

**Community Affairs
Legislation Committee**

Examination of Budget Estimates 2005-2006

Additional Information Received

VOLUME 3

**Outcomes: whole of portfolio, Outcomes 1, 2,
Professional Services Review Agency,
Outcomes 3, 4, 5, 6, 7, 8, Private Health Insurance Administration Council,
Outcomes 9, 10, 11**

HEALTH AND AGEING PORTFOLIO

SEPTEMBER 2005

Note: Where published reports, etc have been provided in response to questions, they have not been included in the Additional Information volume in order to conserve resources.

ADDITIONAL INFORMATION RELATING TO THE EXAMINATION OF BUDGET EXPENDITURE FOR 2005-2006

Included in this volume are answers to written questions on notice and tabled papers relating to the budget estimates hearings on 1 & 2 June 2005

Please note this volume is incomplete – 97 answers are still to be provided by the Department of Health and Ageing. When received these answers will be tabled in a separate Additional Information volume

HEALTH AND AGEING PORTFOLIO

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Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-003

OUTCOME: Whole of Portfolio

Topic: EFFICIENCY DIVIDEND

Written Question on Notice

Senator Carr asked:

- (a) What financial impact will the increased efficiency dividend have on your Department/agency this financial year and in the out years?
- (b) The increase in the efficiency dividend was announced in last year's elections, what plans have you made to meet it?
- (c) What will this mean for staff numbers?
- (d) Will any specific programs be cut? Please specify which ones and the size of the estimated savings?
- (e) Will any core functions be affected by these savings measures?
- (f) How will meeting the efficiency dividend affect your graduate recruitment plans?
- (g) How will meeting the efficiency dividend affect your ability to retain experienced staff?

Answer:

(a)

Financial impact of the increase to the Efficiency Dividend				
	2005-06	2006-07	2007-08	2008-09
	\$million	\$million	\$million	\$million
Department of Health & Ageing	(1.138)	(2.202)	(3.197)	(3.229)
Australian Institute of Health & Welfare	(0.020)	(0.040)	(0.061)	(0.062)
Australian Radiation Protection and Nuclear Safety Agency	(0.027)	(0.028)	(0.027)	(0.028)
Food Standards Australia New Zealand	(0.034)	(0.067)	(0.099)	(0.099)
National Blood Authority	(0.008)	(0.031)	(0.046)	(0.042)
Professional Services Review	(0.18)	(0.035)	(0.061)	(0.063)
Health and Ageing Portfolio	(1.245)	(2.403)	(3.491)	(3.523)

- (b) Each agency within the portfolio has reviewed proposed activities for 2005-06 and identified broad areas of savings to be made to manage their agreed operating result as reported in the 2005-06 Portfolio Budget Statements.
- (c) The impact on the number of staff employed across the Department of Health & Ageing has yet to be determined.
- (d) No.
- (e) The increased efficiency dividend will be managed in such a way as to minimise impact on core functions. It is not anticipated to have any separately identifiable impact (the increased efficiency dividend is one of several factors (positive and negative), that change departmental resourcing year on year).
- (f) The impact on the graduate program has yet to be determined.
- (g) The affect of the efficiency dividend on the portfolio's ability to retain experienced staff cannot be determined in isolation of the many other workforce planning factors that impact on retention.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-011

OUTCOME: Whole of Portfolio

Topic: LEGAL SERVICES EXPENDITURE

Written on Notice

Senator Ludwig asked:

- (a) Which organisations or individuals were contracted to provide legal services to the department and all agencies in 2004-2005?
- (b) In each instance where organisations or individuals were contracted to provide legal services to the department and all agencies, how much was each organisation or individual paid for these services?

Answer:

- (a) Australian Government Solicitor, Phillips Fox, Blake Dawson Waldron, Clayton Utz and Corrs Chambers Westgarth.
- (b) It is expected the 2004-05 financial year expenditure for each of the legal service providers will be available by the third week in July, and the information will be provided to the committee as soon as possible after that time.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-013

OUTCOME: Whole of Portfolio

Topic: LEGAL SERVICES EXPENDITURE

Written on Notice

Senator Ludwig asked:

In 2004-2005, did the department and all agencies obtain any legal services using a direct sourcing procurement process? If so, provide details including the name of the provider, the work involved and the cost?

Answer:

The department's Legal Services Branch Deed of Standing Offer reserves the option to acquire services from other legal service providers. The department has directly sourced legal services from Corrs Chambers Westgarth because of their particular knowledge, skills and expertise on work involving complex procurement issues that cannot be sourced easily, or at all, from members of the department's panel providers.

It is expected the 2004-05 financial year expenditure for each of the legal service providers will be available by the third week in July, and the information requested will be provided to the committee as soon as possible after that time.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-014

OUTCOME: Whole of Portfolio

Topic: LEGAL SERVICES EXPENDITURE

Written on Notice

Senator Ludwig asked:

In 2004-2005, did the department and all agencies procure any legal services under the thresholds required for 'covered procurements' (within the meaning of 8.6 of the Commonwealth Procurement guidelines)? If so, provide details including the name of the provider, the work involved and the cost.

Answer:

Yes, the department did procure legal services under the thresholds required for 'covered procurements'. It is expected the 2004-05 financial year expenditure for each of the legal service providers will be available by the third week in July, and the information requested will be provided to the committee as soon as possible after that time.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-015

OUTCOME: Whole of Portfolio

Topic: Legal Services Expenditure

Written on Notice

Senator Ludwig asked:

In 2004-2005, did the department and all agencies contract any legal firms to provide services other than legal services (such as consulting, conduct of policy reviews, etc)? If so, provide details including the name of the firm, the project involved and the cost of the contract.

Answer:

It is expected the 2004-05 financial year expenditure for each of the legal service providers will be available by the third week in July, and the information requested will be provided to the committee as soon as possible after that time.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-023

OUTCOME: Whole of Portfolio

Topic: NON-ENGLISH SPEAKING BACKGROUND PERSONNEL

Written Question on Notice

A follow-up to a question Senator Ludwig asked in December 2004:

Asked of the department and all agencies under the portfolio regarding the employees that your department or agency has identified as having:

- a) fluency
- b) accredited translator
- c) accredited interpreter

Of these employees, please indicate what the department is doing in order to make full use of its employees skills in this regard and please provide a breakdown of this between employees whose accreditation was paid for by the department and those whose were not?

Answer:

There is no formal policy in place for managing the use of employees' language skills in the Department of Health and Ageing. Staff may voluntarily indicate that they possess skills in languages other than English. There is no formal record retained of any employee's language skills with respect to fluency or accreditation as a translator or interpreter.

The department maintains an informal register of staff with particular skills in languages other than English. Individuals may voluntarily record their skills in this register. From time to time, staff seeking informal translation services request the use of these services through a central contact. This contact then passes the request to a relevant staff member on the register. Any assistance provided is purely voluntary and is not considered to be a part of any staff member's core duties.

The department does not fund any accreditation of language skills. Any staff members with skills in languages other than English have obtained these skills without the department's assistance.

The National Health and Medical Research Council (NHMRC), Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), and Aged Care Standards Accreditation Agency (ACSAA) have identified employees as having fluency in languages other than English. The NHMRC have a total of seven employees, however, exact numbers for ARPANSA and ACSAA cannot be reported as formal records for recording this information are not in place.

Where appropriate, the NHMRC and ARPANSA may seek the assistance of multilingual staff in the performance of day-to-day activities. ACSAA has advised that they use accredited interpreters and translators as required, through the Department of Immigration and Multicultural and Indigenous Affairs National Interpreting Service.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-031

OUTCOME: Whole of Portfolio

Topic: STAFF LEAVE – SICK LEAVE AND UNSCHEDULED ABSENCE

Written Question on Notice

Senator Mason asked:

For each of the last four financial or calendar years for which this information is available:

- (a) What was the average number of sick leave days taken per full-time equivalent (FTE) employee?
- (b) What was the average number of days of unscheduled absence (encompassing all types of leave) taken per FTE employee?

Answer:

- (a) 2003-04 - 8.35 days per FTE
2002-03 - 7.60 days per FTE
2001-02 - 7.26 days per FTE
- (b) 2003-04 - 12.66 days per FTE
2002-03 - 11.95 days per FTE
2001-02 - 11.04 days per FTE

Note: It is not possible to provide information for the 2000-01 financial year as the department's previous Human Resource system, NOMAD, has been archived and the reporting facility is not available.

Figures are not yet available for 2004-05.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-032

OUTCOME: Whole of Portfolio

Topic: STAFF LEAVE

Written Question on Notice

Senator Mason asked:

- (a) Does the department collect, collate and analyse data about unscheduled absence and/or sick leave, for example, which days of the week that employees are away, reasons for absence, dates of absence, employee's age, gender, length of service and work unit location?
- (b) Does the department record the number and/or percentage of working days lost due to unscheduled absence and/or sick leave in the Annual Report?
- (c) Does the department record the cost of unscheduled absence and/or sick leave in annual financial statements?

Answer:

- (a) Yes.
- (b) No.
- (c) No.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-098

OUTCOME: Whole of Portfolio

Topic: NUMBERS OF STAFF IN SPECIFIC CATEGORIES

Hansard page: CA9 1 June

Senator Moore asked:

Is it possible to get some information about the numbers of staff at a regional and central office level who have identified as either:

- having a disability
- being Indigenous
- part-time staff
- staff over 50 years of age.

Answer:

The following table provides the breakdown by requested category and is current at May 2005. Figures have been provided as a percentage of each unit's workforce.

	Whole of Department	ACT	NSW	VIC	QLD	SA	WA	TAS	NT	Central Office*
Disability	2.4%	0.0%	1.7%	1.9%	2.6%	3.8%	3.8%	2.8%	1.9%	2.1%
Indigenous	2.1%	8.1%	4.1%	3.1%	4.1%	7.8%	5.4%	3.1%	16.2%	1.0%
Part-time	8.8%	0.0%	6.7%	10.2%	7.2%	4.4%	12.4%	16.1%	3.2%	12.1%
Over 50	24.0%	36.4%	22.3%	29.4%	30.2%	31.6%	38.3%	23.2%	31.7%	22.6%

*Central Office does not include ACT office

Please note, staff need to self identify as being Indigenous or having a disability, and as a result the reported figures do not include those staff who have not provided this information.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-099

OUTCOME: Whole of Portfolio

Topic: STAFF WHO IDENTIFY AS INDIGENOUS

Hansard page: CA9 1 June

Senator Moore asked:

- (a) Can the department check if the staff survey asks respondents whether or not they identify as Indigenous?
- (b) If the survey does ask this question, is there a difference in the number or percentage of staff who identify themselves as Indigenous at the time of recruitment compared with the number or percentage who identify themselves as Indigenous when completing the staff survey?

Answer:

- (a) This question is asked in the staff survey.
- (b) There is a slight difference in the number of staff who identify themselves as Indigenous during the recruitment process and in the staff survey. 2.1% of staff survey respondents identified as Indigenous in the May 2004 staff survey, while in 2003-04, 2.2% of staff self identified as Indigenous and were reported as such in the 2003-04 annual report.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-129

OUTCOME: Whole of Portfolio

Topic: NEW OUTCOME STRUCTURE

Written Question on Notice

Senator Forshaw asked:

Why is there no administered item around 'health quality and safety' in the new outcome structure?

Answer:

Funding for 'Safety and quality in Healthcare' has been included as part of Outcome 9 since 2000. Table 3.1.9 (Total resources for Outcome 9, page 128) of the *2005-06 Health and Ageing Portfolio Budget Statements* refers to administered funding for 'Safety and quality in Healthcare' under Program 9.7 'Research Capacity'.

In table 3.2.9 (Performance Information for Outcome 9, Administered funding – Health system capacity and quality programs, page 131), 'Research Capacity' is included in the left hand column and a 'quality' indicator is included in the right hand column (agreement by health ministers to annual plans of the Australian Council for Safety and Quality in Health Care).

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-233

OUTCOME: Whole of Portfolio

Topic: NEW OUTCOME STRUCTURE

Hansard Page: CA 11 – 1 June

Senator Forshaw asked:

When did the review of the outcome structure commence?

Answer:

A ten outcome structure was introduced in May 1999 for the 1999-2000 Budget cycle. The portfolio moved to an amended nine outcome structure in 2000-01.

The department commenced reviewing the outcome structure for 2003-04 in October 2002. The review was placed on hold due to changes to the department's organisational structure.

The department recommenced the review of the outcome structure in June 2003. Various options were developed and considered internally. A draft proposal was also provided to the Department of Finance and Administration for comment. The review was not pursued due to late timing in the budget cycle.

The department revisited the proposed structure in June 2004. Minister Abbott provided a draft 14 outcome structure (comprising of eight department and six agency-specific outcomes) to the Minister for Finance and Administration for endorsement.

Further negotiations with the Department of Finance and Administration led to an 18 outcome structure (eleven department and seven agency-specific outcomes), which was endorsed by the Minister for Finance and Administration.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-130

OUTCOME: Whole of Portfolio

Topic: AUSTRALIA - US FREE TRADE AGREEMENT REQUIREMENTS FOR
COMPLEMENTARY MEDICINES

Written Question on Notice

Senator McLucas asked:

We understand that new rules requiring a Free Sale Certificate which apply to goods manufactured in Australia for export to certain countries in SE Asia now means that these products must be listed on the Australian register and therefore need a patent search.

- (a) How much do these patent searches cost?
- (b) Is this an unintended consequence of the AUSFTA?
- (c) What is proposed to resolve this situation?
- (d) Has any work commenced on this issue, if so, when and in what form? If not, why not?

Answer:

(a) to (d)

There are no new or existing rules which require Certificates of Free Sale to be obtained for complementary medicines prior to export from Australia.

The correct position is that complementary health care products have been regulated in Australia under the *Therapeutic Goods Act 1989* as medicines since 1991. As such, the Therapeutic Goods Administration (TGA) does not issue Certificates of Free Sale for these products as they are required to meet relevant standards relating to quality and safety before they can be supplied to the domestic market or exported.

For complementary medicines intended for either domestic supply or export, it has been a requirement since 1991 that such products be entered in the Australian Register of Therapeutic Goods (ARTG). With regard to products intended for export, at the request of importing countries, the TGA, since this time, has also issued either:

- i) a Certificate of Listed Product, which certifies the product is listed on the ARTG and approved for supply to the Australian market; or
- ii) a Certificate of Pharmaceutical Product (CPP), for products which are registered on the ARTG (again for domestic supply) or listed for 'export only'. CPPs are issued by the TGA as part of Australia's commitment to the World Health Organization Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce.

REVIEW OF THE TOBACCO ADVERTISING PROHIBITION ACT 1992 (*the Act*)

Background

The *National Tobacco Strategy 1999 to 2002-03* comprises a range of tobacco control initiatives designed to improve the health of all Australians by eliminating or reducing their exposure to tobacco in all its forms. Under the key strategy area of ‘reducing tobacco promotion’, there is a commitment to review the *Tobacco Advertising Prohibition Act 1992* and, for jurisdictions without their own tobacco advertising legislation, any issues about enforcing the Act.

The *Tobacco Advertising Prohibition Act 1992* came into effect on 1 July 1993. Under the Act, the broadcasting and publishing of tobacco advertisements in Australia is banned, apart from a few limited exceptions. The objective of the Act is to improve public health by limiting the exposure of the public to messages and images that may persuade them to start or continue smoking.

Terms of Reference

The Review will consider whether the Act has met its objective of limiting the exposure of the public to messages and images that may persuade them to start or continue smoking.

