



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION
COMMITTEE

Consideration of Budget Estimates

MONDAY, 27 MAY 2002

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Monday, 27 May 2002

Members: Senator Payne (*Chair*), Senator McKiernan (*Deputy Chair*), Senators Cooney, Greig, Mason and Scullion.

Senators in attendance: Senators Calvert, Carr, Cooney, Crane, Harradine, Ludwig, McKiernan, Payne, Schacht, Scullion and Sherry

Committee met at 9.04 a.m.

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Troeth, Parliamentary Secretary to the Minister for Forestry and Conservation

Senator Ellison, Minister for Justice and Customs

General Questions

Departmental Executive

Mr Robert Cornall, Secretary

Dr James Pople, Executive Adviser

Ms Kathy Leigh, A/g General Manager, Civil Justice and Legal Services

Mr Ian Carnell, General Manager, Criminal Justice and Security

Royal Commission into the Building and Construction Industry

Mr Colin Thatcher, Secretary

Ms Sheila Butler, Director, Corporate Services

Royal Commission into the failure of HHH Insurance Group

Mr Richard St John, Secretary

Mr Graham Millar, Deputy Secretary

National Native Title Tribunal

Mr Christopher Doepel, Registrar

Mr Hugh Chevis, Director, Service Delivery

Ms Marian Schoen, Director, Corporate Services and Public Affairs

Office of the Director of Public Prosecutions

Mr Damian Bugg QC, Director

Mr Graeme Delaney, Principal Adviser, Commercial Prosecutions and Policy

Mr John Thornton, Deputy Director, Legal and Practice Management

Ms Stela Walker, Deputy Director, Corporate Management

Federal Magistrates Service

Mr Peter May, Chief Executive Officer

National Crime Authority

Mr Gary Crooke QC, Chairman

Mr Jon Hickman, National Director Corporate

Mr Adrien Whiddett, General Manager

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen, A/g Director
Mr Alf Mazzitelli, Senior Manager, Corporate Resources

Australian Law Reform Commission

Professor David Weisbrot, President
Ms Rosemary Adams, Executive Director

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

Human Rights and Equal Opportunity Commission

Dr Sev Ozdowski, Human Rights Commissioner and Acting Disability Discrimination
Commissioner
Ms Diana Temby, Executive Director
Ms Sally Moyle, Director, Sex Discrimination Unit
Ms Eleanor Hogan, Senior Policy Officer, Social Justice Unit
Ms Rocky Clifford, Director, Complaint Handling
Mr Stephen Duffield, Director, Human Rights Unit
Ms Robyn Ephgrave, Finance and Services Manager

Office of Film and Literature Classification

Mr Des Clark, Director
Ms Patricia Flanagan, Marketing and Development Manager
Mr Paul Tenison, Business Manager

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, General Manager, Client Services
Ms Dianne Carlos, A/g General Manager, Corporate Services
Ms Angela Filippello, Principal Registrar

Administrative Appeals Tribunal

Ms Kay Ransome, Registrar

High Court of Australia

Mr Christopher Doogan, Chief Executive and Principal Registrar
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

Ms Rayne de Gruchy, Chief Executive Officer

Mr David Riggs, Chief Finance Officer

Australian Institute of Criminology and Criminology Research Council

Dr Adam Graycar, Director

Australian Security Intelligence Organisation

Mr Dennis Richardson, Director-General

Mr Jim Nockels, Assistant Director-General, Corporate Management and Security

Mr Mark Aspin, Coordinator, Financial Strategies

Australian Protective Service

Mr Martin Studdert, Director, Australian Protective Service

Australian Federal Police

Mr Mick Keelty, Commissioner

Mr Brian Cooney, Chief Financial Officer

FA Audrey Fagan, General Manager

Australian Customs Service

Mr Lionel Woodward, Chief Executive Officer

Mr John Drury, Deputy Chief Executive Officer, Border

Rear Admiral Mark Bonser, Director-General, Coastwatch

Mr John Hawksworth, National Director, Border

Mr Phil Burns, National Director, Commercial

Ms Jenny Peachey, National Director, Office of Business Systems

Ms Gail Batman, National Director, Passengers and Information Technology

Mr Alistair Cochrane, Chief Financial Officer

Ms Sue Pitman, National Manager, Trade Measures

Ms Marion Grant, National Manager, Border Operations

Attorney-General's Department

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.

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

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

Output 2.2—Legal services and policy advice on security law.

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

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

Mr Mike Fish, A/g General Manager, Corporate Services

Mr Trevor Kennedy, Chief Finance Officer

Mr Peter LeRoy, General Manager, Information and Knowledge Services

Ms Sandra Power, A/g First Assistant Secretary, Civil Justice Division

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Ms Dianne Heriot, Assistant Secretary, Crime Prevention Branch

Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch

Mr Tony Ward, A/g Principal Legal Counsel, Office of Legislative Drafting

Ms Philippa Horner, First Assistant Secretary, Native Title Division

Ms Sue Pidgeon, A/g 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, A/g Assistant Secretary, Office of Legal Services Coordination

Mr Ed Tyrie, Director, Protective Security Coordination Centre

Mr David Templeman, Director, General, Emergency Management Australia

Mr Morrie Bradley, Director Knowledge and Business Management, Emergency Management Australia

Mr John Mobbs, Chief Executive Officer, CrimTrac

Mr Stewart Cross, Deputy Chief Executive Officer and Director Operations, CrimTrac

Ms Fran Raymond, Chief Finance Officer, CrimTrac

CHAIR—Good morning, ladies and gentlemen. I declare open this public hearing of the Senate Legal and Constitutional Legislation Committee. On 14 May 2002 the Senate referred to the committee the particulars of proposed budget expenditure for 2002-03 for the Attorney-General's and the Immigration and Multicultural and Indigenous Affairs portfolios. The committee will consider the portfolios in the order in which they appear on the circulated agenda, beginning after any general questions with the interstate agencies. The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in order of the Senate dated 31 August 1999. The committee has agreed to the date

of 5 July 2002 for the receipt of answers to questions taken on notice and any additional information. I remind everyone present to please turn mobile phones either off or down whilst you are in the hearing room.

I welcome the Secretary of the Attorney-General's Department, Mr Robert Cornall, and officers of the Attorney-General's Department and associated agencies. I understand that the minister is delayed in attending this morning's hearing by circumstances entirely beyond his control but more in the lap of the gods, so to speak, and we will welcome the minister when he is able to join us. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

I remind you that, while the Finance and Public Administration Legislation Committee oversights the monitoring of the PBS, the Legal and Constitutional Legislation Committee continues to monitor the format of the PBS presented to it. This is in accordance with the Finance and Public Administration Legislation Committee's recommendation, in its third report on the format of the PBSs, that those legislation committees report in each budget estimates on the adequacy of the PBS provided for their use. I also remind officers that an officer of a department of the Commonwealth or a department 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 and I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I would like to take this opportunity to note that there are no outstanding answers to questions and the committee particularly wants to thank the departmental officers, the secretary and the minister for the overall improvement made by the department and all the agencies in providing responses within shorter time frames; that certainly assists us in our efforts and we are very grateful. Do you have an opening statement you wish to make, Mr Cornall?

Mr Cornall—No.

CHAIR—Thank you very much. I would also like to thank you, Mr Cornall, on behalf of the committee for facilitating a briefing for the committee on the PBS before the parliament rose in its last sitting period. I appreciate that that was done at particularly short notice given that we were unable to convene during the up week last week and we are very grateful both for your offer and for the briefing; it was of benefit to all committee members. I begin by seeking any general questions. As there are no general questions, as I have indicated in discussions with the committee and with the secretary, we will move to the National Native Title Tribunal.

[9.08 a.m.]

National Native Title Tribunal

Senator McKIERNAN—Welcome, Mr Doepel. We have not seen you for a while. It must be a relief to get out of the heat of Perth.

Mr Doepel—It is cooling down over there, Senator.

Senator McKIERNAN—It was 29 degrees there yesterday. Things are pretty hot over there. We have not had the National Native Title Tribunal in front of the committee for a period of some time.

Mr Doepel—It has been 12 months since we have been here.

Senator McKIERNAN—It is good to have you here. This will be the last occasion that you will be appearing before me as well. We have some questions for you. We note that there has been a significant increase in costs per output description. For example, in output group 1, Registrations, the claimant applications have increased from \$12,205 per decision to \$17,396 per decision; native title determinations have increased from \$10,727 to \$14,767 per determination; and ILUAs have increased from \$7,886 to \$25,329 per decision. Can you explain these differences to the committee?

Mr Doepel—Yes, I can. In the second half of last year, we had a look at our costing methods for the outputs across the organisation and we revised the costings. The earlier costings were based on some facts and also on some assumptions about what we would be doing in a practical administrative sense to manage these various categories post the 1998 amendments. As we have got further and further into the post 1998 regime, we have realised that the unit costs, particularly around agreement making, are much higher than we anticipated, because the number of meetings, for example, that go into a process of mediation have been 20 or more in many instances. I do not think we were accurately reflecting those full administrative costs in the past, so we have gone back and had good look at it.

I have to say that the process of agreement making, whether it be on the path to a determination or in relation to an indigenous land use agreement, is very human resource intensive. It requires the regular convening of meetings with a range of parties, and there are no shortcuts. We have to get people together to talk through the issues, and we are finding that these processes are taking far more meeting days than we had originally predicted. That is now reflected in the increased costs.

Senator McKIERNAN—In indigenous land use agreements, in particular, there is a three-fold increase. Is that going to be represented in three times the number of conferences, meetings or consultations that are going to happen, or is it just a reflection on what has been happening in the past?

Mr Doepel—I think it is a combination of the representation of some of the things that we perhaps were not capturing in the past and also the fact that some of the agreements that we have been doing in the last 12 months have been highly complex, with multiple parties, and have taken many meetings. We were involved with the KERG group of agreements in Queensland on a much more limited basis than with others—we were called in in May last year to assist the parties who had reached an impasse—and we put four solid months into that agreement. Two members were devoted to it. From memory, up to four staff were almost exclusively devoted to it, and it was a constant operation. If you are being fair in your costing model and try to attribute the costs, including on-costs, that is the price, basically. You cannot hide that. It is very difficult to actually get a benchmark figure for some of these because some meetings for mediation and agreement negotiation are of a far more limited nature but others are quite extensive and may go over that benchmark figure that has been given.

Senator McKIERNAN—Would it be the case that, as this system beds into place, we are now reaching the more complex cases which in turn will mean that there are going to be those additional costs?

Mr Doepel—I think we have to keep a historical perspective here. We are more than three years on from the 1998 agreements, but we still have a lot of users of the system getting accustomed to the processes. One of the things that we would like to see develop in the short to medium term, particularly in some sectors, is template, or benchmark, agreements that can be used across various sectors as models in an attempt to bring some of these costs down. However, we have to be very careful, because ‘one size fits all’ may not be the way to go. All parties have unique needs and requirements as they come to each separate ILUA negotiation. But over time I would expect the costs to reduce. We could perhaps make a few comments in a moment about our experience with mediation towards determination, where we are still seeing people getting used to the system and getting an understanding of how the processes work.

Senator LUDWIG—You have given an explanation as to why the costs are such as they are—in other words, they have increased and will take the ILUAs from \$7,000 to \$25,000. The explanation, as I understand it—or paraphrasing your reply—is that you have revised your costing and it is a little bit dearer because of the additional meetings and so on. But how do you actually arrive at the \$25,000, more pointedly? Is it the overall number of agreements that you make divided by the costs totalled or is there a methodology? What I wanted to ascertain more precisely is the methodology that you use so that when we are here next year, or whenever you next arise, then if it fluctuates again and your answer is the same—you are unsure of the costs and they have fluctuated again—we could tie that down a little bit more specifically.

Mr Doepel—I will ask Mr Chevis, who is the head of our Service Delivery Division in the administration of the tribunal, to answer that for you.

Mr Chevis—The methodology is to do periodic surveys through the tribunal. Costs—both administrative and staff costs—are attributed to particular outputs. In that way, knowing the results that have been achieved for the period, it is possible to then revise the actual costs of achieving that output.

Senator LUDWIG—I understand the general drift of the answer but I am wondering if you could take that on notice and come back to me with examples, perhaps on those areas that Senator McKiernan has mentioned, so that we can understand what staffing outputs you addressed to which areas and whether it will have some predictive value or whether it is simply a historical method of allocating costs.

Mr Chevis—Okay.

Senator LUDWIG—Do you understand what I am asking?

Mr Doepel—We will do that and we will come back to you.

Senator LUDWIG—Yes, if it is possible—come back to us if it is going to take too many of the resources of your area. But I really did need to understand whether it has got any predictive value or whether it is simply historical data—in which case, what are you going to do about predicting how much these things are going to cost?

Mr Doepel—On the general point of prediction, both workload volume and the size and scope of these exercises has in part been speculative in recent years. But, also, it has been grounded on experience as it has been developing. We are heading into a period where we have a more stable range of situations that we are involved in and can give a firmer basis for future costing. But we will come back to you with that.

Senator McKIERNAN—Thank you very much for that. We will look forward to the details you provide. In output 1.2.2 it details ‘Claimant, non-claimant and compensation’ as an output description. Can you explain this output to us? What exactly does it mean and what does it pertain to?

Mr Chevis—The output relates to agreements reached between the parties with assistance from the tribunal. The actual figure is the number of agreements that were reached in those terms during the course of the financial year. The important point is that the tribunal has had a role in facilitating or mediating the agreement itself.

Senator McKIERNAN—What is the non-claimant cost?

Mr Chevis—It is possible that the tribunal might be involved in discussions between the state, the party and the representative body in relation to a non-claimant application. All of the outputs in this financial year do actually relate to claimant applications, not to compensation or non-claimant applications.

Mr Doepel—There has been very little activity in recent times around non-claimant and compensation applications. Our efforts in agreement making under this category have been entirely devoted to assisting in agreement making that ultimately heads towards a determination of native title. That is in response to applications from indigenous parties for a determination.

Senator McKIERNAN—Mr Doepel, you say that there has been very little activity in that area to date. Has there been any activity and, if so, what was the cost? In searching through the outputs now, I am more particularly interested in what the allocations are for the coming financial year and the out years beyond that.

Mr Chevis—In relation to output 1.2.2, all of the results in this financial year have been in relation to claimant applications, as Mr Doepel has said. The predictions in the out years are that that will also be the case, that the activity will be in relation to claimant applications. The situation with non-claimant and compensation applications is much more difficult to predict because there have been so few applications of that type lodged. There has not actually been any role for the tribunal in facilitating any outcomes in relation to those at the moment.

Senator McKIERNAN—So there is \$88,727 per agreement. That would include non-claimant costs, but you do not know exactly what they might be, if indeed there are any. Would there be an expectation that there might not be any non-claimant costs this coming financial year?

Mr Chevis—As I say, the predictions for the number of agreements in the figures for this coming year are based on our current experience. Our current experience is that it is in relation to claimant applications that the services of the tribunal are being requested to negotiate agreements. So, on that basis, our predictions are on what it costs us to assist in negotiating agreements in that area.

Senator LUDWIG—What was the amount last year?

Mr Chevis—The unit cost?

Senator LUDWIG—Yes, in that area. What worries me is that, if you are using the current figure to predict what the next year’s figure will be, you can go anywhere you like.

Mr Doepel—I will just check last year’s PBS to give you that figure.

Senator LUDWIG—Is there a breakdown between claimant and non-claimant costs?

Mr Doepel—No, not as such.

Senator LUDWIG—Why wouldn't you have that?

Mr Doepel—Because we have had no experience with non-claimants. Each process would require meetings, mediation and consultation with stakeholders, in a vein similar to dealing with claimant applications; although, it is conceivable that, in relation to a non-claimant or compensation application, the extent of that activity might not be as large as with the standard claimant application.

Senator LUDWIG—I understand.

Mr Doepel—Looking at this other figure for you, Senator, we are looking at output 1.2.2, and last year the figure stated was \$62,605 per agreement.

Senator LUDWIG—So there has been an increase.

Mr Doepel—Yes. The comparison for this year is—

Senator LUDWIG—\$88,000.

Mr Doepel—Yes, that is right.

Senator LUDWIG—Why is there an increase? Is that part of your revision again?

Mr Doepel—That goes back to my explanation to—

Senator LUDWIG—You understand the point I am making.

Mr Doepel—I understand exactly the point you are making.

Senator LUDWIG—You can start off at \$66,000 and you can say that you will use that to predict next year, but halfway along you revise it upwards to meet whatever your expectations might otherwise be. Next year you can do the same: you can go down or up without any concrete methodology used to work out what your actual costs should be—in other words, to benchmark them as to what they could be so as to have a historical tracking system to say: 'This is what they should be. This is how much they are above or below the benchmark.'

Mr Doepel—I appreciate your point. In response, I would say that we could come to a methodology that remains basically unchanged and find that, as our experience unravels, the degree of effort or intensity going into suites of negotiation or mediation is more extensive than we originally envisaged. That has in part been the experience we have had over the last year or so. There is a lot more effort going into achieving these agreements.

Senator McKIERNAN—I want to go back to some general questions on the tribunal. I jumped ahead of myself in asking those very specific ones. Could you please advise the committee how legislative and executive changes in each state with respect to the hearing of native title claims have impacted on the workload of the tribunal since the last time we met?

Mr Doepel—Let me understand your question a bit more fully, Senator.

Senator McKIERNAN—I am interested in the effects of legislative changes and changes made by the executive.

Mr Doepel—Regarding legislative changes, we are basically working with the regime that we came to in 1998, after the parliament passed the amendment act. There have been no legislative changes for us to work on over the last year. We have been in the continued process of implementing the 1998 amendments. Regarding executive changes, let me clarify: are you talking about a future act?

Senator McKIERNAN—No. Just in terms of legislative changes, hasn't there been a refinement of regulations on the way through?

Mr Doepel—Some regulations relating to indigenous land use agreements have been refined, yes. That is one area of significant refinement.

Senator McKIERNAN—I am asking how the tribunal as a whole is operating now and fitting in and bedding in since the legislative change. There has been a system of almost constant fluctuation since the establishment of the tribunal. Are you bedding in? Are you settling in?

Mr Doepel—It is interesting that you have the perspective that it has been a period of change. With the notable exception of the new indigenous land use regulations, we have considered it a period of stability. Much of our investment in thinking through what was required and in piloting and rolling out new procedures was done in the 1998-99 period. We have had to adjust some of our processes for dealing with indigenous land use agreements. I would say things are settling down fairly well.

During the first year or two after the 1998 amendments, we were very interested in Federal Court rulings on my statutory functions as registrar in applying the registration test to claimant applications. We had a period where there were quite a number of judicial reviews sought; I think at one stage we had up to 18 or 19. Various rulings were made on natural justice points, on quality and extent of evidence, but in the last six to 12 months that has all ebbed away. In fact, I think when I last spoke to the head of our legal area, we had one or perhaps two outstanding judicial review matters in the Federal Court. So the last six or 12 months has been a period—certainly under my functions—of considerable stability.

Senator McKIERNAN—Thank you. In which states has the workload of the tribunal increased or has there been a marked decrease in any states? Are you able to pinpoint those things?

Mr Doepel—I will ask Mr Chevis to give you a quick Cook's tour.

Mr Chevis—In Western Australia there has been a marked increase in the work of the tribunal, particularly in relation to mediation of claimant applications. The future act work in Western Australia continues to remain at a fairly high level. In the Northern Territory, with the decision of the Northern Territory government to use the federal future act regime, there has been a significant increase in the work of the tribunal over time. In this financial year the processing of section 29 notices is under way, and that will continue with the possibility of some significant future act mediations. In the Northern Territory in this financial year there has also been referral by the Federal Court of matters to the tribunal for mediation. That is a fairly new development. In South Australia similarly the Federal Court is beginning to refer matters to the tribunal for mediation; that has not been the case for a number of years before this financial year. There are a number of directions hearings by the Federal Court coming up over the next few months, and we would expect a number of other matters to be referred for mediation in South Australia.

In Victoria a number of very intensive mediations are occurring on several claims, including the Wotjobaluk claim in north-east Victoria. Once again, the Federal Court is moving to refer more matters to the tribunal over the course of the next few months. In New South Wales there certainly have been matters referred to the tribunal for mediation, but the level of work is not increasing or changing in that state as compared to other states. The situation in New South Wales is reasonably steady. In Queensland there has always been a fairly high

level of agreement making and mediation activity. A number of determinations in native title were reached this year with input from the tribunal. I would expect that would continue. The other significant development in Queensland is that we understand the Queensland government intends to process some 70 petroleum tenements through the federal future act processes, and that may lead to work for the tribunal in processing those future act matters.

Senator McKIERNAN—Thank you for that very comprehensive answer. It saved my asking a number of questions on individual states on the way through. I appreciate that.

Senator LUDWIG—Why has the Federal Court started referring more matters to the tribunal?

Mr Doepel—Under the amended act from 1998, that—

Senator LUDWIG—I know the act was amended in 1998, but you seem to be suggesting that this is a recent phenomenon rather than something that started back in 1998—or have an increased number started to come through the states?

Mr Doepel—It has increased. Starting in 1998, we had to start the process again. We had to apply the new registration test to almost all claimant applications that were on the books—some 600-odd, give or take a few. That then triggered a number of administrative processes. Having applied the test to those claims, under my statutory responsibilities, we then have to formally notify interest holders of the existence of the claim. That notification has a period of three months. Then the returns from individual interest holders go back to the Federal Court, which then settles the party lists. So you have three or four stages of administrative process, some of it statutorily defined in three-month lots. In 2002, we are working through that process of notification, settling party lists and formal referral by the court to the tribunal under section 86B of the act for allocation to members for mediation. We can give you some indication of where we are.

Senator LUDWIG—My follow-up question was to ask you if you could outline how many matters have been referred from the Federal Court to the Native Title Tribunal and from which states. I wonder if you can break down the data and tell me whether or not the state legislation currently in place—which has in some states altered over the last couple of years—has facilitated either an increase in the referral process or a decrease in the referral process?

Mr Doepel—We will see what we have here. We can give you a global figure. These figures are as at 23 May 2002. Our statistics for that date show that there are 590 claimant applications for recognition of native title in the system: that is, they are being jointly managed by the tribunal and the court. Of those 590 applications, 290 are formally in mediation and 467 have been notified. The batch between the 467 notification figure and the 290 that have been referred for mediation—approximately 177—are in various stages of completion. The notification has been completed but party lists are being settled and various other administrative procedures are going on with the court prior to referral to the tribunal for mediation. I will just check if we can give you the state by state break down.

Senator LUDWIG—Perhaps you can take that on notice.

Mr Doepel—We can provide you with a table, and we will synchronise it with the 23 May stats so that you can see the whole lot as a snapshot.

Senator LUDWIG—Thank you.

Senator McKIERNAN—How has the new regime in Western Australia, since the election of the new government last year, impacted on the tribunal? Has it led to an increase or a decrease in costs to the tribunal?

Mr Doepel—The short answer is that it has led to an increase in activity and an increase in costs.

Senator McKIERNAN—Is that measurable by a percentile figure at this stage?

Mr Doepel—We could give you details of allocations that we have made to our Western Australian operation in the previous two financial years and compare them with our allocations this year and our estimates for next year. I would happily take that on notice. Within a few months of the change of government, there was a marked increase in agreement making activity throughout the state of Western Australia, and that has continued. We are still waiting to see that government's response to its two reviews, the Wand review and the technical task force review, into the future act area. Depending on the outcome of those responses, there could be even more work for the tribunal.

Senator McKIERNAN—With regard to the future activity of the tribunal, you gave me assurance earlier about the way things are settling in and bedding in, yet you have just done this reallocation of the output costs of things. I am trying to find the right words to express this question: are you still in a position where you are reallocating duties, responsibilities, costs and outputs within the tribunal?

Mr Doepel—No, not at the moment. I think we have to draw a distinction between those activities governed by some sort of administrative procedure—for example, under my statutory functions—and those processes carried out by the members, supported by case managers. We can evolve all those processes, both on procedure on my side and on the mediation or agreement making practice on the side of the members, and work towards better processes, better models. In many instances, you can distinguish that from the underlying workload—that is, what you have to apply those processes or practices to. As I said earlier, we are finding that, as we engage more in this post-1998 regime and there is an increasing number of referrals from the Federal Court, the effort going in at the moment to many areas has been much greater than we anticipated.

I think we have seen examples of some of the larger ventures that we have been engaged in in the last year or two, both in the ILUA assistance in negotiation and in mediation, so we have a sense of the size of the effort and the human and administrative resources devoted to managing those processes. It is an area where precise quantification as against a benchmark figure—and expecting everything to come within a percentage variation on that benchmark figure—is very difficult to assert, because there are such variations in the number of parties to these proceedings across the country. In South Australia, for example, you can have 200-plus parties to a mediation. That, on its face, will require a higher level of human handling, with the large number of parties. By contrast, if you get five or six parties in the Northern Territory matters that are now being referred to us by the Federal Court, that will pull up the party list; that is the extent of it. So just handling the parties and handling the complexity of the meetings and side meetings are quantitatively quite different exercises—without even looking at whether the issues in one are more complex than in the other. They are the sorts of variables we deal with as we move around the country to look at the nature of the case load.

Senator LUDWIG—In answer to the question from Senator McKiernan, I think what you are actually saying is that, because of the move to a less litigious situation in Western

Australia, if that is correct, there is more agreement making and therefore increased cost because the attendant administrative arrangements have to be put in place. How are you going to then allocate the funds? Do you allocate them by state, just as the need arises or as they indent for the money? Of course, that begs the question: if this is happening not only in Western Australia but also in the Northern Territory—and in South Australia, as I understand, when you went around the states and gave us a snapshot—then where is that money coming from? Is that going to be reallocated from Victoria or New South Wales where, you say, not a lot is happening?

Mr Doepel—There are two or three steps to answering your question. Firstly, at the beginning of the financial year we look at the best information we have and we attempt to predict the likely work flows in the various groups or categories in each state and territory. Budgets are made on those basic allocations of workload. Secondly, we know that during the course of a financial year things that were predicted are going to go quiet and other things will come out of the blue—or things that we thought the parties were not prepared to proceed with or were prepared to move with at a certain pace will gather pace. So it does shift within the year. Thirdly, we do reallocate across states. In the last couple of years we have dealt with the resourcing issues by seeing, at various points in the year, what is going on in one state or another state and we have moved resources over accordingly.

A very good example arose a couple of years ago, where activity reduced considerably in Western Australia and we were effectively overresourced on the administrative side in Western Australia. Over a period of about 24 months we reallocated the resources being used in our Western Australian operation to other parts of the organisation where workloads were increasing—in particular, at that time, to Queensland, but also to the early stages of gearing up for the Northern Territory until we were supplemented by the estimates process. We did not have to come back to the parliament immediately; we were able to reallocate resources across the system.

This year we have adopted a similar model. We have looked at best predictions and we have allocated roughly according to activity levels that we were experiencing in the second half of the current financial year. We have left some room to deal with unforeseen contingencies that come up during the year by having some funds there to allocate, but always bearing in mind that if some states go quiet in their activity we will not necessarily let the resources lie there; we will move them to where they can be better used.

Senator LUDWIG—What is the size of your contingency fund?

Mr Doepel—Approximately \$2 million. That will be used, but, rather than locking it up in budgets and overpriming the administrative side of the system with the expectation that there is this funding, we have a system where we have a regular review of workload trends throughout the organisation and a capacity to allocate or redirect resources as we go through.

Senator LUDWIG—Where does that sit in the PBS? Or is that an administrative lump of money that you get?

Mr Doepel—No, it does not sit in the PBS. That sits in our administration. When we allocate the funds from the PBS we allocate according to these various categories or outputs and, knowing that there is a predictive element in the whole forecasting, we hold a bit back and we monitor that. We have a governance mechanism within the tribunal—an advisory group—that assists the president and me—

Senator LUDWIG—So it does not show up as an output but it is an amount of money that is held administratively by the Native Title Tribunal?

Mr Doepel—It is an amount of money that is held in the central administration for allocation to activities that deliver the outputs, but it is there as a contingency for looking at fluctuations of workload throughout the year.

Senator LUDWIG—Shouldn't it be reflected as an output or a contingency amount in the PBS?

Mr Doepel—No, because it is earmarked for the purposes of those outputs, basically.

Senator LUDWIG—Whereabouts is that then? You have just said to me that there is \$2 million floating around in the kitty and it is not in the PBS. I was just a bit curious about where it is then. If it is not in the PBS, where is it?

Mr Doepel—It is in the PBS.

Senator LUDWIG—Can you show me where it is?

Mr Doepel—It is in the global sum there.

Senator LUDWIG—So all of the outputs do not add up to the global sum?

Mr Doepel—They do here.

Senator LUDWIG—Yes, I know that; they have to.

Mr Doepel—They have to.

Senator LUDWIG—That is my point.

Mr Doepel—In the administrative allocations we say, 'We believe the extent of outputs will be X,' and that is the way that the funding is derived for the organisation at the beginning of the financial year. In practical administration, we know that at various stages during the year some activities will be greater and some will be lesser. Rather than overallocate at the beginning of the year—and there are implications here in staffing levels—rather than setting up expectations, putting positions in place and putting administrative arrangements in place that will cost once you have set them up, we do have this contingency which allows us to pick up work as it comes through the year. Some states have a run of work. Historically, certain clusters of agreements are revitalised. The parties indicate their intention to apply themselves more readily to reaching a negotiated outcome. We can, through the various mechanisms that we have, inject resources into those states without having at first instance to reallocate from other states. If we need to reallocate from other states because of underspending, we will.

Senator LUDWIG—So what happens at the end of the financial year if you still have some money left unexpended? Do you have a party or what do you do with it?

Mr Doepel—It has happened in the past. I will give you an example. Around the period of 1997-98 the passage and implementation of the amendment act was delayed and there were various budget allocations made on the assumption of certain workloads which did not come to pass. We did not spend the money; we applied to carry the money forward. In fact, we did that for at least two years running and were able to absorb, to some extent, increases in workload until the financial year before last when we needed to come back to get additional resources to deal with future act activity.

Senator LUDWIG—In relation to the NTRBs, do you think there will be a reallocation, particularly with regard to how they are then going to operate?

Mr Doepel—A reallocation of resources?

Senator LUDWIG—Of funds.

Mr Doepel—I cannot speak for how ATSIC will allocate its funds. Firstly, that is not something that I am aware of and, secondly, I do not think it would be prudent for me to speculate on how ATSIC will manage that.

Senator LUDWIG—But decisions you make about how you allocate funds will affect the NTRBs, won't they?

Mr Doepel—It is a bit of chicken and egg here.

Senator LUDWIG—That is what I am trying to ascertain. Decisions you make as to how you are going to expend your money—for example, where you put the \$2 million—will affect how they then have to respond, surely.

Mr Doepel—I will go back and say that our predictions are based on what we believe will happen, including the capacity to some extent of NTRBs and other respondents participating in the process—not just NTRBs—to be engaged in the process. So we are, in a sense, allocating at the beginning of the year believing that, on current resource levels, the NTRBs will be functioning to a certain degree in each state.

Senator LUDWIG—That is what I thought: you would have to make some assumptions about what level they would be expending and allocating their money for you to know what you are going to be doing as well. So do you talk to them?

Mr Doepel—We talk to them; we talk to ATSIC. We try to get an overall sense through our coordination mechanisms at a state level, particularly through the state manager who manages the registry of what the likely levels of activity will be.

Senator LUDWIG—Let me get this straight. You get an understanding of what their likely activity is going to be and you get an understanding of where they are actually likely to allocate their money, but you do not want to talk about it, from what you understand to date.

Mr Doepel—No. You asked me whether I thought there would be a reallocation.

Senator LUDWIG—Yes.

Mr Doepel—I cannot answer that question. I do not know whether there will be a reallocation, but we do talk to the representative bodies and we do talk to ATSIC.

Senator McKIERNAN—Following on from that, have you seen the native title report of 2001 of the social justice commissioner and the recommendation he makes with regard to funding of NTRBs?

Mr Doepel—I am aware of the report, yes.

Senator McKIERNAN—What is your response to the recommendations of equitable funding arrangements for NTRBs?

Mr Doepel—I would say two things: the first is that we have acknowledged, particularly through statements we have made to another committee of this parliament and in recent annual reports, the interrelationship of all elements of the system and the effect of resourcing on the capacity of the system as a whole to work efficiently. Our president has addressed this issue in broad terms in the past and I think I have referred to it in this committee in the past. At the end of the day, I would have to say that the allocation of resources to the various sectors within the native title system is a matter for government. We can describe to you our

experience in how matters are faring on a state to state basis—where we are experiencing progress and where there might be some difficulties—but at the end of the day the issue of resourcing is a matter for government. I do not feel in a position to respond to that.

Senator McKIERNAN—I accept the difficulty of the situation you are in; however, you have been allocated a function by the parliament and, if the allocation of funding is in any way inhibiting the tribunal in carrying out its functions, I would expect you to have a view on that. Perhaps I am now asking the question in a slightly different way, but could you indicate to the committee whether the funding arrangements for NTRBs are assisting the tribunal in carrying out its work or whether they are causing disadvantage to it? In the main, do the NTRBs—and you may have to go through individual states in order to answer this—have the capacity and the resources necessary to assist the tribunal in the carrying out of its functions?

Mr Doepel—Our publicly stated position on this is that we believe that well-functioning NTRBs are an asset to the system. They do group the interests of claimants and, when you are dealing with multiple parties in quite complex interest based mediation, it is good to have that facility there. You know who you are dealing with and can concentrate on the issues and the administrative work in dealing with the claims. We have said in the past that where NTRBs are in locations where there is a range of native title activity—it could be the mediation of claimant applications, it could be future act activity or it could be indigenous land use agreement activity—we do perceive that they are under some pressure. We have said that before and I think that, by and large, that would be right today. Those that operate where they do not have three or four things to do can focus their resources in a much more directed way to, say, the mediation of claims applications.

However, there are ways out of this. For example, one of the ways out of this in the future act area is not to see everything going through the individual processes of the future act stream. The best way in some parts of the country is to look at indigenous land use or other agreements to remove the need to use the future act stream. There was a very good example—I am trying to remember its formal name—in the goldfields only a few weeks ago of an agreement that was reached there. It allowed quite a number of tenement applications to be dealt with without having to come through the formal processes of the Native Title Act. In a sense—and this comes back to the discussion about outputs—in the future act area, if we could work to a position over the years where there were next to no outputs in future act, because the need for that stream in the system had been overtaken by the effective or successful negotiation of these other forms of enabling agreements, that would be one sort of outcome of the system that I think would be quite favourable to parties and to industry as a whole.

Senator McKIERNAN—Thank you, Mr Doepel, that was helpful. One specific thing in the recommendations of the Social Justice Commissioner's report was the suggestion that there be an audit of all native title applications. Do you think conducting such an audit would be of assistance?

Mr Doepel—I think it would be very difficult to do—quite difficult. There is such a range of and variety in applications. It would be quite resource intensive. Some work is being done at the moment on the range of agreement making under the native title system. Professor Marcia Langton's group is trying to get a sense of what the agreements are, what has come out of them and how indigenous interests have been protected or otherwise in these processes over the last few years. That sort of study may reveal the overall trends in agreement making

and what substantive benefits people are deriving from agreements, but I think an audit as such would be quite resource intensive.

Senator LUDWIG—In an answer to Senator McKiernan you said your public position was X. Did you then go on to say what your non-public position was? I am curious as to what your non-public position might be.

Mr Doepel—Don't misinterpret me: all I am effectively saying is that we have commented on this before in this parliament.

Senator LUDWIG—And the comments you made before reflect your non-public position?

Mr Doepel—It was obviously our public position because we made them in committees in this parliament.

Senator LUDWIG—Yes. What is your non-public position?

Mr Doepel—It is the same as our public position.

Senator LUDWIG—I thought I might get that answer. In relation to the issue of future acts and the suggestion of alternative ways of proceeding, has the tribunal considered writing a paper or producing a document or report in relation to that and, if so, can the committee have a copy of it?

Mr Chevis—Yes, some of those recommendations are included in the task force report.

Senator LUDWIG—Yes, I know some of them are, but not all of them by the sound of it. There seems to have been further development.

Mr Chevis—They would be the principal recommendations.

Senator LUDWIG—Are you resting at those principal recommendations? What further work have you done in relation to that?

Mr Chevis—For example, the goldfields protection protocol that Mr Doepel referred to is a further development. That was mentioned in the task force report. It is a further development, building on the recommendations in that report.

Senator LUDWIG—Thank you.

Senator CARR—When are we going to start the royal commission matters? I understood that we were waiting on a minister. The planes have arrived from various places. Is the minister's plane amongst them? Why can't we proceed, given that Senator Troeth is with us.

CHAIR—Let me first establish whether Minister Ellison has arrived. I would like to finish with the Native Title Tribunal and then return to the royal commission. I thank Senator Troeth for assisting the committee this morning.

Senator COONEY—With Senator Troeth's vast experience in this area, she is a well-judged substitute for Senator Ellison. Senator McKiernan asked a question, and I would like to pursue it because I will be pursuing it in other areas also. He was asking about social indicators. You are saying that it is very difficult to get a grip on that sort of test. You said Professor Langton is doing some work. I take you to pages 188 and 189 of the portfolio budget statements. You talk there under 'Effectiveness—overall achievement of the outcome' of 'Agreements that recognise and protect native title'. You go through the performance measures. Price per decision is one. How do you work that out? I do not want to go deeply into this, but can you give us some general indication of how you work that out?

Mr Doepel—We have given an undertaking to Senator Ludwig to provide to the committee the methodology in relation to some of the principal ones.

Senator COONEY—I want a rough idea, though. No, leave it be; do not worry about that. You talk about the quantity, 193 decisions. You are not able I suppose to talk about the quality of those decisions, are you—how attached they are to the facts and to the law? That would be hard to explain.

Mr Doepel—I can make a comment on that. As I said earlier, if you look, say, at my statutory functions for application of various registration tests, in the immediate year or two after the 1998 amendments came into effect, the quality in terms of lawfulness of those decisions was tested in quite a few applications to the Federal Court for judicial review. Various decisions were made by the court, we were put on the straight and narrow on one aspect of natural justice, our approach to quantum and probity of evidence was upheld and a couple of other principles were established or confirmed in our administration. As I was saying earlier, matters have settled down, and we do not have the judicial review applications, so in a sense the legal quality, coinciding with the intentions of the statute, is by and large there.

Senator COONEY—You rely on the legal system to ensure—

Mr Doepel—That is one part of it. We are constantly monitoring internally as well, looking at the clarity of the law and the way we can apply it. We also have quality standards around timing. Obviously where a claimant application for registration testing is affected by a section 29 issue by a state or territory government, although there is no explicit statutory direction that that be done within a certain time frame, we attempt to do it within the required period so that the parties do not lose the right to negotiate. That is another quite concrete performance indicator that we attempt to apply, because we understand that there will be loss of rights if we go over the four-month threshold.

Senator COONEY—I think on those two pages you refer to the time it has taken in certain respects. Then the expression is used against output group 1.2, ‘Quality: Level of client satisfaction,’ and you do that again in output group 1.4 ‘Level of client satisfaction’. What is the concept behind that? Is that what you have told us already or is there a different dimension to that?

Mr Doepel—Towards the end of these proceedings last year, we commented on the early work that we were doing on a stakeholder or client satisfaction survey and I advised you then that we were going through the first stage of that survey, expecting some initial results by the end of last year. We have proceeded with that survey and have gone past our first round and are about to go into a more detailed round of research into client satisfaction and attitudes to the tribunal’s service delivery. For us that is a very important study and we expect some results from the second stage of that study in July-August this year. That is what we are referring to in those parts.

Senator COONEY—You cannot take it any further at this stage than to use the description ‘Level of client satisfaction’? You are not in a position to take it any further?

Mr Doepel—Not at this stage.

Senator COONEY—When you are working out the costs, say, of mediation, what do you take into account there—the costs to the tribunal or the costs generally?

Mr Doepel—The costs to the tribunal. We endeavour to identify all costs, not only member and staff costs—actual time spent preparing those mediations and the on-country costs

involved in conducting those mediations—but also, as far as we can, all administrative on-costs that support the provision of that service. In a sense there is nothing hidden: it is the cost to the organisation including everything down to the cost of the underlying computer systems that we rely on to manage our work and do our word processing.

Senator COONEY—Do you brief out in any of these areas such as mediation or arbitration?

Mr Doepel—No, there is a facility under the act for the president to appoint consultants to carry out the functions of members. During the current financial year we have had only two ongoing consultancies. We have 14 members at the moment, and the president can effectively carry out the tribunal's work without having to engage consultants to a large extent.

Senator COONEY—You have 14 consultants?

Mr Doepel—No, we have 14 members and two consultancies this financial year.

Senator COONEY—What were those two consultancies?

Mr Chevis—There was one matter in New South Wales and one in Queensland where a qualified person was contracted to provide assistance based on their knowledge and experience in the matter.

Senator COONEY—Who was that?

Mr Chevis—Kim Wilson.

Senator COONEY—Where was he from? What is his background?

Mr Chevis—As I understand it, he is now a consultant in native title matters. He was previously a member of the tribunal—some years ago.

Senator COONEY—What was the cost of that consultancy? I would like to get some comparison between that and the costs of members.

Mr Doepel—I am just seeing if we have a reference to this contract in the annual report for last financial year. That will give you the contract price. I will look it up. The important point to make is that the consultant's costs would be the cost of the consultancy and his or her time; however, we are still providing case managers and bearing what you might call the case management and infrastructure costs. The consultant is coming in to do that slice of value-adding activity that a member would normally do. So you cannot go to the cost of the consultancy and say that it is cheaper or dearer than the unit cost.

Senator COONEY—I was not trying to do that; I was trying to get some idea of what is involved and also to test, if we can, the quality of the service. I am not in any way saying that the quality is not good. If we can, in processes like this, get some idea of what sort of value the public is getting for its money, it is useful. It is a very difficult thing because I am asking about social indicators and they are not as easily obtained as you might think. I am not making any criticism.

Mr Doepel—I do not take it as criticism. The outcome of the stakeholder survey will give stakeholders' perceptions of quality, and that will be very important information for us all.

Senator COONEY—Thank you.

Senator McKIERNAN—I have three questions to place on notice.

Mr Doepel—Fine. Thank you.

CHAIR—Thank you for your assistance this morning. We welcome the minister, Senator Chris Ellison, to the hearing.

Senator Ellison—Thank you. It is a pleasure to be here.

CHAIR—As I indicated in the opening statement, it is the committee's desire to follow the printed version of the program as closely as possible, so we will now return to questions to the royal commissions, beginning with the Royal Commission into the Building and Construction Industry. I invite Mr Thatcher and Ms Butler to come to the table please.

Senator Ellison—Just before we start that, Madam Chair, I did give the committee notice of an intention to ask if there was any way we could minimise waiting time for some of the agencies. Clearly we have a long estimates and there will be a lot of time. It might be possible for the committee to say, 'Today we will not be dealing with X, Y or Z.' I wonder if the committee could give that some consideration.

CHAIR—I have been doing that, Minister. We would certainly ask the departmental officers to remain while we consider the royal commissions. Then I will consult with my colleagues as to what progress we might make before lunchtime and come back to you on that.

Senator Ellison—Thank you.

[10.10 a.m.]

Royal Commission into the Building and Construction Industry

CHAIR—Who intends to begin in relation to the royal commissions?

Senator CARR—Could I just be clear: is it correct that we have officers here who can answer questions on both the HIH royal commission and the Royal Commission into the Building and Construction Industry?

CHAIR—I have invited Mr Thatcher and Ms Butler from the Royal Commission into the Building and Construction Industry to come to the table. I was intending to take the two royal commissions separately: take building and construction first and then move onto HIH.

Senator CARR—That is fine. If that is the case, I will just go back to the previous estimates. There are a few little matters I am wondering if I can follow up on. First of all, I thought I heard you say before, Madam Chair, that all the questions had been answered from the last round.

CHAIR—That is my understanding, Senator.

Senator CARR—I did ask a question regarding certain letters Mr Abbott had written to Multiplex which were posted on web sites and got quite considerable distribution. I asked whether or not Mr Abbott had been the subject of consideration by the committee for contempt proceedings in relation to those. I asked Mr Thatcher if he would take that question on notice, but I do not seem to see an answer. Is it possible that I have misread the situation? Is there in fact an answer to that question?

CHAIR—I am not sure that I have the whole document in front of me, Senator Carr. I will check on that, and Mr Thatcher may wish to add something.

Mr Thatcher—We answered all the questions that the committee provided to us.

Senator CARR—So when you were reading the *Hansard* did you notice that on page 113 there was a reference to Mr Abbott and, in particular, to whether or not Mr Abbott had been in contempt of the commission?

CHAIR—I see the reference you are looking at on page 113. I think it was perhaps the committee's understanding that Mr Thatcher responded to the question there when he said, four statements up from the bottom:

It has not been raised in the hearing room. I follow the evidence.

Senator CARR—That was not the question I asked.

CHAIR—It was perhaps not forwarded to Mr Thatcher as a question on notice, in which case it is an omission on the committee's part and not on Mr Thatcher's part, Senator Carr.

Senator CARR—That is fair enough. Mr Thatcher, perhaps you have had the chance to reflect on this issue. Can you now advise me, since it has been some time since February this year, whether or not you have had any discussion with the commissioner and whether or not with regard to the minister's contempt the issue has been raised in regard to those Multiplex letters?

Mr Thatcher—The issue has not been raised.

Senator CARR—It has not been raised. Has the commission itself sought to take any action in that regard? When I ask you whether it has been raised, presumably you are referring to the possibility that outsiders have raised it. I can hardly expect the department to contact the commissioner and ask whether or not proceedings are going to be issued against their own minister. Has the commission itself considered taking any action?

Mr Thatcher—My understanding is that the issue has not been raised within the commission.

Senator CARR—I am sorry, I am obviously having trouble. This could be a very long day. What I am asking you, Mr Thatcher, is whether the commissioner has given any consideration to taking proceedings against Minister Abbott for his contempt in regard to the letters that were published in the Multiplex affair.

Senator Ellison—Madam Chair, Senator Carr's question refers to the 'minister's contempt', as if a contempt has been found in relation to the minister. That might be the case in Senator Carr's mind, but it certainly has not been made out, so I think the question should be rephrased. Senator Carr can allege a contempt, but his question is based on a wrong premise if it refers to the 'minister's contempt' because that has not been made out.

CHAIR—Point taken, Minister.

Senator CARR—Has the issue of the Multiplex letters been discussed within the commission?

Mr Thatcher—No action has been taken. I cannot speak for the commissioner and, therefore, I obviously cannot say what consideration he has given. I can say quite clearly that no action has been taken. I hope that is of assistance.

Senator COONEY—Have you any impression, Mr Thatcher, that anything at all has been done about the letters that Senator Carr is asking about or have those letters simply not been an issue of any weight at all within the commission itself? When I talk about the commission, I do not mean the commissioner but the commission itself.

Mr Thatcher—I can only repeat that the issue has not been raised. I can say quite clearly that no action has been taken in this respect.

Senator COONEY—Just to get this clarified, what you are saying to us is that in respect of those letters there has never be any matter raised at all within the commission, as far as you are able to gather?

Mr Thatcher—To my knowledge, that is correct.

Senator CARR—In the last round we were talking about whether or not you had actually received these letters. Has the commission now received copies of the letters?

Mr Thatcher—I am not aware of that. I believe that they have not been tendered as an exhibit.

Senator CARR—So, within the commission itself, has the commission sought to acquire copies of the letters?

Mr Thatcher—I can only say that I am not aware of whether or not the commission has copies of those letters.

Senator CARR—Mr Thatcher, you are the secretary to the commissioner, aren't you?

Mr Thatcher—That is correct.

Senator CARR—So have you or the secretariat sought to secure copies of the letters?

Mr Thatcher—It is the role of counsel assisting to lead the investigations before the commission; it is not the role of the secretary. I am certainly aware of correspondence that comes and goes, but I have no recollection of seeing those letters.

Senator COONEY—Mr Thatcher, we take ourselves seriously within the Senate—perhaps we should not but we do. At an estimates committee, this issue about the Multiplex letters was raised. We would have hoped that the system—I am not talking about the commissioner himself but the secretariat and the various workings that go to support the commission—might at least have made some inquiries so that when you came back here you would be able to give an answer beyond saying, 'Not to my knowledge.' But it seems that the issues raised by this committee are of little importance before the commission itself, and I think that is of some concern.

Mr Thatcher—I beg your pardon. I did not intend to give that impression.

Senator CARR—I just want to be clear about this. You have not as yet viewed those letters personally?

Mr Thatcher—I personally have not seen those letters.

Senator CARR—Thank you. I have another little problem. I recall that in the last round of estimates we talked about security at the commission itself. We discussed, if I recall rightly, a person called Mr Gillespie. As I understood it, he had a prominent role in the waterfront dispute, and you advised us that he was in charge of security. Is that correct? Have I understood that right?

CHAIR—Mr Thatcher, in relation to Mr Gillespie, is Senator Carr's interpretation correct?

Mr Thatcher—I did notice, in reading the transcript, that my comments about Mr Gillespie's role in relation to security was then played back as that he was my head of security. I think in hindsight I probably could have come back at that stage and said: no, he is not the head of security; he was contributing, along with others, to the security arrangements,

but he wasn't the head of security. Since those last hearings the commissioner has enhanced security arrangements and we now have a full-time security manager on board.

Senator CARR—Who is that?

Mr Thatcher—We now have a full-time security manager on the establishment.

Senator CARR—And who is that?

Mr Thatcher—The name of the individual?

Senator CARR—Yes.

Mr Thatcher—He is an officer of the Attorney-General's Department. Malcolm Matheson is his name.

Senator CARR—Thank you. What is Mr Matheson's background?

Mr Thatcher—I think I will defer to Ms Butler because Mr Matheson reports to her.

Ms Butler—Mr Matheson was recruited after a selection process to take some people on board into the corporate services area. He has a background in the private sector in building fit-out and construction. His role within the commission is both property manager and responsibility for in-office security.

Senator CARR—How long has he worked for the Commonwealth?

Ms Butler—He has just been recruited to the Commonwealth to join the commission. He came from an open recruitment process.

Senator CARR—He was recruited specially for this job?

Ms Butler—Indeed, for the duration of the commission.

Senator CARR—What are the terms of his recruitment? Is he recruited on APS schedules?

Ms Butler—Yes, he is. He is a non-ongoing employee of the Attorney-General's Department.

Senator CARR—At what level?

Ms Butler—At the APS6 level.

Senator CARR—APS6. Can you refresh my memory: what sort of pay scale is that? Mr Cornall, can you tell us?

Mr Cornall—I am sorry, Senator, I do not have the pay scales in my mind.

Senator CARR—He is a senior officer, is he?

Ms Butler—No, he is a middle-range officer. It would be around \$60,000, I would have thought. Between \$50,000 and \$60,000 is the range, but I am not absolutely certain.

CHAIR—We will clarify that for you, Senator Carr.

Senator CARR—What role does Derren Gillespie play in the commission now then if he is not in charge of security?

Mr Thatcher—Could I just say, Senator, that Mr Gillespie is undertaking a number of functions at present. He has been significantly involved in planning for the commission's future work program—in particular, the development of the hearing schedule in consultation with the commissioner and counsel assisting. Secondly, he has assumed oversight of the

management of the interstate hearing process, which has been a fairly significant logistical issue, as we moved around Australia, in acquiring both suitable accommodation for hearings but also suitable office accommodation and various security and information technology arrangements, which go with those.

Senator CARR—So he does deal with the security of information technology?

Mr Thatcher—He would liaise, say, if we were going to Western Australia with the Western Australia Police Service in making sure that adequate security was in place.

Senator CARR—I am sorry, Mr Thatcher, I am having enormous trouble hearing you.

CHAIR—We can ask for the volume on Mr Thatcher's microphone to be raised.

Senator CARR—Thank you very much.

Mr Thatcher—I could go on. Mr Gillespie is now responsible, as outlined in the statement of 6 May, for overlooking the research and preparation of the commission's forthcoming work on occupational health and safety in the industry. He also operates more like a senior analyst in many ways, reviewing draft research papers along with others from time to time; and, at the request of counsel, commenting on, say, submissions which might be made to the commission. I hope that gives some better description of his duties.

Senator CARR—He obviously plays a very important role in the proceedings of the commission—in terms of the preparation of witness lists, for instance?

Mr Thatcher—No role such as that. His role would be described I think more as administrative.

Senator CARR—I was unkind enough to refer to him as a clerk. That would not be a fair description, would it?

Mr Thatcher—He is in an administrative role, yes.

Senator CARR—He says that he will play no role in the preparation of the report. Is that still the case? That was the report given to us last time.

Mr Thatcher—That is what the commissioner said, and that is what will be.

Senator CARR—It is your understanding, given the role he performs, that he will not have any impact on the report?

Mr Thatcher—I see no conflict between what the commissioner said and what Mr Gillespie is doing at the current time and has been doing.

Senator CARR—He is an SES level 1 officer, is he not?

Mr Thatcher—That is correct.

Senator CARR—What does an SES level 1 receive? Can anyone give me a rough rule of thumb on that?

Mr Cornall—Approximately \$97,000 in salary.

Senator CARR—About \$97,000. There would be all sorts of other on-costs associated with that, wouldn't there—superannuation, a motor car and all of those things?

Mr Cornall—Yes, Senator.

Senator CARR—I raise this because last time around we were discussing on page 118 some matters that related to the leaking of commission documents. One of the matters

canvassed was that some documents were delivered to the Victorian secretary of the CFMEU, Mr Martin Kingham. Can you update the committee on your inquiries into the way in which those documents were leaked from the commission?

