' It is still very much on the government's agenda—that has been canvassed earlier—and it was part of the government's election platform on which the government was elected by the people of Australia. What was debated and voted on last year, in a previous parliament, could well be different from what the government pursues now, after these discussions and negotiations.

**Senator McKIERNAN**—I accept all of that. But we have not yet seen, as the question came out yesterday, the proposals for the new tribunal. We have not seen the bill which will amend the instructions for Mr Karas, with his current hat on or with his previous hat on, or the Administrative Appeals Tribunal or the Social Security Appeals Tribunal. We have not seen that bill. I do not believe an amalgamation should proceed until all the interested parties are consulted. In the information we were given yesterday on who was consulted, it did not include a significant sector. That significant sector was the persons who voted last year upon the establishment of the Administrative Review Tribunal: the opposition parties.

The Democrats can speak for themselves, and other minor parties can speak for themselves, but to the best of my knowledge those parties have not yet been consulted. They are the decision makers in this and they, when they are making a decision, will take into account the will of the people, if it matches the objectives and if it is going to deliver. If it is not going to delivering on the charter that is given, I suggest that there will be some further questions. I doubt if I am going to be around to ask those questions—nonetheless, there will be other colleagues who will. I think it is a shot over the bows or maybe even a few metres in front. I repeat: I am not the only person in the parliament concerned about this. I do hope that the job you are appointed to do will be delivered.

**Mr Farmer**—Obviously those matters are not centred in the Immigration portfolio, but I hear what you say about a shot across the bows. As regards the two tribunals, they are two separate bows; it is not a catamaran we are building.

**Senator McKIERNAN**—No, but a number of things have happened, including the conference, in November or October of last year, between the tribunals, when members were not adjudicating on matters that were before them but were meeting in conference. I can go on.

**Mr Karas**—It was a joint conference of the two tribunals' members on 1 and 2 November of last year, if I remember correctly.

**Senator McKIERNAN**—I have looked at and tried to count up the complaints that are detailed on page 8. I do not think all of the complaints are itemised as to what they were against the tribunal in that particular category.

**Mr Karas**—I could give you more details if you would like: an explanation of the 16 complaints referred to. Do you want me to take that on notice?

**Senator McKIERNAN**—Take that on notice for me, thank you very much. You mention in the maintaining productivity section the uncertainty over the establishment and commencement of the ART. I do recall that you are making that comment, and I hope we are not going to be seeing that in the next annual report, because there is no legislation on the books at the moment in regard to that. I mentioned very briefly at the opening of my comments the priority and non-priority of the cases, and I do note with satisfaction that detention cases are being managed within the time frames the tribunal has set down for itself. That it is good, because those individuals are in detention, they are being deprived of their liberty. Hopefully those time lines can be brought down even further. In regard to detention cases, how many of those hearings would be conducted by video as opposed to an in person interview throughout the detention centres? Can you break it down to a percentage?

**Mr Karas**—I am not too sure if I have those figures here with me now. The tribunal just recently—perhaps because of the numbers and costs involved—has ceased circuits, which we were doing in the previous financial year. Most of the cases now dealing with people in detention—and I am going from memory here—are being done by video conference. As you have indicated, we are working diligently in trying to observe the 70-day limit—the standard that we have set—and most of the members are working towards that. If I remember rightly—and Mr Green will correct me, I am sure—we meet the 70-day standard in about 70 per cent of the detention cases.

**Mr Green**—That is correct; 70 per cent of the cases.

**Senator McKIERNAN**—Have you experienced an additional workload this year as a result of the increased numbers that have arrived in the last financial year and in the early part of this financial year, in July and August?

**Mr Green**—The rate at which detention cases come into the tribunal is pretty steady on what it was last year. Indeed, Senator, you are perfectly right, it was last financial year that we saw a big increase in the number of detention cases that were coming before the tribunal, and that has been sustained, although it is starting to drop off a little now.

**Senator McKIERNAN**—I notice that, in the judicial review column, 145 set-asides of the tribunal's decisions came out of the High Court and the Federal Court. I mention that only in passing to record that fact because, during the course of questions to the department on Friday—not tonight—we will be addressing matters of judicial review and the passage of legislation that the parliament passed last year. Mr Karas, I note your comments in the year ahead in the second column. I note them; I say no more because I have said quite a lot on that particular matter.