The Review will consider whether the objectives of the Act should be expanded to take into account new and emerging advertising and sponsorship practices. After ten years of administration, the Review will also consider areas of the Act that are not effective and whether corrective action is necessary. In particular, the review will consider:

- Legislative definitions and provisions contained in the Act and whether they remain current and workable;
- Emerging technology and media as well as contemporary advertising, marketing and sponsorship practices such as incentives, value-added promotions and related schemes, and whether the Act sufficiently covers these new modes of advertising and sponsorship;
- The extent and impact of media reporting and portrayal of smoking in the media;
- Administration and enforcement of the Act, including the workability of the offence provisions and the feasibility of alternative penalty systems; and
- The current exceptions to the Act, their continued relevance and the scope for further tightening of these provisions.

A panel comprising legal, public policy, public health, broadcasting and tobacco control expertise will provide the Department with advice throughout the course of the Review.

The Review will seek opinions of all interested stakeholders including the health sector, industry and broadcasters and publishers.

Expert Advisory Panel

Professor David Hill
Chair of the National Expert Advisory
Committee on Tobacco
Director of the Cancer Council of Victoria

Comments received

Professor Rob Donovan
Director
Centre for Behavioural Research in Cancer
Control

No comments received

Dr Lyn Roberts
National Heart Foundation of Australia

Comments received

Dr Chris Reynolds
School of Law, Flinders University

Comments received

Dr Christopher John Lennings
School of Community Health/Sciences,
University of Sydney

No comments received

Mr Ken Roberts
Marketing and Corporate Affairs
Consultant

No comments received

Mr James Carter
Principal Legal Officer
Legal & Practice Management Branch
Office of the Commonwealth Director of
Public Prosecutions

Comments received

Dr John Sanders
Principal Policy Officer
Tobacco Policy Unit, NSW Health

Comments received

TAPA Submissions Received -Major Organisations

Name of Organisation
Queensland Retail Traders & Shopkeepers Association
Chester Hill-Carramar RSL Club
Orana Cellars Pty Ltd (vending machine operators)
Australian Hotels Association - Northern Territory Branch
Attorney-General's Department - Criminal Justice Section
Retail Confectionery & Mixed Business Association Inc.
Michael Hudson - Queensland Hotels Association
John Galligan – BATA
Paul Ratten - BP Australia
Simon Beynon - Free Choice Stores
Priscilla Hope – Philip Morris
Mike Potter – COSBOA
John Lewis – AHASA
Dr Alan Shroot – ASH
Peter Jowett – AACS
Brian Ross – AHANSW
Karen Thomas & Dr John Sanders - NSW Health Dept
Steve Wright – Aust Grand Prix Corp
Tobacco Control Unit, Dept of Human Services SA
Queensland Government
Geoffrey Crawford - ABC
The Cancer Council Australia on behalf of a number of Australian Health Organisations
Colin Wright - Stuart Alexander & Co Pty Ltd, Stuart Alexander (Australia) Pty Ltd
Paul McCarthy & Des Clark - Office of Film & Literature
Julie Eisenberg - SBS
Jack R Herman - Australian Press Council
Victorian Department of Human Services
Western Australia Department of Health

Review of the Tobacco Advertising Prohibition Act 1992

Summary of Responses

In response to the *Tobacco Advertising Prohibition Act 1992* (TAPA) Review Issues Paper, The Department of Health and Ageing received 395 Submissions in total.

The Review sought opinions of all interested stakeholders including the health sector, industry, broadcasters and publishers.

The majority of submissions addressed issues at either a general or a technical level relevant to particular stakeholders and/or organisations and individual interests.

Chapter 5 - Key Policy Questions	
5.1. Is the TAPA in its current form (including its penalty regime) an effective deterrent to advertising and promoting tobacco products to the public, particularly young people? If not, where are its weaknesses and how might they be overcome?	<ul style="list-style-type: none">▪ Sub #12 does not consider the current form of TAPA effective, due to lenient exemptions and insufficient political support to enforce the existing Act.▪ Sub #342 consider the TAPA in its current form is serving its purpose as an effective deterrent to advertising and promoting tobacco products to young people.▪ Sub #355 view the marked reduction in public exposure to tobacco advertising as a good indicator that the TAPA has succeeded in its objective of deterring traditional forms of product advertising. A major weakness of the TAPA is its inability to easily adapt to change.▪ Sub #366 consider the TAPA is not an adequate deterrent to the advertising and promotion of tobacco products, in particular the extent to which smoking is depicted in films.▪ Sub #376 considers TAPA is not a sufficient deterrent to the advertising and promotion of tobacco products to the public. The objective of any tobacco policy can only be achieved through coherent and effectively administered legislation which covers all aspects of tobacco cultivation, importation, manufacture, sale and consumption and applies to all jurisdictions. The objectives need to be defined and continually re-examined and the methods of enforcement reviewed.

	<ul style="list-style-type: none"> ▪ Sub #378 considers the penalty system is insufficient to deter offenders, and is too limited in its scope. Recommends a penalty system with higher penalties for corporations, and higher penalties for second and third offences would act as more of a deterrent to offenders. In addition to increased penalties, injunctive powers are needed to stop broadcasting and internet advertising. Proposes that the purpose of the legislation is to deter the consumption of tobacco, not to deter persons from making a profit from the display of tobacco advertisements and the new Act should omit subsection (b) in Sections 14 and 19 of TAPA. ▪ Sub #380 consider TAPA is a strong deterrent against many of the traditional forms of advertisements that were once prevalent in Australia such as tobacco sponsorship of sporting and cultural events and media commercials. ▪ Sub #385 consider from the information and research detailed in the Issues Paper, current regulation is working effectively as a deterrent to advertising and promoting tobacco products to the public. ▪ Sub #386 consider TAPA has been effective in limiting the exposure of the public to tobacco advertising through more traditional mass media forms of marketing. However, it has been ineffective in limiting exposure through other channels of communication to which the tobacco industry has increasingly turned to since the introduction of TAPA. In addition, the exposure of the public to the promotion of smoking in the popular media remains an ongoing concern. Suggests introducing penalties which are appropriately calibrated, taking into account both the impact of the contravening advertising and the incentive of the tobacco industry to do all it can to promote its products. In conjunction recommends: <ul style="list-style-type: none"> - that a breach of any provision of the TAPA by a tobacco manufacturer should a ground on which its licences to manufacture may be suspended or cancelled under the Excise Act; - that the TAPA provide that where an offence committed by a body corporate is proved to have been committed with the consent or knowledge of a director, manager or executive, that person should, in addition to the liability of the body corporate, be personally liable for offence; - the maximum penalty for a tobacco retailer who breaches the TAPA need not be as high for a manufacturer, as the retailer does not have the same incentive to breach the TAPA; - any breach of the TAPA should be made a ground for suspension or cancellation of any
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	<p>licence a retailer requires under State/Territory legislation; and</p> <ul style="list-style-type: none"> - where a person is convicted of an offence of publishing or broadcasting in contravention of the TAPA, the Court should, in addition to imposing a fine, have the power to require the publication or broadcast of any material considered by the Court to be likely to counterbalance the effects of the offending advertisement. <ul style="list-style-type: none"> ▪ Sub #389 consider the current regulation of the broadcast and publishing of tobacco advertising is effective and appropriate. Currently not aware of any substantial changes since the enactment of the legislation, nor any other matter raised in the Issues Paper, which would justify changing the existing regulatory framework for broadcasters. ▪ Sub #390 consider the current tobacco restrictions in TAPA are comprehensive, are consistent with advertising restrictions in other first world countries and have the flexibility to capture any new activities that are genuinely tobacco promotions. ▪ Sub #392 consider more rigour is needed in measuring the effectiveness of TAPA. The main weakness in the TAPA is that there is no body to regulate or monitor the legislation. There is a need for: <ul style="list-style-type: none"> - comprehensive monitoring/reporting to a central body on sales by outlets and by brands; - implementation of an evaluation strategy to measure how effective disclosure of health warnings by tobacco companies to consumers has been; and - provision of information by means of a public document on the number of complaints made about tobacco advertising by the public. ▪ Sub #395 consider it appears that the provisions of the TAPA, as a mirror to the <i>Tobacco Control Act 1990</i> (TCA), has been an effective deterrent. In developing the TCA, WA legislators recognised the weakness in relying on the Commonwealth to effectively enforce legislation prohibiting tobacco advertising at a jurisdictional level. The TAPA in its current form therefore appears to represent an effective deterrent in most situations. Aside from the issue of its monitoring and enforcement, it should be noted that the TAPA is not completely effective in restricting tobacco promotion or advertising.
<p>5.2. What are the main gaps in coverage of the TAPA in the light of its object? Is there a need to expand the object of the TAPA in the light of new and emerging advertising and sponsorship practices, and if so, what should</p>	<ul style="list-style-type: none"> ▪ Sub #12 consider the current exemptions create gaps and the TAPA needs to be expanded include new practices and historical issues in the TAPA review. ▪ Sub #343 recommend introducing a tobacco advertising hotline for the public to report alleged breaches. ▪ Sub #355 perceive the main object of the TAPA should be to provide national standards in

<p>the object be?</p>	<p>areas not covered by state legislation including internet advertising, broadcasting and publications. A major weakness of the TAPA is its inability to easily adapt to change – greater ministerial discretion may be a solution to ensure that changes to legislation do not have to be made when new methods of advertising arise.</p> <ul style="list-style-type: none"> ▪ Sub #365 consider the TAPA in its current form does not address new forms of tobacco advertising as they develop, in particular advertising and access to tobacco products by young people via the internet. ▪ Subs #366 propose the TAPA should be expanded to include the depiction of smoking or related activities and not attempt to delineate between permissible and non-permissible smoking. Propose that smoking scenes be banned from all new films and television programs under the jurisdiction of the TAPA. ▪ Sub #376 consider TAPA’s current deficiencies include exemptions for certain overseas events, inconsistencies between State/Territory jurisdictions, insufficient control over new methods of communication and promotion, insufficient control on smoking in films, television and public occasions. ▪ Sub #377 recommend that the incidental accompaniment of a tobacco advertisement in relation to the publishing of a photograph needs to be addressed. ▪ Sub #380 consider the object of the TAPA is appropriate but could include a statement that the TAPA is also attempting to de-normalise the act of smoking, including smoking which increase exposure to Environmental Tobacco Smoke (ETS). ▪ Sub #385 has not been persuaded by the arguments in the Issues Paper to expand the object of the TAPA. Forms of advertising, publicity, promotion and sponsorship continue to develop and adapt to meet real or perceived new markets and platforms. The object of the TAPA is clearly stated and should remain non-media specific. ▪ Sub #386 consider the decreasing effectiveness is not solely attributable to deficiencies in the provisions of the TAPA itself and may be attributable to a less than optimal enforcement of the TAPA against strategies that appear to breach its provisions. Recommend adequate resourcing and vigorously pursuing enforcement of the TAPA. ▪ Sub #392 suggest the following: <ul style="list-style-type: none"> - that there be an outright ban on tobacco advertising and a review of current sponsoring practices; - tightening the loopholes in the legislation relating to internet advertising and the
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	<p>potential for abuse by minors through internet shopping;</p> <ul style="list-style-type: none"> - implement tighter controls on sporting team sponsorship from Australia, who take part in events outside Australia; - introduce a ban on mail order sales of cigarettes, or failing that limit communications between retailer and customer to price lists in a prescribed format only (without accompanying advertising); and - introducing a requirement to ban tobacco advertising and require tobacco companies to submit an annual audit to confirm compliance. <ul style="list-style-type: none"> ▪ Sub #395 consider the object of the TAPA (s.3) is clearly stated, and as such would appear to limit any gaps in the coverage of the legislation effectively, even considering the new and emerging advertising and sponsorship practices. Suggestions to strengthen the intention of the object of the TAPA include: <ul style="list-style-type: none"> - rather than referring to the ‘public’ as a general term, the TAPA might also refer to particular target audiences along similar lines to the Strategy Objectives of the National Tobacco Strategy (such a change would clearly define the fact that tobacco promotion and advertising targets specific and vulnerable groups in the community and that the legislation is an important measure to prevent this); - adding the term ‘inducements’ to complement the focus on ‘messages and images’; and - the TAPA definition expanded to include maintaining and promoting public health.
<p>5.3. Do the definitions of 'tobacco advertisement' and 'publish a tobacco advertisement' assist in identifying and enforcing obligations under the Act? In addition, should the TAPA be amended to insert definitions for both 'tobacco publicity' and 'tobacco promotion'? If so, what elements of these terms should be spelt out more specifically?</p>	<ul style="list-style-type: none"> ▪ Sub #12, Sub #366 and Sub #395 consider the TAPA should be amended to include definitions for publicity and promotion as the current definitions are not adequate. ▪ Sub #355 agree the proposal to break the definition into two distinct concepts for publicity and promotion would assist the industry’s and the public’s understanding and interpretation of legislation and would assist in identifying and enforcing obligations under the TAPA. ‘Publicity’ should be defined to clarify the definition of ‘giving publicity to smoking’. The TAPA should ensure the definition of ‘smoking’ extends to images such as photographs of a person smoking or the act of smoking (such as the promotion of cigar bars and cover all products that can be smoked). ▪ Sub #376 recommend the definitions of ‘tobacco publicity’ and ‘tobacco promotion’ should be broadened to include all displays and activities that might encourage smoking. ▪ Sub #380 would support detailed definitions that restrict the promotion of ‘quality’, ‘fine’, ‘light’ or ‘mild’ tobacco or information that implies that one form of tobacco is a better

	<p>quality or standard than another.</p> <ul style="list-style-type: none"> ▪ Sub #385 reject the proposition that an image or a portrayal of someone smoking is equivalent to providing publicity to smoking. These images may be a reflection of reality through the genre of history, documentary, news and current affairs or an expression of a character or narrative reality. Such broadening of the powers of the TAPA to influence program content would be highly restrictive and may indeed lead to undue censorship of content. Given tobacco is currently a legal drug, the argument to restrict its portrayal is an untenable one. ▪ Sub #386 recommend broadening the definition of ‘tobacco advertisement’ and ensure the definition and surrounding provisions are broad enough to cover the type of activities which tobacco companies are increasingly turning. These include guerrilla marketing, events and venue marketing, affinity marketing, point of sale marketing, marketing through the pack, internet marketing, direct marketing and value-added promotions. Suggest including words such as ‘or any other image, message or communication of any type’ will ensure the coverage of the definition is beyond doubt. ▪ Sub #392 suggest the definition of ‘tobacco advertisement’ must include both covert and overt messages on all tobacco products including cigar and cigarettes advertising. Revised tobacco packaging, which essentially only allows health warnings on the tobacco packet and introducing, bans on smoking in films and on stage (including the placement of tobacco products in films and on stage). ▪ Sub #393 oppose the suggestion to widen the definition of ‘advertising’ to encompass material that is either advertising or promotional.
<p>5.4. Should the TAPA continue to retain the existing defences of accidentally broadcasting (s.14) and accidentally publishing(s.19) a tobacco advertisement? What other regulatory approaches might be suitable? If the TAPA retains the accidental/incidental defences, should the requirement for an extra direct or indirect benefit (s.19(b)) be deleted?</p>	<ul style="list-style-type: none"> ▪ Sub #12 do not agree that the TAPA should retain the existing defence of accidental broadcasting/advertising. ▪ Sub #366 raise concern over what constitutes ‘accidental broadcasting’. ▪ Sub #376 consider the accidental/incidental defences should not be a justification for the broadcasting or publishing of tobacco promotion. ▪ Sub #380 consider the defences from incidentally broadcasting (where there is no pecuniary benefit from publishing the tobacco advertisement) should remain. However, regulations should be established where prescribe warnings must be published or broadcast with incidental advertisements. ▪ Sub #385 oppose any amendments to s.14 of the TAPA and submit the same positions