Mr Thatcher—I would not want to respond in a way that implied that there was a concurrence and that those documents were leaked from the commission. As I indicated on the last occasion, the matter was referred to the Australian Federal Police for investigation. When I inquired something like a week ago I was told that the Australian Federal Police had not completed their investigations in respect of that particular allegation. In the course of their investigation the Australian Federal Police did provide some general recommendations to the commission about security. Those have been acted upon, and continue to be acted upon, because the commission makes security a very high priority.

Senator CARR—Could you enlighten the committee as to the nature of these general recommendations from the AFP?

Mr Thatcher—I can. There were issues about, for example, whether there had been delays in circulating a comprehensive security manual, whether security arrangements had been put in place and procedures issued—that has since occurred. We did not have a formal visitors register for people visiting the floor and that has been put in operation, for example. There were issues about shredding bins being left unlocked or being able to be opened; we have now got additional shredding bins. They raised issues about contractors such as tradesmen and couriers coming onto the premises and being escorted onto the premises but somebody was not remaining with them at all times, so we have tightened those procedures considerably. There were issues about our needing more shredders than we had. We had a number of shredders, but we have increased the numbers. There were things like reminding staff that documents should not be left on printers. We have constantly wanted to ensure that staff are aware that documents do not remain on printers; we have continued to do that on an ongoing basis. Those are the types of operational matters that were welcomed and that we have implemented. They are very helpful for us not only in the Melbourne premises but also in our interstate premises.

Senator COONEY—Why do you need so many shredders? What is the commission shredding?

Mr Thatcher—Only in respect of confidential information—for example, a draft witness statement ending up in a rubbish bin and not shredded. It is out of respect for the confidentiality arrangements.

Senator COONEY—So witness statements go through several versions and you shred the earlier versions?

Mr Thatcher—Yes, that would be an example—as witness statements are refined.

Senator COONEY—So the idea is to get the witness statements the way you want them?

Mr Thatcher—I would not—

Senator COONEY—I am just wondering why you would shred witness statements—but I am interfering in Senator Carr's questioning.

Senator CARR—That is all right. Mr Thatcher, is the royal commission bound by the Archives Act?

Ms Butler—Senator, perhaps I could assist you. The commission has a very well-established process of handling its documents. All property that is received by the

commission is kept. There is a formal copy that is kept in accordance with archive rules, and we work to the archives classifications. Some of the legal teams also use a working copy of a document. At the end of the proceedings, those documents will be shredded, will be destroyed. Original property, things that people may have provided to the commission, is returned to the owner either immediately or at the end of the process. Documents are kept and filed, working copies are available and original property is returned.

Senator CARR—Are you absolutely confident that the Archives Act is not being breached?

Ms Butler—I am very confident.

Senator CARR—How many shredders do you have?

Ms Butler—We would have them interstate as well as in Melbourne. There are perhaps six of varying grades within the commission.

Senator CARR—Are they big shredders?

Ms Butler—No, they are not big shredders, but they shred material in line with Commonwealth directions as to the reduction of the document.

Senator COONEY—Would you ever have the four going at once?

Ms Butler—I have not observed them all going at once, but it is possible.

Senator COONEY—What do you put in—affidavits and witness statements?

Ms Butler—No. There may well be some draft documents or working papers that would go in—anything that is not required for formal records.

Senator COONEY—So if the witness says, ‘I have made a mistake,’ you might say, ‘Don’t worry about that. We will whip it into the shredder and get you a better one.’ Is that an unfair way of putting it?

Ms Butler—The witness statements are signed by the witness. They are the witness’s own statement. The document that goes into the record is the witness’s statement, not the commission’s statement.

Senator COONEY—Do you massage the original statement to the point where somebody says, ‘Sign that,’ or does the witness say, ‘I am willing to sign. Put all the rest into the shredder’? If there was a big variation between the original version and the final version, what happens then? Do you shred the earlier ones?

Ms Butler—I think the answer is yes.

Mr Thatcher—I think that is really a matter for counsel assisting. It would be wrong to get the impression from anything that has been said that somehow or other the commission is trying to mould witnesses into statements and so forth.

Senator COONEY—So the counsel assisting the royal commissioner operates in the same building as the royal commissioner and is preparing statements and shredding statements that are not satisfactory?

Mr Thatcher—I tried to explain on the last occasion—perhaps I could improve on that explanation—that, because of the magnitude, nature and size of the task, there are four senior counsel assisting the commission. Each of those heads a legal team which operates with three junior counsel and a number of solicitors who supervise the matters which are presented

before the commission. Attached to each team are a number of investigators and analysts who will be responsible for doing the fieldwork. So what I am saying is that—

Senator COONEY—So if we want to get to the truth about the shredding of these witness statements, we really need to have an inquiry to which we call counsel assisting; that would be fairer, wouldn't it?

Mr Thatcher—Senator, I did not mean to sound that unhelpful. I was trying to say—

Senator COONEY—Sorry, I should not interrupt. I think that is a statement of fact. There is nothing to stop the Senate having an inquiry into the conduct of witnesses assisting the royal commission, I wouldn't have thought, and into how documents that have been prepared are shredded.

Mr Thatcher—What I was trying to say earlier—and it may be helpful if I can just go back and clarify—is that when we are shredding documents we are not shredding original documents; we are shredding drafts—for example, it might be a draft of an opening address. There could be many drafts of that as counsels work on those before the hearing process starts. There are many pieces of paper which are in draft form and which are being shredded that are not original documents; that is what I was trying to imply. That is basically the work of the legal teams under the oversight of senior counsel assisting. I think we are trying to assure you that there would be no illegality in respect of the shredding of original documents.

Senator CARR—We see what you are saying. In terms of the Archives Act, which is directly a responsibility for you as secretary, do these original witness statements become part of your obligations under the Archives Act?

Mr Thatcher—Yes, most original witness statements will end up as exhibits.

Senator CARR—Most, not all.

Mr Thatcher—Most, not all.

Senator CARR—Which ones will not?

Mr Thatcher—You might recall that, at the last occasion, I did tender—I think it was responded to in one of the questions—a copy of the commissioner's opening statement. In that he was indicating that, because of the limits of resources and time, it was not going to be possible to investigate every possible complaint. Therefore, he was expecting that really only matters which were representative of issues and representative of the extent of issues would be able to get the time for a hearing. For example, 15 people might prepare statements in support of certain evidence and there could be other evidence given which means that you would not have to proceed with all of those statements. Therefore, they would remain on file and they would be part of the archives.

Senator CARR—Can I just go through this. Do you ever have a situation where a witness would refuse to sign a prepared witness statement?

Mr Thatcher—I am not sure of the question.

Senator CARR—I will put the question to you again so that it is clear. Can you tell the committee please, Mr Thatcher, has there ever been an occasion where a witness has refused to sign a witness statement?

Senator Ellison—Madam Chair, that is really, I think, a question that counsel assisting would be able to answer rather than the secretary; the secretary is in an administrative role.

Counsel assisting is more the person who could answer that. It may be that the secretary can take it on notice, but I really think it is a question which is outside his area of responsibility.

CHAIR—I understand the difference. Could Mr Thatcher indicate whether he is able to assist Senator Carr and, if not, whether he will take the question on notice.

Mr Thatcher—I am certainly not aware of any situation. In many cases, persons who are preparing witness statements do so with the assistance of their own legal adviser. I am happy to take that question on notice.

CHAIR—Thank you very much, Mr Thatcher.

Senator CARR—Thank you. My question is if any witness has refused to sign a statement that has been prepared. In regard to other statements that you say are not presented as exhibits, is it the case that those persons that have been accused of wrongdoings are given access to all witness statements?

Mr Thatcher—If adverse evidence is to be introduced the commissioner has made it clear that a statement—a possible adverse evidence notice—will be given to the individual. So the answer must be no.

Senator CARR—So the answer is no? They are not provided?

Mr Thatcher—There would be no instance where the person who would be the subject of a possible adverse evidence notice would not be given that notice.

Senator CARR—I am not certain from your answer. You are telling the committee that, where adverse evidence is presented against a party or citizen, they are given access to all witness statements both adverse and not adverse to them in relation to that incident.

Mr Thatcher—The practice note says:

However, a person who, to the prior knowledge of Counsel Assisting the Commission, will be the subject of adverse evidence given before a public hearing of the Commission will, if practicable, be notified of that fact before that hearing, with such particulars, if any, as are considered appropriate by Counsel Assisting the Commission, or will, if practicable, be notified as soon as reasonably convenient thereafter and provided with a copy of the material portion of the transcript, or such particulars, if any, as are considered appropriate by Counsel Assisting the Commission, and will be given an opportunity to contest that evidence, if the person so requests.

Senator CARR—Thank you, Mr Thatcher. Could I have that statement you have just read tabled so we can have a look at it?

Ms Butler—Yes, the document is practice note No. 1 of 10 December 2001.

CHAIR—Thank you very much. We will collect that document from Ms Butler.

Senator CARR—From what you have said, not all documents are provided to the person regarding the matter that is before them, in terms of adverse evidence, but all the witness statements, for instance, are provided to each witness named in the commission. Or is it for only those matters that you intend to place on the public record as exhibits?

Mr Thatcher—All I was referring to is that we follow the practice direction. To go into specifics strays into that area to which the minister referred earlier—it is really a matter for senior counsel.

Senator CARR—Thank you. Could you take this question on notice, please: has there been an occasion in which a person has been adversely named in the commission and has not

been provided with all documents both for and against them on that issue in which they have been adversely named?

Mr Thatcher—I will take that on notice. I will seek the advice of senior counsel.

Senator CARR—Thank you. How much time in a notice is given to persons for whom the commission is to lead adverse evidence? What is the general rule of thumb there?

Mr Thatcher—As much time as possible. Practice note No. 2 refers to loading information onto CourtBook which provides parties with information prior to hearings. That note sets out the conditions relating to access to those databases, and says that, as far as is practicable, the proposed order in which witnesses are to appear and their statements are to be on CourtBook before evidence is given. But there have been incidents where application has been made to the commissioner for additional time because of the lateness of that notice. I think there was one as recently as last Friday. An adjournment can be granted by the commissioner, on application, if additional time is needed.

Senator CARR—Thank you, Mr Thatcher. I am not a lawyer—perhaps Senator Cooney can advise me on the right legal terms—but let me be clear about the process itself. You will advise someone that there is likely to be, or there has been, adverse comment. Is there an opportunity for that person you have named to discover what information the commission has on them?

Mr Thatcher—I am a little lost myself as to how to respond to that question. I will have to refer to the practice notes. The practice note states:

However, a person who, to the prior knowledge of Counsel Assisting the Commission, will be the subject of adverse evidence given before a public hearing of the Commission will, if practicable, be notified of that fact before that hearing, with such particulars, if any, as are considered appropriate by Counsel Assisting the Commission, or will, if practicable, be notified as soon as reasonably convenient thereafter and provided with a copy of the material portion of the transcript, or such particulars, if any, as are considered appropriate by Counsel Assisting the Commission, and will be given an opportunity to contest that evidence, if the person so requests.

So the answer appears to be that they will be given an opportunity to contest the evidence.

Senator CARR—Can you tender that to us as well, please? When you say ‘appropriate’, does that include the fact that people who are adversely named are not automatically entitled to information which would tend to contradict the adverse evidence held by the commission?

Mr Thatcher—Senator, I cannot go further than what is said in the practice notes.

Senator CARR—That would be a reasonable conclusion from the word ‘appropriate’, which I think you said.

Mr Thatcher—What it is saying about ‘appropriate’ is whether or not it would be given in advance or given in arrears. That is my understanding. But I really cannot take it further than the practice note, because I am not involved in the discussions on a day-to-day basis between counsel assisting and the legal representatives of parties.

Senator CARR—Would you take the question on notice as to what is the meaning of the term ‘appropriate’ in that context? Does it imply that persons adversely named are entitled to all information held by the commission?

Senator Ellison—It is not whether it is appropriate; it is whether it is practicable. That is the key phrase, I think.

Senator CARR—You say it is the key phrase.

Senator Ellison—I think what we should do, Madam Chair, is provide Senator Carr with a photocopy of the practice direction so that we give him the benefit of reading it and being able to refer to the written document, rather than going round in circles without the document.

CHAIR—Thank you, Minister.

Senator Ellison—This document is the same one that was referred to before.

CHAIR—Can I just clarify: Mr Thatcher has already tabled for the committee the practice note dated 10 December 2001. We have now distributed copies of that to members of the committee. Senator Carr, if you wish to examine that and come back to it, we will do that.

Senator COONEY—I think what is being said is that, if the commission can get round to it, it will do it. Is that the position?

Mr Thatcher—Most certainly not. I think every effort is made to ensure this is so. We have statements of possible adverse evidence, and then later on parties will be notified if there is a possible adverse finding.

Senator COONEY—I think the commission notifies the media if a statement adverse to a unionist or a union is coming along. Doesn't the commission tell the media about that?

Mr Thatcher—There is no relationship between possible adverse evidence or findings and the media.

Senator COONEY—I will come to this later on but that is certainly the perception that people have. There seems to be some considerable evidence of that. I might be wrong about this—Senator Carr can correct me—but don't you have a media officer?

Mr Thatcher—Yes, that is correct.

Senator COONEY—There is a media officer?

Mr Thatcher—Yes, there is.

Senator CARR—We will have to return to this, Senator Cooney, because there is an issue about the rights of citizens to have access to these documents. The question arises as to whether or not documents that may not support the commission's adverse finding are in fact shredded. Are you able to assure us that that does not happen?

Mr Thatcher—That would be in breach of the Archives Act.

Senator CARR—That is the point. I keep coming back to the Archives Act.

Senator COONEY—And to the four shredders.

Senator CARR—This is the issue that does concern me, whether or not witnesses will know. How will they know whether or not you have documents gathered by your 16 investigators that do not end up in the shredder?

Senator COONEY—This is the sort of thing that happened with Enron, isn't it?

Mr Thatcher—I am not sure how much further I can take this, other than to say that it is the matters which are admitted as evidence which are at the end of the day taken into consideration by the commissioner. In his opening statement, which was tendered in response to the committee's question following from the last hearings, the commissioner's intentions have been made quite clear.

Senator COONEY—Do we know how many drafts he had been through before he got to that statement? You might not know. Do you know whether the commissioner shredded any of his early statements?

Mr Thatcher—You are talking about the commissioner's opening statement?

Senator COONEY—Yes.

Mr Thatcher—If there were working drafts of that document, those papers were not left hanging around.

Senator CARR—One of my colleagues here has drawn to my attention that your answer to the Multiplex matter was that to the best of your recollection the documents in regard to Multiplex had not been with the commission. Can I ask you to check your correspondence files, Mr Thatcher, to see if the commission has any correspondence on those Multiplex files.

Mr Thatcher—Yes.

CHAIR—Let us formally note that as a matter on notice, Senator Carr.

Senator CARR—Thank you very much. In regard to the Australian Federal Police inquiry into the documents that were leaked from the commission and I understand were delivered to Mr Martin Kingham's house in Brunswick, when do we expect a response from the AFP on that matter? Have you been advised how long their inquiries will take?

Mr Thatcher—As I indicated before, I was advised that the report has not yet been received. I am not aware of when the AFP will complete its investigations.

Senator CARR—When you say it has not been received, you are not aware of what stage the AFP is at in its investigation?

Mr Thatcher—The AFP investigation is quite independent of the work of the commission. There is an AFP officer who works for the commission who is the liaison point and I am repeating the information that I was given by that officer last week.

Senator CARR—Has Mr Gillespie's role in the leaking of the documents been inquired into?

Mr Thatcher—I know of no indication or suggestion by anybody that there was any relationship between Mr Gillespie and the document or the allegation which was made. I would make it clear that, in responding to your question, I am not accepting that there was a leaking of the document from the commission.

Senator CARR—You are saying that the documents could have been generated somewhere else. Is that the conclusion that the secretariat has reached?

Mr Thatcher—I am leaving that for the AFP investigation.

Senator CARR—I just want to be clear about this. You are not seriously proposing to this committee that these were forgeries, are you?

CHAIR—I do not think that is at all what Mr Thatcher said, Senator Carr. I think he is trying to answer your question by indicating that the investigation is in the hands of the Australian Federal Police and on that basis he is unable to answer the specific details of inquiries as a part of the investigation that you are asking him.

Senator Ellison—Any questions should be directed to the AFP.

CHAIR—And there will be an available opportunity to do that later today I hope, Senator Carr, if you wish to.

Senator CARR—Thank you very much. That is my intention. I am sure they will be delighted to hear that advice.

CHAIR—I am sure they will—ready, willing and able as ever.

Senator CARR—Mr Thatcher, has there been any change in the schedule for the completion of the commission's report?

Mr Thatcher—No. You mean the terms of reference or the letters patent?

Senator CARR—The report itself—do you anticipate meeting the deadline? When will the commission report?

Mr Thatcher—We are working towards the fulfilment of the letters patent.

Senator CARR—What date do you anticipate a report to be received by government?

Mr Thatcher—The date in the letters patent is what we are working towards.

Senator CARR—You have not applied for any additional time?

Mr Thatcher—No.

Senator CARR—Is it your intention to apply for any additional time?

Mr Thatcher—If there were to be an application, it would not be by me; it would be by the commissioner. But at the moment, from talking to him, there is no intention of applying for additional time.

Senator CARR—Is any additional expenditure required over and above the estimates given to us previously, Mr Cornall?

Mr Cornall—The budget remains at \$60 million over the two financial years.

Senator CARR—Do you think the commission will come in on budget?

Mr Cornall—That is our current advice, yes.

Senator CARR—Thank you.

Senator COONEY—Has any estimate been made by the department as to what it is costing other people? I know this is not a legal case, that it is a royal commission, but nevertheless the same tactics are available to it—that is, to just outspend the parties that come before the commission to the point where they are brought to penury or to near ruin. Over \$60 million seems an extraordinary amount of money to be spending. It must be costing lots of people—the industry and the unions—lots of money. Does the department have any concern about that?

Mr Cornall—Obviously, to establish a royal commission will involve costs both for the government and for people who appear before it. That is an issue that must be taken into account when a royal commission is convened. But the decision to convene the commission was a decision for government, and those costs follow that decision.

Senator COONEY—I have a question to ask later on about the quality of the work being done by the commission and by counsel assisting. It is not a matter for Mr Thatcher, but it may be a matter for the department.

Senator CARR—Mr Cornall, has the department any estimates of the expenses incurred by other departments or Commonwealth statutory authorities in respect of the Cole royal commission?

Mr Cornall—We have figures for payments made by way of legal assistance to parties appearing before the commission. But, no, I do not believe we have any estimates for amounts spent by other departments for the purpose you have just outlined.

Senator CARR—So you have no indication, for instance, for the employer advocate?

Mr Cornall—No.

Senator CARR—For the Australian Federal Police?

Mr Cornall—No.

Senator CARR—Is that in your portfolio responsibilities?

Mr Cornall—Yes.

Senator CARR—So there has been no attempt by the department to establish those figures, or are you just not aware of them?

Mr Cornall—Not that I am aware, no.

Senator CARR—Does \$60 million cover all the expenses of the commission or just the expenses incurred by your departmental agencies?

Mr Cornall—The \$60 million covers the expenses of the commission, which is Mr Thatcher's area of activity—the commissioner, counsel assisting, the investigators, the rent, the computer costs and so on. Our departmental costs in administering the royal commissions are not part of that \$60 million, and the costs incurred by other agencies—which are part of their responsibility but flowing from the establishment of the commission—are not part of the \$60 million either.

Senator CARR—Are we able to get a breakdown of some of those costs in the commission's budget?

Mr Cornall—Of the \$60 million?

Senator CARR—Yes.

Mr Cornall—Mr Thatcher could do that.

Senator CARR—What information can you provide to us, Mr Thatcher?

Mr Thatcher—A breakdown of the \$60 million?

Senator CARR—Yes.

Mr Thatcher—I have a breakdown here in broad terms.

Senator CARR—Could we get a copy of that?

Mr Thatcher—Yes.

Senator CARR—That may help us tailor our questions a bit more.

CHAIR—If you would table that document for the committee, Mr Thatcher, I can ask the secretariat to copy it.

Mr Thatcher—Yes.

CHAIR—Thank you.

Senator CARR—If you could, that would be good. I do have a few issues. Last time we were here, we discovered that the commissioner's salary, for instance, was some \$600,000: is that correct?

Mr Thatcher—Yes, it is \$660,000.

Senator CARR—Does that include superannuation contributions?

Mr Thatcher—It does.

Senator CARR—So that is a total package?

Mr Thatcher—Yes.

Senator COONEY—When you say it is a total package, does that mean he is able to use Comcar, for example?

Mr Thatcher—That \$660,000 does not include all conditions of employment, but it certainly includes salary and superannuation.

Senator COONEY—But what about Comcar? Does he pay for his own lodgings?

Mr Thatcher—I could respond and outline the other arrangements that were not referred to in the question that was asked, if you wish.

Senator COONEY—I can understand your difficulty, but Mr Cornall said it was a matter for you. What we are trying to find out is what it is costing the public to have Mr Cole carry out this inquiry. What does it cost in respect of him? In other words, do we pay for his meals when he is on circuit? Do we pay for his bed and lodgings? Do we pay for his food? Do we pay for his transport? Do we pay for his aeroplanes? Are those things within the \$660,000 or are they additional costs?

Mr Thatcher—I can assist with that, Senator. There is \$660,000, which includes salary and superannuation. In addition, because the home base is in Melbourne, whereas Mr Cole really comes from Sydney, the Commonwealth provides suitable furnished accommodation in Melbourne for him. That is a furnished town house. In addition, he is paid a living away from home allowance of \$308 per week, which is based on the Department of Employment and Workplace Relations' published rates.

Senator CARR—Is that per week?

Mr Thatcher—Yes, that is \$308 per week.

Senator CARR—That is the living away from home allowance itself?

Mr Thatcher—That is correct. In addition, he is provided with up to 52 return airfares to Sydney each financial year for himself, his spouse or his family. He certainly has not been availing himself of those every weekend. I checked the figures the other day: out of a possible 37 weekends, I think he has availed himself of that allowance on about 25 occasions.

Senator COONEY—So he has not been the family man? Has he rejected his family? Is that the impression we get?

Mr Thatcher—Most certainly not. In addition, when he is travelling interstate, he is paid the SES travelling allowance rate as set by the Department of Employment and Workplace Relations. He travels business class and has access to the use of a Comcar for official travel to and from home and to and from other accommodation and to and from commission premises, airports and other destinations.

Senator CARR—Can we just go through some of those matters. What does the town house in Melbourne cost the taxpayer?

Mr Thatcher—The rent is \$3,250 per month.

Senator CARR—So it is a good town house?

Senator COONEY—He is such a good man, I suppose he deserves a good house.

Senator CARR—For a town house, \$3250 is a fairly substantial sum of money per month.

Senator Ellison—I think it is hard for Mr Thatcher to comment on that.

CHAIR—Yes, I think Mr Thatcher is reporting the facts as he has them. You are making the observations, and Mr Thatcher is giving us the facts, which is the way it should be

Senator COONEY—The real problem is that Senator Carr has grown up on the wrong side of the tracks and is not used to the better style of living. That is the problem.

Senator CARR—That is true.

CHAIR—Thank you for sharing that information, Senator Cooney. I am not sure it advances us anywhere. If you could continue with questions, that would be helpful.

Senator CARR—I am surprised, that is all. I am just surprised.

Senator COONEY—I am glad Senator McKiernan does not charge me that much a month.

Senator Ellison—Madam Chair, if Senator Carr is leading towards asking for the address of this residence, I will have to oppose that on the grounds of—

Senator CARR—I have not asked for an address.

CHAIR—He is just pre-empting you, Senator Carr.

Senator CARR—This is not where I live, I can tell you.

Senator COONEY—It would not be in Broadmeadows.

Senator CARR—This is not the Paris end of Broadmeadows, which is where I live, in Pascoe Vale. I am just saying that \$3,250 a month is quite a lot. Are you able to tell us what suburb it is in?

CHAIR—I think the minister has indicated how far the secretary is able to go on that point.

Senator Ellison—I think you have the rental, and the focus of public interest is really what it costs. Quite appropriately, those sorts of things are transparent. As for the suburb and the address of the commissioner, that is a different story.

Senator CARR—Is it a family residence? Is it a two-bedroom town house?

Senator Ellison—A question about what sort of accommodation is being paid for is reasonable.

Senator COONEY—I reckon that would be good enough to bring the family down to, and I think he ought to.

CHAIR—We already have one question from Senator Carr, Senator Cooney. We can move to your observations about the commissioner's family after that.

Mr Thatcher—It is a family residence.

Senator CARR—So it has three bedrooms?

Mr Thatcher—I am not aware of that.

Senator Ellison—That will be taken on notice.

CHAIR—If you want details about the construction materials as well, we may need to ask Mr Thatcher and Ms Butler to take that on notice.

Senator COONEY—Has it got a garden?

Senator CARR—Is it an inner city type of town house?

Mr Thatcher—Yes.

Senator CARR—Thank you very much.

Senator COONEY—I wonder if it was built by the CFMEU.

Senator CARR—That is right: was it built with union labour?

CHAIR—At least the senators are amusing themselves.

Senator CARR—How much is the scheduled SES travel allowance at the moment?

Mr Cornall—It varies according to the SES level. I will have to get those figures for you, Senator.

Senator CARR—What is Commissioner Cole's SES rating?

Mr Cornall—It also varies by city.

Senator CARR—I appreciate that. All our TA claims are out there, so we are not fussed by this sort of information.

Mr Cornall—It is the same with the SES; it is just a question of getting the figure.

Senator CARR—So is it equal to politicians' TA or is it more than that?

Ms Butler—The commissioner is paid the SES travel rates that apply to band 1 and band 2 officers in the SES.

Senator CARR—So how much is the rate in Sydney?

Ms Butler—In the new rates just published by DEWR in the last couple of weeks the accommodation rate is around \$160 a night. Of course, when the commissioner is in Sydney he stays at his own home and does not claim an allowance.

Senator CARR—So he does not claim for Sydney—you are ahead of me there. What is the rate in Perth?

Ms Butler—Senator, you are testing me, but I believe the SES rate is around \$130 or \$140.

Senator CARR—That is just the accommodation rate, isn't it?

Ms Butler—Yes.

Senator CARR—What is the total travel allowance for a night in Perth?

Ms Butler—There would be a meals and incidentals entitlement, which I think for the SES is around \$100 per day, depending upon how many meals they have, what time they leave and when they get home et cetera.

Senator CARR—So it is about \$230 per day?

Ms Butler—Possibly in that order.

Senator CARR—That is substantially more than we get, I can tell you. I wonder how they arranged that.

Ms Butler—It is just the standard SES rate, Senator.

Senator CARR—So it is negotiated between the union and the Commonwealth, is it? It is the union rate?

Ms Butler—Those are the rates as advised by DEWR.

Senator COONEY—If you look at the hours he works, he works from 10 a.m. to 1 p.m. and from 2 p.m. to 4 p.m. a day, from Monday to Thursday.

Senator CARR—So you would need accommodation.

Senator COONEY—You would need the accommodation.

CHAIR—As I understand it, those are the hours of hearing aren't they, Mr Thatcher?

Ms Butler—Yes, they are.

Mr Thatcher—Since that was published some time ago, the commissioner has started sitting five days a week on most occasions and on many occasions he starts at 9.30 a.m. and continues until well after 4 p.m.

Senator CARR—So the information you have given us is not accurate, Mr Thatcher?

CHAIR—Would you like to provide the committee with an update of the sitting details of the commission, on notice, Mr Thatcher.

Mr Thatcher—I am prepared to do that, yes.

Senator CARR—Thank you, Mr Thatcher. Can you give me a figure for Mr Cole's total TA claims?

Ms Butler—We would have to take that on notice.

Senator CARR—Could I also get a total for the TA claims of all royal commission staff?

Mr Thatcher—Would you like a bulk figure?

Senator CARR—A bulk figure would be good, but I would like to also have that broken down by category—where it has come from. You know we will come back to it.

Ms Butler—Yes, we can provide that.

Senator CARR—Thank you. If you would not mind, that would be appreciated. What is the living allowance of \$308 per week for? Are you getting a TA claim for Melbourne?

Ms Butler—No, I will explain that: when the commissioner is in Melbourne, he is paid \$308 per week for meals and incidentals. That again is the standard DEWR rate for SES officers living away from home. So he is not paid a daily rate of TA in Melbourne. When he is travelling to other cities such as Perth and Brisbane, he is paid travel allowance and on those days an adjustment is made to his living away from home allowance. So living away from home allowance is reduced on the days on which he receives travelling allowance.

Senator CARR—Can we get the total expenses that have been paid to the royal commissioner over and above the salary component that we have already received?

Ms Butler—Yes; he receives his salary and allowances as we have described.

Senator CARR—You say he has had 37 trips back to Sydney—37 weekends?

Mr Thatcher—No, he has had 25.

Senator CARR—I am sorry about that. He was eligible for 37. How many family trips have there been?

Ms Butler—The commissioner, under his contract, has 52 trips between Melbourne and Sydney per year. They can be taken either by himself, by a family member—

Senator CARR—They are individual tickets, are they?

Ms Butler—or by his spouse. The total is 52.

Senator CARR—So he has used 25 in a period when he is entitled to 37?

Ms Butler—That is correct.

Senator CARR—Some of those are used for family trips and some of them are used for personal trips?

Ms Butler—Yes.

Senator CARR—What was the Comcar bill for the last year?

Ms Butler—I do not know if I have that figure available to me at the moment, but we could certainly give it to you on notice.

Senator CARR—Yes, if you would not mind. As I say, this is all information that is provided about us every six months and we are all very pleased to see it.

Senator COONEY—We all sign off on it, too.

Senator CARR—We are all personally accountable for every cent that we spend from the Commonwealth—I presume that also applies to the royal commissioner. You would have no trouble with that principle, would you?

Ms Butler—Of acquitting travel and allowances?

Senator CARR—Yes.

Ms Butler—No.

Senator CARR—Thank you. Can I just go through some of the other matters we talked about last time. We have already mentioned the salary. I was just wondering how that salary was actually determined—the \$660,000 salary or base salary, presumably.

Mr Thatcher—That is a matter for government.

Senator CARR—I am sorry?

Mr Thatcher—If you were addressing that question to me, I am not in a position to respond to that. Someone from government would need to respond to that.

Senator CARR—Mr Cornall, are you able to advise the committee?

Mr Cornall—These arrangements were put in place by the Department of Finance and Administration prior to the administrative arrangements order in November last year. These arrangements were already in place at that time.

Senator CARR—You have the files now, don't you? Presumably all the files were transferred over with the function?

Mr Cornall—I assume that to be the case.

Senator CARR—Are you then able to provide us with advice? Would it take long to establish that?

Mr Cornall—I will have to see. Ms Leigh is saying that she is not sure that what I just said, about all of the files coming over from the Department of Finance and Administration, was correct. But we will see what information we can provide.

Senator CARR—I would be particularly interested to know if we can get that today, while I am here. Would it take long, do you think, to establish the depth of your knowledge on this matter?

Mr Cornall—We will make inquiries in the next few minutes and see what we can find out.

Senator CARR—I am interested to know which minister was responsible for approving the initial budget for the royal commission. Have you got that information with you?

Senator Ellison—We will take it on notice. I am sure we will be able to find that answer out shortly.

Senator CARR—Yes, if you could, please. When you are getting those expenses for us, can you tell us whether the arrangements for the payment of the royal commissioner's expenses go to his home telephone costs as well? Have we got the full list of entitlements under these arrangements?

Ms Butler—I do not believe we pay the commissioner's phone bills. He has a mobile phone issued by the royal commission and we meet the costs of that.

Senator CARR—I was wondering whether I could get a full list of the associated entitlements. He has a mobile phone. Presumably there are phone expenses through the townhouse in Melbourne, are there?

Ms Butler—I presume there would be.

Senator CARR—They are all part of the costs, are they?

Ms Butler—I believe we pay the rent. I will check and clarify that for you.

Senator CARR—There is the rent of \$3,250 per month. Are there any other expenses associated with the townhouse that the Commonwealth is meeting?

Ms Butler—We did have some security measures installed in the commissioner's homes, which was a cost to—

Senator CARR—That is fair enough, but what was the cost of those?

Ms Butler—I do not have that figure with me. I would have to take it on notice.

Senator COONEY—Do you know whether the commissioner still gets his judge's pension from New South Wales?

Ms Butler—I believe he has his entitlements. They are not matters that concern the commission.

Senator COONEY—I am sorry, I should not interrupt. The reason I ask that is that, when you have a retired senator or member and they go overseas, say, as an ambassador, they stop the pension until they finish the ambassadorship. I suppose this is sour grapes in some ways, but I would be very interested to know whether the commissioner gets his \$660,000 plus his judge's pension.

Ms Butler—I believe they are matters that were part of the negotiation process in the commissioner's salary and they are matters that will be addressed by the department.

Senator CARR—Can you just indicate to me whether there are any additional expenses associated with the townhouse in Melbourne that the Commonwealth is required to pick up.

Ms Butler—Other than rental, no.

Senator CARR—You do not pay the utilities?

Ms Butler—I do not believe we pay the utilities, no.

Senator CARR—And you do not pay the security costs?

Ms Butler—Yes, we do.

Senator CARR—So that is an additional expense. Is that included in the \$3,250 a month?

Ms Butler—No.

Senator CARR—What about the garden and other facilities associated with the residence? Is the Commonwealth paying for those?

Ms Butler—I do not know whether there is a garden, but we pay a rental.

Senator CARR—What I am trying to establish—

CHAIR—Let me just check this, Senator Carr. Would you like to obtain from the royal commission an indication of the facilities, incidentals and support provided to the commissioner attaching to his residence in Melbourne, and the other aspects of his role as he carries them out, along the lines of the questions that you have been asking?

Senator CARR—That is right. Thank you very much.

CHAIR—Can I ask Mr Thatcher and Ms Butler to take that on notice, to break those details down and to provide them as a response to the committee.

Senator CARR—The point is that if you have that information readily available we would prefer it now; it would be better if we had it now.

CHAIR—Indeed, if it is readily available.

Senator CARR—Do you have that now?

Ms Butler—No, I do not, Senator.

CHAIR—Is it obtainable?

Ms Butler—I could make inquiries for you if you would like that, Senator.

Senator CARR—Otherwise, can we understand that there are some logistical—

CHAIR—I think that would certainly facilitate Senator Carr's asking of questions and I would very much like to do that, as you can imagine.

Senator Ellison—On the question of superannuation, I understand that the commissioner is a retired New South Wales judge; therefore his superannuation is a state matter. If I recall correctly—and I am open to correction—under the federal parliamentary rules there is a docking of the superannuation if you take up a government position. I do not know if that is the position for New South Wales, but that question would have to be addressed to the New South Wales government because the Commonwealth has no control over that.

CHAIR—Thank you for clarifying that, Minister.

Senator CARR—Thank you very much. I appreciate the points you make.

Mr Cornall—Just before we go on, it has been drawn to my attention that Mr Thatcher wrote to the chair of this committee on 28 February this year. In the letter he said that ‘negotiations for the commissioner’s salary were undertaken by the Attorney-General’s Department and the salary was agreed’. Mr Govey, who is absent at a course, was involved in discussions about who might be a suitable commissioner and so forth. That was done through the Attorney’s office, so we are making inquiries to ensure that the correct answer is given to you as quickly as possible.

CHAIR—If we can get that information, that would be helpful.

Senator CARR—We will come back to that after the break, presumably, because I expect that we will be going to the break on these matters.

CHAIR—Do you mean up to the break just on the building and construction industry royal commission or do you also mean pursuing the HIH insurance group royal commission?

Senator CARR—Madam Chair, I must advise you I have a considerable number of questions yet to be asked in regard to the building royal commission, so it may well be that we will be here for a while yet.

CHAIR—I understand; I am just seeking some guidance so I can advise agencies and officers.

Senator CARR—It depends. The officers have been very helpful—I appreciate the spread in which they have approached answers to these questions—but it will take some time to go through some of these matters.

CHAIR—All right. Thank you very much.

Senator CARR—With regard to the questions I have asked in relation to the commission, what are the terms of employment of counsel assisting? If you would give me a breakdown of the same issues for the counsel assisting, that will save us a lot of time. Do you have some notes in there in the folder? If you pass them up, it would probably save a great deal of time.

Mr Thatcher—If you are talking about the remuneration of counsel assisting, that was negotiated with them by the Attorney-General’s Department. You may recall that this was a subject of discussion at the previous hearing. It was discussed whether or not it was policy to provide details of remuneration paid to individual counsel and whether that would be in the Commonwealth’s interest to be resolved. On that occasion, I think Mr Govey advised that there were sound reasons for not doing so. I certainly have figures here in bulk form which indicate, for example, the monthly expenditure paid for counsel assisting and for the solicitors. I can provide that if it is of assistance.

Senator CARR—It certainly would be.

Senator COONEY—What we want, Mr Thatcher, is the fee paid to each counsel and to any private solicitors. I am saying this only to clarify the position. Are you saying that you feel you are unable to give us that?

Mr Thatcher—What I can advise you is that, of the budget of \$60 million, we are anticipating that expenditure for barristers and solicitors and other legal expenses will be in the vicinity of \$19,100,000.

Senator COONEY—A Dr Collins, for example, is one of the assisting counsel, isn’t he?

Mr Thatcher—Yes, Dr Mat Collins.

Senator COONEY—What fees does he get paid? Are you saying you do not want to give me that?

Mr Thatcher—No. I am saying that I understand this very issue was discussed at the last hearing, you might recall, Senator.

Senator COONEY—Yes, I know.

Mr Thatcher—And Mr Govey became involved in it because the submission was made. I am informed it is the practice not to publicise the daily rates paid to individual barristers. It does not relate just to our royal commission. It is a general policy. Can I also say that, in answer to question on notice No. 27, we did advise that the daily rates payable to counsel assisting both commissions were set in accordance with the policy for counsel's fees for the engagement of counsel by the Commonwealth, approved by the Attorney-General.

Senator COONEY—I am going to insist on this. Perhaps, Minister and Mr Cornall, we might pursue this. I am asking specifically for the details of the fees paid to individual counsel, plus the living expenses being paid to them, plus their travelling expenses. Perhaps the best way to proceed would be for a response to be made to that and then I will go on to the next part of the argument.

Senator Ellison—I will take that question on notice because we do not, in any event, have those figures here.

CHAIR—Thank you.

Senator Ellison—I understand Senator Cooney's request involves no further consideration of whether this comes under the Commonwealth policy not to divulge daily rates. The person who will make that decision in this instance is the Attorney. I will therefore take up that other aspect with the Attorney-General and get back to Senator Cooney. Hopefully I can get that relatively quickly, bearing in mind that the House of Representatives is sitting today and that he is here.

CHAIR—Thank you, Minister.

Senator COONEY—Can I just read this in. I am reading now from 'Resolutions expressing the opinions of the Senate':

28. Statutory authorities

The committee, having considered the report of Estimates Committee B - recommends ...

(ii) that the principle, espoused by the Senate in 1971 and 1974, that there are no areas of expenditure of public funds where statutory authorities have a discretion to withhold details or explanations from Parliament or its committees unless the Parliament has expressly provided otherwise, be reaffirmed;

(iii) the affirmation, in accordance with this principle, that the right to privacy of individual counsel accepting a brief on behalf of the Commonwealth for which money is appropriated by Parliament is supervened by such acceptance, subject to the reasons for the information being clearly defined and to the proviso that injudicious or unwarranted invasion of privacy is not the intention of the Parliament or its committees; and ... (*18 September 1980 J.1563*)

... ..

33. Public funds

The Senate reaffirms the principle, stated previously in resolutions of 9 December 1971, 23 October 1974, 18 September 1980, 4 June 1984 and 29 May 1997, 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." (25 June 1998 J.4075)

Note: Part of a longer resolution agreed to by means of an amendment to the motion that the Stevedoring Levy (Collection) Bill 1998 and the Stevedoring Levy (Imposition) Bill 1998 be read a second time.

I will give you a look at those. What is happening is that we are now getting to the position—ad nauseam—where parliament trying to do its work through the committees is consistently frustrated by the executive. I do not want to be party political about this, because if you look at some of those dates—

Senator Ellison—I might point out that the previous government made the same decisions. I remember being in estimates seeking the same information and was denied it then.

Senator COONEY—I understand that.

Senator Ellison—I will take up those points that Senator Cooney has made with the Attorney-General. As I say, he is here today and we will see what we can find out.

Senator COONEY—But can you follow my point, Minister? I know that you are on top of this. It is frustrating. The royal commissioner himself has just been through some examinations. Why should counsel who accept public money—public money that you and I have paid taxes for—and every officer in this chamber have their salary and their conditions brought before committees and examined? It must be embarrassing; nevertheless, people like us go on with that. Yet a barrister who is in private practice but who does an incredible amount of work for the government and gets a flood of money coming into his or her pockets can say, 'No, I am not going to tell you.' You can ask whatever you like about the commission. You can ask whatever you like about the public servants who come before these committees and who go through, at times, all sorts of questioning which, hopefully, remains relevant but not always. Why they and these people who go around in these commissions earning, I would have thought, incredible sums of money, given the sort of money paid to people in here—

Senator CARR—\$19 million.

Senator COONEY—Floods and floods of money go to these people and they say, 'You're not to know about it.' If I ask you your salary, you have to tell me. If I ask Mr Cornall his salary, he has to tell me. Mr Thatcher has to tell me. These people are earning lots more money per day than anybody in this room, yet for some reason which I have never quite appreciated we cannot find out about them. I have all sorts of transcripts here which I am going to go through later. Some of their performances are not very good.

Senator Ellison—Senator Cooney's point is not without merit. When I raised it, when I was sitting in a similar position to him, it was put to me that the reason for it was more to protect the Commonwealth's bargaining position. If all the rates were publicly known, the Commonwealth could become very much hamstrung by what it has paid one individual as opposed to another. That is a crucial factor, because briefing out depends on what sort of jurisdiction, what sort of seniority and the complexity of the matter. It is dealt with having regard to those matters. That is what was put to me before. It is not so much to protect the persons being paid but to protect the Commonwealth's bargaining position so that it does not get caught up—once paying a certain price getting locked into it forever and a day. That is just a commercial tendering consideration. I will take that on notice.

Senator CARR—These were open to commercial tenders?

Senator Ellison—No, I am not saying that, but it is akin to where you use the private sector. That is why you have commercial-in-confidence. It is not only for those people who deal with the Commonwealth but also to protect the Commonwealth's interests. In some cases you might pay more; in others you might pay less. You do not want to get locked into a certain rate across the board.

CHAIR—Senator Cooney, you have made the points you indicated you wanted to raise. The minister responded by saying he would take the matter up, but he expressed some concerns. You responded further; the minister has just agreed to address the matter with the Attorney-General. I do not know whether we can progress it beyond that point, until the minister has a response from the Attorney-General.

Senator COONEY— I have one more point.

CHAIR—That is what you said before, Senator Cooney.

Senator COONEY—The quality of these counsel are not as good as you might want. I have a document here prepared by Jerome, my son. He came along Saturday night and explained this to me. It took him a long time to get through to me; nevertheless he did. He showed that counsel were putting submissions that were, in a number of instances, not supported by the evidence. Mr White leaves out bits that change the whole aspect of the evidence, and they do not put the evidence with all the accuracy they might. We just want to know what we are paying for these counsel who might not be equipped with the abilities we are supposedly paying for. That is the problem.

Senator CARR—How do we actually select the counsel assisting?

Mr Thatcher—Shortly after the Prime Minister's announcement on 26 July, the Attorney-General's Department on behalf of the secretary drafted the invitations for expressions of interest from persons and firms interested in providing assistance as part of the commission's legal team. Those invitations were widely circulated. Expressions of interest were distributed by me on 31 July, including to all state and territory law societies and bar associations, as well as to an extensive subscription list of firms by the Attorney-General's office on behalf of the commission's secretary. The invitations specified a 6 August closing date for expressions of interest. The Attorney-General's Department subsequently compiled and forwarded lists of the EOIs received from senior counsel, junior counsel, solicitors and suitable lawyers to the royal commissioner. The commissioner then assessed the legal background and experience of those on the list against the criteria outlined in the legal team selection guidelines.

Senator CARR—Thank you. In essence, you wrote to the lawyers around Australia and asked them whether they wanted to help you. That is the guts of it, isn't it?

Mr Thatcher—I am not sure that is an appropriate characterisation at all, Senator.

Senator COONEY—Did you write to them saying, 'We do not want you to help us?'

Senator CARR—That is right.

CHAIR—I think Mr Thatcher has indicated what was conveyed to the legal organisations concerned, Senator Carr.

Senator CARR—I am not a lawyer, so I am just trying to work out how you get on to this—it is \$19 million a year. Basically, the lawyers then wrote back to the Commonwealth and said, 'We are prepared to act for you.' Did they set a price? Was it a tendering arrangement at all?

Mr Thatcher—I do have a copy of the legal team selection guidelines here.

CHAIR—You do have that, Mr Thatcher? Would you table those, please?

Mr Thatcher—Yes.

CHAIR—Thank you.

Senator CARR—Mr Cornall, do these legal team selection guidelines specify price?

Mr Thatcher—No.

Senator CARR—So it is an open arrangement? Is this what the market will bear? How does it work?

Mr Thatcher—When the commissioner assessed the expressions of interest, in consultation with the Attorney-General's officer—and I think that was Mr Govey—the arrangements for the approval and daily rates were then negotiated with the barrister not by the commissioner but by the Attorney-General's officer.

Senator CARR—Mr Cornall, we have just been told the commissioner does not negotiate the rates; you do—your department does or officers from your department, such as Mr Govey, do. Is that right?

Mr Cornall—Yes. Mr Govey would be the appropriate officer.

Senator CARR—Why isn't he here today?

Mr Cornall—He is on a residential course at the Mt Eliza Business School.

Senator CARR—Mr Cornall, I am troubled by that answer. This is the main estimates period. You would presumably have an expectation that these questions would arise. Have you no-one in the department who could assist us in Mr Govey's absence?

Mr Griffiths—Senator, I am from the Office of Legal Services Coordination in the Attorney-General's Department. I may be able to provide some assistance, but some of the questions we may have to take on notice.

Senator CARR—I appreciate that. Mr Cornall, in allowing leave to be granted for the officer to be absent today, was any consideration given to the possibility that he would be missing estimates?

Mr Cornall—Yes, Senator, that is the case. But this course was only available at a particular time of the year. On weighing up those factors, I thought that we would be able to either answer your questions with other officers or take the questions on notice and give you proper answers.

Senator CARR—I just want to be clear about this: you believe you can answer these questions?

Mr Cornall—We can either answer them through other officers or take them on notice and provide you with answers, yes.

Senator CARR—Let us see if that is the case. We think some of this stuff should not be taken on notice; it should be able to be answered here today. Mr Griffiths, how do you determine the price for the lawyers engaged to assist the commission?

Mr Griffiths—The counsel for the royal commissions were engaged in accordance with the Legal Service Directions, which are subordinate legislation made under the Judiciary Act. They are directions issued by the Attorney-General. Appendix D of those directions is called

'Directions on engagement of counsel'. Appendix D sets out various factors that are considered when engaging counsel to do work on behalf of the Commonwealth. In relation to daily rates, it provides that junior counsel are not to be paid a rate above \$1,600 per day unless a higher amount is approved by the Attorney-General or his delegate. For senior counsel, the figure is \$2,400 per day. In addition, there is an overall cap of \$3,800 per day, which is not to be exceeded unless expressly approved by the Attorney-General.

Senator CARR—So each junior counsel could receive \$1,600 per day?

Mr Griffiths—Or a higher amount, if approved by the Attorney-General.

Senator CARR—I will come to the approval in a minute. I am having a bit of trouble coming to grips with these figures.

Senator COONEY—You are just jealous.

Senator CARR—It is extraordinary. A senior counsel is paid \$2,400 a day, up to \$3,800 per day.

Mr Griffiths—That is correct, Senator.

Senator CARR—So a figure somewhere between \$2,400 and \$3,800 per day?

Mr Griffiths—That is correct.

Senator CARR—Unless otherwise approved at a higher rate?

Mr Griffiths—That is correct.

Senator CARR—In case this is not enough?

Mr Griffiths—That is correct.

Senator CARR—How often has the approval been granted in regard to the royal commission?

Mr Griffiths—No counsel engaged with the royal commissions is paid in excess of \$3,800 per day.

Senator CARR—I am pleased to hear that. Is that a saving?

Mr Griffiths—I think it would be a very substantial saving. Commercial rates in various areas of practice can be \$10,000 a day or even higher.

Senator COONEY—I think the \$1,600 a day is the safety net; you cannot go below that.

Senator CARR—I see. So we have some sort of comparative wage justice here?

Senator COONEY—That is right.

Senator CARR—How do you get into this union—\$3,800 a day?

CHAIR—Senator Carr, I do not think you can necessarily hold the department responsible for the commercial activities of counsel in Australia. No matter how hard we try, I do not think we can do that.

Senator CARR—No, I just wanted to know.

Senator Ellison—You might ask the unions how much they are paying their barristers. I bet it would be about the same.

Senator CARR—That is exactly the point we are coming to. What is happening here is that individual shop stewards, individual workers, are asked on a regular basis about their

wages and conditions. Individual workers are put in the public arena and put through the mill of this. We ask a simple question about how much the lawyers are getting, and we get this rigmarole. Now that we have discovered it is up to \$3,800, I can understand why you would want to protect that information.

Senator Ellison—We are not doing it to protect lawyers. As I said earlier, it is more on the basis of protecting the Commonwealth's position in other work that it may seek to brief out. It is a case by case decision, and that is why you have a range. Certainly, we can give you the ranges—and you have the ranges there. As to the particular people concerned, that is something that I will take up with the Attorney-General.

Senator CARR—Thank you very much. I appreciate the spirit in which you have approached this. I will be looking forward to the answer to see whether the same spirit applies there. You say that there is a commercial-in-confidence arrangement, but in fact the individual counsel approaches the government and says, 'I am prepared to work for this rate.' What is commercial-in-confidence about that? Presumably, everyone in the trade—apart from the senators here—know something about these figures. What is the commercial-in-confidence you are trying to protect here?

Senator Ellison—That is the matter I am referring to the Attorney-General. I know there have been instances where Legal Aid have sought expressions of interest from practitioners as to how much they would be prepared to work for per hour. I do not think Legal Aid have divulged that because of the commercial-in-confidence aspect. Again, Legal Aid could lose an advantage by publicising what they are prepared to take. That is being done at the Legal Aid level. Senator Carr, I will take it up with the Attorney-General over the luncheon break.

Senator CARR—Thank you very much.

Mr Cornall—The rates that Mr Griffiths referred to are well-publicised in the Legal Services Directions. They are well-known Commonwealth rates.

Senator CARR—They are not a secret?

Mr Cornall—No.

Senator CARR—They are still a bit of a shock to people like me.

Mr Cornall—They are well-publicised and well-known rates.

CHAIR—And they are not the responsibility of the department.

Senator Ellison—The point Senator Carr is making is an objection to the price that counsel demand these days. Your committee has looked into the cost of justice before and made comments on that. That is another area entirely, not really the subject of the purview of estimates.

CHAIR—Nor the responsibility of the department.

Senator COONEY—If you have four senior counsel assisting and each one gets about \$20,000 a week, if they are doing five days and a bit extra, that is \$80,000—plus junior counsel—and you would imagine that the unions and building companies are paying similar huge amounts of money. The whole industry will be bankrupt through legal fees if we carry on like this. The real worry is: what are we getting out of it? That is the real issue.

Senator CARR—How many senior counsel did you say there were?

Mr Thatcher—Four.

Senator CARR—So there are four at a minimum of \$2,400 a day. Can you tell us how many are on \$3,800?

Mr Griffiths—I do not think I can; I do not have that information.

Senator CARR—Mr Thatcher, can you advise us how many of the four senior counsel are on \$3,800 a day?

Mr Thatcher—I think that is the matter that the minister was going to take to the Attorney-General.

Senator CARR—How many junior counsel are there?

Mr Thatcher—Nine.

Senator CARR—So there are nine at \$1,600 a day.

Mr Thatcher—Minimum.

Senator CARR—That is the minimum. Is that right?

Mr Griffiths—It is not exactly a minimum. The \$1,600 figure that I mentioned is a figure that cannot be exceeded except with the approval of the Attorney-General or his delegate, similar to the \$2,400 figure.

Senator CARR—So you are saying that they get substantially less than \$2,400, do they?

Mr Griffiths—For reasons that we have just been discussing, I do not think that I could tell you the exact daily amounts that particular counsel are paid. That is really a matter, I think, that will be referred to the Attorney-General.

Senator CARR—I am sorry to be so abstruse here but you are saying that the figure is somewhere between \$2,400 and \$3,800 a day for senior counsel.

Mr Griffiths—For example, a senior counsel could be paid \$2,200 a day. He or she could not be paid above \$2,400 unless the Attorney-General or his delegate approved it and could not be paid above \$3,800 a day unless the Attorney-General personally approved it.

Senator CARR—And you say that there have been no approvals for above \$3,800 a day?

Mr Griffiths—That is correct.

Senator CARR—Are you able to tell us whether, of the four, they are all within that range of \$2,400 to \$3,800 then?

Mr Griffiths—I do not think I could answer that until the Attorney-General has made a decision on the matter that is to be referred to him, but they would have to be between the range of \$1,600 and \$3,800, bearing in mind the limits set by the legal services division.