In this particular report there are detailed appointments, probably rightly so, of all members of the tribunal to 30 June last year—the end of the financial year. Was there any particular reason why the new appointees after that period were not able to be detailed in the book? I notice your own appointment is certainly detailed—a special favour that the principal member can exercise on his own behalf. Why are the new members not detailed? Would it not have been appropriate to put them in the annual report?

**Mr Karas**—Going back to what you were saying earlier about the different tribunals, the practice on the MRT has always been, as I think you may recall, to have a short resume or a few sentences about the members in the back of our annual report. It has not been the practice on the RRT. There have been reasons of security and other considerations, I understand, in relation to that. Without dwelling on the matter, a difficulty was experienced by one of our members where, I think, her daughter may have been threatened and things of that type. There was concern that information in relation to members should not be widely distributed.

**Senator McKIERNAN**—I was not so much asking about the resumes and the CVs of individuals, as are in the other report; I was asking just about the names, which we have got in detail on pages 32 and 33, of those persons whose period of office expired in June last year.

**Ms Toohey**—I may be able to help. Normally each year we have reported on the member appointments for the previous year, and we have followed that practice this year. This report was tabled in parliament on 31 October, if I remember correctly. As far as I recall, the new members had not taken up their appointments at the time of the report.

**Senator McKIERNAN**—Who were the members of the tribunal during the period July, August, September and October?

**Ms Toohey**—I am just trying to recall. Other than those whose terms had expired, all of these members have continued to be members during that period.

**Senator McKIERNAN**—All of those members were reappointed prior to June 2001?

**Ms Toohey**—Their appointments, I believe, took effect on 1 July.

**Senator McKIERNAN**—Why wasn't it detailed in the report and referred to?

**Ms Toohey**—Our practice has always been to report on the year that ended on 30 June.

**Senator McKIERNAN**—We have this great corporate memory of the MRT. Announcements were made prior to the end of June about the reappointment of some of the members that are detailed in those lists. For the uninitiated coming forward and reading this report, they would think, after reading these two pages, that the tribunal ceased operation on 30 June 2001, because there are no continuing members and no detail in that year's activity of who was going to be ongoing in the year. Do you take my point?

**Ms Toohey**—I take your point, Senator.

**Senator McKIERNAN**—I will not labour the point. I have a final question. There was a significant action in the Administrative Appeals Tribunal; it was a very significant action, in my opinion, and it is another matter which will be addressed later on in the detail of the case. It is *SRPP v the Minister for Immigration and Multicultural Affairs*. The reference number is [2000] AATA 878. This is not referred to in the RRT's report as a significant case. The reason why it is significant—for the uninitiated—is that it deals with the East Timorese in Australia. It is again significant because the then principal member of the RRT sat as a member of the AAT in adjudicating the matter. It is not referred to in the RRT report. Was it a deliberate decision of the RRT not to make mention of that case?

**Mr Karas**—Not to my knowledge. It was not deliberate; it just had not been recorded. I think the significant decisions of the courts that have been referred to are those in relation to processes and procedures and the decisions of the courts in relation to those types of matters. I do not think I can help the senator.



**Senator McKIERNAN**—Did you, as principal member—I am not sure whether Mr Green would have been there at that particular point—give consideration to including reference to that case in the significant litigation that was engaged in?

**Mr Karas**—To be honest, no, I had not. Whether it was just a memory lapse, or it had not been brought to my attention, I just cannot recall now. I think the reason why these ones were reported was, as I have indicated, that they went to matters associated with the procedures and processes of the tribunal and were decisions by the court of significance in relation to processes and procedures and what had been the practice of the tribunal. I do take your point that this particular case that you are referring to was the one—it may have been the only one—that has been referred to the AAT by the acting principal member at the time in accordance with the legislation.

**Senator McKIERNAN**—Is there any way of correcting that now? Can something be done on the tribunal's web site?

**Mr Karas**—Again, I cannot recall whether it is referred to in our legal bulletin. It may be one that we will need to get back to you on, Senator.

**Ms Toohey**—We can certainly look into it and get back to you. I am trying to recall the actual date of that decision and why it would not appear here. We would have to take that on notice and get back to you. We can certainly correct that on the information on the tribunal's web site.