	<p>should apply to accidental or incidental publication as provided in s.19 of TAPA. There is certainty under established case law, which should be recognised, and maintained in relation to both broadcasting and publishing. The changes put forward by the Issues Paper may cause greater uncertainty, which would ultimately, impact negatively on audience members and users of other media platforms.</p> <ul style="list-style-type: none"> ▪ Sub #386 recommend an amendment to the accidental/incidental exception. Suggestions include: <ul style="list-style-type: none"> - defining ‘incidental’ as having a minor role in relation to ‘a more important thing’; - specifying factors for determining reasonableness; - specifying that the exception cannot be used by a person in the tobacco trade, where the publication or broadcast is careless; - if direct or indirect benefit is received; and - taking into account the full circumstances in which it is published. ▪ Sub #389 support the retention without altering the existing provision for accidental and incidental broadcast and the existing restrictions on the publication of tobacco advertisements. Concern some of the regulatory changes raised in the Issues Paper may have a negative impact on the ability to commission and broadcast authentic stories. ▪ Sub #392 consider broadcasters should ensure that conspicuous placements of tobacco product, should carry health warnings. The ban should be extended to include incidental advertisements if the main matter that contains the incidental tobacco advertisement can be deleted from the broadcast or publishing the tobacco advertising. ▪ Sub #395 consider it appropriate the TAPA retain the defences to accidentally broadcasting and accidentally publishing a tobacco advertisement. However, if s.14(b) were to be deleted, it would be appropriate to separate the defence of accidental and incidental publication into distinct defences. While s.14(b) does not appear applicable in defining the defence of accidental broadcast, this may not be the case in terms of incidental broadcast.
<p>5.5. Imported magazines containing tobacco advertisements are more common now than at the time TAPA was first introduced. These are frequently general magazines produced for a non-Australian readership and therefore not in breach of TAPA according to</p>	<ul style="list-style-type: none"> ▪ Sub #12 suggest the prohibition of imported magazines on display in retail environments and/or which have a distribution of hundred or more per state. Only allow the magazines for personal use (purchased by the individual overseas), with no re-sale permitted and no subscription company involvement. ▪ Sub #343 consider imported magazines should be covered by the TAPA. ▪ Sub #350 recommend overseas publications should be covered by the TAPA and suggest a

<p>s.17(1). Should this continue to be the case, or are there alternative approaches to regulating these periodicals?</p>	<p>situation where publishers commit ‘publication sin’ in accordance with protocols applying to a particular country.</p> <ul style="list-style-type: none"> ▪ Sub #366 suggest removing the pages depicting smoking. ▪ Sub #376 suggest overseas journals, videos or other such items, which contain overt or covert tobacco promotions should not be on display or sold in Australia. Imported products should conform to local law and s.17(1) should be deleted. ▪ Sub #392 consider there should be a quota on the import of all international magazines coming from countries where there is no legislation on tobacco advertising. Suggest outlets selling imported magazines should apply for a license to sell international magazines and comply with quota restrictions. ▪ Sub #395 suggest currently under the intent of the TAPA such publications are contrary to the policy of both the Commonwealth and all jurisdictions to restrict tobacco advertising/promotion. The range and volume of foreign magazines now available that legally contain tobacco advertisements under the current provisions of the TAPA appears to have increased. A comprehensive approach to address this issue could be to combined the provisions of the New Zealand Smoke-free Environment Act 1990, which effectively bans the sale of arrangement of publications dedicated to the use of tobacco, with the Irish <i>Public Health (Tobacco) Act 2002</i>, which limits the distribution of foreign publications with tobacco advertising predefined quantities. This is not an issue that can be easily addressed at a State/Territory level. It requires a comprehensive national approach to ensure consistency and to make application and interpretation of the legislation easier for importers, publishers and law enforcement agencies.
<p>5.6. How should TAPA treat internet retail sites and the promotion of tobacco products and smoking via the internet? What other regulatory approaches might be suitable?</p>	<ul style="list-style-type: none"> ▪ Sub #12 suggest the TAPA should apply to internet sites, with tobacco retail sites originating in Australia being in breach of Australian law (similar to laws for gambling). ▪ Sub #367 consider the use of the internet to promote tobacco should be legislated. ▪ Sub #376 recommend internet sites need to be tightly controlled in relation to tobacco. ▪ Sub #386 consider there should be a prohibition on internet sales from overseas for personal use to Australians, and on purchase by Australians from overseas via the internet. Otherwise, products in Australia cannot be regulated in accordance with Australian laws on health warnings, content information, and other areas that might be regulated in the future. Internet sales from overseas should be regulated and only allowed to persons in the tobacco trade. The TAPA should provide that only factual information be communicated to an

	<p>Australian via the information by a person in the tobacco trade, with information only available on secure sites. The TAPA should impose obligations on Australian based internet content hosts, have a provision that it is an offence to provide access to offending material and these requirements should be included within the Internet Industry Association code where appropriate.</p> <ul style="list-style-type: none"> ▪ Sub #392 recommend a complete ban on sales of tobacco products over the internet as they cannot be controlled and monitored. Tobacco transactions must be from a registered person, thereby eliminating vending machines, with a requirement for suppliers and sellers to be licensed. ▪ Sub #395 consider legislative controls over the internet difficult to apply, given the nature of the internet and the opportunity this affords for dissemination information that may be contrary to the laws of a jurisdiction. However, this should not preclude an effort under the TAPA to control internet tobacco retail sites and the promotion of tobacco products via the internet, particularly where servers hosting webpages publishing information that fall under the provisions of the TAPA are based in Australia. In such situations, the publisher should not be considered to be the ISP, but the individual or corporate entity, which causes the webpage to be published. The TAPA should contain a provision with the intent that the provisions of the TAPA apply to webpages on servers in Australia as if these webpages were any other form of publication. It should also contain provisions to ensure that investigators can access restricted sites, such as those requiring membership or password access, if it can be reasonably established that tobacco promotion material may be on the site. It would also seem appropriate that any provisions might be contained in regulations under the TAPA rather than in the TAPA itself.
<p>5.7. Are there any less common forms of potential advertising that should be better addressed in the legislation? For example, how should the TAPA treat objects that display tobacco advertising (such as historic racing cars, toy racing cars, and tobacco memorabilia)?</p>	<ul style="list-style-type: none"> ▪ Sub #12 suggest the TAPA legislation should address historical trademarks and brand names with guidelines for museums or a committee of health experts justifying the inclusion and display of historic items. ▪ Sub #350 consider that history has happened and significant historically visual footage should remain. ▪ Sub #376 consider genuine historic items should only be on display in museums, or in special exhibitions and should not be arranged to imply support for tobacco. ▪ Sub #380 consider a person should be able to sell or advertise to sell any object, such as historic replica cars that constitute or contain a tobacco advertisement. This should be

	<p>regardless of pecuniary benefit or whether the advertisement is required for the historic authenticity of the object.</p> <ul style="list-style-type: none">▪ Sub #395 currently consider different States and Territories, particularly those with their own legislation covering tobacco advertising/promotion, appear to have different responses to these issues when questioned on the legality. Product placement is another issue that needs to be properly addressed under the TAPA. It is clear that tobacco manufacturers historically see product placement as a highly effective marketing tool, not simply a means of circumventing current tobacco advertising laws. At a minimum these issues need to be addressed at a national level. It may be that to effectively control issues such as the internet and product placement, a global approach such as that espoused in the Framework Convention on Tobacco Control may be required (FCTC).
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Chapter 6 – Definition of ‘tobacco advertisement’	
<p>6.1. Should the word ‘otherwise’ be deleted from s.9 to ensure that there is no argument that the only kind of publicity that is included is publicity which somehow promotes smoking or tobacco products, etc.?</p>	<ul style="list-style-type: none"> ▪ Sub #360, Sub #376, Sub #384 and Sub #395 agree that the word ‘otherwise’ should be deleted. ▪ Sub #380 propose that it should be made clear that the publicity of tobacco products is a punishable offence, regardless of whether that publicity promotes tobacco products or their use. ▪ Sub #390 oppose such an amendment as the only publicity which should be relevant in the context of the regulation of tobacco advertising is publicity which promotes or intends to promote the activity of smoking. Given the already broad definition of advertisement, removal of the word ‘otherwise’ could potentially capture significant amounts of material that were never intended to fall within the regulations. Any proposed broadening of the definition has the potential to extend the TAPA beyond the stated objectives. ▪ Sub #394 agrees the word ‘otherwise’ should be deleted from s.9 to ensure that there is no argument that the only kind of publicity actually promoted smoking, tobacco products etc. Tobacco products, smoking etc can be given publicity without actually ‘promoting’ and this publicity of itself should not be allowed under the TAPA.
<p>6.2. Should the meaning of the word <i>smoking</i> be amended so that it is not limited to the idea of smoking tobacco products and instead extends to cover all products that can be smoked?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #360, Sub #376, Sub #380 and Sub #384 agree the word ‘smoking’ should be amended and relate to ‘smoking products’, not just ‘tobacco products’. ▪ Sub #394 agree the word ‘smoking’ should be amended. Countries such as New Zealand are looking to make similar amendments to their definitions. The definition should not only be limited to products that can actually be smoked, as then imitation cigarettes are not covered. The definition of smoking should encompass the ‘act’ of smoking, whether or not the product/item in the advertisement can actually be smoked or not. ▪ Sub #395 consider this would be appropriate if the intention is to cover all products that can be smoked under the provisions of the TAPA. This approach is reliant on a suitable and encompassing definition being developed that will achieve the desired definition. Suggest a more practical approach might be to create a schedule under the TAPA for products, to which the provisions of the TAPA apply.
<p>6.3. Should the publication of a photograph of a person smoking, or even of a person holding a cigarette, cigar or pipe, be</p>	<ul style="list-style-type: none"> ▪ Sub #1 disagree based on the difficulty to ensure that all images are free of smoking. ▪ Sub #360 disagree as society accepts smoking, such images should reflect society correctly.

<p>considered as giving publicity to smoking? Should there be any exceptions to such a rule?</p>	<ul style="list-style-type: none"> ▪ Sub #376 recommend the publication of persons smoking, appearing to smoke or holding a smoking implement should not normally be allowed (except under permit). ▪ Sub #380 and Sub #384 recommend the publication of a photo or picture of a person smoking should be considered as publicity. Provisions should require that the publisher edits or removes the tobacco advertisements where possible. Any tobacco image that remains should be accompanied by a health warning message that constitutes at least 10% of the total image. ▪ Sub #385 is opposed to extending the notion of publicity to include such images, particularly when the image may be essential to the portrayal of a character or as a portrayal of social interaction. ▪ Sub #394 agree these types of publications should be considered as giving publicity to smoking. With today's technology it is possible to edit/alter portions of an image. ▪ Sub #395 agree, however, there needs to be consideration given for the deliberate publication of photographs depicting smoking for historical and educative purposes.
<p>6.4. Should s.8 be amended so that cigarette cases and cigar cases are included in the definition of <i>tobacco product</i>?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #344, Sub #360, Sub #376, Sub #380 and Sub #384 agree that as accessories to tobacco products they should be included in the definition of 'tobacco product'. ▪ Sub #386 agree the definition of 'tobacco product' should be extended to cover all products designed for consumption by smoking, and to include cigar and cigarette cases. Suggest definition should also cover cannabis smoking. ▪ Sub #394 agree this amendment should be made, given various tobacco companies have brought out versions of these items displaying tobacco brand names and logos. ▪ Sub #395 agree they should be included under the definition of tobacco products and suggest consideration to extending the definition to cover all packaging for tobacco products (while ensuring health warnings applied to packaging are not removable).

<p>6.5. Could regulations be used to define classes of smoking publicity by publishing examples? How many examples are needed to effectively define a class?</p>	<ul style="list-style-type: none"> ▪ Sub #1 and Sub #360 suggest this would be difficult and lead to examples being overlooked. ▪ Sub #380 view that classifying tobacco ‘publicity’ into levels with layered penalty structures would not be useful. Consider a court is better suited to make decisions about seriousness and judge a penalty on a case by case basis. ▪ Sub #384 support this suggestion. ▪ Sub #385 consider it would impractical and inappropriate to attempt to define classes of smoking publicity by publishing examples. These matters should be interpreted in light of the established case law. ▪ Sub #394 support this suggestion and raise the issue of images that are in magazines of well-known people smoking or of smoking/tobacco products glamorised in fashion-type articles and the fact research shows youth are influenced by these role-models. ▪ Sub #395 support regulations for this purpose if defining classes of publicity by publishing examples is an effective means of defining smoking publicity. However publishing examples might have the unintended effect of providing an automatic defence if the published examples do not clearly cover all situations. The number of examples need to define a class will depend on the size of each class and consideration needs to be given on the issue of how audio publicity will be included.
<p>6.6. Could regulations be framed to provide for exceptions or limitations? For example, a regulation could require an image not to be more than 10% of the surface of an image, but is this feasible?</p>	<ul style="list-style-type: none"> ▪ Sub #1 and Sub #360 disagree as regulations would create unnecessary complications not envisaged at the time the regulation is created. ▪ Sub #376 recommends that promotion should not be made acceptable by being smaller in size. ▪ Sub #380 and Sub #384 agree that regulations would be useful to prescribe health warnings and sizes of health warnings on advertisements. ▪ Sub #385 consider it impractical and inappropriate to attempt to frame regulations providing for exceptions or limitations. These matters should be interpreted in light of the established case law. ▪ Sub #395 consider regulations could be framed to provide for exceptions, given the intent of TAPA is to provide comprehensive coverage of all issues relating to tobacco promotion and publicity. Exception based regulations complementing a complete ban in the TAPA should prove to be workable. Suggest 10% would be too generous while 3% would be acceptable. The issue of how to measure the image needs to be considered.

<p>6.7. Should the term 'a section of the public' be defined to make it clear that any group is a section of the public for the purposes of the TAPA? Should there be any exceptions to such a rule?</p>	<ul style="list-style-type: none"> ▪ Sub #355, Sub #360, Sub #380, Sub #384, Sub #386 and Sub #394 agree the definition of 'section of the public' should make it clear that any group is a section of the public. Including private functions, which are strictly by invitation and advertisements of cigar clubs and lounges, private clubs or other comparable tobacco membership schemes. ▪ Sub #376 suggest that one person can constitute a section of the public. ▪ Sub #395 agree the term should be defined to make it clear that any group is 'a section of the public' for the purposes of the TAPA. This issue was considered in the drafting of the Western Australian Health Regulations 1999 where 'a section of the public' was any section of the public not entirely private by nature. Exceptions should be available for certain purposes under strict definitions and parameters.
<p>6.8. Should a strictly private function, such as one which is exclusive to members or to which admission is strictly by invitation, be considered to comprise a section of the public? What about events where entry is by ticket but where tickets are only available to an exclusive group (such as the members of a club)?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #355, Sub #360, Sub #380 and Sub #384 agree a strictly private function should be considered to comprise a section of the public. ▪ Sub #394 agree these types of functions should be considered to comprise 'a section of the public' especially as tobacco companies sponsor events aimed at young people where you have to be a 'member' to attend. ▪ Sub #395 agree on the basis that exemptions should be available for certain purposes under strict definitions and parameters. Care needs to be taken to ensure that the exception is not available to clubs, for example, whose purpose is the actual consumption or promotion of a product in a non-retail or trade setting.
<p>6.9. Where an exclusive event will feature or include tobacco or smoking, should an invitation to the event be treated as tobacco advertising or promotion?</p>	<ul style="list-style-type: none"> ▪ Sub #1 and Sub #360 disagree, on the condition it is a private function and the event is invitation only. ▪ Sub #355, Sub #376, Sub #380 and Sub #384 agree that any invitation to an event that features or includes tobacco smoking should be treated as tobacco advertising or promotion. ▪ Sub #395 disagree as it would be unworkable to completely prohibit all events/functions at which tobacco might be promoted. If the event/function was able to access an exemption as proposed in 6.8, the invitation should not be considered a promotion.
<p>6.10. Should the term 'a section of the public' include the members of a cigar club or any other comparable tobacco membership schemes?</p>	<ul style="list-style-type: none"> ▪ Sub #355, Sub #360, Sub #376, Sub #380, Sub #384, Sub #386, Sub #394 and Sub #395 agree.
<p>6.11. Should the term 'a section of the</p>	<ul style="list-style-type: none"> ▪ Sub #355, Sub #360, Sub #376, Sub #380, Sub #384 and Sub #395 agree.

public' include the members of a private club who happen to be interested in consuming tobacco products?