Senator CARR—Yes, absolutely. But the senior counsel are not going to allow themselves to be paid the same rate as the junior counsel, are they?

Mr Griffiths—You would expect not.

Senator CARR—Yes, so it is not a real comparison. You have told us that there are four senior counsel and nine junior counsel, so presumably four are paid somewhere in the range \$2,400 to \$3,800.

Mr Griffiths—That is an inference.

Senator CARR—Yes, that is an inference.

Senator COONEY—It is a reasonable inference.

Senator CARR—It is a reasonable inference to draw because the senior ones are not going to be paid at junior rates, are they?

Mr Griffiths—It is equally possible for senior counsel to be paid between \$1,600 and \$2,400.

Senator CARR—Yes, but that is not a reasonable inference to make.

Mr Griffiths—I do not know that I would say that, Senator. There are, certainly, senior counsel who do work for the Commonwealth who are paid less than \$2,400 per day.

Senator COONEY—Mr Cornall, the impression we are getting is that the senior counsel—I think it was Mr White, Mr Green, Dr Collins and somebody else—may well be getting less than \$2,000. Is that the impression that the Attorney-General's Department want to give us?

Mr Cornall—No, I do not think Mr Griffiths said that; he was saying that, theoretically, that is possible. But I do not think he was saying that that was the case at all.

Senator COONEY—But you would only raise that as a possibility.

Mr Cornall—I think it is a possibility, yes.

Senator COONEY—Do you want to leave us with the impression that these people might be getting quite a lot less? We have to write a report. Can we write in our report that the Attorney-General's Department raised this issue so we are putting down that it is possible that these people are—

Mr Cornall—I would not expect that to be the case, no. That would be my expectation.

Senator COONEY—We are just trying to struggle, on behalf of the people of Australia, to get some idea of what is being paid for.

Senator CARR—Can I have a list of all the contractors that have been paid this figure of \$3,800 and the amounts of money paid to each contractor?

Senator Ellison—That is a matter that I will take up with the Attorney-General.

Senator CARR—They are contractors; they are not lawyers.

Senator Ellison—Still, I will take that on notice. I cannot give you that information now.

Senator CARR—Mr Thatcher, do you have a list of contractors that have been paid moneys? Then we can establish what moneys have been paid to individual contractors; I am told here that it is \$3.8 million.

Ms Butler—I advise that all those contracts that have a value of over \$100,000 are published on the Attorney-General Department's web site in line with the Murray motion.

Senator CARR—Thank you. So, if you have the information readily available, you will not mind providing me with the answers to the question?

Ms Butler—We can answer that question.

Senator CARR—Thank you. Now the consultants: \$1.947 million. Could we have a list of the consultants and the amount of money paid to those, and could you indicate whether or not each of those contractors and consultants was paid through an open tender process or a closed tender process?

Ms Butler—Arrangements varied, but they were all in line with procurement provisions.

Senator CARR—Could we have a list of all consultants' fees paid outside normal Attorney-General's guidelines for the letting of contracts or tenders?

Ms Butler—Yes. Could I just be clear: are you asking for those contracts that were provided outside the guidelines?

Senator CARR—I will draw it up for you nice and simply. What I want is a list of all the contractors or consultants engaged by the department or the royal commission in relation to the work of the royal commission. I would like to know the amount of the contract or tender. I would like to know who approved it. Was it approved at departmental level? Was it approved at ministerial level? Was it approved at the royal commission level? I would like to know whether or not the contract was let on an open or selected tender basis. If it was let outside the normal guidelines—that is, by a closed tender process of any description—on what grounds was it let? There may be extenuating circumstances. I have no doubt there are reasons. I would like to know who the decision maker was in relation to the letting of that contract or tender. And I would like to know, as I have indicated already, the value of any contracts that have been let.

Ms Butler—We can provide that information to you.

Senator CARR—Thank you. Have there been any contracts let that you are aware of that involve ministerial intervention?

Ms Butler—No, Senator.

Senator CARR—Is that the same for the department? Have there been any contracts let by the department in relation to the royal commission—

Mr Griffiths—Our involvement would be in relation to legal service providers—

Senator CARR—legal service providers or any other expenses associated with the commission?

Mr Griffiths—I am not aware of any.

Senator CARR—Could you take that on notice, please, to establish whether or not that is the case?

Mr Griffiths—The only thing that comes immediately to mind is provision of legal assistance to people appearing before the commission.

Senator CARR—Thank you. Could we have the details of those, please.

Senator COONEY—Is there a Mr Amendola who has done any work for the commission?

Mr Griffiths—So far as the royal commission is concerned, I think Mr Thatcher would be able to answer that. I am certainly not aware. Do you want to know if he has provided any legal services to the Commonwealth beyond the royal commission?

Senator CARR—Yes, please, if I could.

Mr Griffiths—I would need to take that on notice.

Senator CARR—Thank you.

Senator COONEY—What firms of solicitors won the tender?

Mr Thatcher—It was the Australian Government Solicitor.

Senator COONEY—Just the Australian Government Solicitor?

Mr Thatcher—That is correct.

Senator COONEY—Would you have any objection if we asked the Australian Government Solicitor questions—

Mr Griffiths—Sorry to interrupt, Senator. I thought there was a firm in South Australia: Fisher Jeffries?

Ms Butler—No.

Senator COONEY—So Mr Amendola does not come from any private firm. Is that what you are telling us?

Ms Butler—I am not aware of that person at all.

Senator COONEY—And you are not aware of any private solicitors, other than the Australian Government Solicitor, doing work for the commission?

Ms Butler—The commission has engaged, from time to time, a number of legal firms to advise on probity of selection processes, for example, to assist us with some contract negotiations. We have engaged Blake Dawson Waldron for specific work. Phillips Fox have also been engaged to advise us on probity type matters.

Senator CARR—Does Mr Amendola work for Blake Dawson Waldron?

Ms Butler—As I said, Senator, I am not aware of that name at all.

Senator COONEY—Not at all? You have never heard of it?

Senator CARR—You have never heard of it?

Ms Butler—I have not.

Senator COONEY—And the department has never heard of Mr Amendola?

Mr Griffiths—I personally have not.

Senator CARR—Mr Cornall, could you advise us whether or not the department has entered into a contract with Blake Dawson Waldron for representation at the Cole royal commission?

Mr Cornall—My advice is that, no, we have not.

Senator CARR—So there is no contract that you are aware of between the department and Blake Dawson Waldron for legal services?

Mr Cornall—No, not that I am aware of.

Senator COONEY—To put this in context, I have a now public letter written by Jonathan Hamberger, Employment Advocate, to Mr Tony Abbott MP on 11 May 2001. It starts off, 'I refer to your letter of 30th April 2001, requesting a report regarding behaviour in the building industry', and he then goes on to describe that. When, after that, was the tender called for the commission? I note that the commission itself was given on 29 August 2001, but when was the contract given to the Australian Government Solicitor?

Mr Thatcher—Expressions of interest closed on 6 August and it looks like the approval of the contract with the Australian Government Solicitor was on 14 September.

Senator COONEY—I think the commissioner was appointed on 29 August. This royal commission arose, I would have thought, out of the letter from Mr Hamberger to Mr Abbott. That is a letter that details some allegations of complaints and problems within the building

industry. Mr Cole is asked to look at the untoward conduct that takes place in the industry. What I am trying to get from all this is whether or not we have a royal commission that seems to be haemorrhaging money in terms of costs directed to finding out what I would have thought would have been the sorts of things that the Australian Federal Police and the local police forces should have been doing. Has the department got any comment on that? It is a lot of money; there are a lot of fees being paid to counsel for what really is an investigation of wrongdoing.

Mr Cornall—The decision to set up the royal commission and the terms of reference were, of course, matters for government, as was the budget appropriated to the commission.

Senator CARR—I asked some questions before, Mr Cornall, about the role of government in the appointment of the commissioner. You indicated to us that you were going to find out some information as to which minister authorised the salary for Mr Cole.

Mr Cornall—I do not know that I said I would be able to tell you that; I said I would make inquiries about how the salary was determined, and I have done that.

Senator CARR—What have you discovered?

Mr Cornall—These decisions were made by ministers. I am not able to say—and I was not party to the discussions that ministers had about these matters—but my understanding is that the salary was set by way of a negotiated arrangement where the commissioner sought a daily rate for his services, similar to the way in which barristers approached the provision of their services on a daily rate basis. There was a range of negotiations about that which resulted in the figure of \$660,000 per annum being agreed to, which is something of the order of \$2,750 a day.

Senator CARR—That, of course, does not include all of the other costs associated with it.

Mr Cornall—No, this is the salary.

Senator CARR—Just the salary costs.

Mr Cornall—This is how the \$660,000 was reached.

Senator CARR—You say there was a range of negotiations between Justice Cole, as he was then, before he was Commissioner Cole. Did these negotiations occur before he was appointed or after?

Mr Cornall—These were negotiations that preceded his appointment.

Senator CARR—When were they undertaken?

Mr Cornall—I cannot give you precise dates, because I was not a party to the negotiations. But these were negotiations which led up to his appointment.

Senator CARR—Was the department involved in those negotiations?

Mr Cornall—Mr Govey was involved in some aspects of the negotiations, but I think the final agreements were done at ministerial level.

Senator CARR—Yes, I understand that, but what was Mr Govey's role?

Mr Cornall—It would be providing advice to the Attorney-General.

Senator CARR—Are there any departmental files on these matters, on the nature of the advice?

Mr Cornall—There may well be.

Senator CARR—I know that you will not be able to comment on advice to ministers—that is fair enough—but when were those negotiations undertaken?

Mr Cornall—I do not have the dates. I was only asking about how the amount was calculated, because that is what I thought your question was going to.

Senator CARR—We will come to that point, but will you take it on notice as to when these negotiations occurred—

Mr Cornall—Yes, I will.

Senator CARR—and who was involved in the negotiations, what departmental officers were involved in those negotiations. When you say that ministers were involved, which ministers?

Mr Cornall—I am not sure I am able to say. I know we were giving advice to our minister. As to who else was involved, I am not able to say.

Senator CARR—So A-G's, workplace relations, presumably Minister Abbott?

Mr Cornall—I would assume so.

Senator CARR—Any other ministers?

Mr Cornall—I do not know.

Senator CARR—Was it a cabinet decision?

Mr Cornall—I do not know.

Senator CARR—Can you take that on notice.

Mr Cornall—Yes.

Senator CARR—If there was a cabinet decision, what was the date of the cabinet meeting to determine the salary of the royal commissioner? Was the contract put before cabinet or was it just the commissioner's salary?

Mr Cornall—I will take those questions on notice.

Senator CARR—Thank you very much.

Mr Cornall—I am not sure if you were alluding to the fact earlier about whether Commissioner Cole was a judge at the time these discussions took place.

Senator CARR—No, he was a retired judge.

Mr Cornall—I just want to make sure we are clear on that.

Senator CARR—I understood that to be the case. Who undertook the negotiation for Mr Thatcher's appointment?

Mr Cornall—Mr Thatcher is probably better able to answer that than I am.

Senator CARR—I thought Mr Govey was responsible for that.

Mr Thatcher—No, I negotiated with the acting head of the Department of Finance and Administration.

Senator CARR—So you negotiated directly with DOFA?

Mr Thatcher—That is correct.

Senator CARR—On what date were you appointed, Mr Thatcher?

Mr Thatcher—It was a date in July. On 25 July, I received a letter and I accepted.

Senator CARR—What was the date of the commission's establishment?

Senator COONEY—29 August.

Senator CARR—So you were actually appointed before the establishment of the commission, were you?

Mr Thatcher—There was an announcement by the Prime Minister before the letters patent were formalised.

Senator CARR—Were you appointed before the establishment of the commission?

Mr Thatcher—I was appointed on 25 July 2001.

Senator CARR—So do we say technically you were on the 29th? You are saying it was after the Prime Minister's announcement.

Mr Thatcher—Yes, correct.

Senator CARR—I am just wondering if the A-G's officers can tell us what is the legal authority for appointment of the secretary to the commission before the commission is established.

Mr Cornall—I am unable to answer that question without notice.

Senator CARR—You want to take that on notice, do you?

Mr Cornall—I am not able to answer it immediately, no.

Senator CARR—What was the date of the commissioner's appointment?

Mr Thatcher—Certainly, it was before mine.

Senator CARR—I would hope so.

Mr Thatcher—I have not got that date with me. I will take it on notice.

Senator CARR—Senator Cooney, as I understand what the officers are telling us here, we have officers appointed to the commission before the establishment of the commission. That is, in effect, what has happened. Mr Cornall, would it take you long to establish the legal authority on which those appointments were made?

Mr Cornall—No, I would not think so.

Senator CARR—Thank you very much.

Senator COONEY—When was it decided to get rid of the National Crime Authority?

Mr Cornall—The Prime Minister raised this matter in his campaign speech in November.

Senator COONEY—This commission looks very much like a substitute for the National Crime Authority. You have a judge appointed to, in effect, investigate criminal conduct, untoward conduct, fraud, corruption and collusion. He is given the powers of a royal commission to do it. Speaking for myself, I always found the National Crime Authority to be quite an outstanding body and I have certainly found the Australian Federal Police to be a most outstanding body, and yet the government has chosen to set up, at great cost to the public, this other body which is really doing what their job ought to be. That is why I think we have to pursue this with some vigour.

Senator CARR—Yes.

CHAIR—Senator Cooney, are you directing that question at anyone in particular?

Senator COONEY—I am just explaining why we are persisting. People might think we are persisting a bit too long.

CHAIR—Why you are persisting or assisting?

Senator COONEY—Both.

Senator CARR—Mr Cornall, was Mr Thatcher's appointment to the commission made on your advice?

Mr Cornall—No. At that time we had nothing to do with the royal commission because responsibility for administering royal commissions was with the Department of Finance and Administration until the change in the administrative arrangements order in November.

Senator CARR—I am just interested to follow this through. We have established that the A-G was involved in the establishment of the commission, as you would expect. We have established the minister for workplace relations was involved—

Mr Cornall—I said I expected he was involved.

Senator CARR—We have advice of 20 February this year from the Department of Employment and Workplace Relations that Mr Lloyd and Dr Shergold of that department provided Mr Thatcher's name as the person that should be the secretary of the commission. Was the department involved at all in those discussions on the appointment of the secretary—in any way?

Mr Cornall—I do not know if Mr Govey was in any way involved, but otherwise no.

Senator CARR—Can we establish from Mr Govey whether or not he was involved in any way?

Mr Cornall—We will seek to do that.

Senator CARR—And what were the circumstances of his involvement? When did he first hear that Mr Thatcher was to be appointed as the secretary?

Mr Cornall—We will make inquiries.

Senator CARR—Thank you. You can understand why I would have liked to have spoken to him directly in these circumstances.

Mr Cornall—Yes, I do.

Senator CARR—Mr Thatcher, could I ask you what is your salary?

Mr Thatcher—I am on a salary package of \$200,000 per annum and I have certain conditions.

Senator CARR—Can you indicate to us what is the nature of those other conditions?

Mr Thatcher—I receive furnished accommodation in Melbourne and I receive a meals and incidentals allowance of \$300 per week whilst I am located in Melbourne, which is away from my home.

Senator CARR—What is your base?

Mr Thatcher—I was appointed from Sydney.

Senator CARR—What is the nature of the furnished accommodation that you are allocated?

Mr Thatcher—I was in a furnished apartment in East Melbourne but an officer from the Department of Finance and Administration went back to Canberra. He was at EL2 level. He had a house at Brighton so I took over the rental.

Senator CARR—What is the weekly rental on the house in Brighton?

Mr Thatcher—I know it is cheaper than the furnished apartment, so I did it in an effort to make a saving. I have not got that figure on me, I am sorry. It is paid directly by the department.

Senator CARR—We have here a figure that the commission spent half a million dollars—\$546,120—on residential accommodation. Could you indicate to us what the Commonwealth is paying for your accommodation—the weekly rate?

Mr Thatcher—Certainly. I will take that on notice.

Senator CARR—Is that \$546,120 for only two residences?

Ms Butler—No. There a number of officers attached to the commission who as part of their conditions get rental assistance, as well as the commissioner and the secretary. An officer from the Department of Finance and Administration now attached to the Attorney-General's Department who had moved from Canberra and a couple of the counsel assisting have opted to live in residential accommodation rather than take a weekly allowance.

Senator CARR—Could we go through that. Can you indicate the rental accommodation for each of the officers. What is the weekly rental? Can we start with the counsel assisting. What is the Commonwealth cost for each individual counsel assisting for residential accommodation?

Ms Butler—There are only two who have their accommodation paid in that way. Their circumstances have both changed since the beginning of the commission. We have spent, for one of those officers, \$18,000 until 30 April and, for the other officer, \$3,700.

Senator COONEY—Who were they?

Ms Butler—They were counsel assisting. One was Dr James Renwick and the other was Mr Ian Neill.

Senator COONEY—Are you saying they are the only ones for whom accommodation is paid, whether by way of an allowance or by the supply of a room?

Ms Butler—I am saying they are the only two for whom we have paid residential accommodation in that way. Other barristers who have moved to Melbourne for the duration of the commission are paid allowances, which is either a daily rate which we reimburse or a weekly rate.

Senator CARR—For which counsel was the \$18,000?

Ms Butler—Counsel assisting, Dr Renwick.

Senator CARR—How long was that for?

Ms Butler—It would be for some months. I do not have that figure.

Senator CARR—Can you indicate to us the nature of the accommodation provided, the length of time it was provided, the weekly—

Ms Butler—It would just be a residential house.

Senator CARR—and the monthly rate, and the same for the other officer. Am I right to assume that on top of the daily allowance of up to \$3,800 per day there is an accommodation allowance paid, or is that not included in the daily rate?

Ms Butler—There is an allowance paid for counsel—

Senator CARR—On top of it?

Ms Butler—Yes, for counsel who have relocated to Melbourne.

Senator CARR—How many counsel are there who have relocated to Melbourne?

Ms Butler—Seven. Two of the senior counsel—

Senator CARR—Are we a bit short on barristers in Melbourne? Of the total of 13, nine have had their accommodation paid?

Ms Butler—Seven.

Senator CARR—No; there are two others have had houses provided.

Ms Butler—Sorry, I was answering the question of how many barristers had relocated to Melbourne.

Senator CARR—I see. It is a total of seven?

Ms Butler—Yes.

Senator CARR—How many are on the additional daily accommodation allowance?

Ms Butler—All who have relocated are entitled to living away from home allowance.

Senator CARR—But you have provided houses for two of the seven—is that right?

Ms Butler—Yes.

Senator CARR—The other five are on a daily rate?

Ms Butler—Yes.

Senator CARR—What is the total daily rate for what we crudely call the TA?

Ms Butler—Can I explain the rates. We have two processes by which the barristers are provided with assistance. One is an accommodation allowance of up to \$850 per week plus a \$308 living away from home allowance—meals and incidentals. The other method is that barristers could opt to offer us costs and we reimburse costs up to a ceiling of \$250 per day.

Senator CARR—Is that across seven days a week?

Ms Butler—It would be for the days they are in Melbourne. If they return home at the weekend, as many do, they are not paid that allowance for the time they return home.

Senator CARR—I am pleased to hear that. You are saying basically that there is \$1,100 extra per week for each counsel?

Ms Butler—It varies, but yes.

Senator COONEY—Do they get travelling expenses as well?

Ms Butler—If they travel away from Melbourne. The commission is currently operating interstate in Western Australia, as you know, so arrangements change. However, when the barristers travel on commission business, they are paid SES rates as travelling allowance. In those circumstances, they are clearly not billing us for a daily rate of \$250 a day.

Senator CARR—Do they also get their airfares paid?

Ms Butler—Yes.

Senator CARR—Do they get business class airfares?

Ms Butler—On official travel it is business class.

Senator CARR—It is not a bad gig, is it? They get up to \$3,800 a day for senior counsel plus another \$1,100 a week in accommodation plus the air fares are paid. There are no out of pocket expenses in any of this, are there?

Ms Butler—They are the terms of their engagement.

Senator CARR—That is right. It is a fairly lucrative—

Senator COONEY—Can I just ask a question. What do officers of the National Crime Authority and the Australian Federal Police get paid when they are doing investigations? Do they get an extra \$1,100 allowance when they are travelling?

Senator Ellison—We can answer that when we get to the NCA and the AFP.

Senator COONEY—What about someone in the Public Service? Do they get \$1,100 in addition to the \$3,800 a day? Public servants would be doing well if they did that.

Senator CARR—But they are working five days a week; you have to appreciate that it is a long week.

Senator COONEY—And they sit from 10 a.m. until 4 p.m.

Senator Ellison—Any comparison with the NCA has to assume that the states would agree to the reference. If it were to go to the National Crime Authority, the states would have to agree to the reference going forward in relation to an inquiry into the building industry.

CHAIR—Indeed.

Senator Ellison—And it is a moot question as to whether the state governments would agree to it.

Senator CARR—I am trying to get this clear. You are saying that the Commonwealth is paying these people nearly \$21,000 a week.

Senator COONEY—And if you accept this stuff here which I won't go into—

Senator CARR—And Senator Cooney says it is not very good. It is extraordinary: \$21,000 a week!

Senator COONEY—Any public servant I have come across would do better than this.

Senator CARR—They would only complain about a blow-out of government costs when you are paying that sort of money. They would only be tough on a shop steward for asking for a few bob—

Senator Ellison—I wonder whether there is a question in all this.

CHAIR—Not that I can discern, no. Perhaps we could return to questions, Senator Carr.

Senator CARR—I am sorry; I want to be clear. Mr Thatcher, is the Commonwealth paying up to \$21,000 a week for a senior counsel?

Mr Thatcher—I have not done the arithmetic, but that sounds reasonable.

Senator COONEY—Isn't it under—

Senator CARR—No, we want to be fair to them. They have worked very hard to get those sorts of rates. These are commercial-in-confidence rates. You can understand why you would want to keep them secret, though.

Senator COONEY—And that is done in the safety net.

Senator CARR—Yes, and by invitation: you actually invite them. But you are not getting that, Mr Thatcher, are you? They are not paying you \$21,000 a week.

Senator COONEY—I was just looking at this transcript of the Royal Commission into the Building and Construction Industry inquiry held in Hobart on Tuesday 12 March 2002. On page 3718, Commissioner Cole says:

He was the assistant secretary. Subsequently he got the boot?

He uses that expression again on page 3725. You would expect someone we are paying \$660,000 a year to use an expression better than ‘the boot’.

CHAIR—Frankly, Senator Cooney, I am not sure that the parliament—either the Senate or the House of Representatives—is in a position to be discussing language after events in recent weeks.

Senator CARR—I have to admit that that is the sort of language I use, but I do not think—
Senator McKiernan interjecting—

CHAIR—You know exactly what I am referring to. I can give you a *Hansard* to assist you, Senator McKiernan.

Senator COONEY—We are a bit shocked by that.

Senator CARR—I am staggered.

CHAIR—It would be your colleagues, I think you will find.

Senator CARR—Who is Mr Rick Willis, Mr Thatcher? Do you have a Mr Rick Willis on the payroll?

Mr Thatcher—Yes, he is the media director.

Senator CARR—How much does he get paid?

Mr Thatcher—He is the principal of the company Network Four, which was engaged by the Commonwealth to provide media and related services to the royal commission—I am just trying to get the right reference—and that contract is included in the Attorney-General’s report. It is a contract in excess of \$100,000.

Senator CARR—So how much does Network Four get paid?

Mr Thatcher—Their contract provides for certain rates. There are daily caps, weekly caps and monthly caps, all of which have not been exceeded. But, at the moment, the rate we think we will pay of the total \$60 million should be something like \$613,000.

Senator CARR—So \$613,000 basically for propaganda services?

Mr Thatcher—No.

Senator Ellison—I think the question is not a proper one. We are talking about media services to the royal commission. The word ‘propaganda’ is what Senator Carr might think it is, but it is not an appropriate question to put to the officer.

CHAIR—It comes back to the question of language, doesn’t it, Minister.

Senator CARR—The word ‘propagate’ I think is probably also here. We are getting a fair bit of that. You have got a communications budget of \$741,000, of which \$613,000 goes to one company. Is that correct?

Mr Thatcher—The budget has been a bit fluid because we have been trying to contain costs and, therefore, I am not sure what figure you are looking at. The current total figure for that total area, we think, will be something like \$682,000, which is slightly less than the \$700,000 that I indicated when we were last here in these proceedings.

CHAIR—Are you referring to the budget summary, Senator Carr?

Senator CARR—Yes, I am reading from your own budget.

CHAIR—Mr Thatcher, in the document that we tabled entitled ‘Budget Summary BCI Royal Commission’, the figure under ‘Expenses’ and ‘Communications’ is, I believe, what Senator Carr is pointing to.

Ms Butler—The figure that relates to communications does not relate to the public relations media budget. That is contained under consultants.

Senator CARR—I am sorry. So you are saying that there is another \$741,000?

Mr Thatcher—Which relates to telephones. That is internal communication networks for the royal commission—telephones, email, Internet connections and those sorts of things.

Senator CARR—So it would be unwise for me, then, to conclude that the real figure for communications should include the media?

CHAIR—Should include what, Senator Carr?

Senator CARR—The media. We have got two figures here. We have got \$682,000 for media—

CHAIR—Which, as I think Ms Butler has just clarified for you, is part of the consultants provision—

Senator CARR—I agree; that is the point. I am just trying to get to the figure here. You have got then something like a figure of \$1.4 million—

Ms Butler—The items that are included under communications in the commission’s budget relate to mobile phones, office phones, call charges—Telstra bills. They are unrelated to the media.

Senator CARR—So are there any ads? Where do I find the ads that are placed in newspapers, for instance? Where would I find that under your budget?

Ms Butler—Those things are included in the media budget.

Senator CARR—That is all in the media budget. So Network Four will be paid \$682,000, will they, this year?

Mr Thatcher—No. At the moment we are estimating that they will be paid \$613,000. The balance is for other services, such as media monitoring and purchase of equipment and so forth. Not all of the services relate just to media monitoring.

Ms Butler—Can I clarify also that that figure of \$613,000 relates to the life of the commission. That is our current estimated cost to February 2003.

Senator COONEY—From constituents who have come to see me about this matter, there seems to be the perception that your media liaison officer is used to forewarn the press of

pending statements that are to the detriment of the union and unionists. I suppose you would deny that, would you?

Mr Thatcher—I think that would be a very unfortunate characterisation. We selected this particular media company and Mr Willis in particular because of his previous experience with royal commissions. He had previously been with the royal commission into the ambulance service in Victoria and I received very positive feedback about his professionalism and integrity and ability to understand the delicate role that a media officer must play attached to a royal commission.

Generally speaking, we place high importance on ensuring that there is public awareness of the royal commission, as we go around, because we have found that with very broad terms of reference the more the public is aware of our existence the more people are likely to come forward. For example, we found because we are in Perth it is more likely that people from Perth will come forward with submissions or complaints to the commission than, say, if they are sitting in Melbourne. The role is an even-handed one. There are many facets to it, I suppose. But rather than that categorisation, which is inaccurate, it is to ensure that the media are accurately informed. And that does not mean our briefing or background briefing media; that means ensuring that media know where to look when they want to write a story—‘What has been said about this?’ and he will refer them to the appropriate evidence and so forth.

Senator COONEY—I was going to go through that pile of material there, which is to do with the royal commission. This is an assessment done by Jerome. I do not want to go through it all, but he was able to point out to me examples where the media would arrive and hear not evidence—some allegations as they turned out in the end to be—but allegations that were to the detriment of the union movement and to unionists which were then published in the paper and not corrected when evidence rather than allegations was produced to show just how wrong they were. The perception is out there—and perhaps the commission would like to counter this—that the media liaison person in your establishment is there, amongst other things, to give bad publicity to people appearing before the commission, particularly those from the unions and unions themselves. Have you got any perceptions of that?

Mr Thatcher—A couple of things I could say is that when we establish a hearing room, whether it is in Melbourne or Perth or wherever, we always take into account the need to have some space available for the public but also for the media. That is the only time we ever issue a media release: announcing that we are commencing hearings and so forth. I have gone around a little bit from here and there. I do not follow the hearings physically, but I have been in there on occasions and I have seen media rooms full and sometimes I have seen media rooms empty. I am actually at a loss to understand how the media works. I can only say thank you for that feedback of that misperception, and it is something I will take on board and discuss with the media director because that is the last thing we would want. We want to be seen to be even-handed and independent and to act with impartiality.

Senator COONEY—Perhaps I will give an example of where the commissioner cuts off counsel for the union and for the unionists. Mr Eugene White—as I understand it, there is another White, who is counsel assisting—uses colourful language and cross-examines witnesses. I suppose he is entitled to do that. But the commissioner’s approach is all directed to one side of the argument, if I can put it that way. It is a matter of concern to constituents—and I suppose to the public generally—that all this money should be spent on that sort of inquiry.

CHAIR—Senator Cooney, I do not think Mr Thatcher is in a position to respond to that question.

Senator COONEY—But perhaps the department is.

CHAIR—That is a matter for Mr Cornall or for the minister.

Senator Ellison—Could you comment, Mr Cornall?

Mr Cornall—Sorry, Madam Chair, I was trying to find the answer to one of the earlier questions that Senator Carr asked.

CHAIR—I appreciate that, Mr Cornall. There are a lot of things being pursued here at the moment. Senator Cooney, did you wish to direct that question specifically to Mr Cornall or was it just a statement?

Senator COONEY—There is a perception, Mr Cornall, that this commission has been conducted in the light of the letter from Mr Hamberger to the minister which gave rise to this inquiry and which was written in a very adverse way on 11 May 2001 to unionists and to the union movement—to the CFMEU, in particular. There is a perception that that approach—what some people might call a biased aspect to it all—has been carried through into the commission and that the commissioner himself has an inability to fully appreciate that there are two sides to every case. It is perceived that this approach, which I will go through with you, was indicated by the commissioner's cutting off of counsel for the unions and for the unionists and by his adverse cross-examination of certain witnesses and that all this indicates that this commission is tainted with an unfortunate bias that might not produce the best results required by the public and for which we are paying lots of money. Since this is an extension of the government's activities, it becomes a matter of whether or not that perception can be countered in any way.

Mr Cornall—The commissioner has the responsibility to inquire into the matters referred to him in the terms of reference, to do so on an impartial basis, to be informed by the evidence given to him and to conduct the inquiry in a fair and reasonable manner. I have not reviewed the transcripts, so I am unable to comment on your assertion that there may be examples which you feel give rise to the concerns you have just raised. Without reviewing the whole of the transcript and without reviewing the context in which certain decisions were made by the commissioner during the hearing, I do not think it is possible to comment on that statement.

Senator COONEY—I think that is a fair comment. I will indicate what transcripts I have looked at: they are transcripts from Hobart during March this year. The other issue I wanted to raise in this context—and I will not go through it—is the difficulty counsel assisting has of at all times attaching the evidence to the conclusions they reach. There is a document here that I will not inflict upon you, but you can see three columns have been drawn up—submission by counsel, the finding of fact by counsel and the evidence they in fact relied on—and in an alarming number of cases the facts and the evidence do not support the conclusions.

CHAIR—Is that a document you wish to have examined, Senator Cooney?

Senator COONEY—If they would like to examine it, they can.

CHAIR—I am not sure I understand the status of the document. Is it a document from the royal commission or is it your own personal document?

Senator COONEY—It is a personal document prepared by my son Jerome. I do not think it could in those circumstances be an impugned document, Madam Chair.

CHAIR—Absolutely not, Senator Cooney.

Senator COONEY—Anyhow, perhaps the perception is the thing. I will not inflict all this on you.

CHAIR—Thank you.

Senator CARR—Can I return to Mr Willis's employment. You have indicated to us that the basis of his employment is the contract for Network Four. Is it the case that Mr Willis is not a direct employee but a contractor?

Mr Thatcher—That is right.

Senator CARR—Was the contract issued by select and open tender?

Mr Thatcher—I think it was a select tender, but it was approved by the Department of Finance and Administration and it went through their probity.

Senator CARR—Can you indicate to us when it was approved and on what authority it was approved. Was Network Four the only company approached?

Mr Thatcher—No, definitely not. I can remember because I recall there was a shortlist of two companies.

Senator CARR—What was the selection process, if you would not mind advising us?

Mr Thatcher—There was a panel which interviewed—

Ms Butler—It was a restricted request for proposal process involving two companies. I believe the selection documents were assessed by the secretary.

Mr Thatcher—There was a panel initiated by the Department of Finance and Administration. They selected two companies and put it back to me, as I recall, to say which out of either of those—

Senator CARR—So, Mr Thatcher, you are the decision maker.

Mr Thatcher—In this particular case the panel did not mind and was saying that it could go either way. When it came to the shortlist, I then interviewed the two companies as a final check—

Senator CARR—What were the names of the two companies that you examined?

Mr Thatcher—One, of course, was Network Four, and there was an alternative company—sorry, I am just having difficulty. No, I do not have it. I am afraid I will have to get that information for you; I do not have it in front of me.

Senator CARR—Why was Network Four selected?

Mr Thatcher—I do have it in front of me. The other company was Fleishman-Hillard Stratcom Pty Ltd.

Senator CARR—Where are they from?

Mr Thatcher—I think they were a Melbourne based company.

Senator CARR—Both Melbourne based companies?

Mr Thatcher—Yes.

Senator CARR—Why did you select Network Four?

Mr Thatcher—I will just read from this document. I had received advice that:

The outcome of the process (which consisted of an evaluation of proposals by a panel of Finance officers) was that the Delegate, General Manager Corporate, endorsed recommendations including the following:

agreed that the preferred service provider is Fleishman-Hillard Stratcom Pty Ltd, and that the second-preferred service provider is Network Four (tendering as Network Four Productions Trust Pty Ltd);

agreed that, given the difficulty in discriminating between the first and second-preferred service provider, and given the need for the successful service provider to work closely with the Commissioner and the Commission's Secretary, the final decision on the successful service provider be referred to the Secretary of the Commission.

In endorsing these recommendations the General Manager Corporate requested Finance officers ensure that the Royal Commissioner was consulted and that that your and my final decision was outlined in a letter to him.

I then interviewed representatives—it must have been on 23 August 2001—and following those interviews I recorded that I was firmly of the opinion that Mr Willis would best work closely with both the commissioner and me. I then advised the department to that effect.

Senator CARR—Could I have a copy of that statement you have just read.

Mr Thatcher—Certainly.

CHAIR—Is it something that you can table, Mr Thatcher?

Senator CARR—He has just said he could.

Mr Thatcher—Yes, most certainly.

CHAIR—Thank you.

Senator CARR—So the department actually preferred the other company that you selected?

Mr Thatcher—My recollection is that the prices were very similar. Mr Willis, from my point of view, had the edge because he had had that experience with the ambulance royal commission and he also had had national experience in the media. Looking at his background, I saw that he had at one stage been the Network Ten national news and current affairs manager, whereas the other company did not have that national approach. We knew that it was very important for our operations that we be seen as a national rather than a Melbourne based royal commission.

Senator CARR—Do we have a copy of that document? Can I have a look at the document?

CHAIR—It is being copied, I would imagine.

Senator CARR—All right, I will keep plugging away here until I get a copy of it.

Senator Ellison—Perhaps we could move on to another area.

Senator CARR—No. I want to follow up on this area.

CHAIR—It is being copied for you, Senator Carr—as fast as is humanly possible, I suspect.

Senator CARR—Thank you very much. I had thought that you might have been able to pass it over to me to have a look at it so that I could get the names of the companies. I did not quite catch the names of those two companies.

Senator Ellison—We can give them again.

Mr Thatcher—I think the only document with the names is the one that I have handed up.

CHAIR—It will be with you in a moment, Senator Carr.

Senator COONEY—With regard to the issues that I was raising before, there is some material here that will give you a flavour of the sorts of issues that have been raised with me. I could hand these over, Minister, if you like. We could do it in reverse: instead of you passing documents over here, we will pass them over there. Actually, please disregard my suggestion: I have been overruled on this by senior counsel!

Mr Cornall—Madam Chair, while we are waiting, I have the answers to a couple of the questions that Senator Carr asked earlier and would like to put them on the record. One question concerned the pay rates for an APS level 6 within the Attorney-General's Department. The pay rates range from between \$47,504 and \$54,569, depending on the level that the person is at. In relation to the department's SES band 1 remuneration payments, the departmental standard is \$97,020 and the total package, when you factor in superannuation and vehicle costs, is \$138,136. I have a copy of the rates of travel allowance issued by the Department of Employment and Workplace Relations for the Senior Executive Service, and I can table that. These rates, I understand, are applicable from 9 May 2002. I have spoken about how the commissioner's salary was determined, and Ms Leigh has spoken to Mr Govey and can deal with the question about his involvement in Mr Thatcher's appointment.

Ms Leigh—The Department of Finance and Administration was responsible for Mr Thatcher's appointment; however, we did have some limited involvement. When Mr Thatcher was being considered for appointment, the officer in the department of finance who was responsible for that invited Mr Govey to join him and another officer in interviewing Mr Thatcher. That was the involvement that Mr Govey had.

Senator CARR—But the names were originally provided by Mr Lloyd and Dr Shergold. Is that right?

Ms Leigh—I am not aware of that. We certainly did not put forward those names.

Senator CARR—Why was Mr Thatcher appointed? On what basis? The department obviously interviewed him, so what background did Mr Thatcher bring to this particular job that, in your opinion, made him suitable for this task?

Ms Leigh—I would need to check the details on that, Senator. Clearly he was interviewed and it was considered that he was an appropriate person to carry out the functions.

Senator CARR—Who determined the payment of the salary of \$200,000 a year?

Ms Leigh—That was handled by the department of finance.

Senator CARR—So there was direct negotiation?

Ms Leigh—I understand that it was negotiated by the Department of Finance and Administration and that we did not have any active involvement in it. Mr Govey told me that he cannot recall whether at any stage people informed him about progress on that but that he did not have an active role in those negotiations.

Senator CARR—Mr Thatcher, was that salary figure arrived at, in your opinion, as a result of negotiation, or was it set by the department?

Mr Thatcher—My recollection is that it was part of the interview process. I went to an interview, it appears, on 20 July. There were three departments represented in the interview: it

was chaired by Mr Philip Bowen of the Department of Finance and Administration, and there were representatives of the Attorney-General's Department and the Department of the Prime Minister and Cabinet, as I recall.

Senator CARR—Who was the person from the Department of the Prime Minister and Cabinet?

Mr Thatcher—I think it was Barbara Belcher. Subsequent to that meeting, I had a telephone conversation about remuneration, and there was a negotiated figure.

Senator CARR—Who was the telephone call from?

Mr Thatcher—I recall that it was from Mr Philip Bowen.

Senator CARR—Can you indicate to us how that salary package was structured?

Mr Thatcher—It was a flat package rate which—

Senator CARR—Is it by contract or an AWA?

Mr Thatcher—I am on a contract.

Senator CARR—Perhaps you might want to take this question on notice: can you indicate what is expended on your accommodation, meals and travel expenses?

Mr Thatcher—Certainly.

Senator CARR—I might have to return to that area. There is a media unit within the commission; is that correct?

Mr Thatcher—There is Mr Willis and one other person, a junior person who is also an employee of Network Four.

Senator CARR—So it is a two-person unit: Mr Willis, who heads up the company, and a media assistant.

Mr Thatcher—That is correct.

Senator CARR—So Mr Willis has a media assistant, and that is what the unit comprises?

Ms Butler—That is correct.

Senator CARR—What is the classification of the media assistant?

Ms Butler—She is an employee of Network Four, so she does not have an APS classification. It is part of the overall contract.

Senator CARR—What facilities are made available for the media at the commission hearings? Is there a dedicated media room, for instance?

Ms Butler—Yes, there is.

Senator CARR—Who meets the cost of that?

Mr Thatcher—It is provided by us.

Senator CARR—So it is part of the accommodation provided by the commission?

Mr Thatcher—Yes.

Senator CARR—Who has access to the media room—accredited members of the media?

Mr Thatcher—That is correct.

Senator CARR—And, of course, Network Four?

Mr Thatcher—Yes.

Senator CARR—Do you have any additional personnel that provide liaison with the media, apart from the two in the media unit?

Mr Thatcher—No.

Senator CARR—Has there been any discussion with any of the witnesses for the provision of materials to the commission in return for access to the media room?

Mr Thatcher—Sorry, I did not follow the question. Could you repeat it, please?

Senator CARR—I will go through it again with you. Are you aware, or are any members of the commission aware, of any personnel from the commission making an offer to witnesses—or, for instance, in the case of New South Wales, the officials of the CFMEU—of a trade-off, giving access to the media room at the Sydney hearings in return for the production of documents?

Mr Thatcher—I am certainly not aware of any such proposition. We have not even started sitting in New South Wales at this stage.

Senator CARR—I know that; this is about the forthcoming hearings. I ask you to take that on notice.

Mr Thatcher—It is something that I have to speak to senior counsel about.

Senator CARR—It is quite specific.

Mr Thatcher—I will take that on notice.

Senator CARR—Thank you. Mr Thatcher, when did you first become aware of the possibility of an appointment to the commission?

Mr Thatcher—Some date prior to 20 July.

Senator CARR—Do you recall who approached you about the job?

Mr Thatcher—Someone from the Department of Employment and Workplace Relations contacted me, asking me if I would like to be on a list of names to be considered. I indicated that I would. I cannot recall at the moment who that was. It may have been Mr John Lloyd; I am not sure.

Senator CARR—Did you know Mr Lloyd, prior to this time?

Mr Thatcher—I know Mr Lloyd professionally.

Senator CARR—Have you worked with Mr Lloyd in the past?

Mr Thatcher—I have never worked with Mr Lloyd in the past, not in the same department or anything like that.

Senator CARR—In what capacity did you know Mr Lloyd?

Mr Thatcher—Mr Lloyd was appointed to the position of Chief Executive of the Western Australian Department of Productivity and Labour Relations after I left the position.

Senator CARR—He took your job in Western Australia?

Mr Thatcher—He won my job. I was not on the panel.

Senator CARR—He replaced you in Western Australia.

Mr Thatcher—Yes. I had no part in his selection.

Senator CARR—How do you know Dr Peter Shergold?

Mr Thatcher—I was a chief executive of the Department of Industrial Relations in Queensland when he was the chief executive of the federal department, so I know him professionally through that.

Senator CARR—You think it was Mr Lloyd who contacted you. Are you able to be more precise than that?

Mr Thatcher—I cannot recall whether it was Mr Lloyd or Mr Peter Anderson, but it was one of those two who contacted me.

Senator CARR—Where is Mr Anderson from?

Mr Thatcher—He was then an officer of that department, but I think he was attached to the minister's office.

Senator CARR—I see. Was he a ministerial staffer?

Mr Thatcher—Yes. I have just been advised by Ms Butler, who is a former officer of the department, that Mr Anderson has never been an officer of the department. He was a ministerial staffer.

Senator CARR—Do you recall what position he held in the minister's office at the time?

Mr Thatcher—He was the policy adviser.

Senator CARR—This was to Minister Abbott?

Mr Thatcher—No; to Minister Reith.

Senator CARR—Minister Reith!

Ms Butler—No, it was Minister Abbott.

Mr Thatcher—Sorry, it was Minister Abbott.

Senator CARR—Did he work for Mr Reith as well?

Mr Thatcher—Previously, yes.

Senator CARR—I see. Were you contacted by Mr Reith, while he was the minister, about the commission?

Mr Thatcher—About the appointment? No.

Senator CARR—Did you have discussions with Mr Reith about industrial relations matters?

Mr Thatcher—In my former position, I certainly spoke to Mr Reith about industrial relations matters.

Senator CARR—As a state public servant?

Mr Thatcher—As a state public servant and also at the time when I was Assistant Director of the Business Council of Australia.

Senator CARR—As a lobbyist?

Mr Thatcher—Would it assist if I tendered my curriculum vitae?

Senator CARR—It would certainly help me. This is obviously a significant job. I am wondering how it was that you were appointed to this position. You are from the Business Council of Australia. What did you do prior to that?

Mr Thatcher—I was Assistant Chief Executive of the New South Wales Department of Industrial Relations. I was Chief Executive of the Western Australian Department of Productivity and Labour Relations. I was Chief Executive of the Queensland Department of Industrial Relations and then I became Assistant Director of the Business Council. I left the Business Council and was starting to work in my own capacity when this position came along.

Senator CARR—What years were you chief executive of these various state departments?

Mr Thatcher—I was in the department in New South Wales, and I left the position there in 1995. I was in Western Australia in 1995 and the start of 1996; then I went to Queensland in 1996 and left there in 1998. I did a short stint at SOCOG and then went to the Business Council. I was there for approximately two years.

Senator CARR—It is interesting that those dates you have given have parallels with the changes of governments that have occurred in those states. Do you think there is any significance in that?

Mr Thatcher—Certainly with respect to Queensland there is. My contract was up for renewal on 1 July and was not renewed by the incoming Beattie government.

Senator CARR—Thank you.

Senator COONEY—Mr Thatcher, could I ask you about the letter you wrote to Commissioner Cole on 23 August 2001. This is about the selection of the media adviser to support the building and construction industry royal commission, which was appointed on 29 August. That is six days later. You are looking at who you might choose as the media adviser in communication services. In the second paragraph from the bottom, you say:

I have today interviewed representatives of Fleishman-Hillard Stratcom Pty Ltd (Mr Simon Clarke) and Network Four Productions Trust Pty Ltd (Mr Rick Willis). Following these interviews, I am firmly of the opinion that Mr Willis will best work closely with you and I.

I can understand a media adviser wanting to work closely with the commission and with you, because you are the secretary, but why should it be important that the media adviser work closely with the commissioner, Mr Cole? Why would Mr Cole be interested in having a media adviser that he could work closely with? He is going to stand above it all and be fair, pure and pristine, yet he seems to be concerned that he gets on well with a media adviser. I am just wondering how consistent that is with somebody who wants to stand above the fray. Why was it important that the media adviser be one who got on well with the commissioner?

Mr Thatcher—I understand the point. In fact, on a day-to-day basis, Mr Willis reports directly to me. I think his direct contact with the commissioner is not significant. The answer to the question is fairly simple. Those were the words that came down from the delegate, and I was not a party to drafting that. I just satisfied the terms of the delegate.

Senator COONEY—Who was the delegate?

Mr Thatcher—The Department of Finance and Administration.

Senator COONEY—So the Department of Finance and Administration—

Mr Thatcher—wrote those words.

Senator COONEY—It would seem that the Department of Finance and Administration was very keen to ensure that the media adviser was able to work well with the commissioner. Would that be a fair summation? You have a letter here, before the commissioner has been

appointed, as I understand it. The system is preparing to go about the business of conducting what is meant to be an impartial inquiry into the building industry, yet the Department of Finance and Administration is very keen to ensure that the media adviser is someone who would get on well with the commissioner. That is what is reflected in your letter, isn't it?

Mr Thatcher—I cannot speak for the Department of Finance and Administration or that particular delegate. There would be general issues, such as we were keen to ensure that the public knew the workings of the commission, which would not compromise the points that you are making. But I cannot take it further than to say I was not the author of those words, and I cannot—

Senator COONEY—Why would you use those words just to pick up what the Department of Finance and Administration had said?

Mr Thatcher—Because I had to send this document back to the Department of Finance and Administration for the delegate to then approve it.

Senator COONEY—The address here at the top is to Commissioner Cole QC.

Mr Thatcher—Yes.

Senator COONEY—He is not in the department, is he? This seems to be addressed to him.

Mr Thatcher—What happened was simply that he noted this, and I then forwarded the document with his noting back to the Department of Finance and Administration, which then approved the selection of Network Four.

Senator COONEY—When Commissioner Cole got this letter he did not cross out that bit about Mr Willis to work closely with him; he did not cavil at that proposition that you know of? He did not write back and say: 'Look, Colin'—or Mr Thatcher, or however you might address each other—'it would be unfortunate if the phrase that Mr Willis will best work closely with me was put in the letter; perhaps you had better cross that out'? He never suggested that for one minute, did he?

Mr Thatcher—There was no change made to the document.

CHAIR—Thank you, Senator Cooney.

Proceedings suspended from 1.01 p.m. to 2.04 p.m.

CHAIR—I thank officers for their cooperation this morning. We are recommencing with questions to the Royal Commission into the Building and Construction Industry from Senator Carr at this stage.

Senator CARR—Before lunch we were discussing the royal commission's media unit and also the question of the code of practice or the methods of operation that the commission uses for notification to other witnesses of adverse findings or hearings. Mr Thatcher, you indicated to us before lunch that, wherever possible, the commission seeks to give relevant information to a party likely to be adversely named in the commission. Can you indicate to the committee when the CFMEU was notified of the evidence of a Mr Gary Carter?

Mr Thatcher—I am sorry, I did not bring that sort of information with me to these hearings.

Senator CARR—Mr Carter was a witness who appeared before the commission in Melbourne. He made allegations about the CFMEU and he also indicated to the commission that he was a troubleshooter for the union. In the first instance, there is a question here about

the way in which the commission proceeds, and Senator Cooney asked some questions about the way in which counsel assisting sought to lead the witness. For instance, on page 2565 of the transcript, there is the following exchange:

You were, as you describe in your statement, a troubleshooter?—Yes.

A fixer—

asked counsel assisting—

would that be a correct description?—Well, I usually get asked to do the nasty little jobs.

What about enforcer, would that be a good description?—Maybe.

Did you say yes?—Possibly. Call it what you like. I used to be the person who used to go around and crack their heads.

The next day, the *Herald Sun* described it thus: ‘Union fixer admits he used violence’. The *Australian Financial Review* reported: ‘Union enforcer tells of threats’. The *Australian* reported: ‘Union enforcer turns nark’. It was not until six days later that the CFMEU secretary, Martin Kingham, was able to point out to the commission that Mr Carter was stripped of his delegate’s position at the CFMEU for financial impropriety. But, of course, that did not seem to carry much favour with the press because the story had been and gone a week before. At what point was the CFMEU advised that Mr Carter was likely to give adverse evidence against the CFMEU?

Mr Thatcher—I am sorry, Senator, I have not brought that sort of information with me to this hearing.

Senator CARR—Would you be able to take that on notice?

Mr Thatcher—Certainly.

Senator CARR—It was put to me that the CFMEU was not provided with that information. Is that true? Given the evidence you have given to this committee today, how could that happen?

Mr Thatcher—I express no opinion in respect of the question, other than to say that I will take the matter on notice as requested.

Senator CARR—Is this the same Mr Carter who has been threatening members of parliament in the Geelong region? Is this the same Mr Carter who has been making allegations—or demanding money—in that part of Victoria?

CHAIR—I am not sure that is a question that Mr Thatcher can answer.

Senator CARR—I want to know whether that sort of evidence was canvassed in the commission.

CHAIR—That is a different question.

Mr Thatcher—The way I see it, Madam Chair, is that the commission is still going; it is still having hearings in Melbourne. It certainly has not concluded its deliberations. I do not wish to comment on the evidence which is live and certainly not before findings are settled by the royal commissioner.

CHAIR—Thank you, Mr Thatcher.

Senator CARR—Can you advise the committee as a matter of fact whether Mr Carter’s record in demanding money from members of parliament was canvassed before the commission?

Mr Thatcher—I am sorry, Senator, I am not aware. My role is one mainly to do with administration and organisation, not the evidence. I do recall the particular publicity surrounding this person, who was called an enforcer, but I know nothing other than the general information.

Senator CARR—He claimed to be an enforcer. Was there any evidence presented to the commission concerning Mr Carter's misappropriation of union funds—the theft of union funds?

Mr Thatcher—I am not aware of whether there has been. I can only say that I am not aware.

Senator CARR—Was any evidence tendered to the commission concerning Mr Carter's misappropriation of children's charities moneys in Geelong?

Mr Thatcher—I am not aware of whether there was evidence.

Senator CARR—Was any evidence tendered to the commission concerning Mr Carter's record of violence outside the union?

CHAIR—Is that an allegation that you are making, Senator Carr?

Senator CARR—No, these are questions I ask because they have been brought to my attention by members of parliament in the Geelong region. Was Mr Carter provided—

CHAIR—Senator Carr, it is an alleged record of violence that you may wish to refer to.

Senator CARR—Was Mr Carter provided with any moneys by the commission?

Mr Thatcher—In respect of the first matter, I think that perhaps one of those questions, which related to the use of union's funds, may fall within the terms of reference of the royal commission. I am just wondering whether or not that matter has been brought to the attention of the royal commission. As I have indicated earlier, that is the responsibility of senior counsel assisting. In respect of the arrangements in relation to witnesses, as we canvassed at the previous hearing, it is not the policy of the commission to comment upon individual cases.

Senator CARR—I would have thought your highly paid investigating team would have been able to establish these events before they called upon Mr Carter to give evidence, would they not?

Senator Ellison—Madam Chair, again that is not an area of the secretary's responsibility. The investigating team's secretary deals with administration. Maybe he can take it on notice—I do not know. Certainly we are getting into areas where he said, 'Look, I just don't deal with that side of the business.'

CHAIR—I appreciate that. There are matters raised which are just not within Mr Thatcher's purview to make comment.

Senator CARR—We have a list of the people who have been seconded. Mr Thatcher, have any moneys been paid to Mr Carter by the royal commission?

Mr Thatcher—As I indicated, it is the policy of the commission not to confirm or deny arrangements which might be made with witnesses or potential witnesses in respect of the matters which were the subject of the answer to the question on notice at the previous hearings.

Senator CARR—I do not know if this was on notice, was it—Mr Carter's receipt of moneys from you?

Mr Thatcher—I was referring to the questions about whether we pay for informants et cetera.