**Senator McKIERNAN**—Ring Dr Nygh and he will give you all the details of it.

**Senator SCHACHT**—My question relates to the operation of the decisions of the Refugee Review Tribunal. Do you have any information about how long it is after the time when you grant refugee status to someone who is before the tribunal who is in detention that the person is actually released from detention?

**Mr Green**—Perhaps I can help you. That is not an issue for the RRT. We simply make decisions on applicants' claims.

**Senator SCHACHT**—We do have officers from the department as well, so it sort of crosses both ways. I will get the answer because then I might ask whether the refugee tribunal might express a view about—we will see what the answer is—the time it takes for people to be released after they have been granted refugee status.

**Mr Illingworth**—The role of the Refugee Review Tribunal is to, essentially, make findings about whether protection obligations are owed in relation to what are referred to as the inclusion clauses of the refugees convention. That is where the person outside the country is fearing persecution for a convention ground and that fear is well founded. But there are other elements that have to be satisfied before a person is a refugee and they relate to character considerations and article 1F of the convention in particular. There are requirements that need to be undertaken to ascertain that the individual is not excluded from convention protection. Those checks are largely beyond the control of this department but that is not to say that we do not take every step that we possibly can to influence the speed of those checks. But there are cases where that can take some time.

**Senator SCHACHT**—What, in your view, is 'some time'? A week? A month? Six months?

**Mr Illingworth**—It does depend on the case. In many cases now these steps are taken at the time that the person actually enters Australia and enters the detention facility. In fact, that

has been the point at which we have been initiating these sorts of checks for some time now—about two years. But there are cases where this drags on.

**Senator SCHACHT**—These are medical, penal and character checks—is that right?

**Mr Illingworth**—That is right.

**Senator SCHACHT**—And they have been required now for two years—is that right? Before then you were not required to do that?

**Mr Illingworth**—We have always been required to ensure that those checks are met, but with the influx of boat arrivals in 1999, as that year progressed, we basically reviewed and rebuilt the protection visa process so that we front loaded all of these checks. Rather than waiting, as used to be the case, to conduct medical checks, for example, which have a certain cost, after we made the assessment the person is in need of protection, we start all that right up front and we do that with the other checks as well.

**Senator SCHACHT**—Do you have any examples from your profound memory in which someone, after they have been given refugee status by the tribunal, has had to wait three months, six months, nine months or 12 months for the checks to be completed?

**Mr Illingworth**—I would consider that is highly infrequent but I would not rule it out.

**Senator SCHACHT**—Up to 12 months?

**Mr Illingworth**—That people can wait. Essentially, the time it takes depends on the degree of concern about the individual by the relevant authorities which are conducting these sorts of processes.

**Senator SCHACHT**—Could you take the following question on notice? I do not want to labour the department with unnecessary questions but, of the people who have been granted refugee status by the review tribunal in the last two years, what was the time it took for each of them to complete the checks and, therefore, be released from the detention centre with a temporary visa, a permanent visa or whatever? I am not up to date with these as I have not read the tribunal report properly, but how many people in this financial year, 2001, did the refugee tribunal give a determination to? Is it 2,000? Is it 5,000? Is it 500? Or is it 15?

**CHAIR**—Senator Schacht, I think you should allow the representatives of the tribunal to answer your question.

**Mr Green**—Last financial year the tribunal finalised 5,646 decisions and there were some other finalisations which resulted from withdrawals and so on. So the total number of cases finalised last financial year was 5,965.

**Senator SCHACHT**—By ‘finalised’ do you mean that they were given refugee status?

**Mr Green**—No, that means decisions made.

**Senator SCHACHT**—How many were granted refugee status?

**Mr Illingworth**—On the basis that the final completion of the assessment—

**Senator SCHACHT**—That might have changed it—but how many did the Refugee Review Tribunal itself give refugee status?

**Mr Green**—I have it in percentage terms: 11 per cent of those who applied for review by the tribunal.

**Senator SCHACHT**—So of the 5,000, about 600 got refugee status from the tribunal.

**Mr Green**—That is about correct.

**Mr Farmer**—And not all would be in detention, of course.

**Senator SCHACHT**—Please take this on notice: what was the average time, the median time, people were kept in detention—of those who were in detention—before they were released as a result of having to wait for their checks to be completed?