- Sub #386 agree and consider the aim should be to allow these clubs to exist, but to ensure that they cannot be set up, or used, for tobacco marketing purposes.

Chapter 7 – Broadcasting tobacco advertisements

7.1. Should a person other than a broadcaster (such as the producer or editor) who deliberately includes a tobacco advertisement or tobacco promotion material in a broadcast be personally liable? Is so what form of penalty would be most appropriate?

- Sub #1 and Sub #360 disagree based on the low occurrence of these incidents and the current provision being tight enough.
- Sub #355 consider making a producer or editor personally responsible in addition to a corporation ensures liability is shared.
- Sub #380 consider broadcasters and producers should both be responsible for the broadcast. Broadcasters should be responsible for restricting tobacco advertisements from being broadcasted through their medium and responsible for placing required warnings next to the incidental advertisements. Producers should be responsible for ensuring that other images or words are used, where practical, in the place of tobacco advertisement.
- Sub #384 consider identifying and prosecuting persons involved in the deliberate broadcasting of tobacco advertisements should be the primary objective, which may include producers and editors.
- Sub #386 recommend it an offence to encourage, procure, pay someone else to publish/broadcast a tobacco advertisement that is in breach of the TAPA or would be in breach of the TAPA if published/broadcast by the first-named person or to accept payment.
- Sub #395 suggest it seems logical that anyone other than a broadcaster who deliberately includes a tobacco advertisement or tobacco promotion material in a broadcast would be doing so for either direct or indirect benefit. Therefore, where the direct or indirect benefit can be established, they should be personally liable under the legislation and the TAPA should be extended to include such a personal liability provision. The prescribed penalty should be the same as that applied to an individual under other areas of the TAPA.

Chapter 8 – The accidental and incidental exceptions

<p>8.1. Should s.14 be amended to require that material is not incidental to the broadcast of other matter if certain criteria are not met, for example, the allegedly incidental matter is not subordinate to the other matter, and that the other matter is the smallest segment of a program for which a connection can be meaningfully made?</p>	<ul style="list-style-type: none">▪ Sub #360 disagree to s.14 being amended as it creates unnecessary ‘red tape’ for broadcasting.▪ Sub #389 consider the changes contemplated appear uncertain in their impact.▪ Sub #390 consider that because a determination of what is incidental and what is not is based on many different factors, that it is not possible, to list out all possible scenarios and criteria. Oppose the suggested amendment to s.14 of the TAPA and support the certainty that exists under the established case law.▪ Sub #380 and Sub #384 support a clearer definition of incidental broadcasting/publication of a tobacco advertisement. Specifically supports a definition which states that a matter is incidental if it is inescapably connected to another predominant matter which is being broadcasted or published at the same time. The definition should state that an advertisement is only incidental if all possible attempts to remove or edit the advertisement were made and could not be achieved.▪ Sub #394 support this amendment and suggest this amendment should also state that a matter is not incidental if it is not broadcast at the same time as the other matter or it is not a live broadcast.▪ Sub #395 consider this an appropriate amendment. Raise the issue of the difficulty in understanding how tobacco advertising or promotion should be considered to be incidental if it is separate from the main body of material being broadcast and therefore could easily be edited out.
<p>8.2. Where it becomes apparent to a broadcaster that a live broadcast contains tobacco advertisements or tobacco promotion, what should the broadcaster be reasonably expected to do at the time of broadcast?</p>	<ul style="list-style-type: none">▪ Sub #360 recommend in the event that this occurs, broadcasters should have a code of conduct to eliminate the item from the broadcast where feasible.▪ Sub #376 suggest there should be no broadcasting of overseas events, which include tobacco promotion except by special exemption.▪ Sub #379 concur it would be technically impracticable for a broadcaster to filter out incidental tobacco advertisements that occur during a live broadcast. Suggest the TAPA address distinctions between live, delayed broadcasts and rebroadcast material.▪ Sub #380 propose broadcasters include a health warning during the entire time the broadcast occurs, make all attempts to remove or edit the incidental advertisement and contain Commonwealth approved announcements, warning about the health dangers.

	<ul style="list-style-type: none"> ▪ Sub #384 consider restrictions on accidental or incidental tobacco advertisements during live broadcasts may be impractical for industry to implement, if, however, the technology exists to edit live broadcasts, then the tobacco advertisements or promotions should be removed. ▪ Sub #390 consider currently a high level of responsibility in relation to the TAPA prohibitions are shown. The presence of tobacco material is minimised to the extent possible without affecting coverage of the event being broadcast. Oppose the suggestion that health warnings be forced upon broadcasts that may contain incidental tobacco material. ▪ Sub #394 consider in many instances where a live broadcast will contain tobacco advertisements or promotion, it will be apparent to the broadcaster beforehand. In these instances the broadcaster should be expected to minimise the broadcast of tobacco advertisements where possible. In addition the broadcaster should broadcaster prescribed health warnings or anti-smoking advertisements – further consideration should be given to which of these counter measures (or other alternatives) is the most effective. The content of these prescribed messages/ads should be set by the TAPA in regulations so that they can easily be updated and amended easily. ▪ Sub #395 accept that it may be impractical or technically infeasible for broadcasters to alter the images in live broadcasts. The option should be considered for broadcasting health warnings during the broadcast and/or the concept of digitally altering the image should be explored.
<p>8.3. How should the TAPA respond to rebroadcasts? For example, should it be a TAPA offence to deliberately re-screen tobacco advertisements in a sporting broadcast and in news coverage of a sporting broadcast?</p>	<ul style="list-style-type: none"> ▪ Sub #360 do not think it should be an offence under the TAPA due to news and current affairs requiring editorial freedom. ▪ Sub #376 consider it should be an offence to screen and re-screen tobacco advertisements in sport or in news coverage. ▪ Sub #379 consider it unnecessary to introduce an intention test into the legislation and submits that the current TAPA covers the incidental position adequately. ▪ Sub #380 propose if all attempts to remove or edit the incidental advertisement have been taken, health warnings during the time of broadcasts and Commonwealth approved announcements warnings should be introduced. ▪ Sub #384 suggest if technology exists to edit rebroadcasts, then it should be an offence to deliberately re-screen tobacco advertisements.

	<ul style="list-style-type: none"> ▪ Sub #390 consider currently a high level of responsibility in relation to TAPA prohibitions are shown. The presence of tobacco material is minimised to the extent possible without affecting coverage of the event being broadcast. There is no justification for treating rebroadcasts any differently from other broadcasts and oppose the suggestion that health warnings be forced upon broadcasts that contain incidental tobacco material. ▪ Sub #394 consider this should be an offence. With technology available today it is possible to digitally edit almost any image, therefore it is feasible that any re-broadcast can have tobacco advertising eliminated. If there are issues of copyright or damage to the story then conditions should apply about broadcasting health warnings or anti-smoking advertisements. It could be argued that if editing out the tobacco advertisement damages the program then the tobacco advertisement may not be incidental, and therefore would not be allowed under the TAPA. This should apply to all classes of programs. ▪ Sub #395 recommend that while it might be difficult to edit or alter the image of live broadcasts, rebroadcasts should not have this problem. As a minimum rebroadcasts should require health warnings. Another consideration could be a restriction to prevent rebroadcasts being shown at certain times.
<p>8.4. How serious an effort should the broadcaster of pre-recorded material be expected to make to avoid broadcasting an incidental tobacco advertisement?</p>	<ul style="list-style-type: none"> ▪ Sub #360 recommend broadcasters should follow a code of conduct to avoid broadcasting incidental tobacco advertising. ▪ Sub #376 and Sub #394 consider broadcasters should make every effort to avoid broadcasting incidental tobacco advertisements. ▪ Sub #379 suggest the issue of copyright and contractual restrictions need to be addressed and clarified in relation to question 8.4. ▪ Sub #380 consider broadcasters should make all attempts to remove or edit the incidental tobacco advertisement. ▪ Sub #384 consider broadcasters should make a serious effort to avoid broadcasting an incidental tobacco advertisement and suggest the strategy of screening generic quit smoking advertising during the broadcast may be an effective approach. ▪ Sub #390 consider currently a high level of responsibility in relation to the TAPA prohibitions are shown. The presence of tobacco material is minimised to the extent possible without affecting coverage of the event being broadcast. There may be contractual provisions between the broadcaster and the relevant rights owner that precludes interference with the coverage. Oppose the suggestion that health warnings be forced upon

	<p>broadcasts that contain incidental tobacco material.</p> <ul style="list-style-type: none"> ▪ Sub #395 consider a broadcaster should be required to make all efforts to avoid broadcasting incidental tobacco advertising in pre-recorded material, if amendments to the TAPA were considered, then such efforts would need to be defined. There also needs to be a form of legislative control that forces a broadcaster to take all reasonable steps to ensure that tobacco advertising material that does not need to be shown in the pre-recorded material is omitted from the broadcast.
<p>8.5. What are possible policy responses to the incidental publication of tobacco advertisements in films?</p>	<ul style="list-style-type: none"> ▪ Sub #1 consider currently this issue does not need addressing, if however, research projects indicate a larger problem it may need reconsideration at a later stage. ▪ Sub #4 express concern at the extent of smoking on UK based television programs and Hollywood movies. ▪ Sub #12 suggest the need for M ratings on films displaying smoking, prohibiting TV shows depicting smoking until after 7.30pm and more pressure on the film industry to eliminate tobacco advertising in films. ▪ Sub #343 consider there is a need for embargoes and penalties to be placed on films depicting scenes involving smoking or tobacco products ▪ Sub #355 agree that it is difficult to regulate the incidental publication of tobacco advertisements or smoking in films and other publications. Consideration should be given to applying a classification that requires screening of a health warning or similar message prior to the film being shown. Another option may be to require publishers to airbrush brand names, logo and other marketing devices out of still pictures. ▪ Sub #360 do not consider the TAPA should respond – providing it is legal for inclusion in the country where the film is made ▪ Sub #376 recommend banning films with incidental publications of tobacco advertisements. ▪ Sub #378 and Sub #388 suggest possible policy responses include the setting of ratings for broadcasts, a declaration as part of the credits that the actors have not accepted inducements and the use of anti-smoking advertisements to complement smoking behaviour in movies and on TV. ▪ Sub #380 recommend all publications that are incidental should have a prescribed health warning constituting 10% of the size of the main image in which the tobacco advertisement appears.

	<ul style="list-style-type: none"> ▪ Sub #384 consider the policy responses to the incidental publication of tobacco advertisements in films should be informed by the outcomes of the Commonwealth research project for health warnings. ▪ Sub #386 suggest addressing and regulating smoking in films by providing an appropriately funded education campaign on legal obligations under the TAPA and the establishment of a working group, including relevant stakeholders, to discuss possible policy responses. ▪ Sub #388 refer to the Classification Act and currently it not referring specifically to smoking or the use of tobacco. The national classification scheme is a cooperative scheme between the Commonwealth, States and Territories. Any amendments to the classification guidelines to refer to smoking or the use of tobacco would require the agreement of all Commonwealth, State and Territory Ministers (with censorship responsibilities). Reviews of the guidelines are undertaken from time to time to ensure that the guidelines continue to reflect current community standards. As the current guidelines came into effect on 30 March 2003, the next review of the guidelines will not occur in the near future. ▪ Sub #390 consider program content is already regulated in a number of ways and there are appropriate mechanisms to ensure that program content accords with community standards. Oppose any changes to current regulations and policies. ▪ Sub #395 recommend this issue be considered outside the review of the TAPA to ensure an effective and workable policy and legislative solution is developed.
<p>8.6. Given the objectives of the legislation in limiting the exposure of the Australian people to pro-tobacco messages, is it appropriate for legislation to impose a complete ban on the deliberate inclusion of tobacco-related material with other material?</p>	<ul style="list-style-type: none"> ▪ Sub #1 consider policy questions 8.6.- 8.12. as excessive regulating. ▪ Sub #360 consider (8.6. – 8.9.) incidental inclusion of tobacco material may occur unintentionally and as such the incidental defence should remain. Any further change is adding complexity to the law that would appear impractical to regulate and may not necessarily prevent incidental broadcasting from happening. ▪ Sub #367, Sub #376 and Sub #380 suggest legislation be introduced to impose a complete ban on all forms of tobacco advertising and promotion. ▪ Sub #384 suggests if deliberate inclusion is clarified and/or proven against an alleged offender a total prohibition should be the goal. ▪ Sub #387 consider it inappropriate to impose a complete ban on the deliberate inclusion of tobacco related material (such as a name and trademark) with other material. An attempt to restrict incidental publication of tobacco advertisements would unfairly and unduly restrict

	<p>companies to promote themselves and ‘non-tobacco’ products.</p> <ul style="list-style-type: none"> ▪ Sub #394 consider this legislation would be appropriate. Including tobacco related material and then claiming it is incidental is against the intent of the TAPA – there should be no general exception. ▪ Sub #395 consider this legislation would be appropriate, except in selective circumstances. Suggest that rather than define the exceptions a more appropriate model might be to require than an application to the Minister is required under a formal process.
<p>8.7. Is there a clear and convenient test for identifying tobacco-related material that it would be reasonable to publish on the grounds that the publication is incidental to the publication of other material?</p>	<ul style="list-style-type: none"> ▪ Sub #1 consider policy questions 8.6.- 8.12. as excessive regulating. ▪ Sub #360 consider this adds complexity to the TAPA and would be impractical to regulate, while not necessarily preventing incidental broadcasting. ▪ Sub #380 consider that it should be defensible for a tobacco advertisement to be broadcast or published if it is incidental (not for pecuniary benefit), if it is displayed with prescribed health warnings and efforts have been made to remove or replace the image. ▪ Sub #384 consider the test would need to address technical components and provide a clear and convenient way to identify incidental occurrences that would assist the industry and enforcement officers. ▪ Sub #395 support the idea of a test based on the reasonableness of an argument that the material is not incidental if a publisher could have omitted the tobacco-related material.
<p>8.8. In satisfying the requirement that tobacco-related material be incidental, how close a relationship should be required between the tobacco-related material and other material?</p>	<ul style="list-style-type: none"> ▪ Sub #1 consider policy questions 8.6.- 8.12. as excessive regulating. ▪ Sub #384 consider to satisfy the requirement technical factors would need to be addressed. ▪ Sub #395 consider it difficult to see how the relationship between the tobacco-related material and the other material can be defined.
<p>8.9. Should the incidental exception be amended so that there is no general exception but that the Minister may grant individual exemptions? Should there be review rights for such decisions?</p>	<ul style="list-style-type: none"> ▪ Sub #1 consider policy questions 8.6.- 8.12. as excessive regulating. ▪ Sub #360 oppose the amendment based on incidental inclusion of tobacco material occurring unintentionally. ▪ Sub #379 submit that the process for applying for an individual exemption would be difficult and impose further levels of uncertainty to publication and broadcasting of events. ▪ Sub #380 consider that the incidental defence should remain but be clearly defined. ▪ Sub #395 consider this approach would be appropriate. A review of appeals process should automatically be included for such decisions unless the decision making framework was well defined. Support the development of a system that is flexible and timely enough