Senator CARR—You are not in a position to tell us whether you paid him as an informant?

Mr Thatcher—That question was answered by question on notice No. 28.

Senator CARR—How much money have you paid to informants?

Mr Thatcher—A minimal amount. Any money that has been paid has not been for information; it has been for claims for expenses incurred in the course of assisting the commission with its inquiries.

Senator CARR—How much money have you paid to informants by way of expenses?

Mr Thatcher—You are asking for further clarification of my expression ‘minimal’. Less than \$1,000 in total. That is for expenses incurred in the course of assisting the commission in its inquiries.

Senator CARR—So Cabcharges and that sort of thing?

Mr Thatcher—It is less than \$1,000.

Senator COONEY—Who are the investigators—people taken from the Australian Federal Police and the National Crime Authority? Is that right?

Mr Thatcher—I think we did canvass this. We did provide a statement in respect of a question.

Senator COONEY—You did. I think that was the evidence.

Mr Thatcher—They can be people who are seconded from the AFP, the Victoria Police, the Western Australia Police Service or something like that, or they can be people who have been recruited by us and who therefore become temporary employees of the Attorney-General’s Department.

Senator COONEY—I can follow that. What I am putting—and perhaps this is more a matter for the department to comment on—is that we have, as I said before, a quite outstanding, in my view, National Crime Authority and a quite outstanding police force and yet we go and spend all this extra money to get these people to do what they could, I would have thought, better do through their own organisation. When I say ‘through their own organisation’, I mean when they have their own culture to work in and they have all the experience of the Federal Police and the National Crime Authority. Do they get any extra money for working for the royal commission or do they get the same money as they would get if they had remained with the National Crime Authority or the Australian Federal Police?

Ms Butler—It depends on which terms they have been brought over to the commission. We have a number of officers who are federal agents with the Australian Federal Police currently and we pay the AFP their terms and conditions on a cost-recovery basis. So they come over with their existing terms and conditions and we reimburse the AFP.

Senator COONEY—They do not get paid as much as counsel assisting, for example?

Ms Butler—I do not believe so.

Senator CARR—No-one does; the Prime Minister does not get that sort of money.

Senator Ellison—Madam Chair, can I just point out to the committee that the reason why this could not have been dealt with by the NCA is that part of the terms of reference say:

(a) the nature, extent and effect of any unlawful or otherwise inappropriate industrial or workplace practice ...

(i) any practice or conduct relating to the *Workplace Relations Act 1996*, occupational health and safety laws, or other laws relating to workplace relations; and

... ..

(iii) ... limiting or interfering with decisions whether or not to employ or engage persons ...

(b) the nature, extent and effect of any unlawful or otherwise inappropriate practice ...

... ..

(ii) inappropriate management, use or operation of industry funds for training ...

I seek to table the terms of reference. There are a lot of industrial aspects to this royal commission—not just fraud, corruption or collusion—and certainly the NCA would not be the body to be looking at those areas of industrial relations. So it really is a question of this being a royal commission which is not just looking into fraud, corruption and collusion but also workplace practices such as health and safety laws. That is certainly not something that the NCA is equipped to deal with.

Senator COONEY—That is a very small example of what took place in Hobart, but from what I can gather there has been very little evidence, if any at all, on matters other than unlawful and inappropriate practices—which I would have thought would be the meat and drink of the NCA and the Australian Federal Police—in what has happened so far. Perhaps the commission will get on to such things as occupational health and safety.

Mr Thatcher—Our commissioner did make a statement on 6 May about the future conduct of the royal commission, and I did forward that on Thursday or Friday.

Senator Ellison—I seek to table that.

CHAIR—Yes, indeed, it has been sent to the committee and, I think, provided to committee members. If you would like to table that as well, that would assist the committee.

Mr Thatcher—That certainly responds to the question and talks about future areas such as workplace health and safety, security of payments for subcontractors, avoidance of taxation, phoenix companies, non-payment of workers compensation premiums, non-payment of employee entitlements, illegal migrant labour and the whole funds issue, which is terms of reference (b). It will be clear from that—

Senator CARR—Thank you very much for that. We are keen to look at that.

CHAIR—Thank you very much, Mr Thatcher.

Senator COONEY—I do not want to be seen as an advocate for the National Crime Authority, but even issues like tax avoidance and what have you could be handled by them, I would have thought.

CHAIR—I am sure Mr Croke is very grateful for your advocacy, Senator Cooney. Senator Carr, were you in the middle of asking a question?

Senator CARR—I was. Question on notice No. 24 advises of the number of persons who were engaged by the commission as investigators. Is there a need to update that table?

Mr Thatcher—Yes. Since that time, the roles of investigators and analysts have blurred considerably. The current arrangements are that we look at people who are investigators or analysts. In total we have 38 of those. Some of them are seconded public servants: nine from the AFP, two from the ATO, two from DEWR and one from the NCA.

Senator CARR—You say there are 38 now.

Mr Thatcher—That is the investigators. Previously I said there were 16 investigators.

Senator CARR—So there are now 38 investigators?

Mr Thatcher—Previously I was saying that there were 16 investigators and 16 analysts, which was a total of 32 of course. Currently we are obviously tailoring our numbers to meet our demand, and at the moment we are in full swing. We are having a build-up phase before we have a phase-down phase as we head towards report writing, as you can imagine, so we have 38 in all. I am saying that 14 of those are currently Commonwealth persons on secondment. Do you want me to repeat that break-up?

Senator CARR—Yes, if you could, please. Where have they been seconded from?

Mr Thatcher—Nine from the Australian Federal Police, two from the Australian Taxation Office, two from the Department of Employment and Workplace Relations and one from the NCA.

Senator CARR—Of the 14, 10—

Mr Thatcher—No, of the 38—

Senator CARR—But of the 14 secondees, 10 have undertaken or were directly seconded from organisations that would normally deal with crime?

Mr Thatcher—The AFP and the NCA.

Senator CARR—Yes. Were the two Taxation people from the enforcement branch? Where were they from?

Mr Thatcher—I am not sure.

Ms Butler—They are investigators. I am not sure what the—

Senator CARR—They were tax investigators?

Ms Butler—Yes, they were in the taxation department—investigators and analysts.

Senator CARR—So 12 of the 14 Commonwealth secondees were from occupations that would normally be engaged in what you might call policing work?

Ms Butler—They have a law enforcement background, yes.

Senator CARR—So that lends weight to Senator Cooney's proposition that this is clearly a political inquiry that could well have undertaken its proper functions through the normal policing methods of the Commonwealth.

Mr Thatcher—I am sorry, I could not agree to that.

Senator CARR—You cannot conclude that.

Senator Ellison—They could not go into all those workplace safety aspects which the secretary has alluded to in the statement by the commissioner on what is going to be examined.

Senator COONEY—I am sorry, Minister. Could I say something about this. The royal commission has been going for some months. It is only when people come along and give evidence and they are asked questions about why this could not be done better by the Federal Police and by the National Crime Authority—or by the state police for that matter—that people suddenly say, ‘We’ve got all these other things such as safety to deal with.’ Yet, as a matter of priority, safety and occupational health have not been touched at this stage, after some months. The promise is that it is going to be touched on.

Senator CARR—Since August last year.

Senator COONEY—But you would have thought that health and safety would be a priority—

Senator CARR—We can get to this—

Senator COONEY—in this industry, which is a very dangerous industry, I would suggest.

Senator CARR—Mr Thatcher, the commission, as you say, has now identified occupational health and safety as a priority. How much of the commission’s budget—and it is after 12 months almost of the work of the commission—has been allocated to investigating occupational health and safety?

Mr Thatcher—I would not be able to guesstimate. We have basically a budget on a line item basis, not on a program basis or subprogram basis. But safety has been a recurring theme throughout all of the hearings in all of the states.

Senator CARR—Yes, I know. It has been. I know a number of the unions have been raising the issue of safety quite a lot.

Mr Thatcher—What I was trying to say earlier was that the statement of 6 May contains a specific initiative, which is a new initiative the commissioner and the commission is going to complete in the next little while as a matter of priority. I would like to reassure senators that safety has been a recurring issue. It has been raised over and over again at various hearings.

Senator COONEY—Not often enough and not often times—as people who have directed me to the transcript have said—been sympathetically heard by the commissioner, who it seems to me said, ‘Let us get on to more important matters.’ Just looking at that, I notice here—at least Senator Carr has not asked you to have a guess—on page 3719 of the transcript of the 12 March 2002, when the inquiry was hearing evidence in Hobart, Dr Collins, who is one of the senior counsel engaged there, says to a witness, ‘Have a guess.’ He does not say, ‘What is the evidence?’ but ‘Have a guess about a time.’ The point I am making here is that if that is the way examinations are conducted—that you have to guess rather than give evidence—you begin to wonder what the merit of the whole thing is, if this is a royal commission built on guessing. Can you confirm that, Senator Carr?

Mr Thatcher—I cannot comment because I am not aware of the transcript, but it could be that Dr Collins was saying, ‘Make an estimate.’

Senator CARR—Is it the case that Commissioner Cole has indicated that he does not wish to deal with occupational health and safety issues in open proceedings but wants to do it in closed session?

Mr Thatcher—I do not think that inference can be drawn. He is proposing an initiative which he thinks would be best progressed other than through the public hearing processes. You have to remember that, as I understand it, a lot of this is being driven by the fact that there is only very limited time and resources available and so the idea is to try and get the

maximum available output, so to speak, in the time that is left. So the discussion paper and conference he saw more in respect of term of reference (c), which is about the making of recommendations. After all, that has to be addressed as well. I do not think that the inference should be drawn that occupational health and safety should not be raised in respect of the public hearing process.

Senator CARR—We are drawing the inference that, when the commissioner says he would rather not deal with this in public hearings, he wants it to be dealt with in non-public hearings. I wonder how you can test the evidence under those circumstances. How could you examine whether or not the conclusions drawn match the evidence? Is that an appropriate method to proceed on on matters of this importance?

CHAIR—Senator Carr, I do not believe that that is a question that Mr Thatcher, as the secretary of the commission, is in a position to answer. If you have questions as to the conduct of the proceedings that concern you that may be better directed to counsel or the commissioner, and you wish to put those on notice and it is appropriate to do so, then we might be able to assist you in that regard. But I am not sure that, as secretary of the commission, Mr Thatcher is actually in a position to make inferences or read the mind of the commissioner.

Senator CARR—You are quite right. The point is, though, that Mr Thatcher has raised these as important issues that will be considered by the commission. We are not able to establish what percentage of the budget is being spent on these particular so-called important matters or whether these matters will be dealt with in public. There seems to be a private process undertaken. On top of the other evidence that we are receiving about the private processes of this commission, including the shredding of documents, you would have to suggest that there is reason for concern.

CHAIR—That would be the suggestion you are making, Senator Carr.

Senator CARR—What was the cost of production of those papers that have been prepared?

Mr Thatcher—The papers have been coming through the research unit of the organisation, and there is a twofold process. In the limited time available, we established a small in-house policy research team to manage the research projects, but we have also engaged through a public selection process a small group of external consultants. At the moment I do not know whether we are going to spend all of the budget, but we have made allowance for about \$1.6 million to be paid for this purpose. At the moment the in-house group is relatively small. There is a part-time director and a part-time research assistant from the National Crime Authority, and we have two full-time research officers in the EL2 range.

Senator CARR—So you have a research officer from the National Crime Authority working on occupational health and safety?

Mr Thatcher—No. I beg your pardon; I thought you were talking about the range of research papers.

Senator CARR—Yes, I was in total. But one of them was the occupational health and safety paper.

Mr Thatcher—That occupational health and safety research paper has been contracted out.

Senator CARR—How much did that cost?

Mr Thatcher—I think it was in the vicinity of \$54,000.

Senator CARR—Who was it contracted to?

Mr Thatcher—The figure was \$54,120 and the commission engaged peopleD Pty Ltd to do it. The principal of the company is a person called Mr Barry Durham. He has had extensive experience in workplace health and safety. Until 2001, he was Executive Director of Health and Safety at the Victorian WorkCover Authority; between 1995 and 1998, he was general manager of an area of Comcare Australia; from 1993 to 1995 he was a director of standards at the National Occupational Health and Safety Commission.

Senator CARR—What was the tendering process for the issuing of this tender of \$54,000?

Mr Thatcher—I am just looking through my paperwork to see whether he is on our research panel or whether he was a sole selection. I might have to take that on notice. I would not want to give you the wrong response.

Senator CARR— Could you indicate to the committee the name of each paper and the cost of each paper and the contractor for each paper and the method of selection for each contractor.

Mr Thatcher—The overview of the nature and operation of the building and construction industry was performed in-house and I do not have a clear cost of that. It was done by one of those persons who, as I have explained, is one of the two full-time or two part-time persons. The statistical compendium for the building and construction industry was similarly done. The work on productivity and performance in the building and construction industry was similarly done and the work on enterprise bargaining issues facing the building and construction industry was also similarly done. The work on key features and trends in building and construction enterprise agreements was undertaken by ASERT, which is attached to the University of Sydney, and as of 21 May they have been paid \$10,600. ‘The History of Industrial Relations in the Building and Construction Industry’ is going to be undertaken by the CSIRO building, construction and engineering section. I do not have any further information.

Senator CARR—Did you say that the paper on the history of industrial relations is being undertaken by the CSIRO?

Mr Thatcher—Dr Selwyn Tucker, who is very experienced in the area, will undertake that.

Senator CARR—Is he a historian?

Mr Thatcher—I do not have his CV with me, but he has done—

Senator CARR—Does the CSIRO employ historians?

Mr Thatcher—He has done similar work in respect of the building and construction industry.

Senator CARR—That is a paper on the history of industrial relations?

Mr Thatcher—Industrial relations in the building and construction industry, yes. It is CSIRO’s building construction and engineering section.

Senator CARR—I understand that he does have a record in this area. Can you just remind me what the publications are?

Mr Thatcher—It is referred to in this commissioner’s statement of 6 May.

Senator CARR—Thank you. What are the other papers?

Mr Thatcher—There is going to be one on the building and construction industry's codes of practice, and that is being undertaken in-house. I am reading from paragraph 7 of the commissioner's statement of 6 May. There is another on the right to strike, to protest and to picket under Australian law. That is being done by the Department of Law at Monash University.

Senator CARR—How much is that?

Mr Thatcher—I do not have that figure with me, I am sorry. I only have figures for expended funds.

Senator CARR—You have given us a figure of \$10,000 for the paper on trends. That is the only figure you have given us here. I am just wondering where that figure of \$1.6 million comes from. How did you get expenditure of \$1.6 million?

Ms Butler—That covers the salary of the staff in the research unit.

Senator CARR—How many are there in the research unit?

Ms Butler—There is a director who works on a part-time basis. There are two full-time research officers and a third part-time research officer. So it is a unit of four people.

Senator CARR—What is the total of the salary costs?

Ms Butler—Two of the officers are being paid at the EL2 level and the director is on a contract and so she is paid on a contract basis.

Senator CARR—So what are the total salary costs?

Mr Thatcher—Her contract is one of the ones in the Attorney-General's Department's schedule.

Senator CARR—I cannot see how this comes anywhere near \$1.6 million.

Mr Thatcher—I think I indicated earlier that the figure was a line item estimate at this stage.

Senator CARR—I am sorry, Mr Thatcher, can you please tell me how much the salary costs are for this research unit?

Ms Butler—She is paid on an hourly rate.

Senator CARR—No. What are you paying in salaries for the research unit?

Mr Thatcher—I think I can give you the answer. I will have to look in two places.

Senator COONEY—It is a pity you cannot be like a royal commission and rely on guesses.

Mr Thatcher—During the term of the commission, the director will receive \$174,000.

Senator CARR—It pays well, doesn't it? And what about the others?

Ms Butler—They are paid at EL2 rates, so their salary range is around \$83,000.

Mr Cornall—The salary range for an EL2 is \$70,237 to \$84,395.

Senator CARR—Thank you very much, Mr Cornall, but aren't these part-time officers?

Ms Butler—There are two full-time research officers paid at the EL2 rate and a third—

Senator CARR—Let us assume that they are paid at the \$80,000 rate —or guess, as Senator Cooney would say—

Senator COONEY—I am not saying that; Dr Collins is saying that.

Senator CARR—Yes. So we have \$160,000—is that right?

Mr Thatcher—I am sorry if I am not getting my point over. The moment we started this royal commission and we knew how much money we were having, like any other business unit, we drew up a line item based on what we thought expenditure patterns would be. Over time this has fluctuated considerably. This is a current draft. Our aim, as I indicated, is to come in on budget by 30 June and to come in on budget by the time the commission reports. We may be under this figure of \$1.6 million that I have given you—and I hope we are.

Senator CARR—I am pleased to hear that. Can you tell me when you are expecting to report. What is the date?

Mr Thatcher—It is in our terms of reference. It is December 2002.

Senator CARR—So, according to that budget item, some time between now and December 2002 you look like having to spend \$174,000 for the director and perhaps \$160,000 for the two researchers, and two part-timers are in there.

Mr Thatcher—The context is that we have issued a number of discussion papers and we are issuing further discussion papers. If you read the commissioner's statement of 6 May, paragraph 9, there is then going to be a further tranche of discussion papers issued in September. I have not even mentioned what they will be—

Senator CARR—So he can report in December on these discussion papers?

Mr Thatcher—September.

Senator CARR—Are these draft chapters for his report? What is the point of these discussion papers?

Mr Thatcher—As indicated here, the commissioner has taken a four-pronged approach. He says:

A fourth approach has been to undertake research. The Commission has prepared the first tranche of discussion papers ...

And then he refers to which ones they are. He then goes on to say:

An invitation is hereby issued to interested parties to respond to these papers within six weeks of their issue. Whilst I have read and considered each of these papers and approved each of them for their release as discussion papers, it should not be assumed that any views expressed represent my provisional or final views on the matters referred to in them. They are issued for public comment so that the responses received may be taken into account when I am forming my final recommendations.

Then he goes on to say that there will be a further tranche of discussion papers issued in September 2002.

Senator CARR—So you have six weeks to comment on them, if you wish, and he writes his report there and then?

Senator COONEY—Do you think that the reason the commissioner is asking for discussion papers—and he may have discussed this with you, and I ask it on that basis—is that there has been a minimal response from witnesses? What is the date of this document you

gave us—‘Royal Commission into Building and Construction Industry: Statement by the Commissioner on the Future Conduct of the Royal Commission’?

Mr Thatcher—It was 6 May.

Senator COONEY—It is hardly consistent with desperation in the industry. I will just read what the commissioner says:

First, at the open hearings around Australia in October last year, an invitation was extended to all Governments, organizations, companies, unions and persons with an interest in the subject matter of the Commission to provide submissions addressing relevant matters. The response was minimal.

This is hardly consistent with an industry crying out for examination. The commissioner goes on:

To date, sparse submissions have been received from the Governments of Tasmania, Western Australia, Northern Territory, and recently, New South Wales. Substantial submissions have been received from the Master Builders Association, the Australian Industry Group and the Civil Contractors Federation. No submission was received from any major construction company or any union involved in the industry. I am told that a submission will be provided by the Commonwealth of Australia but it has not yet been received.

Do you think that the real reason for having discussion papers is that nobody really wants to give any evidence at this royal commission and that it is an embarrassment not only to the state governments but to the federal government—we have got a commission and we do not know quite what to do with it?

Senator CARR—Sixty million dollars worth of commission.

Senator COONEY—Sixty million dollars, and here we are with a minimal response.

Mr Thatcher—The answer is no, I think that is not the case. The reason I think that is not the case is that the decision to establish a research unit was made in principle basically last year. The plan to have discussion papers in this form goes back to that time.

Senator CARR—When was the research unit actually established?

Ms Butler—The director of the research unit commenced in December 2001.

Senator CARR—Did you appoint them, Mr Thatcher? Were you responsible for their appointment?

Mr Thatcher—For the director?

Senator CARR—Yes.

Mr Thatcher—No. I approved, but there was a panel consisting of the director of corporate services plus two of counsel assisting, each of which has a PhD.

Senator CARR—I still cannot see where this \$1.6 million is going to be spent. How many research papers are you going to complete?

Mr Thatcher—I was trying to explain that is only an estimate and if we can make savings in that area we will be making savings.

Senator CARR—I understand that 150 major industry participants were contacted by the commissioner at the outset of the proceedings. Is that correct?

Mr Thatcher—Yes. If you are looking at paragraph 4, he wrote to 150 and invited them to consult with him on the inquiry.

Senator CARR—How many of the 150 were subpoenaed? Did you subpoena any of them?

Mr Thatcher—No. They were just written to, invited to come.

Senator CARR—Have you subpoenaed Mr Ian Williamson?

Mr Thatcher—I am sorry. I have no idea whether it was—

CHAIR—Did you say, ‘Have you subpoenaed Mr Ian Williamson’?

Senator CARR—Yes.

CHAIR—Didn’t I hear Mr Thatcher say that they had written to the individuals? That was his response to your question, ‘How many have you subpoenaed?’

Senator CARR—I understand that. But has the commission subpoenaed Mr Ian Williamson?

Mr Thatcher—I am not aware. I am not in a position to answer that question.

Senator CARR—Would you take that on notice?

Mr Thatcher—Yes, certainly.

Senator CARR—Are all your investigators who are seconded by the police required to identify themselves as police when they approach people?

Mr Thatcher—Whilst people are working for the royal commission, they identify as investigators for the royal commission and they work in that capacity. They report to the royal commission.

Senator CARR—So you are saying they are not required to identify themselves as police officers?

Mr Thatcher—That goes to the matter of operations, of how the commission goes about its investigations. This brings me into an area where I feel I am constrained in responding because it is not the policy to comment on those sorts of operational matters. There is good reason for that, of course. We are in full swing. We have a number of investigations under way, and to detail the investigative methods used by the commission may prejudice ongoing or pending investigations.

Senator COONEY—What you are saying is that these are operational matters. When we are asking questions of the Australian Federal Police and the National Crime Authority they will say they are operational matters and we will not pursue them. I take it you are taking the same sort of objection: that these are operational matters of an investigative body and you do not want to reveal either whom you are investigating or the methods because this is an aspect of the commission’s activities which is really the same as an investigating authority. That is the position that you take?

Mr Thatcher—That is correct.

Senator CARR—If persons have complaints about investigators, where do they take them?

Mr Thatcher—This was raised at the previous hearings, and I am pleased to report that we have guidelines for the processing of complaints against investigators. Those guidelines exist within the commission.

Senator CARR—How many complaints have you received about investigators?

Mr Thatcher—We have received no complaints at this stage.

Senator CARR—There is the question which has arisen, on page 463 of the transcript, in which Lisa Brittain is mentioned. It was said that an investigator who was seconded from the Western Australian police had been using her identifications from the Western Australian Police Service. Is that the case?

Ms Butler—Lisa Brittain certainly is an officer who is seconded from the Western Australian police.

Senator CARR—The question arises as to whether or not the powers of a police officer are different from the powers of a royal commission investigator. Has there been any discussion of that within the commission?

Mr Thatcher—It is getting into an area where I am getting a little unconfident.

Senator Ellison—It is beyond the secretary's area of responsibility. That is perhaps a question we can take on notice. I do not have that answer.

Senator CARR—If you could, please. I am particularly interested to know whether or not Ms Lisa Brittain has been acting in the investigation as a police officer or an investigator for the commissioner, what are the differences in the powers of both offices and what obligations do your investigators have to identify themselves in terms of the role they are performing at the time of the investigation.

Senator COONEY—Do you count them as operational matters?

Mr Thatcher—We certainly count the second part of that as an operational matter, because obviously the commission has—and it is no secret—undertaken covert and overt operations.

Senator COONEY—In that context, because you feel you cannot give us an account of operational conduct you are not able to tell us whether people are telephone tapping or whether any sort of communication tapping is used by this commission, or if the benefit of such tapping is used by this commission. You are unable to tell us that because that would be an operational matter.

Mr Thatcher—I can say to you that the commission has no powers to initiate listening devices and telephone intercepts.

Senator COONEY—But if in fact it was used you cannot tell us because that would be an operational matter and it would not be proper for you to tell us that.

Mr Thatcher—That would be correct. I agree with that.

Senator COONEY—So if there is interception of telephonic communication, we are really unable to know because it is an operational matter.

Mr Thatcher—I think you could infer from what I have said that the royal commission investigators have no powers to initiate listening devices and telephone intercepts.

Senator COONEY—But whether they have the power or not is a different issue. What we are not able to know is whether or not they have used it.

Mr Thatcher—They have not acted unlawfully. I can assure you of that.

Senator COONEY—How would you know that if you do not know how operational matters have proceeded? I am not sure how you can tell us that, as secretary.

Mr Thatcher—I did inquire of the director of investigations in that particular matter because I thought it might be raised. I checked and he advised me that there were no powers.

Senator COONEY—You said to somebody, ‘Have you used telecommunication intercepts?’ and the answer was no and you accepted that, did you?

Mr Thatcher—I am the secretary of the commission.

Senator Ellison—Again, it does not go into the responsibility of the secretary.

CHAIR—I think it would be helpful if members of the committee were able to address questions that do come within Mr Thatcher’s purview as the secretary of the commission. We have canvassed the fact that he is not necessarily in a position to answer questions on the conduct of the inquiries and conduct of the hearings, or what is in or not in the commissioner’s mind in relation to certain decisions or in the mind of counsel or counsel assisting. It unnecessarily lengthens the process if we continue to go to areas where Mr Thatcher is not equipped to make responses rather than concentrate on those areas where, as secretary responsible for the administration of the commission, he is.

Senator COONEY—Madam Chair, I agree absolutely with what you say, but can I put to you the difficulty we are in. If what were being examined here were court proceedings then that would be one issue, but this is a classic case of a royal commission into a very political, highly emotional area. As a royal commission, it is the extension of the executive’s power into this particular area. In our capacity as quality controller of the executive, we have to look very carefully at this because there is at stake not only the money that is being spent but the very civil life that people lead. We are left with the feeling at least—and I know that is not a matter to take too much into account, nevertheless it is worthy of taking into some account—that here we have a royal commission that does all sorts of things including perhaps telephone tapping. We cannot be assured that that does not happen. Mr Thatcher cannot assure us that that does not happen. All he can say is, ‘I’ve asked and I am satisfied in my own mind that that does not happen.’ But we have—how many investigators do we have?

Senator CARR—I think we have got up to 38 now.

Senator COONEY—We have 38 investigators wandering around investigating what we are saying should be investigated by the Federal Police or the National Crime Authority.

CHAIR—We have canvassed those points in discussion with the minister as well.

Senator CARR—Have any applications been made by the commission or in connection with the commission for warrants under the Telecommunications (Interception) Act 1979? I would ask Mr Cornall if he could assist me here as well, because it may be a question for the department.

Mr Cornall—My expectation is that that would not be the case, Senator, because it is not an agency that can seek the issue of a warrant to intercept. In fact, the Royal Commissions and Other Legislation Amendment Act 2001 amended the Telecommunications (Interception) Act to allow royal commissions to have access to relevant information obtained through telecommunications interceptions held by other agencies, but those amendments do not allow royal commissions to undertake interceptions.

Senator CARR—I see. Is it the case that the commission can rely upon interceptions undertaken by other agencies?

Mr Cornall—Under the amendment to the act that I just referred to, they can have access to that information when that information is properly obtained by other agencies which do

have the power. Whether that has occurred or not is an operational matter I have absolutely no knowledge about.

Senator CARR—I will ask the question on notice. Has the commission received information from other agencies as a result of warrants issued under the Telecommunications (Interception) Act 1979?

Mr Cornall—That question will have to be taken on notice.

CHAIR—Senator Carr has placed it on notice. Thank you.

Senator COONEY—Can I just put that in context. What we have here is a commission that examines in a way that is reminiscent of bodies like the NCA and the AFP. They go into an investigation. They have investigative officers trained with the NCA and the AFP working for them. They are investigating an area of the community—the union movement—which is very important in the make-up of the opposition, the Australian Labor Party. They go about this in a way which I suggest, looking through this, is cavalier. I am not saying the government is cavalier, but the commission at times might be looked upon in that way and, therefore, it is of considerable concern. Telephone tapping by its very nature is intrusive. I think it is necessary in many cases. I think it is a very important arm for investigators to use. Certainly, in those circumstances, it is reasonable for this committee to know exactly what is going on, and we just cannot get to that point. Mr Thatcher is trying his very best but he probably cannot take it much further.

Senator CARR—I can.

Senator COONEY—But he cannot.

Senator CARR—He cannot, but I can, and I will. There have been media reports concerning a tape recording of Mr Sean Hughes. Can you indicate to us, Mr Thatcher or Mr Cornall, under what circumstances tapes were made of conversations of Mr Sean Hughes?

Mr Thatcher—I cannot respond to individual cases. I am happy to talk about tape recordings of conversations.

Senator CARR—How is it that witnesses have appeared before the commission and it is alleged in the newspapers that evidence is presented of taped conversations?

Mr Thatcher—My understanding of that—and it should not be implied that these conversations are being taped by officers of the royal commission—is that the law varies from state to state. In certain states if two parties are having a telephone conversation it is quite lawful for one party to have a tape recorder beside the telephone. That does not apply in all states, but I am advised it applies in some states.

Senator COONEY—I am not saying this as any criticism, but have you been diligent in building a Chinese Wall around yourself so that you do not know what goes on beyond a certain point?

Mr Thatcher—I think I have taken the lead from the commissioner's opening statement, which I think I tendered last time—the statement of 10 October—about my role.

Senator COONEY—But can you follow what I am saying? Because of the sorts of things that go on in this commission, are you concerned not to know beyond what you have to know?

Mr Thatcher—I think that applies not just to—

Senator COONEY—But would that be a fair statement?

Mr Thatcher—Yes, and it applies not just to myself; information within the commission is on a need to know basis. Information is stored carefully and treated separately in many ways. We have B-class safes, and the whole issue of security is taken very seriously.

Senator COONEY—If you can't get a statement, as Dr Collins said, you go to guessing.

Mr Thatcher—I think Dr Collins might have been trying to say 'estimate', but I would not speak for him.

Senator CARR—In the case of Mr Hughes, how is it that conversations are able to appear in evidence, if you are saying no Commonwealth officer has broken the Telecommunications (Interception) Act 1979?

CHAIR—Senator Carr, I go to the point that I made earlier, and that is to say that Mr Thatcher is able to answer questions that go to the administration of the royal commission, but as to whether he is able to respond to how a matter ends up or does not end up in evidence I would have thought is a very difficult question for him to answer. I am not trying to—

Senator CARR—No, you are not.

CHAIR—stand in the way of your questioning at all, but I am concerned that the officer is able to answer questions that pertain to his area of responsibility and is not put in a position of trying to assist you but not answering in that area.

Senator CARR—Thank you.

Mr Thatcher—What I was referring to was the general question about the use of dictaphones.

Senator CARR—Dictaphones?

Mr Thatcher—That is, I was trying to give my understanding of the law in relation thereto. I do not wish to comment on the particular, for reasons by which I feel I am constrained because of operational perspectives on particular cases, particularly while the royal commission is in progress.

Senator CARR—I referred to a Mr Williamson before. You said that he had not to your knowledge been subpoenaed. Is he subpoenaed to appear tomorrow—

CHAIR—Senator Carr?

Senator CARR—before the commission?

CHAIR—I am sorry: I thought you meant appear here.

Mr Thatcher—I am not aware of that. That is the sort of information that I would not know. The first I would hear is when the hearings start.

Senator CARR—So you are not aware of Mr Williamson appearing tomorrow or not?

Mr Thatcher—No, I am not aware of whether he is appearing tomorrow or not.

Senator CARR—Can you take this on notice for me, because if it is tomorrow we will soon establish whether it is the truth or not. Has Mr Williamson been subpoenaed to appear, or is he seeking to appear voluntarily? Is this the same Mr Williamson as prosecuted by the Office of the Employment Advocate in V82/99 in the Federal Court of Australia, and were those proceedings dismissed with costs awarded against the applicant? Was it also the case that in that case the Office of the Employment Advocate relied on secret tape recordings and the reason the court dismissed the case was that the parties for whom the Office of the

Employment Advocate were acting were entrapping Mr Williamson by telling him a number of lies on the tape and that the same parties have given unsatisfactory evidence to the Federal Court?

Mr Thatcher—I will seek advice on that.

Senator CARR—Yes, please. I do think the issue of the secret recording of a conversation is an important one before the Australian courts and in Australian law. Is it the case that Mr Williamson's solicitors have already been told that Mr Williamson will be examined in relation to secret tape recordings already referred to? Can you advise me on that?

Mr Thatcher—Similarly, I will seek advice on that.

Senator COONEY—By the way, I may have misled you before lunch: it was Mr Amendola, wasn't it?

Ms Butler—I cannot help you on that one, either.

Mr Thatcher—The name does not ring a bell with me. He has not been engaged by the royal commission to act on our behalf. I am aware of his name—Stephen Amendola—but he has not been engaged by the royal commission. He might be acting for one of the parties.

Senator COONEY—Maybe. You do not know of him?

Mr Thatcher—He has not been engaged by the royal commission.

Senator COONEY—Do you talk to the parties at all in the preparation of their appearances before the royal commission?

Mr Thatcher—Counsel assisting is involved.

Senator COONEY—Counsel assisting is the clue, I suppose.

Senator CARR—I would like to continue with these questions in regard to Mr Williamson and the secret tape recordings. Is it a fact that Mr Craig Rawson has been seconded from the Australian Government Solicitor's office?

Mr Thatcher—Craig Rawson is a senior solicitor with the royal commission. He is part of the Australian Government Solicitor's team.

Senator CARR—And Mr Nick Green QC? Is he working with you at the moment?

Mr Thatcher—He is one of the senior counsel.

Senator CARR—Was it the case that Mr Rawson the solicitor and Mr Green QC also acted for the Employment Advocate in the matters I referred to involving Mr Williamson and previously dismissed by the Federal Court?

Mr Thatcher—I am not aware of that.

Senator CARR—I ask you to take that on notice. Has any officer or employee of the royal commission had discussions with the Employment Advocate regarding these proceedings before the Federal Court and now subsequently before the royal commission?

Mr Thatcher—Similarly.

Senator CARR—Thank you. Given that these matters were already canvassed before the Federal Court, on what basis has the royal commission reopened these issues involving Mr Williamson and the CFMEU?

Mr Thatcher—I am not aware of that.

Senator CARR—I ask you to take that on notice, please.

Senator COONEY—I have a matter I would like you to come back to us on later in these hearings. The Australian Government Solicitor will be before us and we will ask them questions relating to the royal commission and the answers given will no doubt be that that is a matter for privilege and for the client. Does the royal commission have any objection to this committee obtaining information from the Australian Government Solicitor as to the work it has done for the royal commission? Oftentimes we get the Australian Government Solicitor to come along and we ask them questions and the answer is given: ‘Oh, no, that’s the client’s privilege. You would have to ask the client.’ Would the royal commission be willing to waive any privilege it has by reason of consulting the Australian Government Solicitor?

Mr Thatcher—I think the issue is that the Australian Government Solicitor is not really working for itself. It has been engaged by the royal commission to do the royal commission work and any of those solicitors are working as part of the team led by the senior counsel and the two barristers.

Senator COONEY—That is right.

Mr Thatcher—So, really, they cannot talk about the work of the commission, because it is part of the work of the commission not part of the work of the Australian Government Solicitor.

Senator COONEY—I take it from that answer that the royal commission is now telling this Senate committee that it is relying on its solicitor-client privilege to prevent the Australian Government Solicitor giving any answers about the work it has done for the royal commission.

Mr Cornall—I think Mr Thatcher is saying that the questions are appropriately directed to the commission and that to give a blanket response to a question as open-ended as that would not be appropriate.

Senator COONEY—Thank you, Mr Secretary. Mr Thatcher has quite properly said that there is only certain information he can give. He is the administrator and, as far as the legal dimensions of the issues that we might want to raise, it is better left to counsel assisting. I have made some reference to the quality of work and asked questions that I think need answering. I think counsel is entitled to have an opportunity of answering those criticisms; I hope they do. But, for this committee to get an idea of how legitimate my criticisms of the legal workings of this commission are, we really need to ask the legal advisers, the Australian Government Solicitor, questions that Mr Thatcher cannot answer, as he has said himself. It is on that basis that I ask the commission to waive any privilege it might have to enable the Australian Government Solicitor to give evidence about its dealings with, and for, the commission.

Mr Cornall—Yes, but those questions may go to a range of operational and other matters and it would be inappropriate for them to answer. But I think Mr Thatcher has also taken on notice quite a range of questions that go to matters that are not in his direct knowledge but for which he has indicated to Senator Carr he will seek answers to and respond.

Senator COONEY—I understand that. That is all legitimate and thanks very much. Nevertheless, I think the answer is going to be, ‘Yes we do rely on our privilege and we are not going to waive it.’ I raise this in the context of a matter I raised this morning. It is not exactly the same but it was about the matter of lawyers fees and prior to that, in 1978, about the issue of commercial-in-confidence. This is material obtained from the estimates

committee *Hansard*, which I will give you to look at. It is in that context of how public money is spent—and you would have to say spent in fairly large proportions in this commission—and just how far a Senate committee can go. So it is on the basis that I want the sort of knowledge I am asking for but I also want to test how far Senate committees are able to go in this area.

Minister, in the context of fees, can I refer you to a question by Senator Brandis this morning in the Finance and Public Administration Legislation Committee when he asked the Clerk of the Senate, Mr Evans, for the cost of an opinion by counsel—that counsel being Mr Bret Walker, senior counsel—and the answer was immediately given without any cavilling. Now that I have got on to this, I can either read into the transcript this series of things in the *Hansard* from the Senate estimates hearings of 9 October 1979, 12 May 1980, 1 September 1980 and 1 October 1981 or just hand you the documents.

Senator Ellison—I think the best approach is to table it. Madam Chair, I contacted the Attorney's office during the luncheon break—I think Mr Cornall did as well—and the Attorney was in the chamber or elsewhere and I could not get in touch with him. I will continue to try to get in touch with him on this issue—either during the afternoon tea break or at 6.30 p.m.

Senator COONEY—The Senate estimates committee hearing of 1 October 1981 stated:

ATTORNEY-GENERAL'S DEPARTMENT

The Committee was pleased to note the responsiveness of the Attorney-General—who was Senator Durack, I think, another eminent Western Australian senator—

and his Department in two areas on which the Committee had previously commented. The first concerns the provision of details of fees paid to individual counsel engaged by the Commonwealth—a matter on which certain representations have been made both to the Committee and to the Attorney-General. As indicated in the Committee's last report, the Committee determined at a private meeting that it would continue the established practice of seeking information concerning counsel's fees where the specific reason for requiring the information was clearly defined and injudicious or unwarranted invasion of privacy was not involved. The Committee continued this practice at its current hearings, and the information sought was made available in response to the Committee's request.

That was over 20 years ago, and we still seem to be struggling with this issue. Before I go, I would like to get this resolved. I understand what you are saying—that perhaps when you get the Attorney's answer we could come back to it—but do you want to look at this in the meantime?

Senator Ellison—I will give that undertaking. I will have a look at it in the meantime and perhaps pass it on to the Attorney.

CHAIR—Minister, I thank you and Mr Cornall for trying to contact the Attorney. We will try to find some time to do that again later this afternoon. Thank you for tabling that, Senator Cooney.

Senator COONEY—I do not think we have solved the issue of whether or not the commission is willing to waive any privilege it might have in respect of evidence to be asked of the Australian Government Solicitor.

CHAIR—I am not sure whether Mr Cornall or the minister will respond to you, Senator Cooney.

Senator Ellison—Sorry, I was just relaying some instructions to chase up the Attorney's office on the matter that Senator Cooney just raised.

CHAIR—Thank you.

Senator Ellison—Perhaps you could repeat that question, Senator Cooney.

Senator COONEY—I do not have an answer as to whether or not the royal commission would be willing to waive any privilege it has in its relationships with the Australian Government Solicitor insofar as legal advice goes.

Senator Ellison—I do not think that is something that the secretary can answer, quite frankly. It is not in his area of responsibility. The secretary could take that to the commissioner and see if he is prepared to take any action.

CHAIR—I think it is a matter for considered assessment, Senator Cooney, not necessarily a decision to be made here this afternoon by the secretary.

Senator Ellison—The secretary can take it on notice and refer it to the commissioner.

Senator COONEY—I wonder whether it could be done expeditiously.

CHAIR—That is not in my hands, Senator Cooney. We can seek for that to happen.

Senator COONEY—Do you think you could do that expeditiously, Mr Thatcher?

Mr Thatcher—I am happy to undertake to speak to the commissioner.

Senator Ellison—If we get an afternoon break, he might be able to do it. He cannot do it while he is sitting here.

CHAIR—Based on the pace at which we are moving, Senator Cooney, the Australian Government Solicitor could well be appearing next week.

Senator Ellison—I understand the commissioner is in sittings at the moment, so it is a bit difficult.

Senator CARR—I have a question for the department in regard to financial assistance from the royal commission. I have here a tabled document dated 19 February that lists a number of applications by letter—A through to G. I take it that individuals are able to apply for assistance but not organisations. Is that the case?

Ms Pidgeon—That is correct, Senator. Individuals need to be the applicants.

Senator CARR—I see. Let us compare, for instance, the situation in regard to the HIH inquiry. Mr Ray Williams received legal advice for the HIH inquiry. It is repeatedly reported that his wife had sold a property on Sydney's North Shore for \$7 million. I wonder why he is able to attract legal assistance but organisations like the various unions that have been under such fire from this commission are not able to attract assistance.

Ms Pidgeon—The fact that individuals rather than organisations need to apply does not prevent applications that would otherwise have been made by organisations coming from individuals within those organisations. So in fact it is not an impediment to organisations receiving assistance. In relation to the question about a particular applicant, it has been a longstanding practice not to discuss individual applications. Successive governments have maintained that practice.

Senator CARR—I see your point but this is a matter of public discussion in newspaper reports and it does seem to me to be somewhat inconsistent. Why are organisations not able to apply for assistance?

Ms Pidgeon—The organisation can receive assistance through an individual in that organisation applying, so it does not prevent the funds from flowing.

Senator CARR—I understand that, but why can't organisations apply?

Ms Pidgeon—I am sorry; this is not something that I have been involved in.

Senator CARR—Can someone tell me why it is that organisations cannot apply?

Ms Pidgeon—In terms of the ability of organisations to apply or not, it really makes no difference.

Mr Cornall—I understand this practice has been in place for some time, but can we check that for you and come back to you later this afternoon?

Senator CARR—If you would not mind, please. I would like to know what the rationale for it is. If organisations cannot apply, what reasons can be given for that? I have a few simply questions to wind up on. Take these on notice, because they are about operational matters. How many union officials are currently under surveillance as a result of the work of the royal commission? What is the form of the surveillance? How many employers or officials of employer organisations are under surveillance, and what is the form of surveillance?

Mr Thatcher—I am sorry, Senator. I would feel constrained in trying to respond to those questions because it is not the policy of the commission to comment on operational matters.

Senator CARR—I have asked a general question, not for individual names. I have asked how many officials of employer organisations and union organisations are under surveillance.

Senator Ellison—The secretary has indicated the difficulty with answering that, as it does go to an operational matter, but we will take that on notice and see if it can be answered, with that caveat.

CHAIR—I think that is the best idea. Thank you, Minister.

Senator CARR—How many employees do you have at the commission at the moment?

Mr Thatcher—We have 135.

Senator CARR—Could you indicate the breakdown in grades, please?

CHAIR—Would you take that on notice, please, Mr Thatcher.

Mr Thatcher—Yes.

Senator CARR—I think that will do me.

Mr Cornall—Before we finish, I think the reason individuals are given assistance is that individuals rather than organisations are required to appear before the commission, but we will confirm that that is the case. You asked earlier whether there was any issue about the timing of the appointments of the commissioner and Mr Thatcher and the letters patent. I do not think anything turns on the fact that they were not all on the one day.

Senator CARR—So you are saying that you do not have to have legal authority to appoint people to jobs despite the fact that the commission has not been established?

Mr Cornall—To get the royal commission started, you need the decision to establish the commission, you need to find the personnel to conduct the commission and you need to get

the letters patent signed. The fact that they did not all happen on the one day does not give rise to any legal concerns.

Senator COONEY—I am glad it has, but why does the Attorney-General have carriage of this commission rather than the Department of Employment and Workplace Relations, because it seems to be an extension of their operations? The commissioner seems to be working for them in the sense that royal commissions are an extension of government. Is there any reason why it should be done through the Attorney-General's Department rather than through the Department of Employment and Workplace Relations?

Mr Cornall—The department's responsibility is in respect of the administration of the royal commission. Previously, the administration of royal commissions was with the Department of Finance and Administration. Obviously a royal commission can be about any number of issues and you would not want to shift that around depending on what issue was before the commission at any one time. However, after the last election the government decided to move the administration of royal commissions generally to the department in the most recent administrative arrangements order.

Senator CARR—Does the commission employ a Mr Contelj?

Ms Butler—No.

Senator CARR—Does the commissioner's salary package include a performance bonus?

Ms Butler—No.

CHAIR—I understand that Senator McKiernan has a question in this royal commission area. My plan then is to go to the HIH royal commission and then take a five- or 10-minute break and resume with the agencies as they are listed after that.

Senator McKIERNAN—I guess they will appreciate the break after I ask my question. I seek clarification on this and you can probably take it on notice. Mr Thatcher, in response to a question from one of my colleagues earlier, you said that it may be legal in some states but not others to record telephone conversations by using a dictaphone. On notice, could you tell the committee in which states that practice might be legal and which states in which it might not be legal?

Mr Thatcher—I can take that on notice, but my understanding is that it is legal in Victoria, Western Australia and one other state that I cannot recall. I will take that on notice.

Senator CARR—When you say 'dictaphone', do you mean a recording device of any description?

Mr Thatcher—No, I responded differently to—

Senator CARR—I would ask the question—

Mr Thatcher—I responded differently to questions. I responded in a particular way to a question about listening devices and I responded in a different way to a question about dictaphones.

Senator CARR—Following on from that, is the use of recording devices for telephone conversations legal in any state in Australia?

CHAIR—For clarification, you said for telephone conversations. That question is probably best taken on notice.

Senator CARR—For instance, if you are on a mobile phone and you have a tape recorder going.

CHAIR—I think Mr Thatcher wanted to conclude his answer.

Mr Thatcher—I think I will take that on notice.

Senator CARR—Thank you.

Senator COONEY—Since we are going through this, is there any surveillance by film?

Mr Thatcher—I am not aware—

Senator COONEY—Perhaps you could take that on notice as well.

Mr Thatcher—I certainly will.

Senator COONEY—As a matter of interest, the inquiry is to include building and construction industries but not the construction of single dwelling houses. Does anyone know why that exception has been made?

Mr Thatcher—I know that that is part of our terms of reference but I am not clear why the government—perhaps someone from the government should respond to that.

CHAIR—Perhaps you should ask the minister that question, Senator Cooney.

Senator COONEY—Just as a matter of curiosity, why was the construction of single dwelling houses left out of the inquiry?

Senator Ellison—I do not know offhand, Senator Cooney, but I will take that on notice and advise the committee.

CHAIR—Thank you, Minister. That concludes questions in this area. Mr Thatcher and Ms Butler, I thank you both for assisting the committee over a lengthy period today. We are very grateful for that. I acknowledge that you have taken a substantial number of questions on notice. The date for return of those questions was noted at the beginning of the committee's hearing today as 5 July. Your assistance in providing those responses by that time would be gratefully received.

[3.30 p.m.]

Royal Commission into the failure of HIH Insurance Group

Senator CARR—These questions are pretty straightforward; you will have no difficulty with them, I am sure. Can you tell me how the salary of the royal commissioner was determined?

Mr St John—The royal commissioner continues to be paid his salary as a justice of the Supreme Court of Western Australia. That is a salary of \$236,000.

Senator CARR—It is extremely modest compared with that of the other royal commissioner, isn't it?

Mr St John—He is reimbursed by the Commonwealth for that and related superannuation and other entitlements.

Senator CARR—In the negotiations for the establishment of the royal commission was this issued pursued directly with the royal commissioner?

Mr St John—I cannot speak to that directly but, as I understand it, Western Australia would have been asked if he could be made available.

Senator CARR—That is standard procedure for royal commissions, is it not? It is unusual not to do that way, would you agree?

Mr St John—I am not sure how usual that is.

Senator CARR—It is just a sharp contrast of \$220,000 versus \$660,000 for the two commissioners running at the same time. Are you able to advise the committee which minister was responsible for approving the amount?

Mr St John—I was not involved in that process, but the understanding would have been that the Attorney-General may have been involved in that process.

Senator CARR—Was the salary set through a cabinet decision?

Mr St John—The commissioner continues to draw his existing salary. He continues to be paid by the state of Western Australia, which has made him available on leave from the Supreme Court of that state. The arrangement for the Commonwealth is one of reimbursement to the state of Western Australia.

Senator CARR—So you are not aware whether the cabinet decision was part of the process of appointment, by way of salary?

Mr St John—I am certainly not aware of that.

Senator CARR—Is there an additional superannuation component to the salary?

Mr St John—I understand that there is. I understand that there is reimbursement to the state in regard to superannuation and other entitlements.

Senator CARR—How much is that?

Mr St John—I could not say; I do not know.

Senator COONEY—I wonder whether the state would pay pension entitlements and the Commonwealth would reimburse the state for that portion of the pension entitlements.

Mr St John—That is my understanding, but I do not know what the amount is.

Senator COONEY—So in this case the commissioner is getting the remuneration he would have got—and that he will get when he goes back, for that matter—as a justice of the Supreme Court of Western Australia, and no more and no less than that. The Commonwealth simply reimburses the state.

Mr St John—That is correct.

Senator CARR—Could you give us the total value of the annual reimbursement by the Commonwealth to the state of Western Australia for salary and other entitlements for Justice Owen?

Mr St John—Perhaps we could take that on notice.

Senator CARR—Thank you. Could you also indicate the cost of accommodation in Sydney for the royal commissioner?

Mr St John—We can take that on notice.

Senator CARR—Are there any reunion fares to Perth?

Mr St John—The commissioner is provided with accommodation in Sydney and he returns to Western Australia from time to time—occasional reunion.

Senator CARR—Yes. Does he make 52 trips a year—that sort of thing?

Mr St John—No, he has been travelling less often.

Senator COONEY—Is this to go back to the family?

Mr St John—Yes. He is based there most of the time. Given the distance, he has relocated to a degree, but still returns as required.

Senator CARR—There is no set figure though, is there?

Mr St John—I do not think there is a set figure. The instances have been several but far from every week.

Senator CARR—There were 25, I think, for the other royal commission. I am interested to compare the salary packages for the two royal commissioners. Given your budget is half that of the building royal commission, it seems to me that a pattern follows through other areas of expenditure as well. Are these costs met from the budget of the commission or is there separate line item within the commission's budget?

Mr St John—They are met from the commission's budget, Senator.

Senator CARR—How much travel allowance has he claimed?

Mr St John—If he were travelling on business within Australia, he might be entitled to travel allowance, but work has been pretty well based in Sydney to date.

Senator CARR—So he does not get a travel allowance on top of his remuneration?

Mr St John—No.

Senator CARR—Does he receive a performance bonus?

Mr St John—No.

Senator CARR—Are there any other payments by the Commonwealth to the commissioner that I have not picked up in my questions?

Mr St John—I do not believe so. Did you mean out-of-pocket expenses?

Senator CARR—It seems to me that effectively the commission is operating at less than a third—probably considerably less than a third—of the costs of the Cole royal commission by comparison. That is the observation I make.

Senator COONEY—I would have thought this was a classic matter for a royal commission, particularly if you look at item (e), which says:

(e) the adequacy and appropriateness of arrangements for the regulation and prudential supervision of general insurance at Commonwealth, State and Territory levels, taking into account his findings in relation to the matters referred to in the preceding paragraphs and other relevant matters, including:

- (i) Commonwealth arrangements before and after the Financial System Inquiry reforms; and
- (ii) different State and Territory statutory insurance and tax regimes.

Given the problem we have with insurance in Australia at the moment, this would seem to be a classic matter for a royal commission.

Senator CARR—The government has provided an additional funding of \$9.8 million in order to extend the HIH Royal Commission's reporting date from 30 June 2002 to February 2003. Is that correct?

Mr St John—That is correct.

Senator CARR—How have you reached the conclusion of nearly \$10 million extra?

Mr St John—The original period was 10 months to 30 June; the extension to February is another eight months. The amount provided is \$9.8 million, in effect, in addition to the approximately \$30 million provided previously. Some of the \$30 million will be carried forward into the second financial year, but those overall global figures are as I stated.

Senator CARR—So that is \$40 million all up for this royal commission?

Mr St John—Very close to \$40 million—just under.

Senator CARR—Which compares to \$60 million for the other.

Senator COONEY—Have a lot of witnesses come forward to give evidence to this royal commission?

Mr St John—The commission is having its 80th or 82nd day of hearings today and, so far, something towards 80 witnesses have been summonsed to appear and have provided evidence.

Senator COONEY—He has not had to make an appeal for witnesses to make statements?

Mr St John—The commission has very largely identified people it thinks are in a position to assist its inquiry.

CHAIR—As there are no further questions, Mr St John and Mr Millar, I thank you both very much. Again, you have taken some questions on notice and your assistance in returning responses would be gratefully received.

Proceedings suspended from 3.40 p.m. to 3.54 p.m.