**Mr Farmer**—We will take that on notice and give you the information.

**Senator SCHACHT**—I am a Johnny-come-lately to this issue. Because of a constituent representation in South Australia, I spoke to the liaison person in South Australia, Gail, and I then spoke to Glenn, the head of your department there, and they were most helpful. They were very friendly towards senators. I did tell them that I would actually ask this question, and I told them to pass it up the line to you, Mr Farmer, so you should not be surprised. The case I have here is of a woman from Iraq. On 21 November, the Refugee Review Tribunal granted her refugee status. She got the letter. Then underneath, a note from the department says:

You will have to go through certain processes. These include medical, penal and character checks.

I was told by the department that the medical check had been completed by the time she got the Refugee Review Tribunal decision, in case she got a positive one, so there was no need to do any more medical checks—though apparently she was not aware of that and was still waiting for the doctor to turn up post 21 November. I am interested in this ‘penal and character check’. I was told by your officers that the penal and character check involves using our security agencies—the good old spooks in the brown coats called ASIO—wandering around trying to find out whether she is ‘penal and character’. I am a bit intrigued about how ASIO could find out about the penal background of someone who has fled Iraq. I hope they do not ring up Saddam’s regime and say, ‘We know this woman, has she been in jail?’ How do they do a check with a country that has an absolutely abysmal human rights regime?

**Mr Illingworth**—There are two checks: one is the security consideration and one is the criminality consideration. The former is conducted by the Commonwealth and the latter—

**Senator SCHACHT**—Sorry—the security is conducted by ASIO?

**Mr Metcalfe**—Yes.

**Mr Illingworth**—The second check is basically conducted by the applicants themselves. It is not related to their homeland. The general requirement is that where a person has resided for 12 months in a country outside their homeland—I think it is in the last 10 years—they need to provide a record of their, hopefully, lack of criminal behaviour in that country. The reason why it is done by the applicant is that most countries do not respond very well to other governments asking for that information; generally an individual has to obtain copies of their own records. We provide assistance to applicants to do that, in the form of the IAAAS—the paid, publicly funded migration agents who are available to assist applicants in those efforts. In this case, there were considerations that led to prolongation of one of those checks.

**Senator SCHACHT**—So you are telling me that this is an unusual case. She has not been released, as of last Friday—she may have been released yesterday and you have not told me—but I was told it may be imminent.

**Mr Illingworth**—I think imminent—

**Senator SCHACHT**—Could mean six months in immigration?

**Mr Illingworth**—No, I am just trying to think of the past tense of that word.

**Senator SCHACHT**—She has now been released.

**Mr Illingworth**—Yes.

**CHAIR**—Post-imminent.

**Senator SCHACHT**—She has now been released?

**Mr Illingworth**—Yes. I would not like to mention the name of the individual—

**Senator SCHACHT**—No, I do not want you to mention the name.

**Mr Illingworth**—because I understand that release happened today for the individual that you are interested in.

**Senator SCHACHT**—I hope release was not because she had the good luck to have someone come to see me on her behalf. I told them that I was turning up here to ask a question.

**Mr Farmer**—I do not know the case, but you can guarantee that.

**Senator SCHACHT**—I had no effect. My representations are absolutely irrelevant to her release. So I am a useless senator. Mr Farmer, you are telling me I am a useless senator.

**CHAIR**—Senator Schacht, if I might say with regard to your effect, you are in fact asking questions that pertain to the department—

**Senator SCHACHT**—It flows backwards and forwards. If I wait for the department on Friday, the tribunal will have left.

**CHAIR**—It is not flowing very far at the moment in either direction. The RRT is here this evening, and I am absolutely determined that we complete the RRT's consideration of additional estimates this evening. I am going to be very determined to ensure that questions that are asked in this next period go to the RRT and are not questions for the department. If you have further questions for the RRT, we can take those up now. If you do not, I will ask Senator Bartlett to ask questions to the RRT.

**Senator SCHACHT**—In view of my non-successful representations, I will go back to the tribunal.

**Mr Farmer**—Senator, I passionately encourage you to revise your opinion of what I said. I did not imply anything about you.