	to make decisions over short time frames.
8.10. Would there be any practical problems if the incidental defence were repealed?	<ul style="list-style-type: none"> ▪ Sub #1 consider policy questions 8.6.- 8.12. as excessive regulating. ▪ Sub #360 consider this change adds complexity to the TAPA and would be impractical to regulate. ▪ Sub #384 suggest practical problems may include technical factors. ▪ Sub #395 consider specific circumstances such as the publication of photographs of international sporting events at which tobacco promotion is allowed, in newspapers and other short-term media may create practical problems.
8.11. Should s.14 be amended so that the accidental broadcast of a tobacco advertisement is not permitted unless the broadcaster can show that the tobacco advertisement had not been broadcast carelessly? Is there any point in retaining the extra requirement that a broadcaster cannot claim the benefit of an accidental broadcast if there was a direct or indirect benefit from the broadcast?	<ul style="list-style-type: none"> ▪ Sub #1 consider policy questions 8.6.- 8.12. as excessive regulating. ▪ Sub #360 suggest further amendments add complexity to the TAPA and would be impractical to regulate. ▪ Sub #379 consider that given the level of tobacco sponsorship associated with some events, it would be difficult to impose penalties where a tobacco advertisement was broadcast/published accidentally in connection with such an event. ▪ Sub #384 consider the concept of direct or indirect benefit is unnecessary, as gathering the evidence and/or determining 'benefit' is difficult. ▪ Sub #390 consider program content is already regulated in a number of ways and are appropriate mechanisms to ensure that program content accords with community standards. Oppose the suggestion raised. ▪ Sub #394 recommend the amendment be made. ▪ Sub #395 support the proposed amendment. Suggest that while it should be redundant under the definition of what constitutes accidental, it may be helpful to retain the additional requirement that no direct or indirect benefit is received to serve the purpose of further defining the consideration of what might be considered accidental.
8.12. Should s.19 be amended so that the accidental publication of a tobacco advertisement is not permitted unless the publisher can show that the tobacco advertisement had not been published carelessly? Is there any point in retaining the extra requirement that a publisher cannot claim the benefit of an accidental publication	<ul style="list-style-type: none"> ▪ Sub #1 consider policy questions 8.6.- 8.12. as excessive regulating. ▪ Sub #360 suggest further amendments add complexity to the TAPA and would be impractical to regulate. ▪ Sub #380 consider the excuse of a tobacco advertisement being accidental is not a legitimate defence, an accidental advertisement implies a lack of care and therefore a penalty is justified. ▪ Sub #384 consider the concept of direct or indirect benefit is unnecessary, as gathering the evidence and/or determining 'benefit' is difficult.

<p>if there was a direct or indirect benefit from the publication?</p>	<ul style="list-style-type: none"> ▪ Sub #394 recommend the amendment be made. ▪ Sub #395 support the amendment and consider publishers who publish material carelessly should be subject to the provisions of the TAPA. Suggest that while it should be redundant under the definition of what constitutes accidental, it may be helpful to retain the additional requirement that no direct or indirect benefit is received to serve the purpose of further defining the consideration of what might be considered accidental.
<p>8.13. Should s.14 be amended so that the incidental broadcast of a tobacco advertisement is not permitted unless the broadcaster can show that the main matter could not reasonably have been replaced with reasonably comparable material that did not contain an incidental tobacco advertisement?</p>	<ul style="list-style-type: none"> ▪ Sub #355 support an attempt to eliminate all forms of accidental and incidental broadcasting and publishing of tobacco advertisements as referred to in section 8.28 of the Issues Paper. This would ensure that the issue of direct or indirect benefit would only arise if a broadcaster or publisher could not reasonably omit the main material. ▪ Sub #360 suggest further amendment add complexity to the TAPA and would be impractical to regulate. ▪ Sub #380 consider it would be useful to require producers to consider alternatives to images featuring tobacco products. However, it is likely that this provisions would be difficult to enforce and defendants could argue it was required for reasons such as artistic or journalistic expression. ▪ Sub #384 recommend the strongest possible legislative reforms in this area due to publication and broadcast of alleged ‘incidental’ tobacco advertising that undermines the general prohibition on tobacco advertising. In addition, the concern that incidental tobacco advertising could be used as an excuse by tobacco companies and others. ▪ Sub #389 consider the changes contemplated appear uncertain in their impact. ▪ Sub #394 and Sub #395 support the proposed amendment.
<p>8.14. Should there be an extra requirement that even if the broadcaster can show that the main material containing the incidental tobacco advertisement could not be omitted from the broadcast, should the broadcast still be prohibited if there is a direct or indirect benefit arising from the broadcast of the incidental tobacco advertisement?</p>	<ul style="list-style-type: none"> ▪ Sub #360 suggest further amendments add complexity to the TAPA and would be impractical to regulate. ▪ Sub #380 propose that all tobacco advertisements for direct or indirect benefit should be prohibited and publishers should be made to replace the main matter with other material. Recommend a list of regulations that specify the various forms of direct or indirect benefit as, this could lead to different treatment for certain parties. ▪ Sub #384 recommend the strongest possible legislative reforms in this area due to publication and broadcast of alleged ‘incidental’ tobacco advertising that undermine the general prohibition on tobacco advertising. Suggest tobacco companies and others could use incidental tobacco advertising as an excuse.

	<ul style="list-style-type: none"> ▪ Sub #394 recommend this type of broadcast should be prohibited if a direct or indirect benefit can be shown. ▪ Sub #395 suggest careful consideration needs to be given, as there are significant ramifications with such a move. Linking the direct or indirect benefit requirement may effectively exclude the broadcast of international sporting events, unless an exception was allowed.
<p>8.15. Should s.19 be amended so that the incidental publication of a tobacco advertisement is not permitted unless the publisher can show that the main matter could not reasonably have been replaced with reasonably comparable material that did not contain an incidental tobacco advertisement?</p>	<ul style="list-style-type: none"> ▪ Sub #360 suggest further amendments add complexity to the TAPA and would be impractical to regulate. ▪ Sub #380 propose that all tobacco advertisements for direct or indirect benefit should be prohibited and publishers should be made to replace the main matter with other material. Do not recommend a list of regulations that specify the various forms of direct or indirect benefit, as this could lead to different treatment for certain parties. ▪ Sub #384 recommend the strongest possible legislative reforms in this area due to publication and broadcast of alleged ‘incidental’ tobacco advertising that undermine the general prohibition on tobacco advertising. Suggest that tobacco companies and others could use incidental tobacco advertising as an excuse. ▪ Sub #394 and Sub #395 support the proposed amendment.
<p>8.16. Should there be an extra requirement that even if the publisher can show that the main material containing the incidental tobacco advertisement could not be omitted from the publication, should the publication still be prohibited if there is a clear or direct benefit arising from the publication of the incidental tobacco advertisement?</p>	<ul style="list-style-type: none"> ▪ Sub #360 suggest further amendments add complexity to the TAPA and would be impractical to regulate. ▪ Sub #380 propose that all tobacco advertisements for direct or indirect benefit should be prohibited and publishers should be made to replace the main matter with other material. Do not recommend a list of regulations that specify the various forms of direct or indirect benefit, as this could lead to different treatment for certain parties. ▪ Sub #384 recommend the strongest possible legislative reforms in this area due to publication and broadcast of alleged ‘incidental’ tobacco advertising that undermine the general prohibition on tobacco advertising. Suggest tobacco companies and others could use incidental tobacco advertising as an excuse. ▪ Sub #394 and Sub #395 recommend this type of broadcast should be prohibited if a direct or indirect benefit can be shown.
<p>8.17. Is there an alternative approach that would avoid the evidential burden of showing that there was no direct or indirect</p>	<ul style="list-style-type: none"> ▪ Sub #360 suggest further amendments add complexity to the TAPA and would be impractical to regulate. ▪ Sub #380 propose that all tobacco advertisements for direct or indirect benefit should be

<p>benefit but which would permit the broadcast or publication of incidental tobacco advertisements that were truly trivial and innocent?</p>	<p>prohibited and publishers should be made to replace the main matter with other material. Do not recommend a list of regulations that specify the various forms of direct or indirect benefit, as this could lead to different treatment for certain parties.</p> <ul style="list-style-type: none"> ▪ Sub #384 recommends the strongest possible legislative reforms in this area due to publication and broadcast of alleged ‘incidental’ tobacco advertising that undermines the general prohibition on tobacco advertising. In addition the concern that incidental tobacco advertising could be used as an excuse by tobacco companies and others. ▪ Sub #395 consider it is difficult to separate the trivial and unintentional – suggest the next logical step would be to remove the accidental/incidental exception completely.
<p>8.18. Even if the Act were otherwise unchanged, should the requirement for an extra direct or indirect benefit be deleted?</p>	<ul style="list-style-type: none"> ▪ Sub #360 suggest further amendments add complexity to the TAPA and would be impractical to regulate. ▪ Sub #380 propose that all tobacco advertisements for direct or indirect benefit should be prohibited and publishers should be made to replace the main matter with other material. Do not recommend a list of regulations that specify the various forms of direct or indirect benefit, as this could lead to different treatment for certain parties. ▪ Sub #384 recommend the strongest possible legislative reforms in this area due to publication and broadcast of alleged ‘incidental’ tobacco advertising that undermine the general prohibition on tobacco advertising. Suggest incidental tobacco advertising could be used as an excuse by tobacco companies and others. ▪ Sub #395 consider the requirement should remain as there is benefit in further defining direct or indirect benefit.
<p>8.19. Alternatively, should the Regulations specify the various forms of direct or indirect benefit? (Such Regulations would not be able to be relied upon until after the disallowance period to allow for consideration of Parliament).</p>	<ul style="list-style-type: none"> ▪ Sub #360 suggest further amendments add complexity to the TAPA and would be impractical to regulate. ▪ Sub #380 propose that all tobacco advertisements for direct or indirect benefit should be prohibited and publishers should be made to replace the main matter with other material. Do not recommend a list of regulations that specify the various forms of direct or indirect benefit, as this could lead to different treatment for certain parties. ▪ Sub #384 recommend the strongest possible legislative reforms in this area due to publication and broadcast of alleged ‘incidental’ tobacco advertising that undermine the general prohibition on tobacco advertising. Suggest that tobacco companies and others could use incidental tobacco advertising as an excuse. ▪ Sub #390 consider program content is already regulated in a number of ways and are

	<p>appropriate mechanisms to ensure that program content accords with community standards. Oppose any change to current regulations.</p> <ul style="list-style-type: none"> ▪ Sub #395 oppose the use of regulations to specify what is considered to be direct or indirect benefit. Suggest this would be a cumbersome and ineffective approach.
<p>8.20. Does the retention of s.20 in its present form serve any practical purpose that could not be addressed by directly amending s.15(3) to protect the non-commercial activities of individuals in the non-self-governing territories?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #360, Sub #380 and Sub #384 suggest an amendment to s.15(3).

Chapter 9 – Business-related communications

9.1. Should the existing exception for listing the name of a manufacturer, distributor or retailer of tobacco products in a telephone directory be expressly extended to comparable listings on the internet?

- Sub #1, Sub #355, Sub #360, Sub #380, Sub #384 and Sub #394 agree that the existing exception for listings in telephone directories should be retained and extended to comparable listings for the internet.
- Sub #376 suggest entries in directories should be limited to name and address, without graphics or other symbols.
- Sub #395 consider there is little benefit in preventing the listings on the internet.

9.2. Should the existing exception in s.9(2) be tightened to exclude any possibility that ordinary business document might be used to promote smoking or individual tobacco products?

- Sub #1, Sub #360, Sub #380, Sub #384 and Sub #394 agree that this exception be tightened, with an exception for product and prices lists.
- Sub #376 suggest documents should be limited to name and address, without graphics or other symbols.
- Sub #386 recommend that such documents be prohibited from containing any communication that goes beyond the factual information, except for the use of an image such as a company logo. Also suggest s.9 should include ‘colour’ and ‘colour schemes’ to make it clear that it is not permissible to use colours or colour schemes to evoke connections and associations with tobacco products and their branding.
- Sub #395 consider the tightening of s.9(2) to exclude any possibility that ordinary business documents are used to promote smoking or individual tobacco products might be perceived as harsh and difficult to monitor/enforce.

Chapter 10 – Tobacco sales advertising

10.1. Should the existing point of sale exception be retained in the TAPA given that it has become inoperative by operation of legislation that has been enacted in all of the states and territories?

- Sub #11, Sub #358 and Sub #384 suggest the existing exception remain as it provides a direct link between the TAPA and existing State/Territory legislation.
- Sub #1, Sub #355, Sub #360 and Sub #380 consider the existing point of sale should not be retained in the TAPA given that each State/Territory has imposed their own legislation.
- Sub #374, Sub #381 and Sub #383 consider there should be a clear set of guidelines in operation across the nation so there is a common approach in all States/Territories, which would ensure a clear and consistent interpretation of the law.
- Sub #386 consider products should not be visible from public places, including inside shops. Recommend no advertising should be allowed at the point of sale, except prescribed (by regulation) purely informational product lists or price boards inside the shop (with prescribed health warning and cessation information) and prescribed signs visible from outside the shop.
- Sub #395 consider the current exception should not be retained given that the States/Territories legislation render it inoperative. The exception should either be repealed to make legislation less cumbersome or strengthened and amended to provide an effective minimum standard.

10.2. Should the point of sale exception in the TAPA be extended and expressed to operate in addition to any relevant state or territory law so that it sets a minimum standard?

- Sub #1, Sub #11, Sub #360, Sub #380 and Sub #384 consider that the current situation recognising State/Territory jurisdiction should remain.
- Sub #337 consider any restrictions on advertising should be discussed between the Government, tobacco companies and vending machine manufacturers.
- Sub #346 favour a national approach to point of sale advertising legislation. If the Commonwealth were to legislate for a national scheme there would be concern about the practicalities of having two differing tiers of legislation at both the Federal and State/Territory levels. Support uniformed legislation governing point of sale.
- Sub #349 consider currently there are too many types of State based legislation and to try and extend the current TAPA point of sale exception to cover all requirements would make it unworkable for the retailer. Suggest point of sale advertising should be allowed.
- Sub #394 and Sub #395 recommend the TAPA should be extended so that it sets a minimum standard that is higher than currently prescribed.

<p>10.3. Should s.16(3) be amended to include a vending machine accessible to a restricted section of the public as well as the general public?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #360, Sub #374, Sub #380, Sub #384, Sub #394 and Sub #395 agree. ▪ Sub #7 clarify that currently under VIC state legislation, no vending machines are available for use by the general public and are located in secure locations where it is extremely difficult for children to access them. Additionally, no advertising is permitted to appear on vending machines. Current State/Territory legislation adequately restricts the use of vending machines. ▪ Sub #8 consider hotels and clubs (where vending machines are located) are ideally placed to responsibly manage associated problems with age restrictions. ▪ Sub #5, Sub #6, Sub #337 and Sub #377 consider licensed premises suitable candidates for exemptions from restrictions than other potential sites.
<p>10.4. Should the Commonwealth legislate to ban tobacco vending machines or is this an issue that is better left to State and Territories? If the Commonwealth should legislate, which approach would be most effective in achieving this objective? Should the legislation allow for a phasing out period for existing tobacco vending machines?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #326, Sub #355, Sub #355, Sub #360, Sub #380 and Sub #384 deem the current State/Territories laws to be adequate and there is no need for Commonwealth legislation ▪ Sub #5 and Sub #369 strongly disagree with the banning of vending machines based on it will not solve the problems of smoking, will effect vending machine businesses, create additional problems by endangering staff and increase targets for theft. ▪ Sub #8, Sub #346, Sub #365, Sub #394 and Sub #395 recommend that this issue should remain the focus of State/Territory Governments as they are better placed than the Commonwealth Government to address immediate concerns, particularly as vending machines are increasingly restricted to licensed premises which are regulated at State/Territory level. There is the expectation that to justify a ban, substantial research would need to be developed to support the position. ▪ Sub #8, Sub #337, Sub #354, Sub #356, Sub #365, Sub #372 and Sub #373 oppose a ban on vending machines. Suggest the Government should instead consider additional measures to prevent children from accessing tobacco products, endorse best practice guidelines for the placement of vending machines, direction for additional training for staff involved in vending machine supervision and a requirement for prominent signage for minimum ages including fines for infringements. ▪ Sub #342 oppose a ban on vending machines and suggest the Government should address the concerns of youth access to tobacco products by other means. ▪ Sub #349 consider banning vending machines (in licensed premises) is a restriction to adult consumer's rights.