Office of the Director of Public Prosecutions

CHAIR—We will reconvene this meeting of the Legal and Constitutional Legislation Committee's consideration of budget estimates and welcome Mr Damian Bugg QC, the Director of Public Prosecutions, and officers of the DPP. Thank you for waiting until this afternoon. I did expect we would be meeting earlier. We will begin with Senator Ludwig, and I know we will have questions from Senator McKiernan, Senator Cooney and Senator Crane.

Senator LUDWIG—You may recall last time you were before us we were talking about Natalie Larkins—the ABC journalist, if you recall. I was wondering if you could give us an update on where that is. As I understand it, the charges have been dropped.

Mr Bugg—That is precisely where it is.

Senator LUDWIG—When did that occur?

Mr Bugg—I could not give you a precise date, but it was the last time she was due to appear in court. I am only estimating: it would be about six weeks ago—5 April.

Senator LUDWIG—When was she charged? I wonder if we could get an idea of the charge date and then the time it took for the charges to be dropped. Is there a process that you go through? She had made an appearance. At what stage did the Director of Public Prosecutions decide to drop the charges? And are they conditional upon certain undertakings or are they unconditional?

Mr Bugg—It is unconditional. The decision was made, but not announced to Ms Larkins or her representatives, about two days before her appearance. However, her representatives were notified the day before I think. Then, of course, the decision was announced in court, but it is unconditional.

Senator LUDWIG—So that is the end of the matter as far as the—

Mr Bugg—Yes, it is.

Senator LUDWIG—Are there any other charges, relating to journalists or to the ruckus outside, that remain outstanding?

Mr Bugg—There is one matter outstanding—a lady whose surname is Bretag—but that matter is still within the system. She is not a journalist.

Senator LUDWIG—Is that a similar matter?

Mr Bugg—It was at a later occasion—

Senator LUDWIG—Could you tell me as much as you can about it. That might be a better way of dealing with it.

Mr Bugg—I cannot tell you too much detail about it other than that it occurred at a time later than the incident involving Ms Larkins. The situation was quite different with Ms Bretag and I really would not like to go into too much detail about it, firstly, because I do not have all the detail and, secondly, because the matter is still pending before the court. It would be inappropriate to canvass those facts, because they might not be facts which she accepts.

Senator LUDWIG—I understand that. Perhaps we can deal with that the next time we are here, if it has been concluded. Thank you.

Senator McKIERNAN—I have only a couple more questions. I am very pleased with the information you have given to my colleague Senator Ludwig with regard to Ms Larkins. I think, with the benefit of hindsight, it might have been better if those charges had not been laid in the first instance, but that is not something you need to address. That statement is made for the wider audience. Are you in a position to tell the committee how many other charges have been laid or are pending regarding disturbances within detention centres within Australia?

Mr Bugg—I would have to take that on notice. You are talking about riot type, disorderly conduct type—

Senator McKIERNAN—Disorderly conduct, not necessarily riot, because I understand there are some differences in law as to when a disturbance becomes a riot and who has responsibility in the event of a riot—in its strict legal definition—happening.

Mr Bugg—I would like to take that on notice. We have had some prosecutions in South Australia—but they have been completed—arising out of an incident within a detention centre. That was over 12 months ago now.

Senator McKIERNAN—Indeed. And there have been some very serious disturbances—and not only in Woomera—since those events that you have just spoken about. I think we were talking about the same ones last year. Very serious disturbances occurred in Curtin—which were probably the most serious disturbances that have ever happened in that place—earlier this year. I am not sure how many charges have been laid in regard to that. Also, in Port Hedland just last month there were some very serious disturbances, but again I am not sure if any charges have been laid in regard to that.

Mr Bugg—Whether the investigations in relation to it have been completed or not, I really would not know.

Senator McKIERNAN—That would be a matter for the AFP or the APS?

Mr Bugg—The APS, yes.

Senator McKIERNAN—Thank you, Mr Bugg. Those are all of my questions. This is the last occasion that I will be putting you under the hammer. I have thoroughly enjoyed the opportunity of meeting with you and addressing questions to you, and I must say that I thoroughly enjoyed my lunch today, as did my wife.

Mr Bugg—Senator, it is a pleasure. The pleasure has also been mine and I will miss being put under the hammer by you.

CHAIR—Mr Bugg, I am sure we can find someone to take his place.

Senator CRANE—I have a number of questions I wish to ask pertaining to allegations that have been made against me and a countercomplaint that I put in. I understand fully that I cannot, and I do not intend to, go into operational matters—I do not think that is correct; we have talked about that before. That is my not my intention, and if I do sway off the track please tell me. My first question is: when did the DPP become aware formally that allegations had been made against me?

Mr Bugg—Formally, it would have to be some time, I guess, in 1999. I cannot give you a precise date, but it was in that year that my office had some involvement, I understand. I am really only speaking from something that I have been told; I would need to formally check that and take it on notice. Advice was given, I believe, by the AFP in relation to a search warrant, and that was in early 1999.

Senator CRANE—So it was after the raid was conducted on my Perth office—my files et cetera.

Mr Bugg—I do not know.

Senator CRANE—That raid was on 18 December.

Mr Bugg—It would have been before then. If it was December 1998, I am sorry, I was not appointed until August 1999.

Senator CRANE—If you could take that question on notice, I would greatly appreciate it. My next question relates to procedural statements that were made at the last estimates either to yourselves or to the AFP. These statements indicated—and I will not read out the quotes; I think you know what they are—very clearly that the matters relating to Mr Tuckey and I had been joined together. That was subsequently changed. I have a letter relating to that particular fact, but there was also what we saw then, and the reason given was that they were substantially the same. That is stated very clearly. The letter that I have received indicates to me that in fact the two matters have been joined together: that is, my complaint and the allegation against me. Is there any reason why the matter relating to me and the allegations that have been made against me cannot be dealt with, particularly in view of what was stated at the last estimates before this committee? Is there any reason why this cannot be dealt with and I be given an answer, which was indicated at the last estimates? Why do the two have to be joined together?

Mr Bugg—Are you saying that a complaint that you have made has been joined with the matter which is alleged against you?

Senator CRANE—That is the indication in the letter that I have, yes.

Mr Bugg—I am sorry, I am not aware of that. I believe that at last estimates—and I was not present—a statement was made during questioning of the AFP that your matter and that of Minister Tuckey had been joined together. That is not strictly speaking correct. Both matters were regarded separately by my office. I believe that statement may have been made on the

basis that the investigations of both matters had been brought together because, I would suspect, they involved the same airline company. I am unaware of any joinder of your matter, as a matter of charge or possible charge, with that of some other matter. That is something that you would have to take up with the AFP because that is certainly not something that was stated by my office at last estimates.

Senator CRANE—Certainly I shall. But the substance of my question to the Office of the DPP is to establish whether or not they can be dealt with separately.

Mr Bugg—I think to answer that question I would need to see the final brief of both matters to say whether they can be dealt with separately or whether they have been joined, because I just do not know the answer to that question. I do not know that they have been joined.

Senator COONEY—I imagine that Senator Crane sees it as somewhat invidious that he has to come along here, but he has been put into a situation that has dragged on for years and which may well have cost him preselection and the whole thing is not yet determined. Is there any quality control process that enables somebody in Senator Crane's position to have a matter resolved one way or the other? He is not making a claim that he be released from anything he should not be released from, but I can understand somebody suffering considerably from being put in the position that he has been put in. Is there any way the system can overcome that? You are the one with the experience and the ability to see how the system works.

Mr Bugg—When you say 'put in the position that he has been put in', perhaps I can take you briefly through the history of the matter. Senator Crane informs me that the matter first started in December 1998. My office would probably in the normal course of events have given some advice about the obtaining of warrants. An application was made to review the decision of the magistrate to grant the warrant in January of the next year, that is, 1999. That matter was not finally resolved by the Federal Court until February of the following year, that is, 2000. The decision of the Federal Court then was that the matter was to be referred back for the decision of the Leader of the Senate. That was resolved in September 2000 by the appointment of a former secretary of the Attorney-General's Department to oversee the examination of the documentation to determine which documents should go to the AFP and which should be returned to the senator. That was finalised in August the next year, that is, August 2001. My office has had no involvement with that matter from about February 1999 until August 2001 in which it could have done anything to progress it at all. If one looks at that timetable, the application to the Federal Court to challenge the issuing of the warrant, which was undertaken by Senator Crane, and the subsequent delays took—

Senator CRANE—That was withdrawn.

Mr Bugg—The whole process took two years from the start of that application, Senator, and then in August the matter came back to the AFP. An operational brief came to my office on 23 November last year. Two of my senior staff, one of whom is at this table, reviewed that file over the weekend—that is, the 24th and 25th—and a letter went back to the AFP detailing certain aspects of the brief on the Monday, which was 26 November, and that was my office's last involvement in the matter—26 November last year. To ask what can be done to expedite these matters, my office dealt with it in three days when the operational brief came to it in late November last year. The matter is back with the AFP, and that is a matter you will have to take up with the AFP.

Senator COONEY—From what you say the Office of the Director of Public Prosecution dealt with the matter most expeditiously, the system would have to say.

Mr Bugg—I know the hours that were put in on the matter over that weekend and it was in an effort to try to progress the matter expeditiously that that was done.

Senator COONEY—Because the office was conscious of the difficulty.

Mr Bugg—We were conscious of the time it had already taken. These matters ought not take that amount of time. I wanted to give you that brief summary of the history of it to indicate that the AFP did not really have access to the documents until August last year. They got an operational brief together for us for further consideration, if that was our suggestion, which it was. That is where the matter now is.

Senator CRANE—I would like to clarify the issue of the challenge to the warrant that was withdrawn. The matter that was before the Federal Court related to the records that I put down in the Federal Court. The AFP have already informed this committee that they got the complaint somewhere around mid-August. The raid occurred on 18 December. On 23 June 1998 a protocol was approved by the then Special Minister of State with regard to processes to be followed in an internal audit. The only exceptions to these internal audits were matters relating to electoral complaints. The document is headed 'Protocol followed when allegation is received of alleged misuse of entitlement by a member or senator'. I am informed that no internal audit was ever carried out as far as I was concerned. I can be corrected on that, but I think that is an accurate position. Maybe there has been one in very recent times. Is this a matter which comes under the province of or is handled by the DPP?

Mr Bugg—The interaction as to whether an internal audit should be undertaken? No, it is not. My office could not direct an internal audit to be undertaken. My office is not an investigative agency. It has no authority to manage or direct an investigation. That is our position. No, it does not come within the province of my office.

Senator CRANE—Even if recommended procedure was not carried out, that would be of no interest to you?

Mr Bugg—It may be, depending on the circumstances of the case. I cannot relate your question to the matter which is currently under consideration because, as you heard me say, it is under consideration. Certainly the question as to whether an audit has been suggested as being a proper or appropriate course that has not been followed is a matter, I would have thought, of concern for that body or organisation which recommended that such an audit be undertaken.

Senator CRANE—I am relating it to procedure. I would not ask things about operational matters. The document says:

When an allegation of or other event which suggests misuse of entitlement occurs, the Department undertakes an internal investigation to ascertain whether the allegations are credible (rather than being only malicious or vexatious).

I can table this document if you wish.

Mr Bugg—Which department is this?

Senator CRANE—It says:

The Protocol was approved by the then Special Minister of State on 23 June 1998 following ... correspondence with the Attorney-General. Underlying the change—

et cetera, from the old system.

Mr Bugg—You mention in there that a department is responsible for undertaking that. Which department would that be? It is not something over which I have any authority or say.

Senator CRANE—I would have thought the linkage with the Attorney-General would have given you some authority, but I do not wish to debate that. As I understand this—and I will table it, Madam Chair—it means that before the investigation at the AFP level proceeds there will be an administrative review carried out in this case, as it would have affected me, by DOFA. I would have thought it would have been of some interest and significance from a procedural point of view if it has not been carried out.

Mr Bugg—As far as the procedures to determine the facts are concerned, our first focus, because that is the basis upon which the matter would be referred to us, is the investigation by the AFP and what that has disclosed. We have examined that interim material, which it took some time to get—until August last year. Our examination took place six months ago now and we referred the matter back with a fairly lengthy report; it was a letter of advice really. I cannot take the matter any further in terms of that protocol. I would think that the department is probably the Department of Finance and Administration, and that may very well be an issue for the department, but I am only speculating.

Senator CRANE—I shall be asking some questions of them on Thursday. I think my interest in this is pretty obviously to get the procedure right. I would claim that if the documents that have surfaced since then had been on the public record then—particularly the ones I have claimed are fraudulent—it would have been discovered that I never claimed for payment on them or received any money.

Senator COONEY—Could you explain your relationships with the investigative agents? I take it they usually come to you with a brief and you give an opinion on the material they put forward. Although you might suggest they see if they can get further evidence on a particular matter, fundamentally you are an assessor of material put before you. Would that be a fair comment?

Mr Bugg—Yes. We have with most agencies a memorandum of understanding as to the relationship and the protocols that will be observed in that exchange or provision of information.

Senator COONEY—I notice that your jurisdiction is increasing, with applications to proceeds of crime and things like that. I think there is a bill before parliament now to extend that jurisdiction. In your opinion will that require further resources to service?

Mr Bugg—Yes, it will. My office has made submissions to the department and there was a letter back from the secretary to me about a fortnight ago, indicating what steps would be undertaken in relation to that resourcing bid once the legislation had passed and was in place.

Senator COONEY—If this legislation is passed, do you envisage requiring resources to go before civil courts only in respect of, say, a particular person, rather than going before the criminal court? If so, to what extent do you think that will make a difference to your use of courts?

Mr Bugg—It will be a new function. On the resourcing it has, I anticipate the existing criminal function should still be able to deal with the criminal aspects of matters that would be covered under this new legislation—that is, where you were proceeding in parallel with both a prosecution and a civil based forfeiture application. But civil court usage is not

something we have been able to calculate in any accurate way. If Mr Delaney, who has had a lot to do with the input from my office in this area, has anything to add, I would ask him to do so.

Mr Delaney—All I can add is that, while we will have a greater use of civil procedures in civil courts, it is a little early to estimate to what extent that is going to occupy us. To a fair extent, we are going to have to wait for that experience before we can give a definition of the additional use.

Senator COONEY—I remember that we used to use the expression years ago; you will have to become a ‘whisperer’, Mr Delaney.

Mr Bugg—An equity man. Yes, without those resources, it would be difficult contemplating my office being able to assist in the implementation of that legislation to its fullest extent.

Senator COONEY—‘Suffer’ might not be the right word, but do you suffer from misconceptions at times about your function in that your function is simply to present cases on evidence given to you? Do people say that you are just an addendum of the investigative bodies? Does that cause any difficulty?

Mr Bugg—Sometimes it causes misunderstandings and when it does we try to correct them by speaking to the people concerned. Alternatively, if it is the result of something in the media, we try to correct it in that way. However, it is certainly an area where, with the passage of time and perhaps the influence of American television, there is a perception that we are more closely linked to the investigation, although we have become closer to some areas of investigation.

Senator COONEY—But that would be in suggesting that further evidence be obtained to establish a point; you would never say, ‘Go out and investigate Bill Smith or Jane Jones’?

Mr Bugg—No. If something is referred to us in that form we reply to the person to say that it has been passed on to the appropriate investigative agency.

Senator COONEY—What is the availability of the courts like? You do not carry out any prosecutions in the Federal Court, do you?

Mr Bugg—No. I am sorry, that is not quite right. We must undertake any prosecution before a jury. Under section 80 of the Constitution, we are required to place any prosecution on indictment before a judge and jury, which must therefore be in the state court. The availability of courts was a problem about three years ago, particularly in New South Wales, but in the past 18 months we have been getting certain dates for trials in that state, as we are in most other states. I do not want to single out any state, but all states are trying to improve the certainty of listings. If that was where your question was heading, New South Wales has reduced its backlog from about 2,400 matters in the District Court to about 800, which is really work in progress for the volume they do there.

Senator COONEY—If there are delays, they are likely to come from the accused in respect of jury courts?

Mr Bugg—I would not point the figure at the accused. Sometimes there are problems with us, in the sense that we are seeking further evidence or there is witness unavailability or problems of that nature.

Senator COONEY—What about the summary courts: do you prosecute those as well?

Mr Bugg—Yes, we do.

Senator COONEY—Are they turned around in a fairly rapid fashion?

Mr Bugg—Yes.

Senator COONEY—You used to even prosecute parking offences at Tullamarine aerodrome years ago. Do you still do that?

Mr Bugg—No, we don't.

Senator COONEY—Do you remember that, Mr Delaney? I know you are not that old.

Mr Delaney—That is very flattering, but I do recall when we prosecuted parking offences at the airport.

Senator COONEY—People probably pay up on the tickets.

Mr Delaney—Yes, and if they do not they are usually investigated and prosecuted by arrangement with the state police.

CHAIR—Are there any further questions?

Senator COONEY—I just want to say that this is an outstanding office serving the Commonwealth. I am sure Senator McKiernan would agree with that, as would Senator Ludwig, Senator Scullion and Madam Chair. Senator McKiernan and I will not have an opportunity to say that again.

CHAIR—Thank you for saying that, Senator Cooney. Mr Bugg, thank you for attending this afternoon and for waiting for that opportunity. Thank you to the officers.

Mr Bugg—May I on behalf of my office thank both Senators Cooney and McKiernan for their attention to the work of my office during these estimates hearings. I wish them on behalf of my office all the very best in their retirements.

[4.26 p.m.]

Federal Magistrates Service

CHAIR—Welcome, Mr May.

Senator McKIERNAN—Welcome back. The budget statement indicates that the average staffing level will increase from 68 to 81 over the next financial year. What accounts for this increase?

Mr May—The organisation has been growing since its establishment two years ago. In fact, we are at that level. The numbers actually reflect the growth over the period since the last PBS. They are not new positions. They are reflecting the growth of the organisation over time.

Senator McKIERNAN—Have any new magistrates been appointed since the last round of estimates in February?

Mr May—Not since the last round of estimates.

Senator McKIERNAN—I suppose this is a question for you, Mr Cornall, rather than Mr May: do you know if any appointments are imminent in this area.

Ms Leigh—The government announced in its election policy that it would be considering up to two additional appointments to the Federal Magistrates Service, taking into

consideration additional jurisdiction for the service. So that matter is under consideration as a general policy.

Senator McKIERNAN—The situation has not changed since February when we last met at Senate estimates—

Ms Leigh—That is correct.

Senator McKIERNAN—but the workload is increasing. Would part of the workload be the additional workload you are getting from migration?

Mr May—Some of that is the increase in migration workload. The court did not have many migration matters up until the first quarter of this year. Then there was a small trickle. We have now had about 70 matters transferred to the court in the migration area. Just over half of those were in Perth. The balance is split between Sydney and Melbourne, with the majority of those in Melbourne.

Senator McKIERNAN—Can you tell us what they are about—what area they are in?

Mr May—They are a range of matters. Some are refugee matters, but I gather that most of them are not refugee matters. They are just migration matters at large.

Senator McKIERNAN—It may be of interest to the committee if you could provide the committee with more information on that. I think it is a learning experience for the Magistrates Service, but it would probably also be a learning experience for the committee to look at it at a future time. So could you put it on notice to provide the committee with some broad detail of what those actions are about. The Magistrates Service is now coming up to its second anniversary. Your birthday is coming up. My grandson's birthday was on Friday last. I just thought I would put that one in, Chair. You usually appreciate comments about grandchildren from Senator Cooney and me.

CHAIR—I do indeed.

Senator McKIERNAN—You will miss that.

CHAIR—Don't verbal me, will you!

Senator McKIERNAN—It is a nice verbal, though. Other than the additional case load of migration that has been mentioned, are there any significant changes in the offing for the Magistrates Service?

Mr May—That is probably more a matter for government to respond to.

Ms Leigh—You would be aware that there was the recent change which increased the family law property jurisdiction from \$300,000 to \$700,000. That is now in operation. In addition to that, the government indicated in its election statement that it would be looking at additional areas of jurisdiction for the service including in relation to corporate insolvency and intellectual property. We are doing work on potential jurisdiction in those areas at the moment.

Senator McKIERNAN—No formal handover of that workload has happened at this stage?

Ms Leigh—No. That is still being developed.

Senator LUDWIG—Can you tell us where that is up to at this point in time? Has a committee been formed? Has a task force been formed in the department to deal with the corporate insolvency and the other area that you mentioned? When is its expected reporting

date or when will the legislation that might underpin it, if necessary, be brought to parliament? Is there a time line developed, or is it at the early discussion stage?

Ms Leigh—In relation to corporate insolvency, the department together with Treasury put out a joint discussion paper last year. As a result of that and comments we received back, we have been having discussions with the Federal Magistrates Service and the Federal Court about exactly how one might define an appropriate area of jurisdiction. That is fairly well advanced, but I cannot give you any specific time frame as to when decisions might be made on that. We had a meeting on it the week before last, and there were further discussions last week. It is very active, but I cannot give you a particular time line.

Senator LUDWIG—And the intellectual property?

Ms Leigh—That arises from an advisory council on intellectual property which is looking at giving jurisdiction in relation to patents, trademarks and design matters in less complex areas. That is linked in with IP Australia and the broader timetable that they are pursuing.

Senator LUDWIG—Where are the family law property settlements up to?

Ms Leigh—That has taken effect. That came into operation on 1 January this year.

Senator LUDWIG—You mentioned the figures in relation to that. Have those cases then flowed on to the Magistrates Service yet? Are you dealing with them at this point in time.

Mr May—We did not anticipate seeing any significant change in work flow as a result of those changes, and that has been the case.

Ms Leigh—I should mention that in the [Marriage Amendment Bill 2002](#), which is currently before the parliament—it has been passed by the House of Representatives and it is awaiting introduction in the Senate—there is a proposal to give the same jurisdiction to the Federal Magistrates Service as the Family Court has in relation to matters under the Marriage Act. That is basically in relation to consent to marry. It is a very small area of jurisdiction, but I thought I should mention it for completeness.

Senator LUDWIG—Has any consideration been given to increased resources of the Federal Magistrates Service other than increasing the number by two to ensure that they can adequately deal with the case load that you have just outlined into the future?

Ms Leigh—We are always looking at the resourcing of the Federal Magistrates Service. You might be interested to know that the government has indicated that it will be conducting a review of the service on its second anniversary and that will be a key part of that review.

Senator McKIERNAN—That review will commence on 1 July, the second anniversary?

Ms Leigh—In terms of analysing the data, we want to have the data up to 1 July, but we have started looking at what should be the components of that review. We are not waiting till then to start to think about it.

Senator McKIERNAN—Have the terms of reference of that review—if terms of reference is the right terminology—been determined yet?

Ms Leigh—They are being developed at the moment.

Senator McKIERNAN—I guess you will be in a position to provide the committee some more details on that at the next round of estimates. I will be looking at it on the Internet, I assure you.

Senator LUDWIG—No, you won't!

Senator McKIERNAN—We talked about migration matters going to the Federal Magistrates Service: I take it that there were direct applications by relevant persons in the community. How many matters have gone to the service directly by transfer from the Federal Court, if indeed any?

Mr May—Nearly all of the 70 are transfers from the Federal Court. To my knowledge, there have been only one or two direct applications to the FMS.

Senator LUDWIG—Why is that, do you think?

Mr May—It is mainly because the procedures are well understood in the community, and the Federal Court has been identified as the place where those applications go. The legal profession, migration agents and others who work in the area will have documentation that says it is where the process leads you. While we are gradually starting to educate the profession and others about the fact that those matters can be brought to the FMS, the fact of the matter is that traditionally they have gone to the Federal Court and many of those applications are staying there. It is not an area where the filing fee is always of interest. In some of the matters it will be, but I understand—

Senator LUDWIG—I think we have discussed the issue of filing fees in the past; effectively, they are waived.

Mr May—I understand that in migration matters a significant number of the fees, especially in the refugee area, are waived, so fees do not become an issue.

Senator LUDWIG—What work have you undertaken to advise the client base of the availability of an alternative jurisdiction such as the Federal Magistrates Service, which is designed to be, from the government's perspective, low cost and flexible?

Mr May—We have changed all our brochures to indicate that we are in the area, and obviously our Internet site has been updated. At the moment, we are working with the Federal Court to change the text of material that goes out in detention centres, for example, to indicate to people where they can make those applications. We are addressing in the community a range of ways to ensure that that knowledge is out there.

Senator McKIERNAN—Mr May, are you in a position now to provide the committee with information on how the referrals from the court were made? Were they made by a judge when they were looking at case management, were they made by the applicants or are they suggestions from the respondents, which in the main would be the department, I would guess?

Mr May—That is probably a matter best answered by the Federal Court, but my understanding is that most of the referrals have been initiated by the judges when the matter gets to them in the Federal Court.

Senator McKIERNAN—Have you had any migration matters referred from the court that have later been withdrawn or dismissed by the Federal Magistrates Service?

Mr May—Perhaps I should take that on notice and give you the exact figures for a closed period. My understanding is that most applications are dismissed, but it would be better to take that on notice, Senator.

Senator McKIERNAN—Thank you very much, Mr May. You told us at the additional estimates in February that the FMS had hired a research officer to work for 12 months on the self-represented litigants project. Can you outline to the committee where that is up to? What were the aims of the project, and how will the outcomes be measured?

Mr May—Senator, I would love to be able to tell you that that matter had progressed, but very shortly after that estimates hearing the person who had been offered the job said that they were not going to take it up. We then readvertised and did not find a sufficient field to fill the job again. We are now in discussions with one of the state legal aid commissions about ‘coventuring’ the exercise. That discussion is at a fairly advanced stage, but the project has not developed as quickly as we would have liked.

Senator McKIERNAN—That is a shame. Which town, city or state was that in? There might be a couple of people around looking for jobs, wherever it was!

Mr May—That is not Perth, Senator.

Senator McKIERNAN—Do you know when things will start up again?

Mr May—I am very hopeful that it will be very soon. As I said, those discussions are happening and it is a project that we consider to be particularly important.

Senator McKIERNAN—I wish you well with the project and indeed with the service as a whole, Mr May.

Senator LUDWIG—How much money was earmarked for that project?

Mr May—We had earmarked the salary of an EL1 officer. My recollection is that the total budget, including travel and other costs, would have been close to \$100,000.

Senator LUDWIG—Has that now been carried forward for the coventuring, or are you intending to change that?

Mr May—The proposal that we put up to the legal aid commission is that we would meet the costs associated with the person, so we would be spending the same amount of money.

Senator LUDWIG—And they would then be housed with the legal aid commission?

Mr May—That is the current proposal, Senator.

Senator LUDWIG—I will not go any further; I will ask you next time. Thank you very much.

Senator COONEY—Mr Cornall, Senator Ellison or Mr May, we have the Native Title Tribunal and a Royal Commission into the Building and Construction Industry and we have the Australian Protective Service, the Federal Court of Australia and the Family Court of Australia. What is the Federal Magistrates Service, as distinct from a court?

Mr May—The act says that the court is established as the Federal Magistrates Court of Australia. A section of the act—I forget which one—says that the Federal Magistrates Court of Australia can be known as the Federal Magistrates Court or the Federal Magistrates Service. The title used for administrative purposes is the Federal Magistrates Service. When the court actually sits as a court, it is called either the Federal Magistrates Court of Australia or the Federal Magistrates Court.

Senator COONEY—When it is the Federal Magistrates Service, it is like the Australian Protective Service; can we conclude that?

Mr May—It never ceases to be a court, Senator.

Senator COONEY—We must call it a service for some reason or other; it transfers to the mind a concept, which is very usual. It is a chapter 3 court?

Mr May—It is, indeed, a chapter 3 court, Senator.

Senator COONEY—Do the people who sit on it get a pension?

Mr May—The federal magistrates do not qualify for judges pensions under the Judges' Pensions Act. Their superannuation arrangements are quite different. I think I answered this question a couple of estimates committees ago.

Senator COONEY—You have. This is about the last time I will ask you.

Mr May—They contribute to a retirement savings account at 13.1 per cent.

Senator COONEY—The system seems to transfer more and more jurisdictions to the Federal Magistrates Court, but the intent seems to be that it will be put through in a very summary way, as though they are flipping through the pages of the book—getting rid of this issue by putting it into the Federal Magistrates Court and getting a running contribution from the people sitting there. When you look at the people sitting there, they could well qualify as judges; I think they are all quite outstanding appointments. What I want to get from someone is why we call it a service, what we want to get across by using that term and whether that affects the way the court goes about its work.

Mr Cornall—As I understand it, the purpose of referring to it as a service was to underline the fact that it is a magistrates level court and it is expected to be flexible and have processes that are as speedy and expeditious as possible, and therefore to distinguish it from the more judicial approach of the Federal Court and the other courts in the federal system. I think it would be a fair comment on all magistrates courts to say that they have to deal with cases more quickly and expeditiously than the superior courts in their own jurisdiction.

Senator COONEY—They try to do so with justice.

Mr Cornall—And I am sure that that is the case with the Federal Magistrates Service.

Senator COONEY—Their jurisdiction is getting wider and wider. I think you have mentioned migration; they deal with human rights, don't they?

Ms Leigh—That is correct, Senator.

Senator COONEY—They are going to do intellectual property now. Do they deal with workers compensation?

Mr May—No, Senator. Actually, I say no but they do deal with Comcare appeals from the AAT, so there is a workers compensation component.

Senator COONEY—So if you get a result before the Administrative Appeals Tribunal, you can appeal to the Magistrates—

Mr May—You can appeal to the Federal Court and the matter can then be remitted to the Federal Magistrates Service.

Senator COONEY—Is that a rehearing?

Mr May—No, it just gets transferred for hearing as an appeal.

Senator COONEY—A complete rehearing or just on questions of law?

Mr May—On questions of law.

Senator COONEY—Does it go on circuit at all? When doing migration work, does it visit the places where people are incarcerated, do you know?

Mr May—It has not done that. It is not out of the realms of possibility that it will. The court does circuit to a wide range of places and is prepared to travel. Sometimes it will depend

on the practicality of going to particular places. While I would not rule out going to detention centres, I certainly do not have a circuit schedule.

Senator COONEY—What size of town would it go to, say, in Victoria? It would go to Bendigo and Ballarat, I suppose, but would it go to Shepparton?

Mr May—In Victoria there is a pretty well-established circuit schedule. We go to Warrnambool, Geelong, Ballarat, Bendigo and Shepparton, as it happens, but that is more because the Family Court goes to Albury and we wanted to cover the area in a different way. In Gippsland we do go to Morwell occasionally but most of the work gets serviced from Dandenong. Dandenong is really the growth area for us.

Senator COONEY—What about a town the size of Benalla? Would it get to Benalla?

Mr May—I doubt very much whether Benalla would have sufficient work to justify going there.

Senator COONEY—But the work is increasing?

Mr May—The work is increasing. When I say that we would not run a circuit to Benalla, it is not a traditional circuit town in Victoria in any event, but what we have done is found particular cases. I think it is this week, although it might have been last week, one of the federal magistrates was sitting on a matter in Dalby in Queensland. We have sat at Mudgee and in various places. So the court has a preparedness to go to particular towns to hear a matter if the occasion arises.

Senator COONEY—What about a historic town like Beechworth?

Mr May—Indeed, the Beechworth court is a wonderful court.

Senator COONEY—As the chair would know, that was where Ned Kelly was tried some time ago.

CHAIR—Indeed, just a minute or two ago.

Senator COONEY—That is right.

CHAIR—I do not actually recall it myself, Senator Cooney.

Senator COONEY—Can you give us an idea—I think you have, to a large extent—does most of the work come from references by the Family Court and the Federal Court, or is there a lot of work which comes direct to the registrar?

Mr May—Most of the work is now coming as direct filings. You may recall that, when the court first started, it was reliant almost totally on work transferred to it. I understand that about 28 per cent of the ancillary application filings in the last quarter in both the Family Court and the Federal Magistrates Court were direct filings in the Federal Magistrates Court. Most bankruptcy applications now are direct filings in the Federal Magistrates Court. So, over time, just as the court has grown in the number of its staff, it has grown in the percentage of the workload that are direct filings in the court.

Senator COONEY—I am just asking for your impression here, although if you can go better than that please do so. Do you get the impression that the profession is looking to the Federal Magistrates Court more and more as the place to go?

Mr May—The impression I get is that the profession is now working out which cases go to the Federal Magistrates Court and which ones go to the superior courts. I was told last week that it has now got to the point where some practitioners actually practise in the Federal

Magistrates Court rather than the superior court, and that is a distinction you would be familiar with in the state level courts. I was a little bit surprised that it was happening in family law, but it seems to be happening.

Senator COONEY—So it is filling a demand?

Mr May—Yes.

Senator COONEY—Thank you very much, Mr May, for all the help you have given us.

CHAIR—Thank you, Mr May, for assisting the committee this afternoon.

[4.50 p.m.]

National Crime Authority

CHAIR—Thank you very much for joining us, Mr Crooke, Mr Whiddett and Mr Hickman. Welcome to estimates.

Senator McKIERNAN—One thing is certain: it will be my last time addressing questions to you, Mr Crooke, Mr Whiddett and Mr Hickman. But will it be the last occasion where you will be answering questions?

Mr Crooke—I think so.

Senator McKIERNAN—You think so?

Mr Crooke—Yes. I think there are Senate estimates in September, and my term expires on 17 September. Mr Whiddett is leaving in October.

Senator COONEY—Who is leaving in October?

Mr Crooke—My term finishes on 17 September and Mr Whiddett is leaving in October. His contract expires then and he is not coming back.

Senator COONEY—Mr Whiddett, you have been with us for a fair time now.

Mr Whiddett—A fair few years, Senator, yes.

CHAIR—In a number of capacities, I think, Senator.

Senator COONEY—It will not be disappointing, because I will not be here, but if I were here, it would be very disappointing that he was not here.

Senator McKIERNAN—You can watch it on the Internet.

CHAIR—I had a vision of this taking a long time this week, one way or another.

Senator McKIERNAN—I was asking the question more in the context of the announcements by government about the future role of the National Crime Authority rather than on the personal level, although the personal level certainly comes into it in my instance, and Senator Cooney will be finishing up long before you. But I had not taken into account, in making the comments, that your own contract was finishing up or indeed that Mr Whiddett's contract was finishing up. I was asking more in the context of the National Crime Authority itself as a body, as a crime fighter in this nation of ours.

Mr Crooke—What is on the drawing board, as everybody knows, is that much work is being done to reach the stated goal of the leaders summit of 5 April that the NCA will have its last day on 31 December this year and, beyond that, an Australian crime commission will be set up. That of course will be a matter for legislation that will have to pass through parliament before that time.

Senator McKIERNAN—What will be the interim arrangements, Minister, in regard to Mr Crooke's position and Mr Whiddett's position, for the duration of time between when their terms finish and 31 December? Will there be temporary appointments to those positions?

Senator Ellison—The NCA continues until the end of the year, as stated by Mr Crooke. Mr Crooke's position expires in September. There is a transition being planned from the NCA to the ACC. The NCA remains during that time. Whether or not there will be an interim chair of the NCA remains to be seen. I can say—and it is best to look at it as a transitional process—that we have a steering committee made up of four police commissioners. They are Police Commissioners Keelty, McCreadie, Hyde and Moroney. They will be overseeing the transitional arrangements in relation to law enforcement.

There is also a project team headed by Mr Simon Overland from the Australian Federal Police with two representatives: one from the Australian Bureau of Criminal Intelligence and one from the NCA. That project team is dealing with the transition on a day-to-day basis and with staffing issues, bearing in mind that we will be folding the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessment, OSCA, into the new ACC so that you will have three entities—NCA, OSCA and ABCI—being folded into one ACC. Then there is a Commonwealth coordinating committee headed by Mr Ian Carnell, who is here today, which is looking at it from the Commonwealth's position, because the new board would be made up of all police commissioners from all states and territories in the Commonwealth, ASIO, Customs, ASIC, possibly the ATO, and the department, of course.

Senator McKIERNAN—From what I read, Mr Carnell is going to be in a different role.

Senator Ellison—That is a matter being discussed with the states at the moment, but bear in mind that all this has been discussed with the states. There was a meeting of officials the other day where a lot of this was gone through with the states. Mr Carnell can update you on what we can say. A lot of progress was made with the states in relation to the transitional arrangements and the new form of the ACC. That gives you an idea of the transition, because you are asking about what will happen to Mr Crooke's position and when the new CEO will start. Certainly, the legislation would have to be amended. We would look to introducing that in September, I think, as a goal. The new ACC will have a CEO, so we will be looking to get a CEO in that time as well. I invite Mr Carnell to make any further comments. No doubt I have missed something.

Mr Carnell—There are the four commissioners, the department and Mr David Knott from ASIC who are formerly members of the steering committee. There is also an observer from the Victorian Premier's department, Mr Mark Duckworth. There are seven on the steering committee, although one is there only in an observer capacity. The initial implementation team consists of six people: Mr Simon Overland, someone from the NCA, someone from the ABCI, and three other people—an office manager, an executive assistant and one person provided by the Attorney-General's Department to help the team. The representative from the NCA is Ann Carson. That is on the implementation project team. At this stage the planning is that underneath that project team there will be five working groups, and those groups will be headed by, in three instances, people from the NCA; in one instance, the director of the ABCI; and in another instance it is shared between a person from the NCA and a person from the ABCI.

As to the process, as the minister said, we had recent discussions with state officials. We have all taken the discussion back to our governments. In our case we will be looking for cabinet to consider it again in the middle of next month. I expect that there will probably need

to be one further round of discussions with the states. We had rather hoped, though, that an end point to those general design issues—the things that will feed into legislation—might be resolved no later than the intergovernmental committee on the NCA meeting on 17 July. As the minister has indicated, we probably need to look at bringing forward legislative amendments in the middle of September so that they have some prospect of being passed before Christmas so that it can commence from 1 January next year. The steering committee will meet several times before the end of the year. The first formal meeting of the steering committee will be on 11 June. That is some additional information which hopefully is useful.

Senator McKIERNAN—Thank you very much. Will the proposal to establish an ACC require complementary legislation at a state and territory level as well?

Mr Carnell—Yes, it will, although it will not be fatal if not all the states and territories have done that by Christmas. It would mean that in those jurisdictions which had not done complementary legislation the ACC would need to approach the issue of jurisdiction carefully. It would have the Commonwealth jurisdiction which would cover most of what it would want to do anyway, but for certainty and completeness of jurisdiction in a particular state or territory there does need to be complementary state or territory legislation.

Senator McKIERNAN—The proposals for the establishment of an ACC arose following the events of September last year in New York and Washington and subsequent discussions within Australia about how to tackle an increased terrorist threat. As I understand it, there was a police committee set up under former police commissioner Mick Palmer and former departmental secretary Tony Blunn. They undertook a review of Australia's capacity to deal with antiterrorism and produced the Blunn-Palmer report. Has that been made a public document yet?

Mr Carnell—No, it was a document prepared specifically for cabinet and so it has cabinet confidentiality. I will just run over the history of it.

Senator McKIERNAN—That would probably help, if I have got it wrong.

Mr Carnell—Yes, I will just give the background. In a sense it was really triggered from matters that were announced by the Prime Minister during the election campaign. There was a key policy statement on 28 October which talked about holding a summit of leaders to consider transnational crime and terrorism and also about an examination of the NCA. On 18 December the Prime Minister wrote to the states and territories about the idea of a summit, and he wrote to the NCA, and they at that time commissioned a review by Messrs Blunn and Palmer. They reported late in January. Cabinet then considered that, and that all fed into discussions we had with state officials leading up to the leaders' summit on 5 April.

Senator McKIERNAN—If the states have had to make decisions in regard to this, have they been provided with copies of the report?

Mr Carnell—No, for the reason that it was cabinet-in-confidence. They were given a paper which drew significantly on that report, after cabinet's consideration of it. There was a document sent out to the states on 27 February, entitled *The transformation of the NCA*.

Senator McKIERNAN—Is the document that was provided to the states available to this committee?

Mr Carnell—I cannot see why not. I cannot imagine that any of the states or territories would be sensitive about its provision. In any case, it was a Commonwealth document and so I am happy to provide that.

Senator COONEY—Do you always shred your documents when you do not want them any more?

Mr Carnell—I seem to go through a lot of drafts sometimes, Senator, and they deserve to be shredded.

Senator COONEY—Do you shred your drafts?

Mr Carnell—Yes.

Senator COONEY—You do? So when you have thought out matters that would solve our problems from the law's point of view, you shred them? I would have thought that, with your ability, the first draft would be sufficient to answer the problem.

Mr Carnell—No, regrettably not.

Senator COONEY—You might have shredded a draft that would solve our problem with crime in Australia: have you thought of that?

Mr Carnell—I think about crime in Australia a lot.

Senator COONEY—But you shred your work on it.

Mr Carnell—But I always keep the useful material.

Senator McKIERNAN—I was going to ask for copies, but perhaps I should not.

Senator COONEY—You cannot ask for copies now, because they have been shredded.

Senator McKIERNAN—No, I was going to ask for copies of the useful material that he keeps. We are grateful for the briefing that was provided to the committee during the budget session. The funding contained in the budget of two weeks ago gives roughly the same amount of money to the current NCA, which we imagine will be transferred to the ACC when the ACC is established for operation from 1 July—if the ACC is established. Was there any particular reason for this? What thought was given to this in the budget processes? There are some changes when you compare the way the NCA as it is currently formed operates and the way a proposed ACC will operate, and yet the funding remains similar to what it has been in previous years.

Mr Carnell—Yes. These matters are of course always potentially up for review, but it is matter—

Senator McKIERNAN—You have scrutiny, and that is what we are doing here, because we are looking at the budget allocation.

Mr Carnell—Yes, certainly that amount is in the forward estimates, as is an amount for the ABCI—indeed, an increase in money for the ABCI. And OSCA is contained within the department's appropriations. The steering committee will carefully consider the organisational structure, staffing, facilities et cetera of the new ACC, and I expect that any further consideration about whether the money needs to be adjusted will be done in the light of the steering committee's recommendations.

Senator McKIERNAN—But what the parliament has been asked to do with these appropriation bills is, to use my words, to buy a pig in a poke. We really do not know precisely how the money that has been allocated to the NCA will be when it has been expended by the ACC. And half will be expended by the ACC, will it not?

Mr Carnell—Yes.

Senator Ellison—I suppose additional estimates might be relevant there.

Senator McKIERNAN—I won't be around for them.

Senator LUDWIG—Additional estimates are, as you are well aware, are for questions arising out of this estimates and sometimes for consideration of annual reports. Either of those will be available for the ACC. The issue really is that there will be six months of the budget which the ACC will expend. At this point in time we have information only about a group of people who have not bedded down the complete role that body will have—whether it will have all the functions of the NCA, the ABCI and OSCA, or whether it will do only some of those. Hopefully the information sheet that Mr Carnell will provide might assist, but until that time I think there is a need to understand how the money will be expended.

Senator Ellison—For a start, I do not think additional estimates is that narrow. From my experience it has not been interpreted that narrowly.

Senator McKIERNAN—We try.

Senator Ellison—If only it were. We have put on record fairly clearly the direction of the ACC, and from that you can extrapolate where expenditure is needed. It will be a national body dealing with the gathering of intelligence, it will have the powers of the NCA to carry out hearings, and it will have coercive powers to continue to look at transnational crime and organised crime—which is multijurisdictional—with backup capacity for those coercive powers. My latest advice is that there currently are 408 staff in the NCA. About 60 are from ABCI and a couple are from OSCA. I am not saying that that will be the final number for the ACC, because it will not be; it will be less than that. There are going to be resources for staffing of the ACC and hearing facilities for the ACC. I have expressed my preference—when a question was put to me—that the office in Perth will continue to have a presence there, because there is a hearing facility there. It will not have exactly the same format as the NCA. It will be a body which will be primarily intelligence focused, and, with the ABCI, could have a dimension of some research work that the ABCI does, because that is also intelligence orientated. At this stage, that is a general description of the ACC and you can understand where the money would be needed to fund a body of that sort.

Senator McKIERNAN—One area of activity the NCA is currently undertaking is investigations but in the proposed ACC, as I understand it, investigations will not be a role for the ACC. Yet the same amount of money has been allocated in these appropriations as an amount that would include funding for that type of activity. I understand that the proposal for the ACC will be that the states will have the responsibility for undertaking investigations and, one would think, the employment of investigators. So there would be a major cost shifting there, one would imagine. Yet, as I read it—and it is only my reading of things so I am asking the questions to be corrected if indeed I am wrong—that investigatory role is going to be removed from what is currently the NCA.

Senator Ellison—Obviously, the ACC will have to have some in-house capacity to the extent that you cannot have a compulsory examination without some backup financial analysts and people who can assist counsel examining the person concerned. Obviously, you are going to have some capacity there to back up those examinations. But you will see the return of a number of staff to the various state police organisations and there will be task forces, which will be organised by the state police forces concerned. For instance, if you had an inquiry into bikie gangs and South Australia and Western Australia had a particular interest—

Senator McKIERNAN—A continuing interest.

Senator Ellison—then you would possibly have a task force made up of Western Australia and South Australia police with a component of Australian Federal Police. Or, if you had a matter of national interest such as drugs, you could have a task force made up of police personnel from all around Australia but the states would contribute to it. They would be doing work which would be of vital interest to those state police forces in any event because their police commissioners would be on the board and they would be the ones deciding on the sorts of things that the ACC would be investigating. The ACC would provide the intelligence and then the footwork would be provided by the task forces. There would still have to be some capacity for analysis by the ACC and backup for its examinations because you would have to have people capable of pulling the strings together or painting the larger picture for intelligence purposes. That would be done by the ACC and then fed out into the investigating task forces who would be on the ground.

Senator McKIERNAN—Thank you, Minister. This is very helpful. It is helping to paint in the colours on the picture, if you like, but it is still confirming the view that I had about the cost shifting that may be occurring from the Commonwealth to the states—and I am putting it forward in order to have it knocked down. As I understand it now, where an investigation is under way and there are secondees—police officers or other investigative persons who undertake investigations—who have been seconded from the states, that cost has to be borne by the NCA. Am I correct in saying that? Mr Whiddett is nodding his head.

Senator Ellison—Yes. That has been the case since about 1994.

Senator McKIERNAN—From what you have just described now, Minister, you are telling me that these task forces that would be undertaking investigations would be at the behest of the states. One would assume, from what you have just said, that it is the states who would be bearing the burden of that cost.

Senator Ellison—That is right. Of course, they would also have the added personnel back in their ranks who would not necessarily be working on these task forces full time or otherwise. They would have the benefit of these people returning back to their ranks.

Senator McKIERNAN—These appropriation bills that are before the committee now have the same amount of money which would include the amount of money that has been allocated in previous years for investigators. That amount of money remains in these appropriations for the 2002-03 financial year. If you are going to be losing that investigating task in the new body, the ACC, and you are currently funded for that investigating task in the NCA, why is there not a drop-off in the appropriation of funds for those particular tasks?

Mr Cornall—The budget was put together earlier this year, when these arrangements were not as advanced as they are now. There will also be transitional and other costs associated with the transition from the NCA to the ACC. If there is a lower expenditure in the second half of the coming financial year, then that will result in money not being spent by the NCA-ACC. That will give us a basis on which to set a budget for the new organisation, at its expected level of operation and expenditure, for the year 2003-04.

Senator McKIERNAN—I understand the 2003-04 arrangement. What I am interested in is the half of the year of the estimates that we are looking at now. While I accept what you have said about the preparation of the budgets, it is true in other areas—from media reports; I do not have inside information—that there were some changes to some of the figures in the

recently presented budget and they were done at the last minute. This occurs in every other budget, irrespective of which political party is in office.

Senator Ellison—But the NCA has to continue to be funded, because these investigations are ongoing. It is still business as usual. So that funding goes to those investigations in the interim. That is obvious. If you are saying that there is a gap in funding during this six-month period, that is not so. There is a continuation of funding for the NCA.

Senator McKIERNAN—No, I am saying the reverse. I am saying there are extra appropriations for tasks which would not be undertaken by the ACC in its reincarnation of the NCA. That is what I am asserting and I think I am getting confirmation on that assertion.

Mr Cornall—The point I was making was that, on the assumption that the NCA ceases to operate in its current structure on 31 December and the new ACC takes its place on 1 January, it will not automatically result in a reduction of expenditure on that first day because there will be ongoing investigations that will need to be brought to a conclusion. There will be transitional costs and other costs that will need to be borne, which may mean that the organisation runs at less than the \$62 million here. At this stage, we have not been able to do a detailed calculation of what the budget for that second half might be and what those transitional costs might be. So this provision is there but, if we do not spend it all, that is money that could be returned to the budget at the end of the coming financial year.

Mr Crooke—There is another matter. This process is underpinned by the agreement between Commonwealth, state and territory leaders that came from the summit of 6 April. A communique was issued there and the relevant paragraph of the communique that was agreed by those leaders was paragraph 12: ‘The ACC will retain the capacity to use coercive powers and to investigate criminal activity of national significance.’ The process is fleshing that out and meetings are taking place where details are being discussed between the Commonwealth and the states. The states have taken a robust position in those discussions about the need for in-house capacity of the new body. So at the present time the issue of the investigative capacity of the new body is still being discussed.

Senator McKIERNAN—Thank you, Mr Crooke, for that additional information.

Senator LUDWIG—What happens with the ACC and the states taking responsibility, by and large, for the investigatory function if a state does not cooperate? As I understand it, there are going to be ad hoc task forces put together to fight crime—for argument’s sake, in the bikie gangs in WA. You would assume that WA would cooperate. There is no reason to doubt that they would. But if a different issue were to occur in New South Wales and the New South Wales police did not recognise it as a national issue, or did not consider it to be a significant national event worthy of an ACC investigation, what happens then? What if they then say, ‘We won’t participate in the task force; we won’t provide any resources’?

Senator Ellison—They would have to go against their own decision, because the decision for the task force that the ACC would be looking at would come from the board. The board is made up of all the police commissioners. So you would get your disagreement at that point, before it is even dealt with—that is, when it is first raised. For instance, if bikie gangs are raised, the New South Wales commissioner would say—

Senator LUDWIG—Assuming you could be outvoted on the board?

Senator Ellison—The thing is that, if the board said, ‘This has to include New South Wales,’ then you would have to have cooperation by New South Wales because they would have to provide some of the task force. It just would not fly without the agreement of that

relevant jurisdiction. That is the beauty of having it in this form. At the moment, you have to go to the ministers, you have to get a majority of ministers voting on it and then you get a reference and terms of reference. In this way, you go straight to the police commissioners and the officials and they deal with it. If you get an agreement from them, you are right. If there is a problem getting an agreement, you have a very substantial problem in any event. If you cannot get agreement between police commissioners, you were never going to get it up anyway. What I am saying is this: once the board makes the decision on law enforcement issues, which, from my experience, are not political—bikie gangs, drug running, fraud against the Commonwealth and all these sorts of things do not have a political content—you are more inclined to get quick agreement between police commissioners than you are between ministers of a political persuasion.

Can I also say that underpinning this in that leaders summit is perhaps one of the most important advances in law enforcement nationally, and that is an agreement between the states, the territories and the Commonwealth to have uniform legislation in place within a year and mutual recognition of police powers in relation to serious crime—that is, crime that cuts across the various jurisdictions—so that you can get a warrant in New South Wales and South Australian police could carry out work pursuant to that warrant. That will assist these task forces even further. It is a standard gauge of law enforcement, and that would be operating underneath this ACC system. We do not have that at the moment. So that is another aspect that works hand in hand with this agreement.

Senator LUDWIG—Would the commissioners then have a veto right? The way you have described it, as I understood it, it is more of a consensual approach, but if you look at it the other way then a commissioner could veto. I am not suggesting it would be for political or other reasons; it may be that they just do not recognise or accept that that is an area that interests them in terms of what the ACC's role should be and they would prefer to deal with it in their own manner.

Senator Ellison—They would not have a veto role. But if it was something that was affecting their jurisdiction one would expect that a police commissioner would go along with a multijurisdictional inquiry into hand guns or bikies or drug smuggling. If the police commissioner did not go along with that, you would have to ask some serious questions. Even the current system could not get around that.

Senator LUDWIG—And then there is the expertise of the multidisciplinary task force. As you have described them, they would form on an ad hoc basis, but for what length of time? As a hypothetical example: if a task force with an expertise in hand guns were formed today—assuming the ACC was in operation and dealt with whatever it had to deal with—but in three or four years time there was another reason to revisit that area, another ad hoc task force could be formed but the expertise in that area might have been lost in the intervening years. How is it proposed to deal with those issues?

Senator Ellison—The police investigative experience and expertise would never be lost in dealing with things like hand guns, drugs and bikie gangs. Those are continually being dealt with by police officers. The ACC would retain a body of people who would have the expertise to gather intelligence, to carry out investigations by way of compulsory examinations and to draw a national picture of trends in crime. In the example of the rising use of amphetamines as opposed to heroin, the ACC would provide a picture for police forces around Australia to say, 'This is a new strain of amphetamine or designer drug, this is how you can detect it, this is where we see it coming from and these are the things to look out for.'

That expertise would be continually in the ACC. On the street level, your expertise will remain with your police officers because they will always be carrying out those sorts of investigations. The ACC will provide the guidance from a national level. Say you had a growth in the theft of motor vehicles on an organised basis, which we are seeing: the ACC could examine that. There is an organised pattern to car thefts and we are finding that it is cropping up in certain states and that there is an exporting aspect to this where they are exporting the vehicles overseas. The ACC provides that, as a snapshot of the national picture, and then your police on the ground carry out the footwork.

Mr Cornall—The other aspect is that the NCA, as it presently exists, or the ACC will have coercive powers which are not available to police forces and therefore this organisation will be able to bring to those investigations a level of interrogation and investigation that police forces themselves cannot achieve.