**Senator SCHACHT**—No, no, I thought you did. I am thick-skinned enough to know what is fair go in this game: I give a kick, you give a kick back—so we are even. I am not offended at all.

**CHAIR**—There is no room for passion or kicking.

**Senator SCHACHT**—In relation to the issue that I raised about the delay after you make your decision and we wait for the information to come on notice, if it does—in this case, it was three months—has anybody come back to the tribunal complaining about that?

**Mr Karas**—Not to my knowledge, Senator. As indicated, we make the decision as to whether Australia owes protection obligations to the applicant as such, and then the matter moves on from the tribunal. As indicated by Mr Illingworth, there are other checks to be made in relation to the application. Once we are functus officio, to use the terminology, usually the tribunal has no further role in the matter.

**Senator SCHACHT**—The letter signed by the deputy registrar in Melbourne, whose signature I cannot read, is a very classic 'Yes, Minister' sort of layout. It is not user-friendly.

Can I suggest to the tribunal that when you say, ‘The tribunal has decided that you are refugee,’ that is plain English, but not when you say, ‘Please note: you still have to satisfy other requirements before you qualify for a protection visa. You should read the attached information sheet from DIMA concerning what you should do now,’ and you look through that material. In the case I raised it was accepted that she was semi-literate. Fortunately—some people might say unfortunately—she found assistance from Australian lawyers who take up these cases, and that is why the case came through. Would it be possible for the tribunal to write a more useful letter explaining that there will be delays on the checks of character and that this is not a case where next day you are automatically out. The way this reads is that through the system there will be a slight check until you collect your toilet bag and then it is ‘good afternoon’. I have to say, with all due respect to the chair, that the letter from the department is even more blunt and unfriendly in explaining that there will be delays. As I understand, this person got quite frantic. She thought she was for the high jump in another way. I also understand that her husband, who is already in the country on a protection visa, was demonstrating outside Woomera in the recent past because he thought you were up to some nasty trick with this delay.

**Mr Farmer**—If I could say something in response. The person in detention would have the assistance of the IAAAS provider to explain those things. I take your point. We will look at the document. If we can make it more accessible, and I cannot see why we could not, we will do that.

**Senator SCHACHT**—I think at the tribunal you should try to explain what the medical, penal and character checks are. What is the difference between a penal and a character check? Your character is checking out whether your character was affected by the fact that you might have been in the slammer, I presume. Is that the difference?

**CHAIR**—We have strayed back to the department, Senator.

**Mr Metcalfe**—In broad terms, penal checking refers to the question of whether a person has a personal record; security checking refers to the question of whether that person is of interest to the security authorities—

**Senator SCHACHT**—But is that character checking? Is security checking the same as character checking?

**Mr Metcalfe**—Character checking is the broad terminology for both penal and security checking.

**Senator SCHACHT**—But it says here in your note penal checking and character checking as though they are two different things. I think these things ought to be clear.

**Mr Metcalfe**—We have already undertaken that we will review that.

**Senator SCHACHT**—At the tribunal when you handed down this decision, Mr Karas—although it was not by you personally, I think it was Ms Kerry Boland—is it possible for that to have been explained in the decision?

**Mr Karas**—We will look at the letter that accompanies a decision. I think that may be the better way to go, Senator. Having regard to what you have said now, we will look at that and see if we can reword the letter, perhaps, to make it a little clearer along the lines of what you have been suggesting.

**Senator SCHACHT**—Reading the determination in this case, I have to say that to my untrained eye it is quite thorough.

**Mr Karas**—The determination usually follows the legislation.

**Senator SCHACHT**—I know, but I was saying that the information for me is easy to follow but I am not sure it is easy for somebody who is not 100 per cent literate, even in their own language, to follow, particularly if you were rejecting them.

**Mr Karas**—I hear what you say, but I think the registrar might want to add something.

**Ms Toohey**—The tribunal has recently reviewed every standard letter and document that it produces with a view to ensuring that they are in plain English and as readable as possible. All of those documents and letters should be on our system in the next month or so. I cannot recall whether that is a matter that has specifically been dealt with in the letter but I will make sure that we deal with it.