	<ul style="list-style-type: none"> ▪ Sub #358, Sub #362 and Sub #376 consider vending machines should remain legal, but tightly regulated. ▪ Sub #374 and Sub #375 recommend the Commonwealth legislate to ban tobacco vending machines based on the view that all tobacco products should be enacted by way of a cross-counter transaction. ▪ Sub #386 recommend prohibiting vending machines along with ‘mobile retailing’, as sales of tobacco products should be restricted to places that operate as shops only.
<p>10.5. Should the TAPA formulate controls on retail, for example, that tobacco product dispensers that are subject to Commonwealth law not be permitted to be transparent and should any form of tobacco or smoking publicity be permitted on tobacco product dispensers? Or should this matter remain with States and Territories as it is now?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #11, Sub #358, Sub #360, Sub #362, Sub #380 and Sub #384 deem the current State/Territories laws to be adequate and there is no need for Commonwealth legislation. With further restrictions unlikely to further the TAPA’s objective of reducing consumption. ▪ Sub #344, Sub #349, Sub #359 and Sub #361 disagree that dispensers should not be permitted to be transparent. There is already agreement that tobacco products cannot be displayed to consumers or the general public outside a retail outlet, however, once a consumer makes the choice to enter a tobacco retailer than all products should be available in plain view. Raise the difference between a specialised tobacconist retailer and large supermarket chain and patrons that frequent the two retailers. ▪ Sub #346 and Sub #374 support a move towards a nation regulatory scheme governing the display of tobacco products, which respects the commercial rights of retailers and the requirements for inventory category management (similar to the current procedure in NSW). ▪ Sub #348, Sub #357, Sub #364, Sub #370, Sub #381 and Sub #382 suggest if retail outlets are forced to keep tobacco products away from display the ability to service customers in an expedited manner will decrease and will impact negatively on business and reputation. ▪ Sub #374 suggest all pricing devices be in black or white and is of the view the current packaging is a means of advertising the different brands to smokers. ▪ Sub #375 consider tobacco products should be kept out of sight and out of reach of consumers. ▪ Sub #394 consider this matter should be left with States/Territories. Enforcement becomes difficult when you have two different types of legislation covering different aspects. ▪ Sub #395 acknowledge that some States/Territories do rely on the TAPA as the only legislative control on tobacco promotion. Recommend this should be an issue State/Territories can adequately address under their own legislation.

<p>10.6. Should s.10(e) be amended to ensure that a regulated corporation or a person engaged in regulated trade or commerce can not advertise or include material in a trade communications that might reasonably be seen to encourage the consumption of tobacco by another person?</p>	<ul style="list-style-type: none"> ▪ Sub #1 and Sub #360 recommend this should remain unchanged – concern that whilst trade press advertisements are designed to inform, an individual may interpret this as an advertisement for smoking. ▪ Sub #346, Sub #374, Sub #381 and Sub #383 consider trade and retail communications do not stimulate consumer demand for tobacco products, nor do they promote smoking or particular brands of tobacco products. Communication between tobacco companies and retailers provide tobacco companies with the opportunity to provide important and relevant product information, (ie. legal obligations and tobacco legislation) which would otherwise not be communicated. ▪ Sub #349 disagree this section should be amended as trade communications are targeted at the seller and not the buyer. ▪ Sub #355 consider advertising in trade communications, which encourages consumption of tobacco, should be better regulated and suggest the restriction of references to tobacco products to words without images, symbols or trademarks. ▪ Sub #376, Sub #380, Sub #387, Sub #394 and Sub #395 support legislative reform in this area. ▪ Sub #386 recommend prohibiting the giving of free samples, the giving of gifts or provision of other items with purchase, and all other promotional offers with, or to encourage, sale. Trade publications should contain only factual information about price, availability and inherent characteristics of products.
<p>10.7. Should the TAPA be amended to make it an offence for a regulated corporation or a person engaged in regulated trade or commerce to engage in conduct which promotes (rather than simply gives publicity to) the consumption of tobacco products? What should be the penalty for such an offence?</p>	<ul style="list-style-type: none"> ▪ Sub #1 recommend this proposal providing there are clear guidelines between promotion and publicity. ▪ Sub #346, Sub #348, Sub #357, Sub #364, Sub #370, Sub #380, Sub #381, Sub #383, Sub #384 and Sub #387 consider a restriction or ban on the ability for a supplier of tobacco products to communicate or provide promotional opportunities to retail customers would reduce the level of competition within the tobacco industry and the retail sector. With the view that such restrictions on trade promotions fall outside the legislative intent of the TAPA and the current exemption should be retained. ▪ Sub #349 refer to the difference between a specialised tobacconist retailer and large supermarket chain and the patrons that frequent the two retailers. Suggest outlets that are frequented by non-supervised children should not be allowed to display tobacco products. Suggest having separate acceptable displays between differing businesses.

	<ul style="list-style-type: none"> ▪ Sub #358, Sub #374 and Sub #377 consider trade communications as an essential part of product manufacturer’s business. Current exemptions should be retained and current activities continue to be permitted. Unduly restricting trade communications would significantly and inappropriately reduce competition in the Australian tobacco industry. Recommend incorporating specific exemptions for communications within the trade – either by clearly defining ‘section of the public’ to exclude the trade, or by including a specific exemption from the TAPA requirements for trade communications. Support further restrictions on trade communications if they are formally regulated. ▪ Sub #360 would not support this amendment until guidelines clarify the conduct of promotion versus publicity has been identified and agreed upon by the industry. Suggest that an industry code of conduct may offer a solution. ▪ Sub #386 consider it should be enough that material ‘gives publicity to’ smoking, tobacco products, trademarks, designs etc for it to be an advertisement. ▪ Sub #394 recommend this amendment be made. ▪ Sub #395 recommend this amendment be made and the penalty applied should be the same as the penalty for the publication of a tobacco advertisement or promotion.
<p>10.8. Should the TAPA be amended to ensure that there is no doubt that it applies to internet retail sales and that the s.16 exception does not apply to internet retail sales?</p>	<ul style="list-style-type: none"> ▪ Sub #1 and Sub #360 agree that s.16. exception should not apply to internet retail sales – if legislation is applied it will need to be drafted to ensure there are no unintended commercial consequences. ▪ Sub # 338 agree that s.16. exception should not apply to internet retail sales. Raise the following proposals: <ul style="list-style-type: none"> - complete ban of cigarette sales on Australian websites, with an allowance for cigar websites, licensed to sell cigars only; - cigar websites permitted only when the operator has a physical site; - websites requiring password access and stringent verification process; - a system of fines for non-compliance; and - cigar websites with reference to government health warnings and linkages to government anti-tobacco websites. ▪ Sub #342 and Sub #386 consider sales of tobacco products through the internet should be regulated with relevant internet sites treated as a point of sale. Recommend a need for each internet site to comply with rules and regulations, ensuring that the site is protected against youth access and sales are controlled.

	<ul style="list-style-type: none"> ▪ Sub #343 and Sub #376 consider the internet needs tighter regulations, with fines imposed for sites advertising tobacco products, promoting tobacco product events, linking to tobacco products and images portraying smoking. ▪ Sub # 346 support practical measures that are aimed at reducing underage access to tobacco products via the internet, however it should be consistent with regulations governing access to other restricted products. ▪ Sub #355, Sub #374, Sub #380, Sub #384 and Sub #395 agree that amendments to the TAPA should ensure there is no doubt that legislation applies to internet retail sales. ▪ Sub #386 consider this amendment necessary to confirm specific inclusion that the TAPA applies to publishing and broadcasting via the internet. ▪ Sub #394 recommend the amendment be made. However, this does not overcome the problem of tobacco retailers located outside of Australia selling to members of the Australian public. One way to control this would be to enact legislation that requires tobacco retailers to be licensed to sell tobacco within Australia, no matter where they are located.
<p>10.9. Should the TAPA treat internet sites that are limited to passworded access any differently to internet sites that are available to the general public?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #374, Sub #360, Sub #380, Sub #394 and Sub #395 disagree that the two should be treated differently and should be subject to the same regulations. It has been demonstrated with other types of sites that password protection is of limited effectiveness. ▪ Sub #349 agree the two should be treated differently. ▪ Sub #355 consider mail orders over the internet should be prohibited with no (including sites that are limited with a password). ▪ Sub #358 and Sub #384 consider a ban on all internet advertising is inappropriate. Suggest a provision of a new explicit exemption for a form of tobacco advertising (and tobacco sales) on age restricted web-sites.
<p>10.10. If so, should it be an offence for a website owner to refuse to give a TAPA regulator full access (including a password) to the website if is reasonable suspected that tobacco products are displayed on the website?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #355, Sub #360, Sub #380, Sub #384 and Sub #386 agree that it should be an offence for a website owner to refuse to give the TAPA regulator full access, including a password to a website if it is reasonably suspected that tobacco products are being displayed. ▪ Sub #395 agree that a password protected site should be accessible to regulatory authorities. Suggest it may be that such sites need to be registered to ensure that all such sites are identified and failure to register also be an offence.
<p>10.11. Should the TAPA be amended to</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #355, Sub #360, Sub #374, Sub #380, Sub #384 and Sub #394 agree that the

<p>ensure that an Internet Service Provider (ISP) does not commit an offence merely by hosting a web server on which a tobacco advertisement is stored for display?</p>	<p>TAPA should be amended to provide that an ISP is not committing an offence by hosting a web server on which a tobacco advertisement is displayed.</p> <ul style="list-style-type: none"> ▪ Sub #395 agree that the ISP should not be held accountable, however, there should be a provisions that requires or places the onus on the ISP to assist with any investigation where required.
<p>10.12. Should the TAPA be amended to allow the Minister or her delegate to issue a notice to an internet service provider to require the ISP to deny access to a webpage or group of webpages where there is a tobacco advertisement?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #355, Sub #360, Sub #374, Sub #380, Sub #384 and Sub #394 agree that the Minister should be able to issue a notice to an ISP requiring them to deny access to a webpage or group of pages where there are tobacco advertisements. ▪ Sub #395 consider this an effective way of getting ISP involvement in dealing with such sites or information. This measure would also be effective in controlling the access of internet users on sites not based on Australian servers.
<p>10.13. Should the existing ban on sending advertisements to a person who has not requested it be expressly extended to prohibit the sending of all tobacco advertisement by mail, including people who have expressly asked for them?</p>	<ul style="list-style-type: none"> ▪ Sub #1 and Sub #360 agree on the basis that it does not provide unintended commercial restrictions between wholesalers, distributors and bona fide retailers. ▪ Sub #349 and Sub #395 disagree based on tobacco being a legal product, consumer rights and choices. ▪ Sub #355 suggest legislation should be introduced to limit communications to price lists in a prescribed format, without any advertisements. ▪ Sub #358 recommend solicited communications – such as direct mail – should be permitted to continue. Recommend the definition of ‘a section of the public’ be clarified to expressly exclude solicited communications with adult consumers. ▪ Sub #374 support the existing ban on sending tobacco advertisements to a person who has not expressly requested them, however, there is a need for the word ‘advertisement’ to be defined. ▪ Sub #376 and Sub #384 consider a ban on tobacco product mail order sales will complement and strengthen State/Territory efforts to address illegal sales to young people. ▪ Sub #380 support the TAPA prohibiting mail order advertisements, except in the case for those sent to tobacco retail businesses. ▪ Sub #386 recommend an exception should be created to allow for the communication of information to a person who has requested, in writing, that information. A request for information could have effect for a maximum of 12 months. ▪ Sub #394 recommend this extension of the ban should occur.
<p>10.14. Should there be a total prohibition on</p>	<ul style="list-style-type: none"> ▪ Sub #349 and Sub #360 disagree based on if consumers choose to purchase products via

<p>the sale by mail order of all tobacco products or is there an effective way to permit mail order sales while preventing children from purchasing tobacco by mail order?</p>	<p>mail order and are over 18, they should have the legal right to do so.</p> <ul style="list-style-type: none"> ▪ Sub #355 support the prohibition of mail order sales. There are precedents for restricting the supply of other substances to personal face to face sales only. With point of sale restrictions increasing, tobacco companies may encourage mail orders as a preferred form of sale. Consideration should be given to introduce legislation at a national level similar to that under the Tasmanian Public Health Act 1997, which prohibits tobacco companies from providing false information about tobacco control legislation to any person. ▪ Sub #374 consider there should not be a total ban on mail order, although measures should be taken to prevent children purchasing tobacco by mail order. ▪ Sub #380 support the TAPA prohibiting mail order advertisements, except in the case for those sent to tobacco retail businesses. ▪ Sub #384 consider a ban on tobacco product mail order sales will complement and strengthen State/Territory efforts to address illegal sales to young people. ▪ Sub #386 recommend a prohibition against the sale by mail order to an Australian (for personal use) from overseas. With the condition, mail order requests must not include promotional material and expire within 12 months. ▪ Sub #394 consider currently there does not seem to be an effective way to permit mail order sales while preventing children purchasing tobacco. Therefore mail order sales of tobacco products should be prohibited. ▪ Sub #395 consider mail order sales of tobacco may be justified in some situations such as rural/remote communities, which rely on mail order services. To address the issue of preventing children from purchasing by mail order an appropriate framework needs to be developed. The framework should include a requirement that any package containing tobacco is appropriately marked and either couriered or sent by certified mail to ensure that it is delivered to the intended recipient. It should be an offence for the courier or mail service provider to give a package clearly marked as containing tobacco to a minor.
<p>10.15. Is the presence of tobacco advertising through imported periodicals a major concern? What issues need to be consider in the policy response? What are possible approaches that could be used?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #360 and Sub #374 consider currently this issue is not a major concern, however, the situation should be continually monitored. ▪ Sub #355 support, as suggested (10.34) commercial importers should be required to take steps to identify and obscure any tobacco advertisements, in particular magazines whose specific purpose is to advertise tobacco products. Concede it would be burdensome for some importers to assess every imported periodical for tobacco advertising. Private

	<p>importation of periodicals for personal use should continue to be allowed.</p> <ul style="list-style-type: none"> ▪ Sub #380 propose the TAPA should require importers to review periodicals that they have imported for distribution. Periodicals with a tobacco advertisement should only be sold through retail businesses and only be sold to persons over 18 years. ▪ Sub #384 suggest that as the primary aim is to strengthen the TAPA, then this concession should be removed. ▪ Sub #386 suggest provisions relating to imported periodicals could be tightened by removing the exemption for: <ul style="list-style-type: none"> - those principally about tobacco products; - those produced solely or mainly for distribution to children; - where an edition of the periodical is published that does not contain a tobacco advertisement; - where publication of the advertisement is not lawful; - those with a circulation above 2000 (treat these under the accidental/incidental exemption); and - those with a circulation under 2000 remove the exemption three years after commencement of the amendment to the TAPA. ▪ Sub #394 consider current tobacco advertising through imported periodicals is not a major concern, although it is one that is growing. Periodicals that are produced for the purpose of promoting the use of tobacco products should be banned within Australia whether they are printed outside Australia or intended principally for the Australian market or not. The availability of these periodicals is in direct opposition to the intent of the TAPA. Controlling incidental advertising in imported periodicals is more difficult and further consideration should be given as to what commercial importers might reasonably be expected to do to eliminate incidental advertising. ▪ Sub #395 suggest currently under the intent of the TAPA such publications are contrary to the policy of both the Commonwealth and all jurisdictions to restrict tobacco advertising or promotion. The range and volume of foreign magazines now available that legally contain tobacco advertisements under the current provisions of the TAPA appear to have increased. A comprehensive approach to address this issue could be to combined the provisions of the New Zealand Smoke-free Environment Act 1990, which effectively bans the sale of arrangement of publications dedicated to the use of tobacco, with the Irish <i>Public Health</i>
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	<p><i>(Tobacco) Act 2002</i>, which limits the distribution of foreign publications with tobacco advertising predefined quantities. This is not an issue that can be easily addressed at a State/Territory level. It requires a comprehensive national approach to ensure consistency and to make application and interpretation of the legislation easier for importers, publishers and law enforcement agencies.</p>
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Chapter 11 – Indirect advertising and sponsorships

11.1. Should the TAPA be amended to prevent tobacco product placements *both* amending the definition of ‘tobacco advertisement’ to place a greater burden on the publisher *and* by requiring corporations which provide the funding for tobacco product placements to make a detailed public declaration of their activities?