Senator LUDWIG—Yes, I understand that.

Senator McKIERNAN—What is envisaged to be the role of the Federal Police, the AFP, with this new body? I note that the commissioner of the Federal Police will be on the board. What was the group that was headed by Simon Overland?

Senator Ellison—The implementation project team.

Senator McKIERNAN—So the AFP have a key role in the establishment of the organisation. What is envisaged to be their role down the line? I ask that question in the context of the report that the Senate Legal and Constitutional References Committee put in some time ago.

Senator Ellison—They will be at the table like any other police force, as will the others that I mentioned earlier: ASIC, Customs, ASIO and hopefully the ATO as well.

Senator McKIERNAN—Would it mean that the AFP will have to change its current priority list in any shape, way or form—is that envisaged?

Senator Ellison—I think that is a question best put to the commissioner.

Senator McKIERNAN—Thank you; we do want to move on. The NCA had a different gestation period, as I understand it—I do not profess to be an expert in this area. It arose following a conference where a large number of persons with interests in the area were brought together and from that the NCA evolved. Despite some criticism from some quarters, it has done a very good job in the time it has been in operation. The ACC has a substantially different gestation period and means of coming forward. We will know a little bit more about it when we get the document that has gone to the states, but there is a minimum amount of information on the table about the ACC at this stage and it is seven months prior to its formal birth. Normally the gestation period that we deal with is nine months, isn't it—and I am not going to grandchildren again, Chair.

Senator Ellison—It is in September that we are aiming to bring in the legislation I mentioned. You will have the legislative framework in September, and this is moving fairly quickly because we have an ambitious deadline at the end of the year. Perhaps we can get a copy of that document and provide it to the committee in this round of estimates.

Senator McKIERNAN—If that could be facilitated, it would be appreciated. I was going to say that I am concerned about this issue, but perhaps 'concerned' is too strong a word at this time. I do not want to be seen to be putting any barriers in the way of the establishment of the new crime fighting body, particularly a body that is going to fight transnational crime, in

the main—that is one of its elements, not its only one. But there may be others in the Australian community who might have been able to make a contribution to this but of necessity in the way the ACC has been developed they have been locked out of that process. Is there any way, other than through the parliamentary committee processes when the bill comes to the parliament, that the broader and wider community can be involved to see if they can in their own way assist the process? There will be problems with it, of course, as there would be with any new venture that has been brought to the fore, but maybe those problems could be ironed out if there were many more heads brought in to look at it.

Senator Ellison—There has been extensive discussion with the states and territories on this. I think that that is quite a significant factor in itself, because you have nine governments talking about this and at the leaders summit an agreement was reached by the leaders of those nine governments. I think that we really could not slow down the process, because we do have to respond to emerging threats which just cannot be ignored: September 11 and also the fact of the rapid growth of transnational crime in this country.

I know what you are saying; I appreciate that. But the parliamentary process is a very good one, and I think the committee purview of this is a very good one. You have to remember that there is the committee which deals with the NCA and there is the Senate Legal and Constitutional Committee—this committee—which will no doubt be dealing with the legislation. So you will have a joint parliamentary committee and a Senate parliamentary committee—and possibly even a House of Representatives parliamentary committee, with their legal and constitutional committee as well—having a look at this. I think that in the circumstances it is about the best consultation you can get.

Senator McKIERNAN—Do you know whether the joint parliamentary committee is doing any work on the proposal at this stage? I am unaware of it, so it is a genuine question. I do not know.

Senator LUDWIG—All of our questions are genuine.

Senator Ellison—I met with them the other day and they were given a briefing. Certainly they have not had any hearings on it but, as I have indicated to that committee, if they have any queries or have any ideas they can put them to us. On that day some very constructive suggestions and points of view were put forward. One which the government is concerned with is ensuring that police commissioners do not have the ability to exercise those coercive powers. That was one thing which was suggested by the joint committee, or some members on it, and it was a point well taken by the government. There were some other aspects about the hearing officers having a limited term of engagement so that they could act without fear or favour in relation to the exercise of the coercive powers. Those were the sorts of things that were suggested and I think that we had a constructive meeting.

Senator McKIERNAN—Thank you for that. Just with the transitional arrangements, I am aware—as you are, Minister, because, being Western Australian and being parochial, we have this big interest in the bikie gangs—that at the moment there is a reference with the NCA on the bikie gang matter. Following the establishment of the ACC, would the WA police force or task force have to take up that inquiry and in turn bear the burden of the costs of that exercise?

Senator Ellison—On the question of motorcycle gangs, I would envisage—and I do not want to pre-empt what the police commissioners would say—that there would be more than one jurisdiction vitally interested in the illegal activities of motorcycle gangs and that that

would be a classic case for which you could get multijurisdictional task forces or a task force made up of police from a variety of police services around Australia. It is a vital issue in South Australia, for example. In fact, one of the references on bikie gangs came from South Australia. Last year I visited Rockhampton, for instance, in Queensland where in a forum evidence was given to me that bikie gangs were the major distributors of amphetamines in that area. I would envisage that there would be great interest from more than one state on that and that you would have a multijurisdictional task force. I would even envisage a Commonwealth involvement.

Senator McKIERNAN—Thank you for that. Minister, in regard to the transitional arrangements and, again, what it means to the staff of the authority, you referred a while ago to the 408 staff in the NCA staff at the moment. Are they full-time employees of the NCA or are they—

Senator Ellison—I think Mr Crooke could answer that.

Senator McKIERNAN—Does that include the persons who are seconded from other organisations, including the tax office and police services?

Mr Crooke—Yes, it does. That is the total number of staff and it includes something like 134 seconded police and about 20 secondees from an aggregate of other organisations: Customs, the tax office et cetera.

Senator McKIERNAN—How many staff were in the ABCI?

Senator Ellison—My last advice was that there were about 60, and I understand that 20 of them were secondees. Maybe Mr Carnell can help us with that.

Mr Carnell—I do not know exactly.

Senator Ellison—I seem to remember that the ABCI had about 60 staff, with about 20 secondees. I will correct that, of course, if that is wrong, but that is my understanding of it. OSCA only had a couple.

Senator McKIERNAN—How much work has been done to determine what the employment levels will be in the new ACC? Have you got to the detail on that yet?

Mr Carnell—No, that is one of the matters that the steering committee will be paying close attention to, and one of the other issues is the employment basis. Currently the NCA staff are employed under the Public Service Act, as are the OSCA staff, but many of the ABCI staff, because it is hosted by the Australian Federal Police, are actually under the AFP Act.

Senator McKIERNAN—Is it proposed, in the establishment of the ACC, that the conditions of the staff currently employed in the NCA will change if those persons move to the new ACC?

Mr Carnell—The exact basis on which people will be employed in the new arrangement is still a matter to be looked at by government. Clearly there would be an expectation that nobody would actually move to the new body on a lesser arrangement than what they currently have.

Senator LUDWIG—Is that a matter that the steering committee is looking at or the department is looking at?

Mr Carnell—At the moment, it is the department. It will need to go to cabinet because it is a matter of what the legislation will provide. So, yes, it is a matter that the government needs to consider further.

Senator LUDWIG—But ostensibly what the legislation will look like will come from the steering committee.

Mr Carnell—No, it will come from government deliberations. I am sorry if I have confused you.

Senator LUDWIG—I misunderstood Senator Ellison when he said that the steering committee was also going to make suggestions on the final legislation. Was I wrong about that? Has the steering committee got a different role?

Senator Ellison—No, it is helping in the transitional arrangements and that includes four areas—

Senator LUDWIG—I imagine that transitional arrangements are partly staffing related.

Senator Ellison— Perhaps Mr Carnell could refresh my memory. I think there are four areas that are being dealt with.

Mr Carnell—There are five working groups. One of them is on strategic direction, one on corporate governance, one on resources, one on information and communications technology, and one on accommodation and facilities.

Senator LUDWIG—So they are the five areas that the steering committee is looking after?

Mr Carnell—Yes, those working groups are working to the project team, which works to the steering committee.

Senator LUDWIG—Do they have various heads to them?

Mr Carnell—The working groups?

Senator LUDWIG—Yes.

Mr Carnell—Yes.

Senator LUDWIG—Is that in that document that you provided to the states?

Mr Carnell—No, but I could provide this in a separate document.

Senator LUDWIG—If you would not mind. Is the NCA only on the peak body that looks after the working groups or is it represented on each of the working groups?

Mr Carnell—I think it is represented on each of the working groups. Certainly it is proposed that NCA staff chair three of those groups and jointly chair a fourth. I assume they would be represented on the fifth as well.

Senator McKIERNAN—Why was there a need for a project team on this? I think I know the answer to this question, so it probably is not a real question.

Senator LUDWIG—It is not a genuine question.

CHAIR—I do not think you need to ask it then.

Senator McKIERNAN—Doesn't the NCA have its own human resources and industrial relations personnel?

Mr Crooke—Yes.

Senator McKIERNAN—Then the question is genuine: why do you need a special project team?

Mr Carnell—They are creating a new organisation that brings together three existing organisations. This is not a change just to the NCA; there are three organisations involved.

Senator McKIERNAN—Yes, exactly. But, in relative terms, there is one very large one and two very small ones. Yet that is being chaired by somebody from outside of any of those organisations, is it not?

Mr Carnell—Yes.

Senator McKIERNAN—Essentially the majority, if not all, of the ACC's work after 1 January next year will be that work currently undertaken by the NCA—thankfully, there are two less acronyms from all these mergers. We went through this with the acronyms in the AFP-NCA inquiry. Do you understand the tone of my question, Mr Carnell?

Mr Carnell—Yes.

Senator Ellison—I think the government's decision here is that, rather than look from the inside out, you look from the outside in. As has been said, we are folding three organisations into one. Remember that of the 408 there are state secondees, a lot of whom will no doubt end up back in their home police forces, and that we still have to resolve the make-up and the requirement we have for staff and the sorts of talents we will need. I think that really needs someone from the outside to come afresh to it and to deal with it, particularly with respect to industrial relations. We have people from the ABCI, OSCA and the NCA, and I thought it was better to deal with it in that manner and to have the AFP, NCA and ABCI represented from a Commonwealth point of view, because it is going to be a body set up by the Commonwealth.

Senator McKIERNAN—From your earlier answer, Minister, has a decision been made yet that the Public Service Act will not apply to personnel who would be employed in the new ACC? Has that decision been made yet or is it still under consideration?

Mr Carnell—No. That is a matter that the government will consider next month.

Senator McKIERNAN—Is it envisaged that there will be any redundancies from any of the three organisations that will be brought into the ACC?

Senator LUDWIG—More broadly, just in the transitional arrangements, is it intended that there will not be any forced redundancies of the ABCI staff, the OSCA staff and the NCA staff—either they will be translated to the new organisation, the ACC, if they wish to go there or their skills are required there, depending on the outcomes; or they will be found other jobs in other places on equal or similar remuneration to what they currently receive? How is it intended to deal with that issue in a sensitive manner, and what information have you provided to your staff about these sorts of issues? I have heard that Mr Whiddett has chosen not to pursue another contract with the NCA. I am not picking him out, but that is an example of what happens when an organisation starts to wind down because a new organisation is going to replace it. You get a transition period when people are uncertain of their future. They decide that it is best to find another, more secure location, and you then have people leaving the organisation. You might have skill losses at that time that cannot be replaced. You have those issues to deal with, whereas, in truth, the new organisation may be able to pick them up, provide them with security and utilise their skills effectively. But if you do not handle it well you get a period of wind-down and a period of wind-up which can be avoided. I was wondering what strategies you have put in place to deal with all of those issues I have just asked about.

Mr Cornall—One of the first strategies, Senator, is to make this period as short as possible, because the period of uncertainty is obviously made worse if it is protracted and the effect on staff and the morale of the organisation is equally affected. So the first thing is to move promptly to deal with these issues. The second strategy would be for us, at each stage of the process, to keep staff as well informed as we are able so that they know what the procedure is and what stage of the process we are up to. The third thing is that there will inevitably be some need to restructure the organisation. If you are going to have an organisation—that is, the ACC—that is different to the NCA, then by definition you will need to have looked at the mix of staff skills and the sort of staff that you have and there may well be some differences. As to how that will impact on each individual staff member, it is too early to say, but it may well be that there may be some redundancies. If that is the case, they will have to be dealt with in accordance with all the appropriate procedures and rights attaching to those redundancies.

Senator LUDWIG—Yes, but I am trying to establish what those procedures might be and under which act they might be.

Mr Cornall—To some extent, that will depend upon the existing arrangements that are in place at the NCA in terms of their staff entitlements under their current certified agreement.

Senator LUDWIG—When will you be in a position to be able to assist the committee a bit more on those issues?

Mr Cornall—I think once we have moved to the stage where cabinet has settled on the terms of the legislation and the legislation is before the parliament we will have a much clearer picture as to how that is to go forward.

Senator LUDWIG—So you are telling the committee that the employees have to wait until they see the black-letter print before they know how certain their future is. Is that what you are suggesting?

Mr Cornall—Certainly we need a clear indication from the government as to the way in which it wants to carry the legislation forward, yes.

Senator LUDWIG—I thought that was to come from the steering committee, in part.

Mr Cornall—Obviously, cabinet has to make a determination as to a number of aspects of the proposal for the ACC which are yet to be determined by cabinet.

Senator LUDWIG—I assume I cannot ask what they are!

Mr Cornall—No.

Senator McKIERNAN—You can ask.

Senator LUDWIG—Yes, but I am not going to get an answer.

Senator Ellison—Can I say, as the minister concerned, that it is my goal to have this dealt with as soon as possible. I mentioned the legislation to be introduced in September. We would, obviously, have a much better idea prior to that. So, if you are looking at time lines, you have got June starting at the end of next week, July, August, and that is the sort of time that we are looking at when decisions will be made. As the secretary of the department has said, we need to keep this as short as possible to limit that time of uncertainty. We do not want to lose good people—they are not going to stick around and wait, and they go and we lose them. I know that Mr Crooke has written to the staff of the NCA, and I have too, and the ABCI staff. Certainly, their concerns are a priority, and I have that uppermost in my mind.

Senator McKIERNAN—In regard to that, what is actually happening at the moment at NCA level with staff? Are there any signs of discontent among them, and with ABCI or OSCA as well?

Mr Crooke—I can speak for the NCA. There are manifest signs of anxiety. It only stands to reason: you have got your mortgage, you have got your two kids and you have got something that says that the NCA is not going to be any more; after 31 January there is a new body and as yet the shape and size of that new body is to be determined. It is impossible at this stage for anyone, I would suggest, to give anybody something that might result in a false hope. Until a decision is made as to the structure and size of the new organisation, nothing can be said, with the best will in the world, that can give any person the confidence they need to make a decision.

As we speak, advertisements are being placed in newspapers by other organisations—not least our good friends the AFP—who have been funded by the new budget, have to recruit new staff and have to advertise to do so, and that of itself creates a difficulty for our people, who have given so much to the NCA and would like to do the same sort of thing if they possibly can in some new organisation; nevertheless, the reality is that there is something before them that is a job that is certain, and they have got to consider their positions as individuals.

The other thing as far as the community is concerned is that the NCA, as you might appreciate, is embarked on some very important operations. If we have attrition in staff, you have a snowballing effect. The way we work is in multidisciplinary teams and if two or three people leave that team you just cannot go out into the street and replace them tomorrow. We have got all sorts of difficulties about that looming large as a problem that has to be addressed. What we are talking about here are some very serious criminal investigations. If they are disrupted, it could have the result that very serious criminals are not apprehended. All these sorts of things come together in this process to create questions of some complexity and difficulty.

I am not suggesting for a moment that anyone could wave a magic wand today and say, 'Here is the complete description of what this new body is going to be.' It is most important to grasp that, with this summit agreement, the details are to be worked out by mutual agreement between the Commonwealth, states and territories, so all of these things come together that one has to get consensus on. It is not a simple matter of one person saying, 'This is what is going to happen.' As I have mentioned before, there is this strong position taken by the states, who talk of wanting the new body to have its own in-house investigative capacity. The question of the quantum of that looms very large because the more there are the greater the chance of existing NCA staff being able to apply and be considered for positions at the new organisation. Of course, the less staff the less the opportunities.

Senator McKIERNAN—I must say that what you have just enunciated to the committee is quite distressing. It would be of grave concern to me personally and possibly to the committee as a whole, but the committee can make its own mind up, and I think it would cause some distress to the government as well. In the event that you do have senior key personnel within the authority deciding to move on—to make a career move, for example, because there is more certainty in other areas—what capacity does the authority have to recruit other staff to replace them in the current environment we are in?

Mr Crooke—Financially, we have our budget and we have, for practical purposes, an injection of funding every fortnight, as other agencies have. The expectation is that we will be

funded up until 31 December, so if somebody leaves we can try to replace that person and have the funds to pay the wages. The difficulty is who you get to take a position between now and 31 December, looking at the massive question mark about what happens after that. That is the practical side of being able to address it. I spoke to Commissioner Keelty quite recently, and I think we can expect that the AFP would try to assist to the best of their ability—these are the seconded police—and we expect that if seconded police terms come to an end between now and 31 December the NCA resources would be replenished by them in the spirit of goodwill that has always existed.

There is a broader thing—because we have so many people. We have financial investigators, lawyers and analysts in particular who have to consider their positions. That is the problem with the important work that we have going on now—they are all flat out. It should not be thought for a moment that the NCA is going to let any criminal off the hook. We are going absolutely hell bent on doing the work that we do—and doing it well, I might add—to make sure that there is no slippage in our investigations. So these people are all heavily committed, but they have to think about reality and just what they have to do. There are little practical things like the fact that it is not a good time to look for a job over Christmas, when 31 December comes, owing to the practicalities of the market and having job interviews and the like.

The other thing as far as the ACC is concerned is that it is going to make, if at all possible, the transition much more effectual and effective if there can be something that is seamless and if such skills that are required can be retained in this particular area or in law enforcement. These people are quite skilled in the sense that they have devoted their lives, some of them at the NCA, and they come with skills that are marketable in the wider community. To see their experience lost to law enforcement would be a bad thing for this country.

Senator McKIERNAN—Have you previously outlined to the government the concerns you have expressed to the committee, Mr Crooke?

Mr Crooke—Yes. I do not underestimate the difficulty for anybody, the government included. The minister has expressed to the staff his earnestness in wanting to do the best for the staff, but there is this insoluble problem that if you do not know what the new thing is going to look like—and the states come into this too; they have to be involved in the detail—you cannot say something that could give staff a false impression. Just one example: at the moment the NCA, as you well know, has offices in every mainland state. As far as the ACC is concerned, one of the things that is rightly under consideration is how many offices it should have and how many people at each office. That is another factor that looms large. How could you say to a person in, say, Adelaide or Perth, that such and such is going to happen to you at this stage? The worst thing you could do is to tell them something which later proves to be the most terrible disappointment. It is not a simple problem; I do not suggest that for a moment.

Senator Ellison—The figures I have here are that 144 staff from Police, Customs, ATO and AFP are seconded and are assured of employment because they come from another agency. Of course, they intend to be involved more in the operational side of things. So those 144, I would venture to say, are the easier side of the equation than are the remaining 275—four being under the NCA Act and 271 under the Public Service Act. Certainly, the government is aware of what Mr Crooke is saying, and that is why the situation has to move very quickly so that we can give people an idea of what we need and where we are going and to make sure that those people we do need with their talents and experience are not lost. I would say this to the committee: remember 144 are seconded and they are there—not necessarily no matter what—for the duration and can end up in task forces or in the new

what—for the duration and can end up in task forces or in the new ACC. It really depends on their own choice or the choice of their own body, if you like.

Senator McKIERNAN—Are there the same uncertainties as described by you, Mr Crooke, with the ABCI and OSCA?

Mr Carnell—I cannot really speak for ABCI; I can speak for OSCA because they are a small group within my group in the department. No, the OSCA staff are very positive about this development. They see it as an opportunity to have their strategic assessments better informed by a closer proximity to operational intelligence. The last time I spoke with them they were positive and I saw no signs of undue concern. Equally, I have not been in the office for a couple of weeks, so I have not spoken with them recently, but in my last talk with them they were positive.

Senator McKIERNAN—How many of the 275 NCA staff are on contract and how many are under the Public Service Act?

Mr Crooke—Some are ongoing employees under the Public Service Act and others are non-ongoing employees and thus they are under contract. As far as ongoing employees go, 174 are under the Public Service Act and 102 are non-ongoing employees whose contracts expire at different times.

Senator McKIERNAN—Those are not the secondees?

Mr Crooke—No. The police secondees are in addition to the 276 NCA staff.

Senator McKIERNAN—What happens with contracts which may extend beyond 31 December of this year?

Mr Crooke—That is probably a legal question; it could depend on the legislation. I think the expectation of these people is that their contractual rights are legal rights. Unless those are legislated away in some way, they will have those legal rights as a contract.

Senator McKIERNAN—Minister, have you addressed the staff at the NCA?

Senator Ellison—I have written a letter to them and also to the staff of ABCI. That is my first letter; I intend to write to them again as events progress and when I have more to tell them. In the legislation, those various members of staff with current entitlements will not lose those entitlements under the legislation. There will be no disadvantage from the legislation.

Senator McKIERNAN—I think they will appreciate that reassurance you have given them on the record, Minister. Thank you for that. Mr Crooke, have you addressed the staff on this matter or has somebody from your human relations area?

Mr Crooke—No, we try to keep them apprised as much as we can almost on a day-to-day basis. There is an ongoing communication about how the process is moving. The key question on everybody's lips is, 'What about my future?' They have been favoured with a letter from the minister and also with communications from me in the same terms really, saying that at the moment the process does not admit of their being told something definite about their futures as individuals. We are trying to manage this in the best way possible, for the reasons I outlined before relating to the organisation and its investigations. We do not want to let this snowball come and destroy our critical mass.

Senator McKIERNAN—I have just one follow-up question on that. Regarding the role of Mr Overland and the project team he is heading up, does he have a one-on-one relationship

with the staff of the NCA in particular and also those of the ABCI? Does his project team reach down to that level or does it operate more at a planning and structural level?

Mr Carnell—No, Mr Overland communicates with the staff in the organisations.

Senator McKIERNAN—Is that communication by message, email or—

Mr Carnell—No, some of it has been face to face, as I understand it.

Mr Crooke—He has been to most NCA offices to address the staff face to face.

Senator Ellison—He intends to go to all of them, as I understand it.

Senator LUDWIG—Mr Whiddett, you indicated that you are not going to renew your contract: how many others from the NCA have indicated that? Mr Hickman might have the numbers.

Mr Whiddett—I think I should indicate from the outset that my decision to go in October was made long before the Crime Commission became a possibility. I had a limited contract with the National Crime Authority. I had previously been with the Federal Police. After a 30-year career in law enforcement, I decided to move on.

Mr Hickman—The issue has not emerged in discussion with ongoing employees, but certainly there is some insecurity amongst non-ongoing employees whose instruments of engagement point to a date of conclusion of their employment any day from now.

Senator LUDWIG—How many of those will come up for renewal or end prior to 31 December? Do you have a breakdown of those?

Mr Hickman—It is around 25 between now and the end of June and prospectively 40, I think, between now and 31 December.

Senator LUDWIG—What is being done in relation to those employees?

Mr Hickman—I have discussed their situation with Mr Overland. He is aware that, where an employee is required for the ongoing operations of the organisation, we are extending their non-ongoing appointment where that is warranted because of their personal performance. We are extending that to 31 March next year—or up to 31 March next year—to cover the transitional period.

Senator LUDWIG—So ostensibly there are 40 people from June and 25 people up to June who are in operational roles which could not be renewed—or they might decide to leave—and that then highlights the issue that Mr Crooke was making about the lack of ongoing personnel in key areas.

Mr Hickman—It does.

Senator LUDWIG—The response, as I understand it, is that you have said that you are extending their tenure until March next year. Is that for all of the 40 plus 25?

Mr Hickman—Unless we have issues with their performance, but in the normal course of events their engagement would be extended up to 31 March if there was an operational requirement.

Senator LUDWIG—When you say ‘if there was an operational requirement’, who determines that? Why is Mr Overland being asked? Does he determine whether the person is in an operational capacity?

Mr Hickman—The discussions I had with Mr Overland relate to the principles that we were operating on.

Senator LUDWIG—You still have not answered that question. Maybe we can come back to that. Why would you put it to him? I do not quite understand that.

Mr Hickman—In his capacity as managing the transition and given that we were prospectively extending some appointments to the 31st—

Senator LUDWIG—Is he personally managing the transition?

Mr Hickman—He is the appointed transition manager. Given that we are talking about arrangements that are going to extend to 31 March and that the authority may not be in existence for part of that period, I thought it appropriate to discuss the arrangements that we intended to put in place with Mr Overland.

Senator LUDWIG—Where would the legislative backing be for that? The contract is being renewed by the NCA to 31 March but the NCA will cease to exist on 31 December. Mr Overland is not employed by NCA but employed by—

Mr Hickman—The AFP.

Senator LUDWIG—I know he is employed by the AFP, but where in the steering committee does he get the authority to direct NCA staff about what their future may or may not be?

Mr Hickman—It was not intended or assumed that he would be directing, but rather as a matter of courtesy it seemed sensible.

Senator LUDWIG—It is a direction if someone says that your job is not going to end in June; it is going to continue to 31 March—

Mr Hickman—That would be a decision of the National Crime Authority, employing under the provisions of the Public Service Act.

Senator LUDWIG—But on the recommendation of Mr Overland?

Mr Hickman—No, on recommendations of the relevant line managers.

Senator LUDWIG—I still do not quite understand how Mr Overland has got himself wedged in this—or are you now unwedging him from it?

Mr Crooke—I think the situation is this: at the moment there is not a steering committee. It is yet to have its first meeting. As far as courtesy and information is concerned, Mr Overland is not a decision maker; he is an implementer of decisions made.

Senator LUDWIG—That is as I understood it, but from what I was hearing he was more than that.

Mr Crooke—No, I think it was—

Senator LUDWIG—If you recommend that someone's appointment gets extended to 31 March, I do not know about you but it seems a bit more of an operational role than simply an advisory one.

Mr Crooke—There is no doubt in Mr Overland's mind—he has said it to many people and he has said it to me—that he does not work as a decision maker.

Senator LUDWIG—Not in that capacity—perhaps we could limit it to that.

Mr Crooke—The management of the NCA is, by statute, in the authority. As far as courtesy is concerned and to try to make things move as smoothly as possible in the transition, we see Mr Hickman's solution as the way to go. But as yet the steering committee has not met, in case they have some comments.

Senator LUDWIG—So we can put it no higher than you were extending your courtesy to Mr Overland to see what would actually happen. We go back to the earlier question: where does the NCA get its authority to extend to 31 March if it is not to exist from December? For argument's sake, if those employees who have been extended to 31 March are not picked up by the ACC, who pays the bills? I assume you are going to continue them on somewhere until 31 March.

Mr Cornall—The way I anticipate this legislation will go is that there will be amendments to the National Crime Authority Act. Those amendments will change the name of the organisation, the management structure of the organisation and so forth, but it will essentially be a change to the existing organisation and those contractual obligations will all be met.

Senator LUDWIG—You are guaranteeing that those 25 and 40, subject to their satisfactorily meeting the review of their performance—the performance appraisal or whichever word you use to describe it—will at least have a job until 31 March?

Mr Cornall—Yes, that is my expectation.

Senator LUDWIG—Is it your expectation or is that what is going to happen?

Mr Cornall—That is what I expect to happen.

Senator COONEY—There is going to be a national scheme of legislation?

Mr Cornall—Yes.

Senator COONEY—Who is going to draft that?

Mr Cornall—The Commonwealth will draft the amendments to the National Crime Authority legislation as it presently exists, and the states will draft their complementary legislation.

Senator COONEY—Will parliament have a look at them or will everybody say, 'Look, this is so important we have to put it through'?

Mr Cornall—Which parliament, Senator?

Senator COONEY—Any of them.

Mr Cornall—I expect they all will.

Senator COONEY—From what has been said, we seem to be worried about bikie gangs, hand guns and drugs. Is that what our worry is and why we are setting up the Australian Crime Commission?

Senator Ellison—No. There are many other aspects to this in relation to the growth of transnational crime in Australia. We have a range of areas of concern. I am interested in motor vehicle theft on an organised basis, fraud, credit card fraud, money laundering and the question of security. In fact, you have ASIO on this body. For the first time you have seen some formal contact, if you like, between security and law enforcement because we know that there is a link now as never before between terrorist groups and organised crime. People-smuggling is another one that is on the rise. That needs to be looked at as well.

Senator COONEY—I thought we had fallen off on people- smuggling. We have not had any people smugglers since whenever it was.

Senator Ellison—We do not take it for granted, Senator Cooney. Just as with the heroin shortage at the moment, we do not rest on our laurels and say, 'That's great, we've cleaned that up.' We know it never stops, it never ends. Organised crime looks for all sorts of areas to deal in all sorts of commodities. Another one on the horizon is illegal cigarettes.

Senator COONEY—You have appeared successfully for people charged with criminal offences over many years. Was there no crime years ago? Has crime always been with us? What is particularly important about this sort of crime that we are looking at?

Senator Ellison—We saw it in the 1970s, and that brought about the NCA when we saw crime on a more organised basis in Australia than ever before. We saw that in the Costigan royal commission and other royal commissions. You had Griffith and the question of the Italian mafia. You are now seeing transnational crime 30 years down the track which can move money very quickly through international markets. You have seen where, in the South Pacific, transnational criminal groups can have budgets bigger than Third World countries. Look at the infiltration of groups such as the Russian mafia, Japanese organised crime and South-East Asian groups dealing in drugs. They were just not around in Australia back in the 1970s. We have groups now which also have links to terrorists. In fact, in a number of cases, terrorists have used organised crime as a means of funding their arsenal of weapons and their other activities. It is a very different scenario—and we saw that in September 11—to the way the world was 30 years ago. Money laundering now, for instance, is a big issue. In the 1970s money laundering was perhaps done through the local delicatessen. Some person who had knocked off a lot of equipment flogged it off down at the pub and then laundered the money through a delicatessen or small business. Now money laundering is being done through banks internationally.

Senator COONEY—That is why we have the National Crime Authority. That is why it was set up.

Senator Ellison—That is why we have AUSTRAC—for money laundering.

Senator COONEY—I have not noticed a great number of hand guns on the streets or, for that matter, bikie gangs.

Senator Ellison—You should tell Bob Carr that!

CHAIR—Where do you spend your time, Senator Cooney!

Senator COONEY—I cannot resist quoting a journalist called H.L. Mencken who, as you know, wrote for the *Baltimore Post* in the 1920s and 1930s. This is what he had to say back then:

The whole aim of practical politics is to keep the populace alarmed (and hence clamorous to be led to safety) by menacing it with an endless series of hobgoblins, all of them imaginary.

Forgive the impression I have that we are linking terrorism up with bikie gangs, hand guns on the street, amphetamines, credit card fraud and what have you so we have to give more powers, create a new body and throw out Mr Crooke's body. I thought it was doing very well, but let that be as it may. We are battling crime which has always been there. You just wonder how well this has all been organised, whether this is just another reaction to a series of political cries which all governments go on with. Labor governments are doing so as well at the moment. There are Labor governments throughout Australia except federally and they are

all crying ‘Law and order’ and ‘There is an alarm upon us’. We must ask some of the witnesses later who have looked at this just how much crime there is.

What evidence have you got of this? You point to this and you say that there are bikie gangs and that there are people streaming across state boundaries. You say that Mr Carnell is in there creating a new mechanism to fight all of it, but I wonder whether, 10 years from now, you might come back and say, ‘This new body was not quite the one we wanted. We will throw out the present body and bring in a new one.’ I do not know who will be running the Australian Crime Commission. You might be running it, Mr Crooke. They might throw you out again.

Senator Ellison—Senator Cooney, it is evolutionary. We have said before that crime evolves and the law enforcement needed to fight it evolves accordingly. Policemen now have IT skills which policemen years ago did not have—obviously so, because we have to be able to keep one step ahead of organised crime. We have never had overseas involvement of the Australian Federal Police in the way we have now. There is actually an Australian Federal Police officer in Myanmar. In Myanmar there is a warlord who has some 20,000 troops under his command. The Thai army cannot even get to him and he is one of the biggest producers of heroin and amphetamines in the region. There are four million addicts in Thailand. You did not have that situation 20 or 30 years ago.

We have a situation where the Taliban was involved in producing heroin in Afghanistan and where have to look at regions as a whole that produce illicit drugs which affect the lives of Australians on the streets here. Burma is a bigger concern than Afghanistan, I hasten to add. These are modern developments which we have had to tackle. We have had to use international efforts—for instance, Operation Logrunner, when we got about a tonne of heroin in Fiji—with the Canadian Mounted Police, the Drug Enforcement Agency of America, the Australian Federal Police, Australian Customs, and I think there were one or two other international agencies. I think that was about the fifth biggest bust ever of heroin in the world. It was a truly international effort, fighting a truly transnational criminal group that was very sophisticated. That is the sort of thing we are facing these days. There is still the average offender who breaks and enters for all those reasons. When I used to represent people in indictable jurisdictions, there were people who were not involved in an organised way but involved in opportunistic crime. In fact, you might say that villains of the old school even had some sort of—

Senator COONEY—The honest criminal.

Senator Ellison—They had some sort of code. But what we are dealing with today is a very different world. It is a transnational criminal scene where you have alliances forged quickly between countries and between different criminal groups—terrorism included—using all sophisticated means to launder money and to smuggle drugs, guns and other commodities.

Senator COONEY—We have had some very successful actions against them. Why change a winning game? Why get rid of the National Crime Authority when we are solving these crimes as we are? You have been on the media saying, ‘Look, we’ve had this big bust.’ I think we have had more drug busts—if that is the expression you use—in recent times than for a long while, and that is with the NCA operating as it is. What is the convincing evidence that the present system is not working well?

Senator Ellison—The leaders’ summit was the key issue, not just the NCA evolving into the ACC. At the leaders’ summit, for the first time in Australia’s history there was an agree-

ment between all government leaders for an approach to fighting not only terrorism but also transnational and organised crime in Australia. What we got out of that were agreements, which I think will be historic in the way that crime is fought on the national stage in Australia. I mentioned earlier the uniform legislation and mutual recognition—a national approach to money laundering—and the AFP being able to investigate matters of a state nature incidental to a federal investigation. As well as that, there is the NCA changing to the ACC, and those aspects dealing with terrorism where the states agree that certain powers be referred to the Commonwealth in relation to terrorism. So what we have is a comprehensive agreement across governments of different persuasions in relation to not only national security matters but also matters dealing with transnational crime and organised crime. That came about because I think there was an overwhelming recognition by all those jurisdictions that we have to band together to do something and bring in legislation so that our state and territory borders would not offer organised crime any advantage.

Senator COONEY—I can follow all that and I can understand the desirability of having all these law enforcement agencies working together, but of all those law enforcement agencies you have mentioned right across the country the only one that is changing in any dramatic sense is the National Crime Authority. You are throwing out people who, by looking at them, still have years of good service ahead of them—out they go. Why should this new system, to fight all this new crime that we have, require that only one organisation be changed?

Senator Ellison—I am on record as saying the NCA has done a good job, and a good job for its time. But there are other changes too, and they are in relation to policing powers, as I mentioned. They are significant changes in relation to legislation which has been agreed, where the police does not pursue it to the border and have to wave the baddie goodbye. It has never been done before that you have a national gauge looking at law enforcement and that a state warrant could have effect over the borders of that state. That is a big change.

Senator COONEY—Why not leave it with the NCA? These law enforcement bodies take a long while to bed down. You get strained relationships, as has been the case with the NCA. You go through all this crisis and finally get the system working reasonably well and everybody knows ‘this is what the NCA does’. We have accommodated ourselves with that, there have been decisions made about it, the courts have taken this approach, and the system generally knows about it. As soon as we get to that point, we throw out the NCA and introduce a new body that nobody is quite sure will work in any particular way, and we have got to go through another 20 years to settle it down. It just seems a very extraordinary approach to things.

Senator Ellison—You have to remember that Frank Costigan expressed reservations about the NCA when it was set up—back in 1984, I think it was. If I recall correctly, he said recently that the NCA has done a reasonable job. I think it is not unnatural that people express reservations about a new body, but who is to say that, in 20-odd years time, the government of the day will not come along and say that things have developed to such a point that they will have to change the ACC. They might say, ‘Back then the government had all the best intentions but this just does not suit us today.’ You see the point I am making: it is evolution.

Senator COONEY—But this seems to be an intelligence gathering body rather than an enforcement body—

Senator Ellison—Intelligence is enforcement, because you cannot have policing without intelligence today. Policing has to be intelligence led. That is the world we are living in. Gone

are the days when the policeman on the beat could suss out who did the break-and-enter and apprehend the villain by a bit of gut reaction, experience and luck. What we are dealing with today is intelligence-led policing. It has to be that way. That is why we have things like CrimTrac, DNA databases and automated fingerprint databases. That is the way of the modern world in relation to law enforcement.

Senator COONEY—Will this body be able to arrest people and hold them for 48 hours, like ASIO can, to get information from them?

Senator Ellison—No, it will not be able to do that, because that is something that is peculiar to ASIO. But it will have these strong coercive powers which will be exercised independently of a police force.

Senator COONEY—But it is being run by the police force—various police forces around the country—isn't it?

Senator Ellison—I mentioned earlier to Senator McKiernan that it is a concern the government has, and it has been raised with the government. We believe we have a mechanism which can deal with that concern. The decision as to when and where the coercive power will be exercised could be looked at by the hearing officer concerned or by the CEO of the ACC. The board could decide that there could be an investigation into, say, bikie gangs and that coercive powers should be used. In the more particular instance, that power could be exercised by someone who is not a police officer but has certain qualifications and is appointed accordingly.

Senator COONEY—As I understand, we can have all the police commissioners from around Australia sitting on this body, plus ASIO. ASIO has been an information gathering body up until now, but it has taken on a new role. There are a lot of people to get agreement from.

Senator Ellison—I think that, at the moment, you have got the same thing. You have got politicians and ministers on the IGC of the NCA who have to refer a matter, and the terms of reference have to be drafted much as they would be for a royal commission. Even with thunderous agreement it takes some time to get that done, in a very bureaucratic sense. What we are looking at is cutting that out and going straight to the law enforcement people who are at the coalface. They are the ones who should be making the decisions as to where the resources go and what should be investigated.

Senator COONEY—Will they each be clothed with federal and state powers? Will we have an integrated police force around Australia with both federal power and state power?

Senator Ellison—What you would have is the ACC acting in a national way to gather intelligence to be fed back to task forces made up of state, territory and federal police officers. If it was decided that it was a national issue then you would have everyone involved in it. If it was only localised to a couple of states then so be it: the task force would concentrate on those states. There has been a suggestion of organised crime being involved in abalone. That might only relate to two states. Those two states would provide the task force, ACC would provide overriding intelligence and coercive powers and there could be a Federal Police component in there as well.

Senator COONEY—Who is going to be in control of it? Say, for example, abalone has been taken from Portland around into South Australia: is it going to be the South Australian police or state police? It seems to be pretty vague. With the NCA you have Mr Crooke—love him or like him, at least you can say that he is the man who is going to bear the responsibility;

he is going to make the decision. We will criticise him or not criticise him—at least there is somebody in charge and we know who is in charge. Whereas this way, we are going to say, ‘Look, there is a bit of abalone stealing around Portland and going over to South Australia. We had better tell the South Australian police and the Victorian police and see if they can get a couple of policemen down to have a look at this.’ ‘Who are we going to put in charge?’ ‘Well, we’re not too sure who we’re going to put in charge.’

Senator Ellison—I think what would happen is that it would go to the board. The board would say, ‘Yes, this is something we should be looking into. We will set up a task force made up of the respective state police forces.’ One would say, ‘I will be the lead agency.’ And they would say, ‘Okay, you are the lead agency for it.’ The Federal Police would say, ‘We’ll be involved because there is a federal element in it.’ And then the ACC would say, ‘We’ll provide backup intelligence and if there is a Harry Bloggs who needs to be examined then that is an aspect we can pursue.’

Senator COONEY—But say somebody says, ‘Look, this is the one. When we make this arrest there’s going to be the cameras down here to take the photo of the arrest and this is going to look good and I want to be the person in charge.’ That is going to be tempting to somebody. Who is going to take the case? It is a bit like estimates: who gets the run of the questions? Who is going to be allowed to ask the big questions?

CHAIR—It must be a fascinating competition.

Senator Ellison—I think if publicity is our biggest worry then we are doing pretty well.

Senator COONEY—I think perhaps there will be inquiries into this, no doubt, when the legislation comes in.

CHAIR—No doubt.

Senator COONEY—But it is very difficult to work out why this legislation has been brought forward out of the blue. I do not know whether there have been any terrorist acts. There might have been some of those that we have not heard about. I do not know whether there are a lot of hand guns on the street, either. The bikies seem to be always with us; I have heard of bikies forever. But nevertheless we seem to be solving as much in the way of crime as we always have. Mr Whiddett and Mr Croke and Mr Hickman seem to have been doing their job fairly well. You have had some success, recently, haven’t you, Mr Croke?

Mr Croke—Yes; it has been documented. It is probably not worth taking your time to catalogue it but there have been a number of matters that have come before the courts and reached fruition in that way, as well as a number of very significant arrests.

Senator COONEY—You have not necessarily grown tired of the task, have you? You are still out there ready to go? This is probably a question I should not ask you—

CHAIR—I get the feeling that you are going to, though, Senator Cooney.

Senator COONEY—but perhaps you or Mr Whiddett or Mr Hickman can tell me whether they think there is going to be a grand improvement in the service given by the NCA. What we are going to have is all these policeman sitting around, and I suppose they would have to set things up by phone. ‘Hello.’ ‘Christine Nixon is our member down in Victoria.’ ‘Hello. We’re a bit worried about some abalone stealing.’ ‘We’re a bit worried about the bikies going over into Western Australia.’ This is the sort of the thing that worries me. Whereas as it is now, at least there is some order. Do you have any comments on that, Mr Croke?

Mr Crooke—The NCA has always said that this is a golden opportunity to revisit and reform law enforcement, and indeed the communique of the Australian leaders said in paragraph 7 to ‘build upon’ the strengths of the NCA. It always has to be remembered that this is an issue between Commonwealth and states. It is written into that summit communique that the skeleton is there and the detail has to be by mutual agreement. Hopefully, the collective wisdom of those that are looking at it will produce a result that is to the betterment of law enforcement. Twenty years is a long time for an organisation and, in principle, it is a golden opportunity. It has to be done in a reasoned way. Let me just stop there. If it is not done in a reasoned way and the problem is not clearly understood and the need for improvement not clearly understood, there could be the very regrettable circumstance that the final result may not be to the improvement of law enforcement. The collective wisdom, hopefully, is going to deal with that.

Senator COONEY—You are courageously and manfully trying to give some explanation as to how this will work, but there is nobody in charge.

CHAIR—You keep asking Mr Crooke the question, Senator Cooney. He is trying to respond.

Senator COONEY—I know. Can you identify anybody who will be in charge of this or will somebody toss the coin and say, ‘It is your turn’?

CHAIR—I do not know that that is a matter for Mr Crooke to respond to, Senator Cooney, but if you wish to address it to the minister.

Senator COONEY—All right, I will direct it to the minister.

Senator Ellison—There is going to be a chief executive officer, which I think answers your question as to the day-to-day running of the ACC. There will be a chairman of the board. I think, in hindsight, the NCA could have done with a CEO. I think that is a very good part of it. Certainly, when the NCA was set up, it was never intended to be a ninth police force. If you go back to its inception, that was always the case. What we are doing here is setting up a body which is definitely not another police force but which can be a national aid to the police forces we have in Australia.

Senator COONEY—Will it have royal commission powers?

Senator Ellison—It will have the coercive powers of the NCA—yes, the hearing powers.

Senator COONEY—That just gives the police forces of Australia powers they never had before.

Senator Ellison—But it will not be exercised by those police commissioners. What is envisaged is something which is exercised by the CEO, a subcommittee of that board or a hearing officer, which takes it away from those police commissioners.

Senator COONEY—Goodbye, civil life. This is going to be a police state.

Senator Ellison—Senator Cooney, that will be intensely scrutinised by this committee, the Joint Committee on the NCA and others. It is a concern that I appreciate fully that you do not have police officers exercising those coercive powers. They do not want them. They have made it very clear they do not want those powers.

Senator COONEY—We might have to walk down the street with our hands ready to have handcuffs clipped around them. If you do not do it that way, you are going to be in trouble. That is what it is going to be, isn’t it?

Senator Ellison—No, I do not think so.

Senator McKIERNAN—If there were more time available and we were not so many witnesses behind, I would go into more depth and detail, but I did note in response to an earlier question, Mr Whiddett, that you are hanging up your boots after 39 years of very distinguished law enforcement in Australia—now with the NCA but previously before this committee with the Federal Police. I would just like to recognise that. It is also my last estimates committee. With you, Mr Crooke and Mr Hickman here, I would like to put on record the appreciation for the assistance that you have given—you, the organisation, but particularly you as an individual, because of the length of the period you have served law enforcement in Australia. I would like to put those appreciations on the record. I regret there is no time to go into more depth and detail, but I think you will accept these sentiments as being expressed.

Mr Whiddett—Thank you, Senator, I appreciate your comments.

Senator COONEY—I am just looking at *Australian crime: facts and figures*. I am trying to find the level of terrorism in here, but there is none that I can see.

Senator Ellison—Let us hope it stays that way, Senator Cooney. You hope for the best and plan for the worst.

Senator COONEY—Mr Hickman, this is the passing of an era with their going. It is a tragedy to law enforcement in Australia that you should be going.

Proceedings suspended from 6.39 p.m. to 7.42 p.m.

Australian Transaction Reports and Analysis Centre

CHAIR—I welcome Mr Neil Jensen, the Acting Director of AUSTRAC, and Mr Mazzitelli to the table. Senator Cooney will begin with questions in this area.

Senator COONEY—Mr Jensen, you are acting director at the moment. Who was your former director?

Mr Jensen—Elizabeth Montano.

Senator COONEY—Where has she gone?

Mr Jensen—She resigned as at 31 December last year.

Senator COONEY—How long had she been there? She had fought the good fight for some years.

Mr Jensen—Nearly six years.

Senator COONEY—And you have been there even longer.

Mr Jensen—That is correct; yes, I have.

Senator COONEY—I am just looking at the five outputs for AUSTRAC. They are:

Output 1.1: Deterring money laundering, serious crime and tax evasion

Output 1.2: Targeting money laundering, serious crime and tax evasion

Output 1.3: Advice on the effectiveness of the FTR Act

Output 1.4 Contributions to international efforts directed at the suppression of money laundering, major crime and tax evasion

Output 1.5 Privacy and security

You have probably heard ad nauseam the discussion that took place before dinner and I was wondering whether you could give us some idea of whether or not money laundering, serious crime and tax evasion are occurring more frequently on the screens? Do you still have screens?

Mr Jensen—Yes, we do. It is a little bit different to 1993 these days though.

Senator COONEY—Is it that long since I was there?

Mr Jensen—It is that long; yes, sir.

Senator COONEY—I just want to get a picture of how prevalent organised crime, gun carrying and all those sorts of things you heard us talking about before dinner are from your viewpoint. Are things showing up more than they used to? Are there more examples of crime?

Mr Jensen—Yes, they are showing up more. Without doubt, money laundering and financing of crime is becoming more technical in its nature and more sophisticated at a higher level, with transnational crime, terrorist activities et cetera. We are able to find things within our database because of the technologies that we have put in place, but we are now finding that we need to refine even further the data we are looking at and to apply better quality data mining type tools to find the transactions that are being used, particularly for terrorism or terrorist financing, for example, where we are finding values that are quite a bit lower than those we have seen for major drug activities. We need to refine our data quite significantly to be able to find those lower level transactions.

Senator COONEY—The sorts of things we talked about before dinner were fraud, credit card fraud and bikie gangs. Without giving away secrets, do you see any sign that those things are prevalent?

Mr Jensen—I think the answer to that is in the use of our data by our partner agencies—the Commonwealth law enforcement agencies, the tax office and the national security agency. They are using our data a lot more in almost every investigation they undertake these days. So they are finding the value in it, and it is those organisations that could probably answer that question better than I can, in terms of whether fraud is increasing or not. We are definitely finding a lot in our database, and they are finding a lot as a result of that and using it more widely.

Senator COONEY—Without giving away too much, how do terrorist groups show up? Do they show up in bank accounts? You collect all sorts of information—where do the terrorists show up on the screen? From what source? From the banks?

Mr Jensen—With our financial system the way it is, probably the easiest way to move money is to move it through the legitimate financial system. But that is not the only way in which terrorist financing is moved. It is moved through bureaux de change, remittance dealers and those types of organisations. We have been given information from our overseas agencies or from overseas agencies similar to ours about the way in which money is moving around the world. We apply what they say is happening elsewhere, and we can then locate transactions through our database.

Senator COONEY—So you are in contact with other organisations around the world. Are there other organisations like yours around the world? You were the first, weren't you?

Mr Jensen—Yes, we were the first. The Americans might argue with that one, but we were definitely the first by a short period. There are some 60 or more organisations which are similar in the sense that they are financial intelligence units, but they are constructed in

different ways. There are quite a number that are like ours in structure. A number of them are in police forces and in other forms. But those that are developing now are more often than not of a similar style to AUSTRAC.

Senator COONEY—And you exchange information around the world?

Mr Jensen—At the moment, we have eight international agreements for the exchange of financial intelligence with those financial intelligence units. We are working on 22 more.

Senator COONEY—So can you chase deposits or a load of money moving around the world?

Mr Jensen—We have an advantage over a number of other jurisdictions in that we have the international funds transfer instructions or international telegraphic or wire transfers and because of that we have a link to where the transactions are going overseas and we can locate them. Having said that, a number of the new financial intelligence units in the jurisdictions which are developing regimes to counter money laundering are also looking to capture that type of information. Therefore, exchange will be of more benefit to Australian agencies in the future as well.

Senator COONEY—And how do you know that this bit of money—I hope I have the right concept here—is for drugs or terrorist activities or fraud or tax evasion? Is it labelled or do you just pass it on to different organisations?

Mr Jensen—It would be nice if it were labelled in the data that was coming to us. In some ways it is, because, if we get it in suspicious transaction reports, quite often the cash dealer organisation will indicate that they think it might be related to tax evasion or drugs or some other activity. We do pass that directly to the law enforcement agencies and the tax office. However, our system—particularly our target monitoring system, which is a software application—has a number of parameters built into it. We refer to some of those as the ‘cocaine clause’ or the ‘heroin clause’ or something like that. By putting in specific parameters, we can be reasonably confident that the output from that will more than likely relate to that type of activity. That is based on information that has been provided to us in feedback on the data and, in general, in respect of investigations from the law enforcement agencies and also from overseas agencies giving us typologies of crime.

Senator COONEY—What is the level of cooperation from people handling money in Australia at the moment—banks and so on?

Mr Jensen—The cooperation has, even back to 1993, been very strong, and that continues. We continue to work very closely with the cash dealer organisations, through our provider advisory group. We see that as a very important part of this whole process. In fact, we are a two-pronged organisation: we are a financial intelligence unit in terms of getting the data out, but we are also a money laundering regulator, if you like. So we have a very important role to play with the private sector in ensuring not only that they are reporting to us but that they can report to us and that we are not upsetting their operations or their normal daily business in any way.

Senator COONEY—I wanted to ask about advice on effectiveness of the FTR Act. Do you give regular advice, or do you give it every now and then? What is the way in which you deal with output 1.3, Advice on the effectiveness of the FTR Act?

Mr Jensen—There are a number of aspects there. The first is that we are constantly looking at the act and the changing financial sector and gambling sectors to ensure that the legis-

lation itself, the Financial Transaction Reports Act, remains relevant in today's climate. That climate is changing, so we do need to seek amendment to the act from time to time. We are currently going through a fairly significant review of the act and will be proposing—or have proposed, at this point in time—that we pursue a number of possible amendments. We intend to pursue those amendments with the private sector in a confidential way to make sure that what we are proposing will work and is appropriate in the circumstances.

We also look to a range of other things—in particular, the future of electronic commerce. We have our Action Group into the Law Enforcement Implications of Electronic Commerce, which comprises a range of portfolio and other agencies which are looking at the law enforcement implications associated with electronic commerce and making recommendations in various arenas in respect of those matters. So it is not just looking at what is happening now and how that needs to be 'tweaked', to a degree; it is looking into the future and looking to see how relevant this legislation will be in the future. It is extremely effective now; we need to continue to maintain that. Both the legislation itself and the way AUSTRAC operates are looked at in the international arena as being amongst the best practice in the world, and it is important that we maintain that.

Senator COONEY—Do you know if there are any treaties or conventions underpinning this practice? I am looking at output 1.4, Contributions to international efforts. Are there any international treaties?

Mr Jensen—There is an international group called the Financial Action Task Force on Money Laundering, which was an OECD initiative. That has been around since 1989 or thereabouts. There are numerous countries that have joined in with that group which, through a number of recommendations—of which there are now 48—is implementing these anti-money laundering processes around the world. Yes, there are a number of conventions underpinning them. I do not have the details of them here at the moment, but we could certainly provide them to you if you wished.

Senator COONEY—Output 1.5, Privacy and security, is to ensure that this exercise that you go through is done with as much respect for people's privacy as possible. Is that the idea?