**Senator SCHACHT**—That is all I have. Thank you. I am pleased she was released.

**CHAIR**—Thank you, Senator Schacht, for assisting the committee in concluding our consideration of this part of the additional estimates this evening.

**Senator Ellison**—I hope we are still on track, Madam Chair, for the 11 o'clock finish and disposal—not disposal—completion of evidence of the Refugee Review Tribunal.

**CHAIR**—An unfortunate turn of phrase, Minister. Senator Bartlett, I am sure that you will endeavour to be expeditious in your approach to these questions.

**Senator BARTLETT**—Absolutely, Madam Chair. I will follow the example set by my colleagues. I have some questions in relation to some aspects of the annual report. Firstly, I note your comment about the concern you mentioned about the handing down of decisions and the delay that can produce. Obviously as a legislator I will note that but have you got any indication that that concern has been absorbed by the department or the government and that there may be some action in that regard?

**Mr Karas**—We had raised the matter of some changes to legislation that would assist in our procedures and process and that is one that has been highlighted.

**Senator BARTLETT**—I am following on from the comments Senator McKiernan made about the terms of the various members of the tribunal. You have listed all the tribunal members up to the end of 2001, and I am presuming a whole number of people were appointed again after that. What are the current terms of those people?

**Mr Karas**—All members are appointed till 30 June 2004.

**Senator BARTLETT**—So, linking that back in with this other issue of the potentially pending ART reappearance, how does that impact on people's terms? If the parliament decides that the newly reconstituted legislation, following great consultation with the government, is now a thing we might want to pass expeditiously before 2004, how does that affect those members?

**Mr Karas**—It may depend on the terms of the legislation but, going from memory, I do recall that the draft ART bill did contain a provision to the effect that tribunal members would be carried over for a year, if I recall it rightly. That is the portfolio tribunals.

**Senator McKIERNAN**—Are you talking about the draft bill?

**Mr Karas**—The draft bill. The one that was defeated in parliament last year.

**Senator McKIERNAN**—Are you sure you are not referring to the consequences bill that went with the main bill?

**Mr Karas**—I may be. I am just going from memory now. It is quite some while ago.

**Senator McKIERNAN**—You are probably getting old like I am, Mr Karas.

**Mr Karas**—I don't know; I may be a little older, Senator. I am not sure; I have not checked. Just going from memory, I do recall there was such a provision that did enable—

**Mr Storer**—The consequential.

**Senator McKIERNAN**—The consequential bill. Mr Storer has confirmed my thoughts.

**Mr Karas**—Consequential is right.

**Senator BARTLETT**—The statistics you have here on page 19 in relation to the percentage of cases finalised within time, as I read them, have actually dropped reasonably significantly to under 70 per cent for those in detention, and indeed it is lower than it has been in the last five years, if I am reading it correctly. There would seem to be a worrying decline in a key performance standard, I guess. Am I reading that correctly and, if so, why is that the case?

**Mr Green**—You are right, Senator. There has been a decline over the last couple of years in the number of cases that meet the tribunal standard of being completed in 70 days. There is in truth a very close comparison between the number of detention cases overall that come before the tribunal and our ability to finalise them within time lines. As you know, the number of detention cases that have come before the tribunal over the last year and a half or two years has been very much higher than we had experienced before. It has been difficult to continue to finalise those in time. We hope to see, as the number of detention cases before us levels out and perhaps reduces, that we will be able to increase compliance with a 70-day standard.

**Senator BARTLETT**—So you are saying it is predominantly due to having to deal with more applications, particularly from detention, without having increased resources.

**Mr Green**—That is the principal reason. There have been some additional complexities produced by changes in the law as a result of judicial decisions, but the principal reason is, I think, the larger number of detention cases that come before the tribunal.

**Senator BARTLETT**—You have stated in here a couple of times that the percentage of decisions that people have sought judicial review of has increased, and that is basically due to the statistical fact that people in detention are more likely to appeal. Why is that? Why are people in detention more likely to appeal than people in the community?

**Mr Karas**—I don't think there is a particular explanation for it, Senator. There just seems to be a tendency that a number of them do, statistically.

**Senator BARTLETT**—Does anyone from the department have any extra insight into that one in terms of workload and such for the tribunal and the courts and all those sorts of things?