- Sub #346 consider there is no justification provided that outlines why such information such as indirect advertising and sponsorship would be required from tobacco companies and how its disclosure would achieve the objectives of the TAPA (while also falling outside the objectives of TAPA)
- Sub #358 consider requiring companies to disclose promotional expenditure as means of verifying compliance with the TAPA as unreasonable and unnecessary.
- Sub #378 and Sub #384 recommend there is a requirement for the tobacco industry undertaking commercial activities to disclose annual expenditure on promotion of tobacco products.
- Sub #380 is not convinced that requirements for corporations to make an annual declaration of their direct or indirect promotional expenditure for product placement would be useful, as companies will be able to present their figures to conceal their product placement activity.
- Sub #390 consider program content is already regulated in a number of ways and regulations are appropriate mechanisms to ensure that program content accords with community standards. Oppose any change to current definitions.
- Sub #394 recommend both these amendments should be made. Requiring corporations to make public declarations of their activities in relation to product placement would also provide an opportunity to educate the general public about this practice. Education can help to counter the effect of the product placement: product placement in most cases is attempting to ‘normalise’ tobacco use or promote a specific brand.
- Sub #395 support both these amendments.

11.2. If only one approach were to be adopted, would the problem of tobacco placements be better answered by amending the definition of ‘tobacco advertisement’ to place a greater burden on the publisher, or would it be better to require corporations which provide the funding for tobacco

- Sub #1 and Sub #360 consider that if a corporation is acting within the law, there should be no requirement for them to have to publicly declare their activities.
- Sub #380 is not convinced that requirements for corporations to make an annual declaration of direct or indirect promotional expenditure for product placement would be useful, as companies will be able to present figures to conceal product placement activity.
- Sub #390 consider program content is already regulated in a number of ways and regulations are appropriate mechanisms to ensure that program content accords with

<p>product placements to make a detailed public declaration of their activities?</p>	<p>community standards. Oppose any change to current regulations.</p> <ul style="list-style-type: none"> ▪ Sub #395 support both these amendments. Amending the definition of ‘tobacco advertisement’ would seem more effective. The public declaration by tobacco manufactures would be of use to policy makers, however, the benefits for public health are questionable.
<p>11.3. What public health value would derive from a requirement for corporations to make a declaration of their direct and indirect promotional activities with respect to tobacco products? If so, what would be the appropriate penalty regime?</p>	<ul style="list-style-type: none"> ▪ Sub #360 consider no public health value would be derived by such declarations. ▪ Sub #380 is not convinced that requirements for corporations to make an annual declaration of direct or indirect promotional expenditure for product placement would be useful, as companies will be able to present figures to conceal product placement activity. ▪ Sub #394 recommend both these amendments should be made. Requiring corporations to make public declarations of their activities in relation to product placement would also provide an opportunity to educate the general public about this practice. Education can help to counter the effect of the product placement: product placement in most cases is attempting to ‘normalise’ tobacco use or promote a specific brand. ▪ Sub #386 consider this approach would allow the Government to develop, a more informed idea of the extent to which the object of the TAPA is being met and what needs to be done to ensure it is better met, with both Government and health organisations knowing what types of promotion they need to ‘undo’ in communicating public health messages relating to tobacco. ▪ Sub #395 consider this approach questionable, other than at a policy level, it is difficult to identify the benefits for public health.
<p>11.4. Is it reasonable to only allow restored and repainted tobacco advertisements for historic racing cars held by museums? Should historic cars with tobacco advertising be permitted to be displayed outside museums?</p>	<ul style="list-style-type: none"> ▪ Sub #77, Sub #350, Sub #363 and Sub #382 support the exclusion of historic items and/or reconstructions of historic items from the TAPA and consider historic cars should be permitted to be displayed outside museums. ▪ Sub #353 request historic cars be permitted to be displayed outside museums and any new legislation protects the ability for historically significant motor vehicles to carry the livery that they did as competition vehicles - subject to the current owners receiving no financial gain or sponsorship from the tobacco companies. ▪ Sub #355 and Sub #394 agree that the exemption should be in relation to restored and repainted tobacco advertisements on historic cars displayed only by museums. Museums need to be defined so as to not allow semi-permanent or temporary structures to be classed as museums simply by the fact that they contain historic items. Retailers that sell historic

	<p>racing cars should only be permitted to display signage to indicate that they sell cars with historic tobacco livery – it would assist retailers of these types of products if the TAPA addressed this issue.</p> <ul style="list-style-type: none"> ▪ Sub #379 consider historic cars with tobacco advertising should be permitted outside museums as long as there is no ulterior motive for their display. ▪ Sub #380 consider the display to the public of historic cars that contain tobacco advertisements should be allowed if they include health warnings. The exemption for museums should not apply as children regularly attend them. ▪ Sub #384 consider allowing these cars to only be displayed by museums is an adequate compromise. ▪ Sub #386 recommend the allowance for an exemption for the display of historic cars with original advertising on them, but restored, repainted and reproduced ones (after a certain date) only to be displayed in museums. ▪ Sub #395 consider it reasonable to allow the display of such vehicles in museums under the same consideration that permits historical photographs depicting smoking to be published, including accompanying health warnings. Recommend restricting the display of such vehicles to museums.
<p>11.5. How should the display of such models be treated under the TAPA?</p>	<ul style="list-style-type: none"> ▪ Sub #1 consider models should be treated the same as historic racing cars. ▪ Sub #360 and Sub #384 consider this as trivialising the tobacco advertising restrictions. ▪ Sub #380 suggest the display of such models should include the display of health warnings. ▪ Sub #394 suggest these items should be allowed to be sold, but not be on display or advertised using pictures. Signs/advertising containing wording only, should alert the consumer to the availability of these items. ▪ Sub #395 suggest by providing a distinction between a historical model and toys, there is no justification to ban the sale of models. Models should be available for private collections and public displays need to be limited to museums.
<p>11.6. How should full-size replicas and miniature replicas of cars with copies of original tobacco advertising be treated under the TAPA?</p>	<ul style="list-style-type: none"> ▪ Sub #14, Sub #65 consider given the size of miniature replicas and the availability of them from selected outlets they should not be considered advertising. If it is unreasonable to include tobacco signage then the suggestion made is an allowance for manufacturers to include the decals with the models, so that a consumer can add them after purchasing. ▪ Sub #1, Sub #15, Sub #17 - Sub #20, Sub #22 - Sub #27, Sub #29 - Sub #50, Sub #52, Sub #54 - Sub #64, Sub #67 - Sub #84, Sub #86 - Sub #103, Sub #105 - Sub #112, Sub #114 –

	<p>Sub #314, Sub #316 – Sub #325, Sub #327 – Sub #336, Sub #339 – Sub #342, Sub #345, Sub #347, Sub #351, Sub #352, Sub #360, Sub #368, Sub #371, Sub #384 and Sub #391 recommend that collectable model cars and trucks should be allowed to be portrayed accurately and that identified model cars be excluded from the TAPA legislation to maintain an accurate historical record of motor sport. Consider it unrealistic that signage on model cars has an effect on people taking up smoking and manufacturers of these models should be able to produce authentic copies of motor racing history. Raise the issue of the expense of the model cars ensures they are rarely purchased for/by children and therefore children will not be influenced by the tobacco product placement.</p> <ul style="list-style-type: none"> ▪ Sub #16 support the restriction on tobacco advertising as the after-market decal suppliers can cater for this. ▪ Sub #66 suggest that the models should have accurate decals however the boxes the models are sold in may be an opportunity to educate people on the dangers of smoking. ▪ Sub #85 suggest a licensed system to sell models that contain tobacco advertising. ▪ Sub #380 consider these models should not be allowed under the TAPA. ▪ Sub #386 suggest an allowance for memorabilia items (made before a certain date) but not where sold or advertised by those in the tobacco trade. ▪ Sub #395 recommend that unless a historical link between the replica or model can be established there should be no allowance for the products to display tobacco livery.
<p>11.7. Should toys with tobacco livery be banned under the TAPA?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #350, Sub #360, Sub #380, Sub #386 and Sub #395 consider toys with tobacco livery should be prohibited under TAPA.
<p>11.8. Should advertisements for the sale of these tobacco memorabilia items be permitted? If advertisement for sale of these items is permitted, should internet auctions of such items be permitted? What other responses are possible, for example, should a health warning accompany the advertising?</p>	<ul style="list-style-type: none"> ▪ Sub #1, Sub #360, Sub #384 and Sub #394 consider tobacco memorabilia should be permitted and auctioned on the internet allowed provided they are accompanied with health warnings. ▪ Sub #395 suggest the public sale of tobacco memorabilia should not be promoted and or permitted. Consider the display of health warnings would not be effective and to control the issue, a complete ban on the sale of tobacco memorabilia would be required.

Chapter 12 – Offences and penalties

12.1. Should the penalty for s.15(1) be increased to 600 penalty units in conformity with the penalty for the other TAPA offences committed by a corporation?

- Sub #1, Sub #355, Sub #360, Sub #378, Sub #380, Sub #384, Sub #386, Sub #394 and Sub #395 agree the penalty for s.15(1) should be increased to 600 penalty units so that it conforms with penalties for other TAPA offences committed by a corporation.
- Sub #10 consider increasing the penalty for s.15(1) could be justified by evidence that the penalty has not proven to be adequate. Relevant evidence include that current penalties are being flouted or ignored, criticism by the courts of the adequacy of the penalty and the penalty is failing to attract appropriate law enforcement resources in comparison with higher penalty offences.
- Sub #346 consider TAPA an inappropriate instrument for the imposition of strict liability offences.

12.2. Are the existing penalties adequate to achieve compliance? Would retractations be more effective?

- Sub #1 and Sub #360 consider the existing penalties are a sufficient deterrent.
- Sub #10 raise a number of general principles relating to penalties that need to be considered in the context of any proposal to increase penalties. Penalties in Commonwealth legislation must be adequate, by reference to the nature of the criminal conduct to which they apply. The penalty should also be high enough to deter commission of the offence. A penalty should reflect the seriousness of the offence in the relevant legislative scheme and be comparable to provisions in other legislation.
- Sub #346 consider TAPA an inappropriate instrument for the imposition of strict liability offences.
- Sub #378 consider the existing penalties available to the regulator should not only be increased but more varied, including the ability for injunctive powers to more effectively prevent activities that breach the legislation.
- Sub #380 consider (12.2. – 12.17.) the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada.
- Sub #384 suggest the TAPA penalty regime should be similar to the penalty regime for the Broadcasting Act.
- Sub #385 oppose any amendment to the existing penalty provisions. The acknowledged high level of compliance with the TAPA suggest the existing regime is more than

	<p>adequate.</p> <ul style="list-style-type: none"> ▪ Sub #386 consider current penalties are inadequate to operate as an effective deterrent and that maximum penalties for a breach of the TAPA should be significant – at the very least \$10 million, or 1% of the current value of total profits flowing from all those potentially effected. ▪ Sub #390 consider an amendment to the existing penalty provisions within the TAPA is unnecessary given that the existing penalties are already substantial and there is no evidence to suggest that the existing regime has been inadequate to ensure compliance. ▪ Sub #392 consider penalties should be higher as currently penalties do not act a disincentive, which is reflected in the profit made by tobacco companies (breaches of the TAPA should include the sales of tobacco by non-licensed sellers). ▪ Sub #394 consider the existing penalties are unlikely to be an adequate deterrent and should be increased. Retractions may be effective when used in conjunction with penalties but in most cases would not be effective on their own. There is also the possibility that a retraction would simply act to bring further attention to the original tobacco advertisement. ▪ Sub #395 consider there is difficulty in determining the effectiveness of the current penalties, however, recommend increased penalties for corporations. Consider retractions would be an ineffective deterrent.
<p>12.3. Should the TAPA be amended to include an offence of giving publicity to smoking, or to a tobacco product, or a range of tobacco products? Should the Prosecution be required to prove that the alleged offender intended to give the publicity, or should this be a strict liability offence?</p>	<ul style="list-style-type: none"> ▪ Sub #10 in relation to strict liability offence raise the following issues: <ul style="list-style-type: none"> - strict liability should only be used in an offence where there are well thought out grounds; - the application of either strict or absolute liability negates the requirement to prove fault; - different considerations apply to the use of strict liability depending on how it applies to an offence; and - application of strict liability to a particular physical element of an offence is generally only considered under certain circumstances. ▪ Sub #346 consider TAPA an inappropriate instrument for the imposition of strict liability offences. ▪ Sub #360 recommend (12.3. – 12.16.) offences and penalties should be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and

	<p>maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada.</p> <ul style="list-style-type: none"> ▪ Sub #384 and Sub #394 agree a practical solution is to make giving publicity to smoking, a strict liability offence. ▪ Sub #395 recommend TAPA is amended to include the offence of giving publicity to a tobacco product. If this was to be a strict liability offence, consideration needs to be given to the structure and provisions of TAPA defining the offence. Suggest placing a reverse onus on the offence, where the defendant must show why the offence activity was not giving publicity to tobacco or tobacco use.
<p>12.4. Should an offence of giving publicity to smoking, or a range of tobacco products should be subject to administrative penalties as an alternative to prosecution in court? What would be an appropriate pecuniary amount for an administrative penalty?</p>	<ul style="list-style-type: none"> ▪ Sub #10 raise the issue that an ‘offence’ is a transgression of the criminal law and the penalty is usually imprisonment and/or a fine. Only a court can impose a criminal penalty. Administrative penalties are broadly understood as being sanctions imposed by the regulator, or by the regulator’s enforcement of legislation, without the intervention by a court or tribunal. Administrative penalties include financial penalties and these are generally found under taxation and customs legislation where tax, levies or penalties are unpaid, paid late, or not paid. In these cases the legislation determines when a breach has occurred and the amount or method of calculating the monetary penalty. The regulator has no power before the penalty is imposed to determine the level of the penalty or whether there are extenuating circumstances that might warrant variation in its application. The act of varying, qualifying or revoking the distribution of benefits by a regulator has also been described as an administrative penalty. The principal area of operation of such penalties is licensing regimes and social security. There are constitutional limitations on the extent to which the ‘Government/Regulator’ can impose penalties. ▪ Sub #346 consider the TAPA an inappropriate instrument for the imposition of strict liability offences. ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 suggest under the TAPA there should be the option of issuing administrative penalties for initial and less severe breaches. ▪ Sub #384 consider this will be difficult to enforce. ▪ Sub #386 consider if administrative penalties are introduced, they should not apply to offences committed by those in the tobacco trade and tobacco manufacturers.