Mr Jensen—That is entirely correct. We have a very high regard for privacy and security. We have a lot of financial transaction information that is very sensitive. We have systems in place to ensure that the security of the organisation is in place and the security of that data is in place, not only within our own organisation. There are also controls in terms of the people who use it. We do have on the other side a privacy consultative group which we have had since about 1994, of which the Commonwealth Privacy Commissioner is a member in respect of civil liberties and there is a consumer representative. The group meet regularly about three times a year to review the legislation, to look at any potential amendments and to advise the director as to any concerns they may have.

Senator COONEY—Who do you provide material to—the Federal Police and the NCA?

Mr Jensen—Yes.

Senator COONEY—The tax office?

Mr Jensen—Yes. The tax office, the Federal Police, Customs, NCA, ASIO, all of the state police forces, a small number of state police agencies or law enforcement agencies, the two royal commissions, ASIC and state revenue offices—I think I have covered just about all of them there.

Senator COONEY—None of the states has a provision like this?

Mr Jensen—There is some state legislation underpinning the suspect transaction reporting legislation but no other legislation as such.

Senator COONEY—You might not be able to tell me this: how much material have you supplied to the royal commission into the building industry, about which there were some inquiries this morning?

Mr Jensen—I cannot tell you precisely. However, we have logs that manage that process, and if you require that information we could make that available to you. If you look at the number of activities that have occurred on our database—that is, there were some 89,000 log-ons in the 2000-01 financial year and some 700,000 basic searches on the database—there is a lot of information that we would need to go through, but we can provide that to you if you do require it.

Senator COONEY—If you can that would be good. I will finish by thanking you for all the help you have given over the years and for that visit in 1993.

Senator McKIERNAN—I echo Senator Cooney's words.

Senator LUDWIG—I feel left out of this.

Senator McKIERNAN—I also said that on behalf of Senator Ludwig. One of the interesting things in which this committee has been engaged in recent times has been an examination of the security bills, the package of bills that was brought into parliament and is still up for debate. One of the sidelines of that legislation was what happened to a particular Melbourne company known as Shining Path, and AUSTRAC was mentioned on a number of occasions with regard to that. I do not believe the committee had the privilege of talking with AUSTRAC during the course of those proceedings.

CHAIR—We did. They were witnesses in the Canberra hearing.

Senator McKIERNAN—I have been misinformed. I will not say by whom.

CHAIR—You were there.

Senator McKIERNAN—I do not think so. We will leave that. We will check the records later. Can you briefly outline—I do not want to delay the committee tonight—where AUSTRAC fitted into the process of Shining Path? I am not debating the legislation as such and I do not want to open the legislation up for debate, but I am interested in what happened to that particular small company.

Mr Jensen—The process surrounding that was that we received suspicious transaction reports from cash dealers. In this particular case those suspicious transaction reports were provided to the Australian Federal Police. That provides the ability for the cash dealer—the bank in this particular instance—to provide us with that information and to readily make that available to the Federal Police for them to undertake their investigations.

Senator LUDWIG—To provide a different tack: you are familiar with what occurred with the Shining Path organisation—

Senator McKIERNAN—It is a company, rather than an organisation.

Senator LUDWIG—Yes. I will call it the music store. What safeguards have AUSTRAC put in place to ensure that those organisations which are not organisations of interest are caught in the net?

Mr Jensen—There are a couple of points that can be made. There is an interdepartmental committee which is considering that very issue, and that was referred to previously in the hearings.

Senator LUDWIG—Yes.

Mr Jensen—That group met recently and is meeting with the financial sector to ensure that appropriate procedures are set in place.

Senator LUDWIG—You are on that committee?

Mr Jensen—We are on that committee. The other side of it, from our perspective, is that our position is that we receive the suspicious transaction report. We will move that quickly so that any investigation or any activity associated with it will be undertaken in the quickest possible way—so the bank will get it to us and we will automatically or immediately get it out to the Federal Police so that they can look at the matter, get back to the bank and make sure that the process is set in place as quickly as possible. We also provide guidelines—again, which we referred to in the committee hearings—and we will be pursuing those further.

Senator LUDWIG—I am not sure whether we asked this in the committee, but how long did it take for your organisation to respond to the inquiry in relation to Shining Path the music company?

Mr Jensen—Once we had received the suspicious transaction record?

Senator LUDWIG—Yes.

Mr Jensen—Very quickly. It would have landed on our desk and we would have responded to it within a very short period of time. It would have been minutes to an hour, maybe; I do not have the exact figures. That was the process we were going through at that point in time, so I would suggest it was fairly short. I can find that out; I do not know.

Senator LUDWIG—Yes, if you would not mind. You then determined that it was not an organisation of interest?

Mr Jensen—We do not make that determination. We pass on the information. The Federal Police would need to—

Senator LUDWIG—You only pass on the actual information?

Mr Jensen—We are the vehicle for getting the information through as quickly as possible.

Senator LUDWIG—So the Commonwealth Bank tells you and you tell the Australian Federal Police?

Mr Jensen—Yes.

Senator LUDWIG—Do they come back to you at any stage?

Mr Jensen—They have no obligation to come back to us. They would deal directly with the bank, although generally speaking—

Senator LUDWIG—Did they in this instance come back to you?

Mr Jensen—We were in constant contact with them during that period of time. I do not know whether they specifically came back to us on that issue at that point in time. Again, I can find out.

Senator LUDWIG—Perhaps you can take on notice whether they came back to you and asked for any further information in relation to that transaction or any other transaction.

Mr Jensen—I do not believe they would have asked us for any more information, because that was not the process at that point in time.

Senator LUDWIG—There was only notification by the Commonwealth Bank and you then passed on—

Mr Jensen—We passed it on, yes.

Senator LUDWIG—Why would they then come back to you? I know you said they did, but it begs the question of why.

Mr Jensen—One of the processes we have in place and are constantly seeking information on is feedback from all of the agencies with whom we deal in respect of the matters that are being investigated. There are a number of reasons for that. We need to know that what we are doing is effective in terms of getting the information to them and that it relates to investigations that they will pursue. Also, we need to get information back to the cash dealers as to how they are reporting to us and whether the things they are reporting are matters that are being picked up by the police and being pursued. The feedback issue is very important to us; it is something that we have grappled with over a long period of time, and we will be working with the law enforcement agencies and the tax office in particular to try and get better, if you like.

Senator LUDWIG—But there is no obligation on them to come back.

Mr Jensen—The only obligation is through the memorandum of understanding we have with them which seeks feedback from them—but there is no specific legislative requirement for them to report back to us.

Senator LUDWIG—Have you raised the issue of improving feedback in respect of your operation with them in the interdepartmental committee that you mentioned?

Mr Jensen—I am not sure that it was specifically mentioned, but we mention it on almost a daily basis to the law enforcement agencies.

Senator LUDWIG—That is why I was surprised that you had not mentioned it in that if you took every opportunity to mention it. That was the impression I was getting. Why wouldn't you also raise it in that vein as a mechanism?

Mr Jensen—We may well have done that. I was not at that meeting, so I cannot answer that specifically.

Senator LUDWIG—Thank you.

CHAIR—Mr Jensen and Mr Mazzitelli, thank you both very much for assisting the committee and thank you for waiting during the extended period of the day. We appreciate it.

Mr Jensen—Could I make one final comment?

CHAIR—Certainly.

Mr Jensen—I would like to thank Senator Cooney for the work that he has done with us in Senate estimates over a long period of time, since the 1993 review. I also wish Senator McKiernan and Senator Cooney all the best for their retirements.

[8.05 p.m.]

Australian Law Reform Commission

CHAIR—Welcome, Professor Weisbrot and Ms Adams, to the consideration of budget estimates for the Australian Law Reform Commission.

Senator McKIERNAN—I have just a few short questions, I hope, Professor Weisbrot. The reporting date for the genetic information inquiry which the ALRC is conducting has been extended by nine months. What is the reason for that? What is the background to it?

Prof. Weisbrot—A combination of two things. One is that it is an enormous inquiry in terms of the scope that it covers. It covers privacy law, discrimination law and ethical standards across a very wide range of issues that includes medical research, clinical practice, the insurance industry, employment and a whole grab bag of other services, such as potential uses of genetic information for selection, for example, in schools by immigration authorities. We are also looking at some law enforcement applications. Part of the reason is that no-one had an idea of the breadth of it at the time we got the initial terms of reference.

Having said that, we still could have delivered a report on the initial timetable, but we have had enormous public interest in this. In order to facilitate the community's participation in it, we extended the timetable. It was really at the request of many community organisations, like genetic support groups and others, who said they wanted more opportunity to read through the issues paper, go through their own consultation processes and get back to us. They will then have a second bite of the cherry when they see our discussion paper, which will have the tentative draft proposals that they can respond to specifically.

Senator McKIERNAN—Can you test the community interest by telling us the number of submissions you have received to date?

Prof. Weisbrot—We have received, give or take a couple, 160-odd. They are still coming in, including some from major organisations, so we expect that we will have about 200 formal written submissions in response to the issues paper. We also did very extensive travel and community consultation. We had 18 public meetings around Australia, including in all of the capital cities and many regional centres. We have also had many targeted meetings—for example with genetic support groups, employers' groups, trade unions, educational authorities, practitioners, research labs and so on—to try to get a real feel for what is happening, not just in the statute book but actually in practice.

Senator McKIERNAN—Have you made any decisions at this time—in the early to middle stages of the inquiry—as to the form your recommendations will be in at the end of it? Will you be putting them in the form of draft legislation, or will they be standing recommendations which will then have legislation framed around them?

Prof. Weisbrot—There will be a mix. We will be producing a discussion paper around 1 August, which will have our draft proposals contained in that. Some of our recommendations will definitely take legislative form. For example, there may be suggested amendments to discrimination laws, privacy laws, occupational health and safety laws and so on. Some of the things will involve recommendations in relation to industry codes, and some of them may be educational measures, whether they are public education or professional education, so it will be a wide ranging strategy. Where we are recommending legislative solutions, we will not necessarily have a whole draft bill attached to it, but we would certainly have what you might call drafting instructions.

Senator McKIERNAN—What other inquiries have you got on foot?

Prof. Weisbrot—At the moment, civil and administrative penalties. In fact, we released a discussion paper on that just a few days ago. That is on track to report by the end of November.

Senator COONEY—The overview in the portfolio budget statements states, ‘The commission is committed to raising public awareness on key legal issues affecting Australian society.’ How is that going? I can remember the plain English period we had in this area. What are your methods for trying to make the law understandable for people?

Prof. Weisbrot—They are wide ranging, and they are also horses for courses, so we did not attempt to beat the community up over the Marine Insurance Act, for example; we did not anticipate that there would be mass uprisings of interest in that area. But we have produced a long but extremely accessible issues paper on genetic information, and we have been extremely gratified because of all the community groups that have come back to us to say how valuable that was in raising their understanding about the issues and about basic genetics. As well as that, we produced a brochure—a four-page, much simpler dot-point format. We also have a lot of material on our web site. In the issues paper we have a section that alerts people to other web sites—for example, the human genome project and the Centre for Law and Genetics at the University of Tasmania—where people can go for further information.

We have done an enormous amount of media work in that area. I have done close to 100 radio, television and press interviews on the genetics project, and lots of talkback radio. I was on *Consumer Dimensions* a couple of nights ago on the ABC, talking about those issues. Our web site has also been improved quite dramatically to allow access to our materials, so we now have every commission report up on the web site and freely available. We have web site statistics that we publish relatively frequently. We produce a journal, called *Reform*, twice a year, and it is aimed at a general audience. The latest edition, which is on customary law, just came out a few days ago. The next one we are planning will be on law and ageing—how Australia’s ageing population will affect various aspects of the legal system.

Senator COONEY—How is the issue of plain English going? That was very big in the eighties.

Prof. Weisbrot—We endeavour to use that; and again we have been pleased at the extent to which our fairly technical reports have been regarded as accessible. I think that plain English as a religion is sort of fading, because it is so well accepted now. It is a bit like alternative dispute resolution or administrative law. A generation ago you had to convince people of the merits of it. I think now everybody understands that it is a necessary part of our system.

Senator COONEY—What sort of interest do you get from the public? It is a very important area, and I would have thought that you would get a fair response from the public, but what is it like? Do you get inquiries coming in? I do not mean from the profession as much as from the person in the street.

Prof. Weisbrot—Again, it varies with the project. In civil and administrative penalties, it has largely been an insider one, where you have a lot of lawyers for the regulated community, regulators—people who have an interest in that area. With genetics it has been extremely widespread, so again we have made a special effort to reach out to genetic support groups and community groups. I have spoken at Rotary clubs, primary schools—whoever is interested in this area. We have LIAC, which is a New South Wales organisation run out of the state library, and that attempts to provide legal information to the general community. They

produce a monograph called *Hot Topics*. We have worked with them, and the next edition of that journal will be on genetics. Again, it is written very much for a general audience.

Senator COONEY—What sort of communication do you have with other law reform commissions? All of the states have law reform commissions, haven't they—on a different basis in some cases?

Prof. Weisbrot—Most states have something like a law reform commission. Tasmania has a law institute based at the university, and there is one in contemplation in South Australia. There is an organisation called ALRAC, which is the Australasian Law Reform Agencies Conference. That includes all the Australian law reform commissions, as well as the ones in New Zealand and, when they can send people to us, Papua New Guinea, Solomon Islands, Fiji and so on. That group will be meeting in Darwin. It is being organised by Austin Ash in Darwin this June. There will be some international representation at that as well. I know that the Sri Lankan Law Commission, the English Law Commission, the Canadian Law Commission and some others are intending to send representatives.

Senator COONEY—Is there any correlation between the committees or, when you meet in Darwin, do you just compare notes? When I say 'just', it is very important to do that, but you know what I mean.

Prof. Weisbrot—Sometimes it is more than that. There have been a number of joint projects where different commissions have worked together on things—for example, on national uniform succession laws and personal property securities—and in a number of other areas there has actually been formal linkage. At the informal level, there would not be a week, certainly, and there would probably not be a day when I do not talk to people at the New South Wales commission or the Victorian commission or the WA commission, exchanging information or ideas or providing referee reports for staff, that sort of thing.

Senator COONEY—I have a volume of yours down there now, which is about administrative penalties, I think.

Prof. Weisbrot—That is right. That is the latest discussion paper.

Senator COONEY—That is the sort of thing that could be made interesting to everybody, couldn't it? We all come across administrative penalties, whether it is a parking meter or something else.

Prof. Weisbrot—We are trying. The launch of that got a reasonable amount of coverage. There were significant stories in the *Sydney Morning Herald*, the *Financial Review* and the *Australian*, but it did not quite have the visuals to make it on television, as genetics did.

Senator COONEY—Thank you very much for that and all the best for the future.

CHAIR—As there are no further questions for the ALRC, Professor Weisbrot and Ms Adams, thank you very much.

Prof. Weisbrot—May I join with others in expressing my gratitude to Senators Cooney and McKiernan for their interest and consideration over many estimates committees now. My first one was after just a few days in office, and Senator McKiernan had a lot of interesting questions for me, which I had difficulty answering. Since that time, I hope I have performed at a higher level. I wish the two of you a very full and happy period in retirement, which I am sure in both cases will be a very busy period as well.

Senator COONEY—Thank you very much.

[8.18 p.m.]

Office of the Privacy Commissioner

CHAIR—I welcome Mr Crompton and Mr Pilgrim. Senator Ludwig will begin questions of the Office of the Privacy Commissioner.

Senator LUDWIG—Recently, the Legal and Constitutional Legislation Committee examined the Customs border bill, to which I think you made a submission and you made a significant number of comments about Customs. Did Customs originally work with the Privacy Commissioner in developing the legislation? That is one of the issues that I want to explore with you. I am open to correction but, as I understand it, they were informed by their legal branch that there was no need to contact the Privacy Commissioner as they had addressed all the Privacy Act issues within the bill. Is it a standard way for departments to operate, in your view, that they do not liaise directly with you and that the relevant agency, interdepartmental committee or whatever does not actually front your office?

Mr Crompton—I think there are probably two guideposts here. One of them is that the provisions in our act include a power for the Privacy Commissioner to comment on any proposed legislation, and I believe there is a provision also in the cabinet handbook that requires proposals with a privacy impact to be consulted with us. As with any rule, it is often honoured and sometimes breached. In this instance, as I understand it, the Customs office people had not consulted with us before that legislation was prepared. They did so as thoroughly as they could in the time available, once they had been asked by the committee.

Senator LUDWIG—So since that time the Customs department have consulted with you in relation to that bill?

Mr Crompton—Yes, they have. There was a document, I think, submitted to that committee after some consultation between the Customs people and our office—in particular, with Timothy. He may wish to expand on that in a minute. The upshot was that there was better explanation for us of some of the proposals that they had in mind and still some residual concerns on our part. In particular, as with the whole of that suite of legislation, we proposed in our submission that all of the proposals be subject to a sunset clause so that, in the calmer light of day when hopefully the terrorist threat was more under control, we could review how the package had gone and whether or not some of the provisions were still needed. We held—and still hold—that position on both the border protection legislation and the rest of that package.

Senator LUDWIG—There was a submission by the Privacy Commissioner—that is, yourself—in relation to the five bills. Has there been a subsequent document from that time that has been developed in relation to you?

Mr Crompton—We wrote one submission beforehand, and I believe the Customs people have submitted a second submission to the document, as part of which they included agreed word commentary by us. There was an unfortunate and genuine error in there which, I think, has been corrected with the committee.

Senator LUDWIG—I recollect that.

Mr Crompton—There are two documents, yes.

Senator LUDWIG—That joint document allays your concerns and contains your final say in relation to the matter?

Mr Crompton—Many but not all. In particular, the sunset clause issue remains alive.

Senator LUDWIG—Are there any other issues outside of the sunset clause that you have not had addressed in relation to those five bills?

Mr Crompton—I will ask the Deputy Privacy Commissioner at this point to elucidate on that.

Mr Pilgrim—In response to that, Senator, and particularly focusing on the customs bill, one of the key issues that we are looking at was what sort of monitoring role there would be in regard to the increase of powers that would be going to organisations such as Customs. In relation to those bills, as part of our discussions with them after they appeared before the committee, we discussed opportunities for our organisation to become more involved in monitoring the use of those powers. Subsequently, we have had some ongoing discussions with Customs. We are going to undertake a site visit to discuss with their officers at a couple of their major airports what they are intending to do with the increased powers through that proposed bill. We are also talking about how we can better increase our monitoring role. For example, we are looking at ways in which we might acquire some additional funding from Customs so that we can employ some additional staff to allow us to better monitor the functions that will be coming through via those bills.

Senator LUDWIG—Those options are available to the Privacy Commission to access additional funds from Customs. Have you outlined how much that is likely to be, or has there been any discussion on the price of that?

Mr Pilgrim—At this stage, it is early in that the discussions have been fairly informal, but we are looking at a level that may require us to have at least one additional full-time staff person in our audit area, for example, to help undertake a compliance monitoring role. As I said, it is an early proposal. We have not had a face-to-face meeting with Customs at this stage.

Senator LUDWIG—Do you have those arrangements with other departments?

Mr Pilgrim—We do in regard to our statutory responsibilities under the data matching act.

Senator LUDWIG—I was thinking more of those which are not statutorily based which are, I guess, as novel as the Customs one that you have just outlined.

Mr Pilgrim—No, not at this stage; not in regard to a pure monitoring role like that. This will be the first we are entering into.

Senator LUDWIG—Is that something that the Privacy Commissioner is looking to develop? I am sorry if I interrupted you.

Mr Pilgrim—Could you repeat the question?

Senator LUDWIG—I was more interested in the answer by Mr Crompton.

Mr Pilgrim—I will explain that Mr Crompton was pointing out that we do have other MOUs. I was limiting the answer in regard to our role in monitoring compliance. We have other memorandums of understanding by which we acquire funds into the organisation than the example the commissioner was going to refer to. We have one with the Health Insurance Commission, and that is approximately \$250,000 per annum over a period of three years we are receiving. That is to assist in assessing policy proposals and undertake advice and guidance on those proposals that are coming out of the Health Insurance Commission with regard to their functions that might impact on privacy. We have a second one with the Department of Health and Ageing, which is approximately \$220,000 per annum for a period

of two years, again along similar lines, to help them get, if you like, expert advice on privacy implications of some of their policy proposals.

Mr Crompton—In addition to that, statutorily we are the Privacy Commissioner for the ACT as well, and we have a memorandum of understanding with the ACT and they fund us for doing that service for the ACT.

Senator LUDWIG—In relation to the prospect of an arrangement with Customs, is that an area that you going to explore with the private sector as well, given the new stretch of your legislation with private sector compliance? In other words, are you developing a relationship with small, large or medium-size businesses with ensuring compliance or auditing with privacy issues?

Mr Crompton—We have not explored it at this stage. I do sense that there is a market for doing so. I think we have the powers under the act, for example, to go auditing when invited.

Senator LUDWIG—That was my next question, whether your current legislation allows you to do that.

Mr Crompton—I think the legislation does, but again the deputy can correct me on that. At this stage we have not proposed anything like that. As we are contemplating some strategic planning over the next period, we are contemplating elucidating and promulgating best practice models, but that is not the same as auditing. Possibly in that regard we would do joint funded operations with private sector entities. But in terms of pure auditing it is not something that we have contemplated much at the moment.

Senator LUDWIG—Have you finished all your audits of the Commonwealth government web sites to ensure that they meet the Privacy Act requirements?

Mr Crompton—We have in fact done a couple of sweeps through Commonwealth web sites. The first time round I let agencies know that we would audit them and would let them know what we thought of them with a view to helping them improve their practice before we more publicly audited them. We more publicly audited them and published those results last year. As I said at the time, anything less than 100 per cent compliance by federal agencies with the federal web site guidelines is unsatisfactory. Unfortunately, we did not hit 100 per cent. The publication of the audit most certainly did generate further interest around the agencies and I do know they have put in more work to improve that compliance rate. At some stage I intend that we have another look at all of the web sites.

Senator LUDWIG—I was just curious whether you had followed up on that at this point in time, and you have given me the answer. Is that something that you intend to do at irregular intervals?

Mr Crompton—We always plan our audit program on a risk assessment basis and we are currently going through the current round of assessment on where we will put our efforts for the coming year. That is constrained by resources available and where the risky points are. I am not sure that we have completed that process. I think the deputy was conducting that process and I do not think it is finished.

Mr Pilgrim—We have not finished the risk assessment process for our audit program for the next financial year as yet.

Senator LUDWIG—So are there any Commonwealth government departments that you are currently talking to about their Privacy Act requirements, particularly in relation to their web sites?

Mr Crompton—There has been, as I understand it, repeated informal contact by various agencies with us. For me to come back with a more definitive list I would have to round up a list of the informal contacts. It is not been very well documented, I suspect, because people are simply on the phone to us asking for help or very informal advice.

Senator LUDWIG—Can you provide us with an update on where you are at with the private sector compliance—as neatly as you can in the time available?

Mr Crompton—If you remember when we met last, I was basically saying that it was almost too early to say where we were at with the legislation but that there had clearly been an increase on a number of the parameters being measured. This time around, we do have enough numbers for it to be worthwhile talking about, and what I would like to do is to take you through a few of those numbers broadly and then to actually table those numbers for you. There is also a graph that will most particularly draw out where things are at. Firstly, if we can distribute to the senators a copy of a table, I will go through it very quickly.

Since 1 July 2001 we have received nearly 19,000 telephone inquiries, and since 21 December it is about 11,700. When you take whole year on whole year ratios, that represents about a threefold increase on the rate of inquiries we were receiving during 2000-01. We have had a similar increase elsewhere. The number of email inquiries we have received year on year, in terms of the rate they are coming in since 21 December, is up about fourfold. We have received 1,500 email inquiries since 21 December.

The thing that is possibly of greatest interest to you is the number of complaints that have come in. Since 1 July last year we have received 515 complaints, of which 359 have come in since 21 December. It is still very early days—and we will distribute the graphs to you now. The graphs show that, while we have had an average of 77 complaints per month since 21 December, for the months of March and April, we have had 100 new complaints coming in. It really depends how you do your extrapolations but, if the figure of 77 per month is extrapolated to a full year, it would represent 924 complaints per year, which, if you compare it with the number of complaints received the previous year of 194 in a full year, would be about a 3½-fold increase on the number of complaints year on year. That 3½-fold increase for us is considerable because we were only funded, essentially, for 120 extra complaints under the new jurisdiction, and at 3½ times we are a couple of hundred in excess of that figure.

The point of all of this is that, when estimating for what this new regime would do for the operations of the office, everybody had to pick a number and fund for it. We are now under way and it would appear that the level of activity required of the office to put the law in place is quite considerably in excess of estimates. We can unpack those numbers in some detail now for you. It is having quite some impact on the way we run the rest of the office because we have to move in more people to conduct the investigation of complaints. If you wish, we will take you through that in a lot more detail now. But the particular graph that is in front of you is possibly the best place to start to help you understand what is happening with the complaints process. Shall I proceed to go through the graph for you?

CHAIR—You are giving Customs a run for their money, Mr Crompton, with your colourful graphs. They have been leaders in the field to date but I think you may just have outdone them, which will be some great concern to Lionel Woodward, I know.

Senator McKIERNAN—Almost Fremantle Dockers colours as well!

Mr Pilgrim—Please do not take it as an indication of our resources.

CHAIR—That did not occur to anybody else in the room.

Mr Crompton—We do aim to please.

CHAIR—It is totally over my head.

Mr Crompton—What you can see in the darker colour is the rate at which we have been able to close complaints, and what you can see in the paler colour is the number of complaints being received per month. So from July to November last year, you can see that we were receiving between 20 and 25-odd complaints per month and we were nearly closing them at about the same rate—although there was a small gap there and I can explain some reasons for that small gap to that point.

What you can see after December is a continuing climb in the number of complaints received—the taller bars in each month. As you can see, 106 and 100 complaints were received in March and April. It is hard to tell whether those numbers—100 and 106—are the new plateau or whether we are still climbing the graph to yet more complaints. As I may have said in a previous estimates committee hearing, when previously the regime was expanded, it took about six months for complaints to peak. We may be at the peak and about to get to the new plateau or we may not. We are keeping an eye on that. Also, you can see that we have been able to increase the rate of closure of complaints. It is now up to 45 or 53 per month being closed. That reflects the fact that we have already taken staff out of other parts of the office and put them into the complaints handling area to get them handling more complaints. You can see a widening gap between the number of complaints received and our ability at this stage to handle the complaints, which means we are moving more staff in there from other parts of the office to do that. We estimate that there is anywhere between a total of five and 10 staff years worth of impact of the new regime which is essentially unfunded, with complaints handling being a major part of that impact.

Senator LUDWIG—Obviously, you have not yet experienced enough time to develop a tail as to how long a complaint remains unresolved.

Mr Crompton—That is a very good point. Not under the new regime, no. Obviously we have tail experience with the previous regimes, but most of the complaints that we have been able to deal with until now have been complaints where there is almost no substance to them at all. Any complaints that require serious investigation would still be under way just to make absolutely sure we have given everybody a fair go through the complaints handling process.

Senator LUDWIG—But it still suggests that there is a crisis forming in almost half of the complaints not being closed in March and April, and if that continues—even if it plateaus—I understand that you are suggesting that you have already moved staff to deal with the increase in complaints. You have probably peaked by the number of complaints you can close, and if it continues at the rate of approximately 100 a month you will continue to have 50 or 60 unresolved each month. It does not take long for that to build to an unmanageable level.

Mr Crompton—The two target figures that I worry about are the rates of receiving complaints and of closing the complaints—in particular, whether we have an expanding backlog. The first thing you have to do is to stop the backlog expanding, and after that you have to bring the backlog back under control. At this stage these statistics suggest that we do not even have the expansion of the backlog under control, which is why we intend to move more staff into the complaints handling area. Again, the deputy has been putting considerable time into estimating how we can do that, but already we have had to almost close down parts of the policy advice area to deliver complaints handling. We are about to move more

resources into that area. If that still does not bring matters under control we will have to further close down parts of the office.

Senator LUDWIG—The graphs suggest that from January to now—perhaps not even including now—there have been 300-odd complaints. You have closed about 149, so you are not even managing to close half of what you have. If that rate continues, where will you get the extra staff from to start to eat into the remaining 150 because you have—

Mr Crompton—Yes is the answer to that at the moment—only from within the office. We have not been offered additional resources to undertake—

Senator LUDWIG—Have you advised the department about what is occurring? It is increasing at an exponential rate, effectively. If you have 150 unresolved from January, that will increase by 50 or 60 each month. If we take May into consideration, that 150 is now 200. You already have a tail of potentially five months.

Mr Crompton—I do not think the tail is under control at this point. That is why we will have to move more resources into that area. I am not sure that, without almost closing down other parts of the office altogether, we will be able to control the tail under current resources. We have raised the issue with both the department and the Attorney.

Senator LUDWIG—Have you received an answer?

Mr Crompton—No, we have not.

Senator LUDWIG—When did you raise that?

Mr Crompton—We have been keeping them progressively informed throughout the year. It is very hard to work out when you have actually got a grip on the scale of the problem. As you can see, the numbers have not yet been brought under control, but the extent to which they need to be resourced for control is only just emerging right now.

Senator LUDWIG—What it is suggesting to me is that, if you have asked the department to assist or at least advised them of what is happening, the government is not interested in privacy complaints. I do not mind who answers that, but the figures are suggesting to me that the government is just not interested: the complaints are growing at a rate of 50 a month since January; there are about, by my estimate, 200 that remain unresolved; the Privacy Commissioner has indicated that they are moving resources as fast as they can to meet it; the figure is continuing to increase; the department understands what is going on but as yet has failed to act. Is the department going to act?

Mr Cornall—The Attorney is aware of the issue that the Privacy Commissioner has raised and is considering the options in terms of further funding, but there might be other issues to consider in relation to this than just funding. There are all sorts of issues in running a complaints investigation function than just throwing money at the issue.

Senator LUDWIG—I am not suggesting that you throw money at it; what I am suggesting is that you tackle the complaints. How you tackle those complaints I am waiting to hear. At the moment I have heard that the Office of the Privacy Commissioner are doing their best to deal with it in the best way they can—that is, to work through the complaints in the way that they are able to with the funds available. What is your solution?

Mr Cornall—Firstly, the Attorney is considering the issue about further funding and what can be done to accommodate that.

Senator LUDWIG—But you just said, ‘Don’t throw money at it.’ You are telling me the Attorney-General is considering further funding.

Mr Cornall—No, I said there are other issues that could be considered rather than just assuming that you have a straight multiplication of the numbers of complaints with the amount of resources. One of my previous positions involved administering a complaint handling function in respect of solicitors, and we handled about 3,000 complaints each year without a huge number of staff. I think it would be useful to sit down with the Privacy Commissioner and go through the processes and procedures to analyse the way the complaints are being resolved and whether or not experience with those complaints can indicate ways in which they can be dealt with more expeditiously.

Mr Crompton—We are obviously always interested in improving productivity. The Deputy Commissioner may have some of the numbers in his head, but I think our productivity rates in terms of complaints closed per handler have already increased. We have completely rebuilt the information management process underneath. I am not convinced that there is not more productivity to be obtained there, and one can always look for more productivity, but certainly I am always interested to hear from anybody who has further suggestions for us to further improve productivity.

Senator LUDWIG—So have you asked the department about whether or not they have got mechanisms to assist you in the complaints process? I do not want to say it as boldly as what I am thinking, but effectively we could say that one quarter might suggest that your management system fails to address the complaints. Is that the case? Is it simply that your systems in place cannot address the complaints or is it that your systems are in place to address the complaints but there are too many complaints? There are two ways of looking at the same issue. Your organisation might have sufficient money and resources and people to deal with the complaints, but your processes in place cannot deal with them: is that the case?

Mr Crompton—I believe our rate of complaint closures per employee stands up to examination. I believe we have the monitoring systems in place to understand very well where we are at. At least part of the obligation on anybody running an organisation is to redeploy your resources when big changes like this come along. That is what we are doing. But I believe that the scale of the impacts on our office of actually stopping that tail growing any further would be quite considerable, and I would certainly want to make sure the government was very, very well aware of the impact of us simply resolving that problem by internally redeploying resources. We did conduct a review of the complaints-handling process last year and the deputy commissioner can take you through some of the numbers that came out of that and what we have done about it, if that is what you would like to hear.

Senator LUDWIG—Have you analysed most of these complaints as to their type or where they are from or whether they relate to the new private sector legislation? If I recall correctly, this issue was raised a number of estimates ago when we first heard of the mooted idea of extending the privacy principles to the private sector, that there would be an impact on the Privacy Commissioner’s role and that it would be extended. At that time—this is from memory and I am happy to be corrected—I was informed by the government that there were sufficient resources to meet all contingencies. I am not hearing that now, am I? As I said, I do not mind who answers that question just as long as someone does.

Mr Crompton—My recollection is that at the time I was saying the best thing you can do is take an estimate of the impact of the legislation. The estimate was taken, we were given the resources and, as I said at the time, after that all you can do is experience what actually

happens and then keep the parties informed if there is a gap between the estimates and the actuals. That is precisely what has happened now and so we are taking the issue back to the government to let them know the full impact of the legislation. In terms of the nature of the complaints, yes, we have a number of extra statistics we can put on the table for you, but that moves us off the financials. So do you want to know more about the financials and the quantum or wait?

Senator LUDWIG—Yes, if you have them available that would be helpful or you could take them on notice and you could provide them to the committee as a breakdown.

Mr Crompton—Many of the outlined numbers are actually on that page of dot points that we gave you in terms of not only have there been complaints but there has been a significant increase in the investigations we have had to conduct this year. There are records there of the code approval processes that we have been through and a very brief summary of some of the points at which we have sought to obtain and achieve community awareness. The handling of the telephone inquiries and the handling of the complaints have been one of the main areas where there has been a significant impact on the operations of the office. The other area that is not listed there is the fact that, as with any new legislation, you need to get new legal advice and so the cost of legal advice to us this year compared with previous years is going up.

Senator LUDWIG—That is the second issue that I was going to come to in the time available: the impact on the other areas of operation. So in short there is an impact in two respects, as far as I can identify so far, and perhaps you will identify a few more. One is that you have had to draw staff away from other areas, so there is an impact on the new legislation in that respect, and I would like to ask you about those programs and how they are being supported now or whether they are being stalled as a consequence of the current need to reduce the number of complaints. Secondly, there is the cost impact and whether or not it is being met effectively from your budget. As I understand it, the increase in legal fees is one area. Have there been any others?

Mr Crompton—Yes, there are those two components. The flexibilities available to the office vary depending on the area that you are talking about. Because of the two memorandums of understanding that the deputy outlined before, we are essentially contracted to be providing a certain level of policy advice on health issues, which for quite proper reasons we should not be reducing or moving resources away from because it is the arrangement with the Health Insurance Commission and the department of health to be working on those issues. On the other hand, in one of our other policy advising areas particularly relating to other government proposals, we have had to reduce down to about two—from probably about four—the number of people available to deal with new government initiatives. That is already a significant reduction on what was available in years gone by. So that simply reduces the quality and quantity of advice we can provide in that area.

We had intended to provide further help through the year to some areas in the private sector where we did not get to do very much detailed work last year. Again, the number of those areas that we will be able to address are probably fewer than we had anticipated. Outside of the legal advice and the code approval area, there are a couple of areas where we have some more funding requirements. I must admit that they have slipped my mind for the moment—I did not bring that with me—but the deputy may have those numbers.

Mr Pilgrim—One of the areas that we need to take careful care, and which is being impacted upon by budget constraints, is that of getting information out to the broader community. For example, the bottom series of dot points on the sheet that the commissioner

handed out shows that we have made inroads into getting some information out to the community about the new privacy legislation. In future years, that will be limited as we work through our strategic planning process to assess where to best place our resources to meet the needs of the community. We will have to balance meeting the backlog of complaints with the resources that we can put into it. With what is left, we will educate the broader community—the citizens—and provide advice to the business sector in their obligations and responsibilities. We did quite a bit of that last year in the publications of guidelines, but we will have to reassess what we can do in future years in that broader education and promotion role.

Senator LUDWIG—So there has been a sevenfold increase in own-motion investigations? Are they in the private area? Is there a breakdown of where they are?

Mr Pilgrim—I will give you some figures. In the current financial year, we have opened approximately 38 own-motion investigations, of which 17 are under the new private sector jurisdiction.

Senator LUDWIG—So there has been a significant increase in the need to investigate privacy concerns in the new area that has opened up—that is, the private sector—as a consequence of resources being put to the test in that area as well?

Mr Pilgrim—Yes.

Senator LUDWIG—Are you adequately dealing with all the investigations that need to be done? You have said there has been a sevenfold increase, which are own-motions that have been generated by you. Are there areas that you have left untouched? With the introduction of the new legislation, you are not monitoring it as effectively as you would like to, or can do or, holistically, should do?

Mr Pilgrim—Let me give a bit of an explanation around what has turned the own-motion investigation. To open an own-motion investigation, we have to find out about something that is a potential breach. We do that via some contact through the community. We may get a phone call from someone who does not want to lodge a formal complaint.

Senator LUDWIG—A lead, perhaps?

Mr Pilgrim—It could be in that manner; it could be through the media as well. We can then determine whether we think it is potentially a breach of the act and the severity of that breach. That will determine our actions from there. This is very subjective, but it may be, say, a minor breach, in which case we would either make a phone call or write to the company and ask for a short explanation. But not all of those cases require us to have an on-site inspection of the particular organisation. There will be quite a degree of variation within those 38 own-motion investigations of the resources that are applied to each one of those. There is quite a bit of variation.

Senator LUDWIG—Mr Cornall, what is the department doing about this? There are two issues: firstly, there is a need to ensure that the private sector complies with the new act—which is your responsibility at the end of the day, as I understand it—and, secondly, to ensure that the Privacy Commissioner's resources are adequate to meet the complaints, which appear to be getting out of hand, and all of its other obligations under its current charter.

Mr Cornall—As I said before, the resources issue has been brought to the Attorney's attention and he is giving consideration to the options open to him to look at further funding for the Privacy Commissioner. That is what is presently under consideration.

Senator LUDWIG—All right. Thank you.

CHAIR—Any further questions?

Senator COONEY—From the comparative complaint rate, does this mean that in March-April, taking into account the weekends, you get about five complaints a day? Would that be about right on that scale?

Mr Crompton—Roughly right, yes.

Senator COONEY—What is the process of dealing with those? Do you try to reconcile the parties? What happens? I am just trying to work out how much time would be involved. Obviously, it is a struggle to handle them adequately and I was wondering how you go around them and where the time is consumed in trying to handle them.

Mr Crompton—There is obviously a preliminary assessment process because there are always a number of complaints that come in that are simply not covered by our law, or there is something else that means we can deal with them fairly quickly. But if they do actually proceed to serious investigation then fairly early on in the piece we are writing to and opening up the issue with the respondent party to say, 'These are the facts of the matter that have been put to us. We are wishing to open an investigation.' Where it goes to from there will obviously depend on the case. Some of our work can then simply be done by written correspondence between the parties. Sometimes we will be using the telephone to try and broker a result. What we are trying to do all the time, though, is to bring the parties together to a compromise: sometimes to a very satisfactory resolution and sometimes to a compromise that they can live with.

Senator COONEY—It would take time to get the story from both.

Mr Crompton—Yes, and that has turned out to take quite some time because what we are setting out to do is to broker a result rather than push it through unsatisfactorily to one party. It has been very successful generally in doing that.

Senator COONEY—Sort of a mediation process?

Mr Crompton—It has been a mediation process, yes.

Mr Pilgrim—If I could just add to that, there is another important step which we try to follow as well—and under the private sector provisions it is actually embedded in the legislation—and that is that we are required to see whether the complainant and the respondent have actually tried to resolve the matter prior to come into our office. We would like to think that that is still the best step for both the complainant and the respondent. It is something that we try to assess prior to us automatically opening an investigation.

Senator COONEY—The graph is consistent with the office establishing a good reputation, I would have thought; otherwise, you would not get as many complaint as you do. Is that your impression: as your work becomes known, there are more and more demands on your services?

Mr Crompton—We would hope so. It is going to be very hard to tell. If you think about the number of complaints we are receiving compared with the number of transactions in Australia or the number of Australians or anything like that, it is clearly not turning out to be an extremely large issue. If, on the other hand, you look at it by comparison with the resources available to the office it is distinctly more than was planned for. We have done some extremely crude comparisons with other English language jurisdictions around the world, where there are huge other factors to account for—including whether or not there are separate state level or local government level complaints handling processes and so forth—but we are

at the quieter end of the scale, I would suggest, by comparison with those jurisdictions. So my conclusion would be that there appears to be a genuine need for this kind of law—a genuine need for a complaints handler to resolve problems and to resolve them well and effectively—but by the same token it does not appear to be something that is bringing in hundreds of complaints a week.

Senator COONEY—Do you advise government agencies as to how they might do their work so as to preserve the privacy of the people they come across in so far as possible?

Mr Crompton—In two ways. One is that often our findings on a complaint will be a systemic recommendation that some procedure change so that this sort of thing does not happen in the future. Of course, in the government agency area, we have an additional power that we do not have with regard to the private sector, which is to audit agencies and make direct recommendations to them.

Senator COONEY—Do you ever give any advice to the Defence Signals Directorate as it goes round intercepting communications of Australian citizens?

Mr Crompton—I cannot remember the exact provision of the act, but it is not part of our jurisdiction.

Senator COONEY—Who does that?

Mr Crompton—The Inspector-General of Intelligence and Security.

Senator COONEY—Have you ever given him advice as to how to do his job so that it becomes efficient?

Mr Crompton—We have not.

CHAIR—That is not a question that Mr Crompton can respond to, Senator Cooney. It contains an assumption I am not entirely sure he would accept. So shall we go on?

Senator COONEY—Thanks very much.

CHAIR—Any further questions? Mr Crompton and Mr Pilgrim, thank you very much for assisting the committee this evening, and thank you very much for the documents you have tabled, particularly the coloured printing.

Mr Crompton—Thank you very much, indeed, senators. All the very best to Senator Cooney and Senator McKiernan for the future too. Thank you.

CHAIR—Thank you both.

[9.02 p.m.]

Human Rights and Equal Opportunity Commission

CHAIR—I welcome representatives of the Human Rights and Equal Opportunity Commission: Dr Ozdowski, Ms Temby, Ms Clifford and Mr Duffield. We will begin with questions from Senator McKiernan.

Senator McKIERNAN—I have some questions that flow on from the last round of estimates committees when the commission appeared before us on Monday, 18 February 2002. I will start with page 105 from the *Hansard* of those hearings. I was making a contrast between the dealings of two different inquiries that the commission had had or was undertaking. The first was by the social justice commissioner into mandatory sentencing, where the commissioner felt that he was not able to assist a Senate committee; and the second was Dr Ozdowski's inquiry into children in detention centres where, to the contrary, we were

getting media release upon media release, which has been continuing. After my making that contrast between the two inquiries, Ms Clifford said, ‘We have noted your concerns, Senator’—and that is a quote from the *Hansard*. Has the commission addressed those concerns that I raised at the last estimates hearings? If so, what are the outcomes of the commission’s decisions, if any?

Dr Ozdowski—Yes, we addressed the concern. We provided you with answers to the questions that were taken on notice. We also considered the release of that initial report which dealt with the January visit by staff of the commission to Woomera. Also, after consultations with the department of immigration, we decided that this particular part of the broader investigation into children in detention will be released together as part of my final report.

Senator McKIERNAN—With due respect, that was not what I was asking about.

Ms Temby—Senator, perhaps I may try to be slightly more helpful.

Senator McKIERNAN—By all means, Ms Temby—whoever. As long as I get information that the commission is acting on the concerns that I brought to it at the last hearing, I will be satisfied, and I do not mind who does it.

Ms Temby—Senator, as you are aware, each process of inquiry or examination that the commission undertakes is dealt with on its merits, on what they can do, and they particularly have to do with the history of the matter. I spoke with Commissioner Jonas recently on this issue and he was aware, of course, of the *Hansard* matters. He says that he had written to the Senate and explained to the Senate that this would form a large part of the Social Justice Commissioner’s report which he is required to provide to parliament under the legislation. He took the view that, while he did not wish to not be helpful at all to the Senate committee, he was in the middle of coming to conclusions with his report, which had to go to the Attorney and be tabled in the parliament, and that that material was integral to his report.

Senator McKIERNAN—Can I say that that response is not adequate, from my point of view. I would have thought that the commission as a commission would have addressed the concerns and would have come down with some guidelines, some pro forma, of how it would address every inquiry and how every inquiry should be treated, particularly in response to the parliament and requests from the parliament or the parliament’s committees. It would appear that the commission as a commission has not done that.

Ms Temby—All I can say to you is that the commissioner concerned with your concerns was aware of them, as with the other commissioners, and takes the view that in that particular instance that was the way in which under his legislative responsibilities he had made the decision to carry forward. I have heard what you said and I will ensure that the matter is brought to the next commission meeting.

Senator McKIERNAN—My question did go to the commission rather than to the individual commissioners. I would like you to also look at your earlier response where you talked about each inquiry being dealt with on its merits. I was careful in the last round of estimates to draw the attention of the committee to the fact that the inquiry into the mandatory detention of children was an own motion inquiry by Commissioner Ozdowski, and that is the one that is receiving the publicity. The other one was at the request of the Senate, and when the Senate committee could not get assistance from the commissioner in regard to that one. I drew that distinction and I had hoped that the commission as a commission would have addressed that and made sure that that situation was not repeated in the future and that each individual inquiry would be treated on its merits, seeing that they are of equal value certainly

to the parliament. It would appear that was not the case. You have indicated that will be taken to the commission. I will be looking for what happens in regard to that, although I will not be here myself to press the matter.

Senator LUDWIG—I will follow it up.

Senator McKIERNAN—Dr Ozdowski, in response to my earlier question you mentioned a report to the Senate. I quote from page 99 of the Senate *Hansard* of those hearings, which states:

Dr Ozdowski—Senator, the full report of my visits to the centres will be reaching you soon, and it will flesh out the issue in much fuller detail. You will understand our reasoning better.

CHAIR—When is ‘soon’, Commissioner?

Dr Ozdowski—I hope to have it sometime in March. Basically, it will be a short report describing my visits, including Woomera—the last visit by my officers to detention centres. It is a progress report.

You informed the committee; now you have changed your view on that.

Dr Ozdowski—No, I did not change my view on that particular report. I must say I was a bit overoptimistic and the process took much longer. The report is drafted. We are waiting for final comments from the department of immigration. We hope it will be presented soon. I got that report drafted. Unfortunately, we cannot release it unless we receive proper comments from Immigration, and I hope they will be arriving any day.

Senator McKIERNAN—Where is the explanation to the committee about the commitment that you or the commission gave the committee at the last hearing?

Dr Ozdowski—I made this commitment and I can only apologise to the committee because I was overoptimistic that it would be possible to finish the full process of lodgment of that report with parliament earlier.

Senator McKIERNAN—You have not offered the committee an explanation of why you have not fulfilled a commitment that you gave of your own volition to the committee?

Dr Ozdowski—I said to the committee that at that stage it was my best guesstimate of the time required to deliver it. By the end of March, we had the draft ready. However there were issues which were brought to my attention which required further time and consultation.

Senator McKIERNAN—But until tonight you had not explained to the committee why that report was not here. It was supposed to be a report to the parliament, not necessarily just to this committee.

Dr Ozdowski—That is correct, yes.

Senator McKIERNAN—During the last estimates we talked about those disturbing reports of children in Woomera having their lips sewn and the commission going in and investigating that. That is a separate issue; we can leave that for later. We talked about when your officers went to Woomera, and you were asked questions about your officers talking to people who had participated in the alternative detention trial that has been conducted in Woomera. The chair asked:

In relation to the comments you made in response to a question from Senator McKiernan on the trial at Woomera to remove women and their families who were interested in participating, did you interview those people?

You replied:

Yes, my officers interviewed the people over there and they formed a view that it is quite a successful project, although relatively narrow at that stage, so let us wait for the ministerial report, which I hope will be coming soon, about what is happening over there.

The chair asked:

Can you tell us what proportion of the people participating in the trial you interviewed. This is an area in which I have a significant interest. What number of people participating in the trial did you interview? The majority of people participating in the trial? A small number?

You replied:

I would need to go to my papers.

Did you mislead the committee in making those comments?

Dr Ozdowski—No.

Mr Duffield—The response that Dr Ozdowski gave was corrected subsequently to the committee.

Senator McKIERNAN—Shall I repeat the question? The question was: Dr Ozdowski, did you mislead the committee with the response that you made to the chair's question at the last estimates committee? I can read it again if you wish.

Senator Ellison—I wonder if the correction could be put to Dr Ozdowski. You cannot ask in isolation. In the normal course of events, if it has been corrected, the corrected version is what stands, not the original piece of evidence. He could be asked, 'You made this statement; why did you correct it?'

Senator McKIERNAN—I take your point, Minister, and it is quite right. In the normal course, as we know from this committee—very shortly afterwards we received letters from Commissioner Keelty—there is a letter from the officer making the correction. There is no letter on the record from Dr Ozdowski on the information that I have just read from *Hansard*. There is on the record responses to questions. For example, there is a response to that question—question No. 36—from Dr Ozdowski or from HREOC which completely contradicts what Dr Ozdowski did but it does not retract what Dr Ozdowski put to the committee.

Dr Ozdowski—Could I mention two matters? The first matter is that I was quite clear when we spoke about it that I did not have the details about exactly with whom my officer spoke over there and that I would be looking into that matter. Looking at the report later provided by my officers, I am confident that they reported to me that they spoke to the supervisor, they spoke to other staff and they briefly met with some women and children in the houses. I do not see here how I misled the committee.

Senator McKIERNAN—Can I quote from the *Hansard*? Have you got the *Hansard* there?

Dr Ozdowski—Yes.

Senator McKIERNAN—It is about two-thirds of the way down the page:

Dr Ozdowski—Yes, my officers interviewed the people over there and they formed a view that it is quite a successful project, although relatively narrow at that stage, so let us wait for the ministerial report, which I hope will be coming soon, about what is happening over there.

It did not seem to me that you were confused or that there was a lack of clarity in that particular statement.

Dr Ozdowski—If you would go to the next statement, I am saying:

I would need to go to my papers. Allow me a moment and I will check it. No, I do not have that detail here but I can provide it to you.

Senator McKIERNAN—I quoted that in my earlier quote when I asked a question about misleading the committee. You had not, and probably still have not, retracted that information. We have got answers. The answer to question No. 36 is a contradiction of your remark but hardly could it be said—in the way this committee has operated over the years—that it is a retraction of the information, which I find very disappointing. I suppose to give clarity to the record I should quote what the commission has put back in response to the question on notice—question No. 36—asked by the Chair. It states:

Senator Payne asked the following question at the hearing of 18/19 February 2002.

What number of people participating in the trial (to remove women and their families) did you interview?

I am advised that the answer to the honourable Senator's question is as follows:

No people participating in the trial were interviewed—
no people—

Some women and children were briefly met during an inspection of the houses being used in the trial.

Dr Ozdowski—I think when I was talking about people I meant the officers who were interviewed over there and possibly that is the misunderstanding. I was referring to what I was told by my officers and the officers were telling me that the supervisor and other staff were interviewed in person and that they had a brief meeting with the people who were living there. I was not clear of the detail at that stage and therefore in a way I said, 'I am not sure about it.' But I know they were there; I know they spoke to people without referring to which people.

Senator McKIERNAN—I accept that, Commissioner, in regard to your appearance on the night. The reason in many instances that questions are taken on notice is to check the facts. You had opportunity, or the commission had opportunity, to check the facts and to correct the record. It did not do that. I think from the point of view of the Senate, a Senate committee, and particularly a Senate estimates committee, that is unforgivable. I trust that you will read the *Hansard* on this and that the commission as a whole will, not only on this instance but on the two other matters that I have raised, lift their game and show the due respect that should be shown to a committee such as this.

These questions are not asked just for the sake of asking questions and to fill in the day. The commission has vast responsibilities, very serious responsibilities, and it is taxpayers' funds that pay for the commission to undertake those responsibilities. In the sense of what we have just been through within this committee and the series of questions that has been put to you now, I think that you are not fulfilling your obligations to the parliament or to the taxpayers of Australia by the manner in which you responded to those questions during the last round of hearings and, might I say, even tonight.

Dr Ozdowski—Senator, I am hearing what you are saying. The point is taken.

Senator McKIERNAN—Thank you very much. I want to move on. The point is taken, and I do not want to labour the point. I want to go back to the *Social Justice Report 2001*. Let me ask a question of the minister or the secretary about the tabling of documents such as this—and I am holding up the *Social Justice Report 2001* from the Aboriginal and Torres Strait Islander Social Justice Commissioner, and the covering letter is dated 23 December 2001. When it was tabled in the Senate on 14 May 2002, the information was that the report

was submitted to the minister on 12 March and it was received by the minister on the same date. Why is there a discrepancy in dates? It is a very important report as, indeed, is the *Native Title Report 2001* from the Aboriginal and Torres Strait Social Justice Commissioner. Why is there a discrepancy in dates from 23 December through to the 12 March and then through to 14 May—and 14 May, of course, was budget day when we were just inundated with material from all over the place. Why was there a delay in the tabling of this report?

Mr Cornall—I am sorry, Senator, I do not know the exact circumstances. I am not sure that there is an officer here who does.

Ms Leigh—Senator, I will check for you, but my understanding was it had been tabled within time, because it is 15 sitting days.

Senator McKIERNAN—It certainly is within time—I am not arguing the point about it being within time.

Ms Leigh—I am sorry. I misunderstood the question then.

Senator McKIERNAN—It was received by the minister on 12 March but it was not tabled in parliament, or available to the public, until 14 May.