**Mr Storer**—If they get an adverse decision from the tribunal they would have to be removed.

**Senator BARTLETT**—That would be the case with people in the community as well, surely; not just people in detention.

**Mr Storer**—Yes, but you asked about the detention.

**Senator BARTLETT**—You are saying that statistically people are more likely to appeal for judicial review if they are in detention than if they are not.

**Mr Illingworth**—I think the reality is that when one is in detention the third option of just disappearing until such time as you can be located, and considering the issues then, is not available. So for detainees receiving a firm RRT decision means that they either have to do something about it or prepare for departure.

**Senator BARTLETT**—That is logical. So you are basically saying that, in terms of the total number of applications that are filed, there is a greater proportion of them now that are detainees than was previously the case?

**Mr Green**—That is certainly true.

**Senator BARTLETT**—Is that detail in the report? I cannot find it in here in the statistics.

**Mr Green**—I think you will find that there are some statistics on that on pages 10 and 11 of the annual report.

**Senator BARTLETT**—I just like nice neat tables so I do not have to read; I am too lazy. The other aspect concerns those applications to the Federal Court and the High Court. I am not sure if you give a percentage.

**Mr Green**—I can give you a percentage: about 16 per cent of applicants last financial year made applications for judicial review and then failed to get a protection visa, from our consideration.

**Senator BARTLETT**—And there are 835 determined by the courts, of which about 140-odd were set aside or omitted by consent and that sort of thing. Is that percentage higher than previous years?

**Mr Green**—It is very stable. In 1999-2000 the percentage of applicants in the courts overturning decisions of the tribunal was 17 per cent. It was 18 per cent last financial year, and it is running at 18 per cent this financial year.

**Senator BARTLETT**—You have listed some significant decisions of the courts on pages 11 and 12. I note the useful observation by Senator McKiernan about the AAT decision—

**Senator McKIERNAN**—I thought they were all useful.

**Senator BARTLETT**—the particularly useful observation by Senator McKiernan about the AAT decision, which it probably would be handy to have detailed here as well. Have the couple of examples that you have outlined concerning the procedural fairness decisions of the High Court been affected by subsequent legislative changes?

**Mr Green**—The decisions would not have been affected. The tribunal continues to base its procedures and processes and directions to members on the law as it stands. No changes have been made to those procedures as a result of the privative clause or other recent legislation.

**Senator BARTLETT**—In terms of the three cases relating to a particular social group that you have listed in the paragraph at the bottom of page 12—Sarrazola, Khawar and Haji Ibrahim—are those principles likely to have been overturned, modified or affected by legislative changes at the end of last year?

**Mr Green**—I do not believe so.

**Senator BARTLETT**—So those have been basically taken into account in your decision making processes consequently?

**Mr Green**—That is correct.



**Mr Storer**—Some of those cases were drawn upon for bill No. 6 as part of the package of bills last year.

**Senator BARTLETT**—So it may have been affected by that bill No. 6?

**Mr Storer**—Yes—dealing with persecution and so forth.

**Senator BARTLETT**—My next question goes beyond the report but concerns the operations of the tribunal now. There were obviously a significant number of bills passed in September last year—and No. 6 was probably the key one in your activities, at a guess. Has that affected your operations already or does that only come into effect for protection visa applications after September-October last year? You are having to operate under a new law in relation to the determination of a refugee under the act. Have you developed some new guidelines as a consequence of that—training for the members in the new law?

**Mr Karas**—Yes, there has been a module introduced into the training to take that into account, from what I understand. At the same time, members are aware and there has been a legal bulletin or an advice—if I can refer to it that way—which indicates to members that there have been amendments or additions to section 91 which do have an effect in relation to the consideration of matters that come before the tribunal. And in accordance with legislation there is some guide—if I can use that term loosely—as to how that is to be looked at or considered. In other words, members have to take the legislative amendments into account.

**Senator BARTLETT**—Has there actually been a document or an advice or something like that produced that outlines the changes—how people will now need to examine cases under the new law and what the differences are?

**Mr Green**—Certainly, Senator. Every time that there is a substantial case that changes the way in which we are meant to apply the law there would be a legal bulletin which gave members all of the information and directions they need in relation to that.

**Senator BARTLETT**—They are probably publicly available but could you point me in the direction of them or provide me with a copy of them if they are not.

**Ms Toohey**—We will provide copies of them.

**Senator BARTLETT**—I ask this because we pass laws and the government says, ‘This is to have the effect or intent of this change,’ and obviously you want to assess whether that is what has happened. Is it possible, either now or later—it may be too early this stage—in terms of the decision-making of your members to ascertain whether or not a different decision would have occurred if the law had not been changed?

**Mr Karas**—I do not think so—the members would take into consideration the relevant law in relation to facts and circumstances that they have before them and in their application of it. I do not know whether I could say that there had been a change in relation to it. Personally, I have not heard of it—in other words, members coming up and saying, ‘Look, had this not been the case I would have been able to find this way or that way.’ I just have no experience of that.

**Senator BARTLETT**—What way have we got of being able to tell whether or not the changes are having any impact in terms of the intent that the government suggests?

**Mr Karas**—I do not know. Perhaps with the passage of time after there have been quite a number of decisions made—

**Senator BARTLETT**—Crunch the numbers and all that sort of thing

**Mr Karas**—Perhaps.

**Senator McKIERNAN**—I just have a quick question following Senator Bartlett's very useful contribution. The other very significant change that occurred in September of last year was the passage of the judicial review amendment bill which, in law, made the tribunal the final determining body in adjudicating claims for protection within Australia. What additional training, if any, did the tribunal institute for members with this added responsibility that was placed on their shoulders? Was there any additional training made available to members in order to ensure that they were fully equipped to adjudicate on decisions in the light of the changed circumstances with the passage of the judicial review amendment bill?

**Mr Green**—Yes, indeed, there was training in relation to the alteration to the legislation.

**Mr Karas**—We do continually have training programs which take into account those sorts of things and there was specific training given in relation to that.

**Senator McKIERNAN**—I noted in the annual report for the previous year that, I think, 147 cases had been set aside by the courts. That indicated to me not that in every case did the tribunal member get the decision wrong but that there was concern at the court to remit the case back to the tribunal for a further look at it. That fail-safe mechanism was no longer available to the tribunal members; there was an additional onus of responsibility on their decisions.

I wonder if you could provide the committee with details of that training: the curriculum, the duration, the length. Could you also provide the committee—I am asking this on notice—with information as to the number of members who partook of that additional training, and also who were the trainers, the lecturers, tutors or whatever was required.

**Mr Green**—I would be very happy to do that, Senator, but it is very important to understand that although the legislation may change we are not at all sure how the courts will interpret it. Although it would seem to change the way in which decisions can be reviewed by the courts, it does not change the basis upon which members of the tribunal make their decisions. The law as it was remains as it is and decision makers are still required to make their decisions according to that law.

**Senator McKIERNAN**—But we have already, through the questioning from Senator Bartlett, discovered that migration bill No. 6 did change the law and that the judicial review amendment bill ensured that the courts were not going to make decisions as to whether or not the decisions of the tribunal were accurate, or flawed in some shape or form. It was going to be according to the will of the parliament who passed that legislation. It made the RRT the final determining body in law on those matters, did it not? That, significantly, put an extra, very significant onus on the tribunal member. Do you dispute that?

**Mr Green**—I do not dispute that for a moment. But nor did it change the law that tribunal members need to interpret in making individual decisions. You are indeed right: there will need to be a deal more attention applied in this area because of the enhanced role for the tribunal. But the law that they are interpreting has not changed as a result of the privative clause legislation that you are referring to.

**CHAIR**—I think that that concludes questions in this area to the Refugee Review Tribunal this evening and we have achieved one of our small goals today as a committee—although I suspect we would not be standing on the gold dais at Salt Lake City in terms of pace! The committee has had a long and arduous two days but with the cooperation of senators and all officers who have appeared before the committee they have been productive. The committee

will resume at 9 a.m. on Friday morning for the scheduled spillover day. I would like to be able to indicate a time frame for Friday, but I left my crystal ball at home and I do not think it is possible to do that. A significant number of senators will be participating. I thank all the witnesses who have appeared this evening, I thank the minister for his assistance and cooperation over the past two days, and I thank the secretariat, Hansard and Broadcasting.

**Committee adjourned at 11.03 p.m.**