Ms Leigh—There is always time for the minister to consider the report before it is tabled. That is why there is that provision for the 15 sitting days. It is quite usual for there to be some delay between when any minister receives a report that is to be tabled and the tabling of the report.

Senator McKIERNAN—I thought that it was a finished document by then. Didn't the minister get a draft copy of the report prior to 23 December? Wouldn't that be the normal routine of business, that the respective minister—let us not just talk about this one—would receive a draft copy and there would be responses from the respective minister and then they would sign off on the report, put a name to it and add a cover and a covering letter, and in this instance that would have been 23 December?

Ms Leigh—Senator, I do not know and I need to check on whether there was an advance draft provided. I do not think that I can add anything more to my comment about the usual period being provided for consideration between receipt of reports and tabling, and that it was tabled within time.

Senator McKIERNAN—Thanks, Ms Leigh. If there is any further information on that you can come back to the committee on that. I appreciate that. Let me clarify this before I ask questions. We have made inquiries about the possibility of Commissioner Jonas being present with us tonight and we were told that the practice of the commission is that one commissioner will be present and Commissioner Jonas, in any case, was overseas, so he could not be present to meet the wish of the committee. It was a request I put to the committee, but the committee did not endorse that request because the commissioner is not available. Is it true that the commissioner is overseas?

Ms Temby—Yes, it is true; the commissioner is overseas.

Senator McKIERNAN—What is he doing?

Ms Temby—The commissioner is at the UN permanent forum on indigenous issues in New York and also the UN human rights workshop on indigenous self-determination. It is a longstanding commitment. If Commissioner Jonas were in Australia, he would be here as requested. Commissioner Jonas, of course, would be available to the committee to discuss his report at any time that is mutually convenient.

CHAIR—I should also note for the record—and I omitted to do this at the beginning of HREOC’s evidence—that we have a letter from the commission indicating that the president is in fact attending a conference in Hanoi and is unable to be here. In response to the committee’s request for advice when chief executives were unable to be here, that is what was received.

Ms Temby—The president is actually not at a conference; she is part of the Australian delegation at the inaugural session of the Australia-Vietnam dialogue on international communications.

CHAIR—I am sure they are conferring, though, Ms Temby—aren’t they?—even if they are not at a conference.

Ms Temby—I would hope they are conferring in a convivial tone.

CHAIR—If they are not conferring, what are they doing?

Senator McKIERNAN—I want to make some comments on the way through to emphasise the point I raised during the course of the last Senate estimates committee, and then I want to ask questions about not so much the content of the report or the thrust of the report, because that is for a different day, but the expenditure of public funds in the development of the report. If you would bear with me for a moment, I want to start with the conclusion—which is not necessarily the best way to start these things, but from my perspective it is—which is on page 130 of the report, and I quote two small parts of it:

From whatever perspective they are examined, mandatory detention laws in WA and the NT are bad law.

I think what we should be talking about here is mandatory sentencing laws, because that is what the inquiry was about; but that is the quote. The second quote is:

The WA provisions are more complex than those in the NT and have avoided scrutiny because of this.

As an individual parochial Western Australian, I had hoped that the commissioner would provide this scrutiny, and I am deeply disappointed that that is not the case. I say this in the context that now WA, my home state, a Labor state, is the only state or territory in Australia which has mandatory sentencing laws in place. I go back now to page 102 and quote a small part of it:

In the WA, we commissioned a researcher—

‘we’ being the commission. Why would the commission, with all the resources available to it, need to outsource an important inquiry such as this? Does anybody from the commission know why such a decision was taken?

Ms Temby—Specifically that decision? No, I do not. But, obviously, these two reports are significant reports for the commissioner every year, and no doubt he seeks expertise wherever he believes it can be of assistance to him.

Senator McKIERNAN—I accept that. I have held the commissioner in great esteem, until now I believe. Can I just further enlighten you as to the lead-in to that sentence that I have just quoted:

We interviewed lawyers, police, correctional services, community leaders, program coordinators, youth workers and young offenders in the Alice Springs region, Darwin, Tennant Creek, Katherine and Groote Eylandt.

That shows the depth of the detail that the commissioner went into to do the work that he was doing to fulfil the report. Then in WA they commissioned a researcher. There is no detail of where that researcher went for information and little detail of who they met. As a Western Australian, I must say I am really, deeply disappointed, particularly now, as I said in the beginning, that my state is the only state or territory in Australia which has mandatory sentencing laws in place. I think we in WA, and particularly juvenile Aboriginal people who get into trouble, have been let down very badly by this inquiry.

To reinforce that point of how they have been let down, I will read from page 13 of the *Social Justice Report 2001*. It is talking about the rates of incarceration, particularly the rates of indigenous overrepresentation and deaths in custody. It says:

On a state by state basis, the situation was worst in Western Australia and South Australia where Indigenous people were incarcerated at 20.6 and 17 times the rate of non-Indigenous people respectively at 30 June 2001.

That is damning enough but it goes on. At the first dot point over the page, the report is again talking about rates of indigenous overrepresentation and deaths in custody, this time with regard to women. It says:

In Western Australia the incarceration rate was 29.7 times the non-Indigenous rate ...

Yet the commissioner saw fit to engage a researcher to go out and gather information on a regime that incarcerates those people at those rates—a mandatory sentencing regime, which the commissioner was asked by the parliament to investigate. I really do regret that I am retiring at this point in time and that I do not have the opportunity to follow this matter through with the social justice commissioner and ask him to justify the effort that was spent on this.

In concluding my remarks on this, I will put a couple of questions on notice to you. I ask who the consultant or researcher was; why the matter could not have been undertaken within the commission, where I had hoped there was expertise to undertake inquiries such as this, otherwise I doubt the Senate would have given the brief to HREOC to do it; what the cost of it was; who they met during the course of the evaluations of the report; and whether the results of the report can be provided to the committee so that we in turn can evaluate what was gained by the commissioner for material to be put into this report. I really am very distraught about what has occurred here. I had expected better from the commission and from the individual commissioner. I personally am deeply disappointed by this, and I suspect that there are many others around Australia who are as well. That was quite a statement; I do not know whether you want to respond. If you do not, that is fine; I will move on to the next questions.

Ms Temby—I will draw your comments to the attention of the commissioner immediately.

Senator McKIERNAN—I would appreciate it if you would bring them to the attention of the president as well.

Ms Temby—Certainly. I am sure that Commissioner Jonas will follow up any opportunity he may have to discuss the issues with you, and certainly we will answer your questions on notice as soon as we can.

Senator McKIERNAN—Thank you. The questions on notice belong to the committee, not to me as an individual. I will look with interest at the response of Commissioner Jonas to that, but I put it in the context of the earlier questions that I addressed to the other commissioners.

In the ministerial budget statement at page 25, there is an item regarding community affairs and HREOC, with an estimated actual for 2001-02 of \$1,079,000, but budget estimates for 2002-03 show only \$0.988 million. Does this item refer to a decrease? If it does, why is there a decrease and what implications does it have for the indigenous affairs work of HREOC and all of HREOC's work?

Ms Temby—Could I take that question on notice? I was aware of the figures when they were compiled, but I am not sure quite what the difference is between the two years. They of course encompass the staff of both the native title and the social justice units and the commissioner's costs and oncosts, but I would need to refer in quite some detail to the figures to give you more information regarding the differential between them.

Senator McKIERNAN—Thank you very much. I would appreciate it if you could do that. In Dr Jonas's speech to launch the *Social Justice Report*, he had the following comment to say:

To date, there has been no formal, comprehensive public response by the federal government to the reconciliation documents handed to the government at Corroboree 2000 or the recommendations of the Council for Aboriginal Reconciliation's final report of December 2000.

He went on to make some other comments. Has the commission received any indication from the government about whether or if it will respond, or when a response might be made by the government to either of those two reports?

Ms Temby—I am informed that the government responded to recommendation 1 of CAR's final report, which concerns implementation of a national framework for addressing indigenous disadvantage, but that is one out of, I think, six. I am unaware that we have been informed on any likelihood or time frame of a response to the other matters.

Senator McKIERNAN—Minister, could you take that on notice and see whether you can get a response from the minister to that question as to when there will be a response?

Senator Ellison—That can be taken on notice. I will tell the Minister for Immigration and Multicultural and Indigenous Affairs.

Senator McKIERNAN—Commissioner Ozdowski, the deadline for submissions to the national inquiry into children in immigration detention was extended from 15 March to 3 May 2002. What was the reason for that extension?

Dr Ozdowski—That is correct, Senator. A number of organisations asked us to extend the deadline, saying that the process of writing a submission is very complex and that they did not have enough time to provide a quality submission.

Senator McKIERNAN—I note for the record that you did indeed inform the committee that there was a change to the closing date for submissions. In response to question No. 35 from Senator Ludwig on where public hearings would be held, you indicated that it would be Sydney, Melbourne, Woomera, Perth, Port Hedland, Curtin and Brisbane/Darwin. Are there any changes to those venues?

Dr Ozdowski—Yes. By now we have received submissions and we have made the decisions as to when and where the hearings will be held. I will ask Mr Duffield, Director of the Human Rights Unit, to give you the exact dates and places.

Mr Duffield—At this stage, it is proposed that there will be public hearings; however, I should make a distinction between public hearings that will be held outside detention centres

and visits to detention centres, which are involved with the hearings but are not, as such, public hearings necessarily.

The first of the public hearings will be held on Thursday and Friday of this week in Melbourne. There will be public hearings in Perth, commencing 10 June, and then out to Curtin and Port Hedland for hearings on 12 and 13 June. At this stage, the public hearings in Sydney will be on 24 and 25 June, and in Adelaide the hearing will potentially be on 15 July. The reason that ‘potentially’ is the operative word here is that DIMIA have advised us that the contract of the management of the detention centres is reaching its finality and that that is involving DIMIA in quite a lot of inspections of detention centres with would-be contractors. They have approached us and asked us to refine our program to a certain extent to help them, so we are in a dialogue on that situation as we speak. The answer that is being given tonight is as at tonight, but there could well be further adjustments to that program. As we get that information, if you want it, we would be happy to provide it on notice.

Senator McKIERNAN—Yes, if you would keep the committee up to date on it.

CHAIR—There is no intention to visit Christmas Island, Mr Duffield?

Mr Duffield—It is in the program as a potential, especially in light of the government’s announcement in the budget of a substantial capital work commitment for the creation of a permanent 1,200-person facility on the island. We are leaving that as a potential to visit, but there is no clear commitment to that at this stage.

CHAIR—I do not have the terms of reference of the inquiry in front of me, but I understand it pertains to the conditions of children in detention centres. How will the potential construction of a facility at Christmas Island wrap into your terms of reference appropriately?

Mr Duffield—With the commissioner’s indulgence, obviously a commitment of that capital spend indicates that the government certainly sees that that facility will be substantially used in the foreseeable future. Obviously, everything that we do has to look not only at the actuality of now but also at the potential. For instance, Baxter in South Australia, which has now been completed as a permanent facility but does not yet have any asylum seekers, is of some interest to the inquiry as to how that will function. Again, we have not made a final decision on that.

CHAIR—Thank you for clarifying that for me.

Senator McKIERNAN—How many submissions to the inquiry have you received by closing date?

Dr Ozdowski—We have received 226 submissions and we would classify that about 70 or 80 of them are of a very substantial nature and will be of major benefit to the inquiry.

Senator McKIERNAN—You have published some of the submissions on the Internet, and that is very valuable. It will help the inquiry process no end. It is a very good facility. Why have you published only some?

Dr Ozdowski—We have released at the moment two lots of submissions. The first lot deals with education and the second lot deals with mental health. It requires quite a lot of work to select the submissions to ensure that privacy issues are appropriately protected. We are doing it as soon as we can. We intend that all submissions of major significance will be available there.

Senator McKIERNAN—You will receive submissions in a variety of forms, as is explained on your web site—again, this is an innovation which I commend the commission

for—including oral submissions by tape and pictures from children. I think it is indicated on the web site that you have in fact got some pictures from children that you have already accepted as submissions to the inquiry. Is that correct?

Dr Ozdowski—As I understand, yes, but could I ask Mr Duffield, who runs the unit, to respond to that.

Mr Duffield—I would have to take that question on notice for the specifics. I know that we have received some drawings from children in detention. We are also running focus groups of children who were in detention and who are now out in the community on temporary protection visas. From memory, some material has come from them. The actual specifics of other media that is being used I would have to take on notice.

Senator McKIERNAN—Thank you very much. I will leave it at that. How many of the submissions have been received so far on a confidential basis? Do you have an indication or perhaps a percentage figure?

Mr Duffield—No, I would have to take that on notice, Senator.

Senator McKIERNAN—In response to my questions about the report which was to be presented to parliament in March—and I am not going to go back to that issue—on page 99 of *Hansard*, about three-quarters of the way down, you start the paragraph by saying, ‘Yes, that is correct,’ and then you go on to say at the conclusion of those remarks, in describing how the inquiry will be conducted:

Then we will write our report. So it is a very extensive process, but a process which is aiming to establish the facts.

Am I correctly quoting you?

Dr Ozdowski—That is correct.

Senator McKIERNAN—How will you do that in this very extensive inquiry? It seems to me that from the last round of hearings when we were asking questions about the allegations of the lip sewing of children in Woomera, which your officers went in to investigate, you have not been able to establish the facts in that instance.

Dr Ozdowski—We established the facts as they were reported to my officers. My officers reported to me that they spoke with a whole range of officials and with the parents and that they were not able to establish that there was any assistance given by the parents in lip-sewing exercises. In a way, in order to meet your interest in this issue, we have written a more extensive version of that particular visit to Woomera. I wanted to release it to parliament as well as a part of the inquiry. However, after consultations with the department of immigration, we decided to test all evidence further, so consequently that part of the report which deals with the January visit to Woomera will constitute a part of the overall report and the department of immigration will be providing evidence in the public hearings as well.

Senator McKIERNAN—Staying with the allegations of lip sewing, the committee was very concerned about that and, following your evidence to the committee, the committee on the last occasion that it met on estimates continued to address questions on this matter to the department of immigration when officers from the department appeared before us. Since that time some members of the committee have had the benefit of a briefing from the department dealing with the allegations, the inquiries and the investigations that went on. Without giving away any of the privileged matter that was given to members of the committee on that

briefing, the facts surrounding those incidents have not yet been established, even by the bodies charged with investigating those allegations.

Dr Ozdowski—I can only rely on the evidence which was brought by my officers and on what my officers told me. I cannot find the exact detail of whom they spoke to, but they spoke to quite a number of people in the detention centre and later they spoke also to the officers from the South Australian Department of Human Services. Basically the advice was that there was no evidence that adults were either encouraging it or assisting with it or doing it to the children.

Senator McKIERNAN—The allegations are still hanging there, aren't they, because there has been no proof and no facts found by the investigating authorities to dismiss the allegations in the first instance or in fact to confirm the allegations?

Mr Duffield—Obviously we are not privy to the briefings that you receive but, if they are similar to the briefings and discussions that we have had with DIMIA, in all fairness the position is somewhat analogous to this: we say the glass is half-full and the department is saying it is half-empty. Their finding was that they believed that it was possible that there was coaching, if you like, but they could not prove it. We take the position that there was no proof to say that it occurred; therefore, in the absence of that, you give the benefit of the doubt to the children. The advice that the commissioner received from South Australian FAYS was similar in context, that they in turn had no proof either way, so it is a question of which way you want to put the balance.

Senator McKIERNAN—It does not matter which way I put the balance. What I am asking—and what I started asking Dr Ozdowski—is how the commission in this inquiry will establish the facts. You do not have investigatory powers as such in the investigation of allegations of child abuse, do you?

Dr Ozdowski—No, we do not. On this particular occasion, our officers interviewed the health services coordinator over there and also the ACM manager about incidents involving lip stitching. Basically, as Mr Duffield said, there was no evidence that any of the parents were involved.

Senator McKIERNAN—I accept that you are saying that there is no evidence. How do you establish the facts, because you are not an investigatory body with investigatory powers?

Dr Ozdowski—We will be testing this issue in public hearings with the department of immigration. We will have to weigh the evidence, as it is provided, to our best ability.

Senator McKIERNAN—I have not had the benefit of seeing a copy of the report of the investigating body into those allegations—the body with the powers to investigate. I have not received or sighted a copy of that, but I have been told that, with their investigatory powers, they were not able to establish the facts—facts to dismiss the allegations or facts to confirm the allegations. If a body such as that cannot do it, how can you do it?

Ms Clifford—The commission does have the power under the Human Rights and Equal Opportunity Commission Act to obtain certain information. It has compellable powers to call witnesses to particular inquiries and to obtain documentation. So we have quite a number of powers to be able to seek the information and weigh up the evidence in the normal course of an inquiry and to give it appropriate weight and relevance either through personal statement or by the collection of original documents. The commission has that power. It can do that voluntarily under its normal inquiry powers: the national inquiry, under section 11(1)(F) of the

Human Rights and Equal Opportunity Commission Act, enables the commission to inquire into an act and practice that may be inconsistent with a human right.

We also have compellable powers, but the commission rarely needs to use those because the parties that we are often inquiring into volunteer that information and allow us access to interview witnesses, to people directly involved and to obtain the original documents to particular incidents, to medical reports and things like that. They would be the same sorts of powers that the state children and community services department would have to be able to call and examine witnesses and documents.

Senator McKIERNAN—I am grateful to you. Thank you very much for that information because it does answer the first question I addressed to Dr Ozdowski. In saying that, and thanking you for it, I accept with all humbleness that I was wrong when I said you did not have the investigatory power. Now that I know that you have that power, I am going to address the question again to you, Dr Ozdowski, because you and I know now that you have the ways and means to seek to establish the facts in relation to those very, very serious allegations. Let me repeat them: it was alleged that children as young as 12 years old had had their lips stitched, sometimes with the allegation that maybe with the assistance of an adult. Will you now, in the course of this inquiry, use your investigatory powers to try and do something that the state department in South Australia was not able to do, that is, to establish the facts on those very, very serious allegations?

Dr Ozdowski—We will be doing it through two different processes. First, we will be asking people to give evidence during the public hearings. We will also be requesting a whole range of documents on particular cases from the department of immigration and from ACM to see what information is there to be able to judge what really happened.

Senator McKIERNAN—Will you be using your investigatory powers to examine the very serious allegations of lip sewing among children as young as 12 in Woomera, I think around Australia Day this year?

Dr Ozdowski—The answer is yes.

Senator McKIERNAN—You will be?

Dr Ozdowski—Yes.

Senator McKIERNAN—I am comforted by that. I am sorry you took so long to get to it. I was disappointed with the result of the inquiries in South Australia, which I have not seen but have been told about, in that those allegations still hang out there because they have not been dismissed. I hope that your organisation, with the powers that you have got and the inquiry that is under way, can get to the bottom of this. If there is confirmation, I would expect from that that there would be a brief prepared for the DPP, with the possibility of charges arising from it. If there is no substance to it, I would welcome that as well and perhaps the persons who made the allegations public might in turn go back and retract, as I had to humbly tonight when I was talking about the investigatory powers of the commission. I would be very pleased if you would do that.

With regard to some of the matters in some of the submissions I have seen that go to the commission, the allegations made will be tested in public hearings. I refer to the recent submission from the Catholic Commission for Social Justice, I think it is called—I have the paper here but I have so many papers around me. As part of that very comprehensive submission it repeated some allegations about a child being left without food deliberately for a period of something like 34 hours—it might have been 36, it might have been 32. The

reason I raise that is that those allegations had been brought to this committee as well and we had examined that matter with the department of immigration through the Senate estimates committee processes, yet the allegation hangs out there and is used in a number of other ways. Part of the reason why I am using it is that some of the media have picked that particular instance up and used it. How will you test information such as that? Will you use your powers to go back to the Senate estimates committee and get the responses to questions that various senators put to the department about those very serious allegations?

Dr Ozdowski—Possibly the first thing we will do will be to look at getting access to documentary evidence which is already there. This kind of issue should be reported in a whole range of ACM reports to DIMIA, so when we have a specific case mentioned to us we will be making case-by-case decisions on what documents of DIMIA we need to get access to and what people we need to interview to clarify the circumstances. But the whole idea of public submissions was not only to get a general overview of the system or some good ideas on how it could work better in the future in terms of alternative models but also to have these individual cases brought to our attention so we can follow it through.

Senator McKIERNAN—How do you expect the department of immigration, the body responsible for these things, and ACM to respond to allegations such as that? If the Catholic commission had not made that document public, I certainly would not have known what was contained in it and I doubt that the department would know either. Will you be putting instances like that to the department and asking them to respond to them by written submission or, indeed, in public fora like we are doing tonight? What will be the methodology for establishing the facts and getting the record established?

Dr Ozdowski—We have power to request documents from the department of immigration, so consequently we will be requesting all documents which relate to particular cases like it and examining the official records. At the moment we reserve two days of public hearings for cross-examining departmental officers. They are two methods that we will be using.

Senator McKIERNAN—Will Australasian Correctional Management be invited to attend the hearings? They deliver the service at the various detention centres.

Dr Ozdowski—Yes, they will be invited.

Senator McKIERNAN—Will the department be making a written submission, or indeed have they made a written submission, prior to the closing date of submissions?

Dr Ozdowski—Yes, they have already made their written submission.

Senator McKIERNAN—When will you decide to publish that document? They appear before the committee on Wednesday.

Dr Ozdowski—My understanding is that this particular submission will be distributed to members of parliament tomorrow, but that is only what I have heard on the grapevine. We are just securing an electronic copy of that submission, and as soon as it is available it will be released publicly.

Senator McKIERNAN—I look forward to that. There was one further assertion contained in the Catholic commission's document, and that related to allegations about juveniles who had been released recently on temporary protection visas. One of the allegations which was repeated in the media was that a young man had been working in one detention centre for 14 hours a day for \$1. How would you test that allegation?

Dr Ozdowski—We will have to listen to that young man's story first, then we will have to ask the Department of Immigration and Multicultural and Indigenous Affairs to respond to it, then we will have to see what the working arrangements are and then we will have to judge it.

Senator McKIERNAN—Will the delay in the closing of submissions to the inquiry have the effect of blowing out the reporting date, which is the end of this year?

Dr Ozdowski—We are still working towards finishing our major work towards the end of the year. However, I possibly need to bring to your attention that after we finish our work there will be a requirement for us to receive comments from the department of immigration before we finalise the report and put it to parliament for consideration. There were periods in the past when we waited a substantial time to secure comments from the department.

Senator McKIERNAN—I have one final question in this area, then I will ask questions about the sex discrimination unit—it is about time I gave some of my colleagues an opportunity to ask some questions. You have established a special commission—is that the word?—for this current inquiry. You have engaged two additional temporary commissioners to assist in the work of the inquiry.

Dr Ozdowski—That is correct. The commission appointed two assistant commissioners who, because of their expertise, will assist me with the public hearing and with the final drafting of the report.

Senator McKIERNAN—There is nothing secret about this, is there?

Dr Ozdowski—No, it is all on the public record.

Senator McKIERNAN—It is already on the public record?

Dr Ozdowski—Yes.

Senator McKIERNAN—You might detail to the committee the names and qualifications of those assistant commissioners. You might also put on the record their expertise in this area.

Dr Ozdowski—The first assistant commissioner is Dr Robin Sullivan, who at the moment is the Commissioner for Children and Young People in Queensland. She has permission from the Queensland government to assist us with this inquiry, because she is a statutory officer. She had been involved with education for quite a long time. I think she was the first female Deputy-Director General of Education in Queensland and she also conducted research. In terms of her appointment, her educational expertise and knowledge were important in respect of the schooling standards and how they apply to children's ages and so on.

The second assistant commissioner is Professor Trang Thomas. She is currently the Director of Science of the Australian Psychological Society. She is also a professor in Melbourne. She specialises in children's psychology. She is also quite an expert in multicultural affairs. We thought that she would be very able to assist the committee to go especially to the evidence dealing with the impact of detention on children.

Senator McKIERNAN—Thank you for that information. The appointment of these assistant commissioners will have to be resourced in terms of salary and other emoluments. What are the terms of the appointments of the assistant commissioners and on what salary scales are they employed?

Dr Ozdowski—An agreement was reached which does not involve salary, but I will ask the director of the unit to give you the details.

Mr Duffield—The arrangement was that, in the case of Dr Robin Sullivan, the time that she spends working on this inquiry in terms of the public hearings and other matters that we ask of her—that is, days or part thereof—we would reimburse her commission, the Commission for Children and Young People, the salary that she would earn on that day so that they are not out of pocket. In the case of Professor Trang Thomas from RMIT, the arrangement is with RMIT and, in respect of a day or part thereof of work for us, there will be reimbursement at the rate of \$320 a day for her time. Obviously, then there is just straight reimbursement of travel expenses such as hotel expenses and airfares.

Senator McKIERNAN—You have not yet finalised all the hearing dates. Do you have some indication of the number of days when both assistant commissioners would be, for want of a better word, employed on this inquiry by the commission?

Mr Duffield—I will take that on notice. I will be in a better position on that score in perhaps two weeks time when hopefully our program will have finalised a little more in terms of the public hearings.

Senator McKIERNAN—Thank you. Have you done any estimates of the overall cost of this inquiry?

Dr Ozdowski—Yes, we made some estimates and I will ask the person responsible for them.

Mr Duffield—First of all, it is the commission's intention that the costs of this inquiry will be fully met within the normal operating costs of the Human Rights Unit. Based on past national public inquiries, we estimate that over two financial years the cost will be approximately \$380,000.

Senator McKIERNAN—I wish you well in the inquiry.

Dr Ozdowski—Thank you, Senator.

Senator McKIERNAN—I hope that you are able to get to the facts and that you will use your investigatory powers to good use, particularly where allegations of child abuse have been raised. I am sorry it has not been done to date. I have not pressed that matter, but you have not used those powers to date; I hope that you will use them now following the commitments you have entered into tonight in public that you will consider using those investigatory powers to get to the bottom of those very serious allegations at Woomera and, if there is any justice to be brought to that situation, I hope it can be brought one way or the other, either by refuting the allegations or by confirming them, leading to criminal charges being laid on the perpetrators or the persons who assisted.

Senator COONEY—I would like to clarify a few matters about the inquiry. I am a little bit concerned about what you have been invited to do in going about this inquiry into child problems in the detention centres and the sewing of lips together. I have been on briefings too and, as I see it, there is absolutely no evidence that the parents sewed the lips together. People from the department seem to say that since there is no evidence then it might be the case. But I think there is as much evidence that the parents sewed the lips together as there is that the department or, perhaps even more likely, ACM—Australasian Correctional Management—sewed the lips together. But I hope that when you are going about your exercise you are not going around with any preconceptions as to who did the lip sewing. Has the commission made up its mind one way or the other about that?

Dr Ozdowski—We take the view that the evidence which we have seen so far does not provide proof in any way, shape or form that the lips were sewn by parents or that parents were encouraging children to do so, and we have publicly expressed that view.

Senator COONEY—Normally the rule in societies which respect human rights is that those who allege have to prove. I am not even sure who has alleged in this case. Do you know anybody who has alleged that the lips were sewn together other than those rumours in the media?

Dr Ozdowski—I cannot respond to that. I have heard a general allegation, but when I ask for some further evidence to support it it is always short in coming.

Senator COONEY—I do not want to tell you how to run an inquiry, but there seems to be an appetite to get to the point where people can say it is the parents that did it. The preconception is that it is the parents. I hope the commission has not got that preconception.

Dr Ozdowski—We do not have that preconception. If we err, we err on the other side.

Senator COONEY—You do not err on the other side; you just apply the rules of law. That is not erring, I would have thought. Isn't there a rule of law that says that those who allege must prove?

Dr Ozdowski—That is correct, and as far as I can see it was not proven.

Senator COONEY—It is not a matter of how far you can see; it was just not proven. Isn't that so?

Dr Ozdowski—That is correct.

Senator COONEY—Why do you use the express words 'not proven'? Isn't it a Scottish test when you are saying, 'We haven't got enough evidence but we are going to thump them anyhow by saying it is not proven'? I would have thought there was no evidence that the parents did it and that at this stage that is a fairly nasty inference that is made by people who seem to be intent upon denigrating certain people in immigration detention centres.

Dr Ozdowski—Yes. It clearly plays that role.

Senator COONEY—There is just as much evidence that the department did it or that the staff of Australasian Correctional Management did it. I wonder why they are not put forward as being possible perpetrators of this deed.

Senator LUDWIG—I would like to ask some questions in respect of the report on paid maternity leave. As I understand it, on 18 April an interim report on parenting options and paid maternity leave called 'Valuing parenthood: options for paid maternity leave—interim paper 2002' was produced. Where is that up to? Is the government costing options that were canvassed in the interim report? Have they been referred to the government for costing?

Ms Moyle—I am the Director of the Sex Discrimination Unit and I am working with Pru Goward on this issues paper. At present, the issues paper is up to the consultation period. The interim paper was launched on 18 April, and we have asked for submissions to be provided by 12 July this year. There is a 12-week period for written submissions to be received. We are currently embarking upon our national consultations. In each capital city we are hoping to meet with unions, employers, employer groups, women and community groups to seek input and advice in relation to the issues we have raised in that paper.

Some of the costing on the various options is difficult to do in the sense that there is key research that we need to allow us to do the detailed costing. However, in terms of the options that are emerging most strongly, we feel that we can give some degree of a ballpark figure.

Senator LUDWIG—Do you have those figures available? Have you developed the costings? Who has developed the costings in relation to those ballpark figures?

Ms Moyle—We are still in the very early days of consultation so we are yet to see which options do emerge through the community consultations as the leading options. At this stage we have not done anything but the most rudimentary costings. You may have heard an amount of \$300 million per annum discussed. That was done on a thumbnail estimate by our office, using the very basic assumption no frills model of paid maternity leave.

Senator LUDWIG—What was the no frills model?

Ms Moyle—It was based on 12 weeks paid to those women who are in the work force and who have had 12 months continuity of service, at the rate of the basic minimum wage, which was \$413 per week at that stage.

Senator LUDWIG—Is that irrespective of income?

Ms Moyle—We did our calculations on that basis, irrespective of income, but we would have capped the amount to the woman's actual income or the basic minimum wage.

Senator LUDWIG—If they have had no income, would you have paid the \$413?

Ms Moyle—This was for women who are in the work force.

Senator LUDWIG—And if their income was less than \$413 because it was part time?

Ms Moyle—We had expected that that would have been built in, thus reducing the costs overall. But we did not have the figures at that stage to enable us to cost that out.

Senator LUDWIG—Has the Sex Discrimination Commissioner requested the government to do any costings of some of the leading options?

Ms Moyle—You may be aware that the 1999 'Pregnant and productive' report, produced during the tenure of the former Sex Discrimination Commissioner, recommended that the government undertake detailed costings of various options for paid maternity leave. So that recommendation stands.

Senator LUDWIG—To your knowledge, has the government responded to that?

Ms Moyle—In its formal response to the 'Pregnant and productive' report, the government said that it did not feel that the costing was necessary at this stage.

Senator LUDWIG—Have you followed that up? At what stage will it be necessary?

Ms Moyle—During the course of this particular current inquiry into paid maternity leave options there have been discussions with various Commonwealth officers and, I believe, ministers seeking costings on various models.

Senator LUDWIG—There is a public consultative process you are undertaking at the moment to distill the leaving options into a hierarchy of options. Is that the process that you are now going through?

Ms Moyle—More or less. We are looking for input on what should be the parameters of any paid maternity leave scheme. The first question we ask in our interim paper is: ought we to have a paid maternity leave scheme?

Senator LUDWIG—Is that paper publicly available?

Ms Moyle—It certainly is. It is publicly available in hard copy and on our web site. The first question we ask is: should we have a paid maternity leave scheme? If so, what objectives should we see it pursuing and what should be the assumptions we make in developing such a scheme?

Senator LUDWIG—Does the public consultative process include all capital cities or regional centres? What program have you got in place? If you have a program, can you make it available to the committee?

Ms Moyle—Certainly. I would have to take that on notice. I do not have the actual dates here. We had our first visit to Brisbane on Thursday and Friday of last week. We are visiting Melbourne this week and Darwin the week after. I will give you the full list of the dates that we have plugged in at this stage.

Senator LUDWIG—You do not expect the government response to the interim report until you finalise your final report and then you will be seeking a response to the final report. Is that the process that you hope to undertake?

Ms Moyle—We are hoping that the final paper will be produced by the end of this year. The idea behind this paper was that it would be an options paper, that we would outline the basic options around paid maternity leave to advance the national debate. In fact, the national debate has advanced quite significantly since we began the inquiry.

Senator LUDWIG—That is encouraging to see.

Ms Moyle—That is right. So it may be that we are able to identify more closely a number of options that we believe could be suitable as a result of the public input into this. We do not expect to be making discrete recommendations about a particular model at this stage although, depending on what the consultation process throws up, that may be done.

Senator LUDWIG—Which way do I go? Will you or won't you be?

Ms Moyle—We will certainly be isolating a number of options. It may be that one front runner emerges strongly. If so, we will certainly be reporting on that, but it may be that there are two or three options that are considered equally valid.

Senator LUDWIG—So you might keep your powder dry. Turning to another issue, the McBain case, what was the total cost of HREOC's representation in the McBain proceedings? Could you detail that for me, including a breakdown of counsel's costs and the overall solicitor costs and other incidentals. If you do not have those there I am happy for you to take that on notice.

Ms Temby—I have the total cost of our intervention, but I do not think I have them for each individual.

Senator LUDWIG—Could we have the total cost now and you could provide the committee with a breakdown at some stage.

Ms Temby—In the financial year 2000-01, the commission expended in direct costs \$33,000 on interventions—that is nine interventions—and \$5,000 on amicus matters. The commission's expenditure in this financial year to date is \$65,835.94 for interventions and \$14,500 for amicus. The McBain matter will be only one of the 12 matters covered there.

Senator LUDWIG—Could you detail those 12 matters and the breakdown of what the costs were for each of those 12 matters?

Ms Temby—We would be happy to. Much of our work on interventions and amicus occurs in-house, within our own section. We do not brief out for a great deal of the work. We may only brief out for the actual court appearances and often our own staff appear as juniors with the consent of the senior counsel that we brief. If we do staff costs, it becomes quite complicated. Are you happy to just have the direct costs paid to others outside the commission?

Senator LUDWIG—Yes, because I do not want to put you to any great stress in relation to that. Could you simply indicate by an asterisk where there is additional staff support in relation to those particular cases, if that is available.

Ms Temby—I do not think there is any additional staff support apart from the staff in the unit.

Senator LUDWIG—What I am saying is: where you have got a matter that you have briefed counsel for but you have also then sent along a junior out of your staff, then you can put an asterisk.

Ms Temby—We would be happy to, Senator.

Senator LUDWIG—Thank you.

Senator SCULLION—Dr Ozdowski, like Senator McKiernan I have been somewhat frustrated that the outcome of the investigation into the so-called lip sewing affair by the Department of Human Services in South Australia was not comprehensive for a number of reasons. The fact that tonight you may have undertaken to further investigate those allegations is obviously of some interest to me. Tonight, for the first time, I have heard Senator Cooney perhaps suggest that ACM and the department may be on the same level as the parents because there is no evidence one way or another to exonerate them from these matters. I wondered if at any time you have heard anybody allege or make any suggestion at all that either ACM or the department were actually involved in supervising, had knowledge while it was happening of, or actually did this lip sewing themselves?

Dr Ozdowski—Allow me to think.

Senator SCULLION—Have you heard of the allegations?

Dr Ozdowski—Nobody told me so far that they have evidence that parents were involved with it.

Senator SCULLION—Sorry, I meant the ACM and the department. Have you ever heard any allegations?

Dr Ozdowski—I never heard these allegations made.

Senator SCULLION—Perhaps, since they are on the same level, you can help me in a general sense. When you are looking at responsibilities and these issues, as a guardian and a supervisor would you have a concern if a child is abused with the knowledge of another or their guardian?

Dr Ozdowski—We are very concerned about the present arrangements which do exist, especially for unattached minors in detention centres in Australia. As a matter of fact, one of the amicus curiae or intervention methods deals with that particular problem. We believe that the minister for immigration is having a clear conflict of interest in this matter.

Senator SCULLION—I was referring specifically to the potential for a parent or guardian to be present and aware, to perhaps not have been involved but to not have acted to prevent

that harm being done to the child by themselves or by others unknown at the moment. Can you assure me that as part of the investigations you will be looking at the proximity of parents in regard to those matters and others?

Dr Ozdowski—We will be looking as far as it is possible.

Senator LUDWIG—Thank you.

Senator COONEY—I would like to clarify that the minister is the guardian of these children not the parents.

Dr Ozdowski—No. As far as I know the system, I think the minister is only a guardian of unaccompanied children.

Senator McKIERNAN—This is a serious matter on that subject. In relation to a question you took on notice about a letter to the minister, following some dialogue between Senator Ludwig and yourself on page 97, the chair sought clarification at page 105 and asked you specifically:

And you are going to determine whether that letter can be released?

You said ‘Yes’. That appears in the middle of that particular page. Your response to that was:

It is not the practice of the Commission to release official correspondence between itself and Ministers of the Crown.

It is not exactly a response to the question that was asked in oral form at the hearings. Did you check—

Dr Ozdowski—That is correct. I undertook it and then I discussed the matter with the commission staff and I was told that there is this longstanding practice of which I was not aware before. Therefore, the response is as it was put in.

Senator McKIERNAN—Did you not follow through what you undertook to do to the committee, which was that you would follow up with the minister and see if the letter could be released?

Dr Ozdowski—No, I did not.

Senator McKIERNAN—Minister, I ask you to ask Minister Ruddock if he would be prepared to provide the committee with a copy of that letter. It is a practice we have engaged in before. It is the minister’s letter, now that it is his property. A media release followed that letter shortly afterwards—within five days, I think. I do not want to go back over the whole lot. Would you, Minister, undertake to do that? I thought we had an undertaking last time round that it would be done. We will see whether it can be done.

Senator Ellison—I will take that up with Minister Ruddock.

Senator COONEY—Does Australia have any matters before any of the commissions in Geneva at the moment?

Ms Clifford—Are you talking about communications?

Senator COONEY—Yes. I can think of one straightaway. There is one on the aged at the moment, as you know. Is that right?

Ms Clifford—Not that I am familiar with.

Senator COONEY—There is—and the government has responded to it. Do you know that one?

Ms Clifford—That will be a matter for the government.

Senator COONEY—Does anybody know about Mr Ivanoff? The papers on the table are not imaginary, I am sure, and the government has responded to the matter.

Mr Cornall—Could you explain what this matter is?

Senator COONEY—Mr Ivanoff is taking the Commonwealth government to the committee on the basis that it has allowed discrimination on the basis of age to take place. Do you know anything about that? Slater and Gordon are acting. It does not matter. Obviously, nobody knows about it.

Mr Cornall—Can we take this matter up tomorrow? We may be able to answer the question tomorrow.

CHAIR—It would seem, Senator Cooney, that the officers are unable to assist you at this hour.

Senator COONEY—That is all right. Let us drop it.

CHAIR—On behalf of the committee, I thank you, Dr Ozdowski, and your officers for assisting us with our deliberations tonight. A number of significant issues have, I believe, been raised with the commission, and both you and Ms Temby, in particular, have undertaken to bring those to the attention of commissioners and to respond to the committee in as expeditious a manner as possible. I appreciate those undertakings.

Dr Ozdowski—Thank you very much. Would you allow me to wish Senator McKiernan, Senator Cooney and Senator Schacht all the best and thank them very much for their contribution to public policy, and to Senator McKiernan and Senator Cooney, especially, for their work on the terrorism bills.

Senator McKIERNAN—I would like to respond to that. I sincerely regret that my final hearing with the HREOC has been so conflicted, but I do believe that very serious issues were on the table today and had to be addressed. I hope that, when I see the responses from HREOC—when I will be an ordinary Australian—I will be comforted by them. I am certainly looking forward to them but I had to raise them tonight. I have enjoyed working with HREOC. I wish the commission very well in the future and hope that it continues to undertake the very good work that it has done on behalf of all Australians. Thank you.

[10.34 p.m.]

Office of Film and Literature Classification

CHAIR—I welcome the representatives of the Office of Film and Literature Classification.

Mr Clark—I wish Senator Cooney well. Over many generations the OFLC has welcomed his questions, and also Senator McKiernan's.

Senator COONEY—Thank you. It is not a discourtesy that I am leaving the hearing now, it is just that I cannot stand the heat that comes from Senator Harradine and Senator Schacht. It is just too bloody a conflict, so I am off.

CHAIR—Thank you, Senator Cooney. Shall we begin with Senator Harradine?

Senator HARRADINE—Thank you, Madam Chair. I will be brief because these matters were canvassed during the additional estimates hearings in February. Mr Clark, could you let the committee know what is happening to classification guidelines for computer games?

Mr Clark—At this stage, the draft guidelines for computer games and films and video are being rewritten to go to ministers in a draft form in July. The draft is combining the guidelines for those mediums into one set, apart from the R4 computer games, which do not exist. There is also an issue we need to address, if the markings do not change, that the G(8+) and PG markings above G would also have to be managed. At this stage we have a set which combines at that level, but at the R level there is no recommendation in relation to computer games.

Senator HARRADINE—What are you saying?

Mr Clark—What I am saying is that, if there were, we are building the guidelines in general to deal with convergent media, and that is part of the purpose of the exercise. In dealing with the guidelines, and they are not in a final form yet, we will be looking at talking about interactivity in particular, because that is an element that increasingly is coming into film. So in a sense it does not matter whether it is a computer game or an interactive film, there are issues of interactivity we must deal with in drafting guidelines for the future. And that could potentially, if ministers were to make that decision, accommodate an R-rated computer game.

Senator HARRADINE—The draft guidelines were prepared by whom?

Mr Clark—The original draft guidelines were prepared within the office—

Senator HARRADINE—Quite so, yes. And the final draft guidelines? Or at least not the final ones—

Mr Clark—The current draft is also being prepared in the office but that would, once ministers have seen it and before it is finally agreed, go to a language expert to work through the concepts.

Senator HARRADINE—Why won't they go to the people?

Mr Clark—The original draft guidelines have been to the people. Ministers at this stage have asked us to write a clearer set of guidelines. They are not guidelines that are changing the levels and there has been a public consultation and we have been asked to do some targeted consultation in relation to the second draft, which will not change the intent.

Senator HARRADINE—Excuse me, I must have missed something. I did not realise that there were public hearings conducted by the OFLC in respect of the draft guidelines similar to the public hearings that are engaged upon by the ABA, for example.

Mr Clark—The office has not conducted any public hearings, Senator, and it is not part of the agreed process in relation to the guidelines review.

Senator HARRADINE—Why? I mean this is a democracy and people need to have a say about it. I am sure you would get a range of viewpoints expressed and that they would be an important assisting aid to the OFLC in preparing draft guidelines.

Mr Clark—I think I canvassed this with you at the last meeting. The censorship ministers agreed that we go to a new set of guidelines. The original procedure agreed by ministers did not include public hearings and so we proceeded in good faith to a public consultation. The public consultation invited submissions from the community. Virtually at the end of that public process, there was a request from some people to have public hearings. Those people who requested public hearings had in fact made submissions to the guidelines review anyway. When we went to ministers with the report, ministers asked us to look at the process and the

procedure for guidelines reviews. That is not covering this one, but certainly for future reviews we would be looking at that possibility.

Senator HARRADINE—Once these guidelines are approved—if they are approved—they will be in force for a considerable period of time. How long is it since the last ones were in force?

Mr Clark—There was an amendment to the guidelines in 2000, which was the X amendments. Prior to that—my copy does not have a date—I think it was 1995 but I will have to check that date.

Senator HARRADINE—I put it to you again that that may be a matter of interest to the Commonwealth and state ministers. When did you say you are going to put it to them?

Mr Clark—In July.

Senator HARRADINE—In July. Who will be at that meeting?

Mr Clark—The meeting will be attended by the ministers responsible for censorship in the states and territories—most often that is the Attorney-General—and their officers, the department, the Commonwealth Attorney-General and the OFLC. Occasionally, New Zealand and Norfolk Island attend.

Senator HARRADINE—Do you have an up-to-date list of those ministers who will be attending?

Mr Clark—I have an up-to-date list of the ministers. Whether they all attend or not, I cannot predict.

Senator HARRADINE—Yes, I understand that. From the Commonwealth, how many will be attending—only the Attorney-General?

Mr Clark—From the Commonwealth?

Senator HARRADINE—Yes.

Mr Clark—Yes.

Senator HARRADINE—In respect of the discussions, is it not a fact that a Dr Brand had some say in the development of these guidelines?

Mr Clark—No. Dr Brand was only commissioned to do the assessment of the submissions to the guidelines review and he only came on board after the public consultation process. He had no part in the preparation of the draft guidelines.

Senator HARRADINE—Those were the draft guidelines upon which a number of people made submissions. He then, as I understand it, made an assessment of the public submissions. In that particular case, the terms of reference—as it were—were in fact limited only to the submissions that were made. His terms of reference were only directed to the submissions which were made—

Mr Clark—That is correct.

Senator HARRADINE—and were not a request to him to advise the government or the OFLC on what should be regarded as proper public policy in regard to the guidelines.

Mr Clark—He was asked to look at the submissions and look at the guidelines with the submissions and, in writing his report, he made a series of recommendations. He has made no

contribution to writing a new set of guidelines and the recommendations are merely that: they are recommendations that have no authority beyond that.

Senator HARRADINE—I go to the question of the film that was most recently reviewed by the Classification Review Board. When a unanimous decision like that is taken by the Classification Review Board, what action is taken by you and the OFLC to ensure that their future actions in classifying films reflect the unanimous interpretation of the guidelines as expressed by the Classification Review Board? In other words, in this particular case you had—was it 5-4 or 5-6?

Mr Clark—5-6.

Senator HARRADINE—You had six members of the board voting to give that film an R classification and you had five members that voted the other way, that it be refused classification. That was subsequently referred to the Classification Review Board. The Classification Review Board unanimously made a decision that the film should be refused classification. In making its decision:

... the Review Board took into account the combination of:

- strong depictions of violence
- sexual violence
- frequent actual, detailed sex scenes; and
- scenes which demean both women and men.

Such depictions cannot be accommodated within the R18+ classification.

That is the decision of the Classification Review Board. What action do you take and what action does the Classification Review Board take to ensure that the classification—

Senator SCHACHT—At least there were six decent people—

CHAIR—Senator Schacht, if we let Senator Harradine finish, I will come back to you.

Senator HARRADINE—What action do you and the OFLC take to ensure that those people interpret the guidelines in accordance with that interpretation placed on it by the film board of review?

Mr Clark—I think I need to say that the members of the board are statutory appointees who are appointed to make decisions independently, away from influence, and therefore I cannot direct board members how to make decisions; I can direct them how to do their work but not how to make decisions. The board can take into account and take note of decisions made by the review board, but the legislation and the nature of their appointment does not require them to do anything other than take note of those and proceed to make decisions that they consider to be within the guidelines, the code and the act.

Senator HARRADINE—How does this square with the clear indication that such depictions, the depictions I described, cannot be accommodated within the R18+ classification? That is the decision of the review board. I mean it is a bit like the High Court. Judges are also statutory officials, are they not?

Mr Clark—Certainly.

Senator HARRADINE—Would it be wise or unwise for them to ignore the decisions of a higher court?

Mr Clark—I am saying that certainly the board can take note of decisions by the review board, but they are not binding on them in making their independent decisions, and it is not a court.

Senator HARRADINE—Of course they are not binding upon them, but it is not binding upon a lower court judge to have regard to what the superior court has said. We are talking about questions which go to the area as a whole, that is to say, the classification scheme as a whole. You have individual board members and you have a review. It is somewhat similar to the court system. Are you saying that it would be quite prudent for the board members not to take notice of what the film board of review have said?

Mr Clark—No, my comment was that certainly the board should take into account decisions made by the review board. I suspect that if one goes back to the decision on the film *Romance*—which was a decision of the review board—that was taken into account. The process, though, is that the Classification Board must make its own decisions and make them independently, having regard to information that is presented to it. In the decision here, the Classification Board made a majority R18+ decision and its report gives its reasons why it made that decision. The Classification Review Board, in coming to a different decision, has not yet produced its reasons. We will look at those reasons when they are available to consider but, at the end of the day, the Classification Board still has to make its decision, the Classification Review Board has made its decision, and that is the process—that is the way the system works.

Senator Ellison—Madam Chair, I suppose one aspect to Senator Harradine's question, in comparing the situation of a higher court versus a lower court, is whether the Classification Board has regard to the decisions made by the review board when it considers classifying a film. Are those previous decisions by the review board used as precedents perhaps? In this case, will the Classification Board have regard to a decision by the review board setting a precedent for future classification for other films?

CHAIR—As a precedent?

Senator Ellison—Yes, I think that is another angle to Senator Harradine's question, which Mr Clark might want to have a look at.

Senator SCHACHT—Is there anything in the act?

Senator Ellison—That is a good question too, isn't it? Ask that.

Senator SCHACHT—There is nothing in the act. As I understand it, you have got to let the decision of the review board take precedence. Show me which section of the act says that.

CHAIR—Perhaps we might even give Mr Clark an opportunity to respond.

Mr Clark—As I have indicated already—I think twice—the board does have regard to decisions made by the review board. There is an illustration of that. The fact is that the act does not require consideration of precedents. There is no reference in the act at all to that happening. So, under the board's interpretation, with me as part of it, we must continue to make with the tools we are given—the guidelines, the code and the act—decisions in relation to the classification of material that is presented to us.

CHAIR—Thank you, Mr Clark. Senator Harradine, do you have anything further?

Senator HARRADINE—Yes. Coming back to the R-rated video games, I did not quite understand what you meant. You are not recommending that there be R-rated computer games in Australia?

Mr Clark—There is not a recommendation. Dr Brand, in his report, has supported that notion. We have not made a recommendation to ministers in relation to R-rated computer games.

Senator HARRADINE—But you are now referring to Dr Brand.

Mr Clark—No, there is not a recommendation for an R rating for computer games.

Senator HARRADINE—In other words, the state censorship ministers will not have before them a recommendation for R-rated computer games?

Mr Clark—It is an issue that ministers will be invited to consider and to talk about, but there is no recommendation at this stage from the OFLC—not to say that there may not be in the future—in relation to an R rating for computer games. But it is an issue that has been highlighted in the review documents. It has been commented on by Dr Brand and is an issue that the ministers will consider in due course.

Senator HARRADINE—Have they been advised about the interactive nature and extremely violent and pornographic type of material in the R-rated computer games?

Mr Clark—We have not made any comment to ministers in relation to R-rated computer games because we could not judge what an R-rated computer game is. There is no guideline as such for that.

Senator HARRADINE—But you have prepared a guideline just in case, haven't you?

Mr Clark—There is a guideline that has the potential, if ministers decide on such a matter, to be used for that purpose.

Senator HARRADINE—But I thought you just said that you had not. I must have misunderstood you there. Didn't you say that you were not able to describe to the ministers what is contained in the R-rated computer game classification?

Mr Clark—At this stage there is no R rating for computer games, so we cannot describe a game—

Senator HARRADINE—I understand that but, with due respect, you are playing with words.

Mr Clark—It is not my intention to play with words. I am trying to be very clear in my responses.

Senator HARRADINE—Mr Clark, you said to the committee that you could not describe what was contained in an R-rated computer game.

Mr Clark—That is correct.

Senator HARRADINE—Of course you cannot describe it now because there is no such classification. But you said before that you have prepared such a classification.

Mr Clark—We are preparing a draft guideline at the R18+ level which deals with convergent media and interactivity. It is very difficult now with some material. Some film has potentially the same elements as an interactive game, so the division between a game and a film will be blurred increasingly as the technology develops. We are looking in our guidelines at whether R18+ could deal with an interactive film and consequentially with a computer game, but that issue is at the side at the moment.

Senator HARRADINE—Is there a recommendation to the ministers that the interactive film you speak of should be given a classification?

Mr Clark—The recommendation is not formulated at this stage but we are taking to ministers a set of guidelines that can deal with convergent media, which includes interactive film.

Senator HARRADINE—Will that be given different guidelines to those in existence now for R-rated films?

Mr Clark—There will be an element within the guidelines. It may be dealt with more generically in the introduction or in the beginning of each section which deals with elements of interactivity. Yes, we will be dealing with interactivity in the draft guidelines.

Senator HARRADINE—So you could end up with narrower guidelines, if you like, for the R-rated material than is currently the case, given that there is interactivity involved?

Mr Clark—We are not seeking to change the levels, but we are seeking to be able to deal with the convergent nature of entertainment media now as it is emerging. The intent is that interactivity, as an element, will receive a descriptor or guideline which requires it to be dealt with in a certain way—which would be potentially different to what would be just a straightforward R18+ movie.

Senator HARRADINE—So with interactivity you could have a film with, for example, violent or extremely violent interactivity and this would be far more impactful than the current film without interactivity?

Mr Clark—I am trying to think of an example which might assist. A game was refused classification late last year. It was refused classification because in the interactive segment of the game you could achieve a reward if you were to assault and rob a prostitute after having hired her for sexual purposes. The board considered that the combination of violence, sex and rewards was such that the game should be refused classification. That is the sort of measure that we can build into the guidelines to deal with that sort of inappropriate content.

CHAIR—It being after 11 o'clock the committee will adjourn for the evening and resume at nine o'clock tomorrow morning with consideration of budget estimates for the Office of Film and Literature Classification. I thank everybody for their assistance with the committee today.

Committee adjourned at 11.01 p.m.