	<p>Administrative penalties would be an inappropriate response to breach of the TAPA by those with a strong incentive to breach it.</p> <ul style="list-style-type: none"> ▪ Sub #394 recommend administrative penalties should be considered as an alternative to court action. The appropriate amount should be set once the new limits for offences under the TAPA have been reviewed. Repeat offenders should not be offered the alternative of administrative penalties and should be prosecuted in court. ▪ Sub #395 consider an administrative penalty would be appropriate if a high volume of offences was expected, if the interpretation of the legislation was simple and consistently applied.
<p>12.5. If 12.4 is answered to the affirmative, should the TAPA be amended to include a substantially more serious offence of promoting smoking, or a tobacco product, or a range of tobacco products should be included in the TAPA, where the Prosecution would be required to prove that the alleged offender intended the promotion?</p>	<ul style="list-style-type: none"> ▪ Sub #346 consider the TAPA an inappropriate instrument for the imposition of strict liability offences. ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada. ▪ Sub #384 consider this will be difficult to enforce. ▪ Sub #394 recommend this amendment should be made.
<p>12.6. Should the TAPA be amended to include a provision that the Minister may approve retractions of tobacco broadcasts and tobacco publications, as an alternative to the imposition of an administrative penalty or in addition to one?</p>	<ul style="list-style-type: none"> ▪ Sub #10 raise a number of options for requiring retractions: <ul style="list-style-type: none"> - the failure to issue a retraction could be a separate offence to the publication or broadcast offence; - the failure to issue a retraction could be a physical element of the offence itself or the issuing of a retraction could be a defence to a criminal offence (although the damage may have already been done); - a retraction requirement could be an order a court can give in addition to a penalty; and - the retraction requirement should not be tied to or included in an infringement notice. ▪ Sub #355 and Sub #384 agree retractions may be a useful provision to include as an alternative or in addition to the imposition of administrative penalties depending on the severity of the breach. ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 suggest the TAPA should provide the Minister's delegate the option of retracting

	<p>a broadcast or publication without diminishing the power to penalise the offender by other means. The Minister’s delegate may use the retractions of the advertisement as an alternative to the imposition of another penalty, such as the cancellation of a broadcasting licence at his/her discretion.</p> <ul style="list-style-type: none"> ▪ Sub #386 recommend where a person has published or broadcast a tobacco advertisement in breach of the TAPA, the Minister should have the power to require that person to publish a corrective advertisement and/or run an appropriate anti-tobacco advertisement in a form approved by the Minister. This should not be regarded as an alternative to other enforcement action under the TAPA, but in addition to enforcement action. ▪ Sub #394 recommend the amendment to include a provision that the Minister can approve retractions of tobacco advertisements should be made. Unless there is strong evidence that a retraction alone is sufficient deterrent, the retractions should be in addition to an administrative penalty. Consideration should also be given to whether this option should be made available to repeat offenders. ▪ Sub #395 consider retractions ineffective penalties as majority of members of the public fail to notice them. Support the use of retractions in addition to other forms of penalties.
<p>12.7. Should the TAPA be amended to provide that no offence has been committed if a retraction is published or broadcast in accordance with an agreement given by the Minister to this affect?</p>	<ul style="list-style-type: none"> ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada. ▪ Sub #384 suggest published retractions should not be the sole enforcement tool. ▪ Sub #394 support this amendment, however, repeat offenders should not be offered this provision. ▪ Sub #395 suggest this provision may only be useful in some circumstances. A policy would need to be developed to determine how and when a retraction is appropriate to provide that no offence has been committed – repeat offenders would need further consideration.
<p>12.8. If the TAPA were to authorise a broadcaster a retraction in agreement with the Minister, should the retraction have the effect of curing the corresponding breach of</p>	<ul style="list-style-type: none"> ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in

broadcasting licence?	<p>countries such as Canada.</p> <ul style="list-style-type: none"> ▪ Sub #384 suggest published retractions should not be the sole enforcement tool. ▪ Sub #394 suggest this should be decided by the Australian Broadcasting Authority. ▪ Sub #395 disagree due to if an offence creates a corresponding breach, a tobacco advertising license is a more powerful deterrent for broadcasters.
12.9. If the notion of retraction were introduced, should the TAPA be amended to provide that it is an offence to publish a retraction in such a way as to convey the impression that the retraction is not genuinely given?	<ul style="list-style-type: none"> ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada. ▪ Sub #384 raise the importance of outlining the legal requirements for published retractions. ▪ Sub #394 recommend that it should be an offence to publish a retraction in such a way as to convey the impression that the retraction is not genuinely given. ▪ Sub #395 consider this amendment unnecessary, it should be that an agreement reached with the Minister under Q12.7. would clearly define the requirement of the retraction.
12.10. Should the penalty for repeated offences be substantially higher than for a first offence? How much higher? Over what period should the repeated offence be counted?	<ul style="list-style-type: none"> ▪ Sub #10 recommend the penalty for repeat offences should not be higher than for a first offence. There should be a single maximum penalty for an offence that is adequate to deter and punish a worst case offence, including the case of a repeat offender. There should not be multiple penalties for particular conduct, except in the case of offences tiered according to the level of culpability. Such distinctions are generally undesirable because they elevate a single factor above all others, thereby undermining the scope for a court to weigh all relevant factors in determining the appropriate penalty in accordance with the sentencing consideration in section 16A of the Crimes Act. ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 propose repeat corporate offenders should be given a substantially higher penalty eg. in excess of \$300,000. ▪ Sub #384 and Sub #395 agree the penalty should be higher for repeat offenders. ▪ Sub #394 agree the penalty should be higher than for the first offence. The amount should be determined after the review of current first offence penalties.
12.11. Are there any other evidential matters that should be addressed by the current	<ul style="list-style-type: none"> ▪ Sub #10 consider for subsection 13.3(3) of the <i>Criminal Code</i> should apply to sections 14, 16, 17, 18 and 19 of TAPA, these sections must be characterised as exceptions,

<p>review of the TAPA?</p>	<p>exemptions, excuses, qualifications or justifications and elements of the offence. As currently drafted, it is not clear that these sections would attract the applications of subsection 13.3(3) of the <i>Criminal Code</i>. It would be necessary to consider the individual circumstances 14, 16, 17, 18 and 19 of the TAPA to determine whether these sections should be elements of, or defences to, the offence.</p> <ul style="list-style-type: none"> ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada. ▪ Sub #384 suggest simplifying the TAPA and removing ambiguity from the TAPA.
<p>12.12. Should the Minister have the power to require a person to provide specified information? Would this be a breach of right against self-incrimination? regress</p>	<ul style="list-style-type: none"> ▪ Sub #10 state provisions under which a person may be required to answer questions or to produce information or documents are a common enforcement mechanism in Commonwealth legislation. They are often referred to as ‘notice to produce’ provisions, although in most cases they provide for attendance to answer questions as well. Such provisions are appropriate whenever such powers will assist in the administration of Commonwealth legislation. Appropriate safeguards should moderate this type of coercive power. Compliance with a disclosure requirement by a natural person should be expressed either to be subject to the privilege against self-incrimination or to override that privilege, subject to a ‘use derivative-use’ immunity. ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #384 support additional powers to obtain information. ▪ Sub #395 agree the Minister should have the power to require additional information – suggest the need for legal advice on whether this power would breach the right against self-incrimination.
<p>12.13. Should it be an offence to refuse to provide information if required to do so, or to provide incorrect information?</p>	<ul style="list-style-type: none"> ▪ Sub #10 state provisions under which a person may be required to answer questions or to produce information or documents are a common enforcement mechanism in Commonwealth legislation. They are often referred to as ‘notice to produce’ provisions, although in most cases they provide for attendance to answer questions as well. Such provisions are appropriate whenever such powers will assist in the administration of Commonwealth legislation. Appropriate safeguards should moderate this type of coercive

	<p>power. Compliance with a disclosure requirement by a natural person should be expressed either to be subject to the privilege against self-incrimination or to override that privilege, subject to a ‘use derivative-use’ immunity.</p> <ul style="list-style-type: none"> ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada. ▪ Sub #384 and Sub #394 agree it should be an offence to refuse to provide information if required to do so. ▪ Sub #395 agree – suggest that unless some penalty is involved, it will be difficult to enforce the legislation.
<p>12.14. Is there an alternative way of effectively obtaining relevant information about alleged tobacco advertisements from uncooperative individuals?</p>	<ul style="list-style-type: none"> ▪ Sub #10 state provisions under which a person may be required to answer questions or to produce information or documents are a common enforcement mechanism in Commonwealth legislation. They are often referred to as ‘notice to produce’ provisions, although in most cases they provide for attendance to answer questions as well. Such provisions are appropriate whenever such powers will assist in the administration of Commonwealth legislation. Appropriate safeguards should moderate this type of coercive power. Compliance with a disclosure requirement by a natural person should be expressed either to be subject to the privilege against self-incrimination or to override that privilege, subject to a ‘use derivative-use’ immunity. ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada.
<p>12.15. Should the TAPA have power to request that information required to investigate offences be provided?</p>	<ul style="list-style-type: none"> ▪ Sub #10 state provisions under which a person may be required to answer questions or to produce information or documents are a common enforcement mechanism in Commonwealth legislation. They are often referred to as ‘notice to produce’ provisions, although in most cases they provide for attendance to answer questions as well. Such provisions are appropriate whenever such powers will assist in the administration of Commonwealth legislation. Appropriate safeguards should moderate this type of coercive

	<p>power. Compliance with a disclosure requirement by a natural person should be expressed either to be subject to the privilege against self-incrimination or to override that privilege, subject to a ‘use derivative-use’ immunity.</p> <ul style="list-style-type: none"> ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada. ▪ Sub #384, Sub #394 and Sub #395 agree the TAPA should have power to request that information required to investigate offences be provided.
<p>12.16. Should the TAPA make it an offence to provide false information?</p>	<ul style="list-style-type: none"> ▪ Sub #10 mention the generic offences in the <i>Criminal Code</i> covering the provision of false or misleading information (see in particular 7.4.). Where a relevant <i>Criminal Code</i> or Crimes Act provision applies, separate provision should not be made in another Act. ▪ Sub #360 recommend offences and penalties be covered by the industry with codes of conduct clarifying the offence and appropriate penalty. ▪ Sub #380 consider the current penalty structure is inadequate for the offences and maximum penalties for first offences should be in excess of \$100,000 to match penalties in countries such as Canada. ▪ Sub #384, Sub #394 and Sub #395 agree that the TAPA should make it an offence to provide false information. ▪ Sub #386 agree the TAPA should prohibit false or misleading statements by manufacturers about the TAPA and false or misleading statements by manufacturers about the addictiveness or health effects of smoking or exposure to smoke.
<p>12.17. Should the TAPA be amended to provide that the report to Parliament outline all the possible breaches of the Act investigated by the Department of Health and Ageing and the action taken in relation to each matter? Should administrative penalties (if implemented) also be reported in this manner?</p>	<ul style="list-style-type: none"> ▪ Sub #1 and Sub #360 consider the current reporting procedures adequate. ▪ Sub #10 consider there should not be publicity about alleged conduct. It is not appropriate that possible breaches are in the public sphere as they are merely allegations. Not only is it inappropriate to cast dispersions on people but it may also compromise investigations. This also applies to infringement notices. Infringement notices are merely an allegation of certain conduct and allow for a quick resolution of the matter. Payment of an infringement notice penalty does not amount to an admission of guilt. It may also be worthwhile contacting the Information Law Branch of the Attorney-General’s Department about the privacy implications of the publication of possible breaches in a report to Parliament.

	<ul style="list-style-type: none">▪ Sub #384 and Sub #395 agree this is a practical solution as it will provide information on all enforcement efforts.▪ Sub #386 recommend the power to bring prosecutions for breach of the TAPA should be extended beyond the Commonwealth Director of Public Prosecutions to officers of the Commonwealth Department of Health and Ageing (Department). Officers of the Department should have appropriate powers of inspection, including to require the answering of questions, and to inspect premises, where they have reasonable grounds to believe an offence has been committed. Adequate resources must be devoted to enforcement of the TAPA, and reported breaches must be fully investigated, and where appropriate, vigorously prosecuted. The reporting requirement must be extended to include all reports and complaints made in relation to breaches of the TAPA.▪ Sub #394 recommend the TAPA should be amended to provide that all substantial breaches of the TAPA <u>reported</u> to the Department are outlined in the report to Parliament, including what investigations took place, the actions taken in relation to each matter and any administrative penalties or prosecutions that occurred as a result. Improved feedback to those who report breaches in the future would create increased confidence in reporting further breaches.
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Other Issues Raised:	
Advisory Panel	<ul style="list-style-type: none"> ▪ Sub #393 consider the Advisory Panel need to be more representative of the wider community, including representatives of the print and broadcast media.
Cigar Clubs	<ul style="list-style-type: none"> ▪ Sub #350 recommend protocols for advertising and marketing of cigar products where Cigar Clubs are established for cigar lovers. ▪ Sub #367 recommend cigar lounges should have legislation for Occupational Health and Safety.
Commonwealth Government Control	<ul style="list-style-type: none"> ▪ Sub #361, Sub #362 and Sub #374 suggest the Commonwealth Government control all tobacco legislation.
Discounted Tobacco Products	<ul style="list-style-type: none"> ▪ Sub #3 propose the TAPA legislation include restrictions of discounting tobacco products and point of sale advertising (like specific legislation in SA).
Exemptions	<ul style="list-style-type: none"> ▪ Sub #2 consider there should be exemptions for smoking in theatrical performances. ▪ Sub #350 consider while exemptions are permitted under the TAPA legislation, there will be problems with incidental advertising of tobacco products and suggest this would be avoided if there were no exemptions. ▪ Sub #386 consider the exception in section 26A of the TAPA, is without justification and the exemption for tobacco advertisements on international flights in and out of Australia should be removed.
Excessive Regulation	<ul style="list-style-type: none"> ▪ Sub #342 and Sub #344 support a reasonable level of regulation relating to the marketing and advertising of tobacco products. Consider some of the suggestions and questions raised in the Issues Paper exceed what is reasonable and what are the limits of the law, to the extent that competition would become stifled.
Framework Convention on Tobacco Control (FCTC)	<ul style="list-style-type: none"> ▪ Sub #386 recommend ratifying the FCTC and playing a leading role in the development of protocols in areas where international cooperation is needed to prevent activities outside Australia which weaken the capacity of the TAPA to achieve its objects.
Generic Packaging	<ul style="list-style-type: none"> ▪ Sub #386 recommend all tobacco products should be sold only in prescribed generic packaging that does not have any colours or branding or information other than that prescribed by legislation. ▪ Sub #392 recommend all tobacco products have generic packaging with only health warnings being displayed and remove the 'duty free' exemptions and advertising of tobacco products on international flights.

Impact on Small Businesses	<ul style="list-style-type: none"> ▪ Sub #9, Sub #361 and Sub #364 raise concern over counter sales of cigarettes being restricted as part of the review and the impact this will have on small businesses. ▪ Sub #13, Sub #315 and Sub #361 mention concern for the viability of small business if vending machines were to be banned.
International Events	<ul style="list-style-type: none"> ▪ Sub #350 raise in relation to events of international significance, a recommendation for a legislative amendment to prevent promotional newsprint supplements and other newsprint promotions including any photographs or drawings referring to a tobacco product or other means of minimising the impact of tobacco sponsored events.
Licences	<ul style="list-style-type: none"> ▪ Sub #362 suggest the introduction of 'Positive Licences' will help in the reduction of underage smoking. ▪ Sub #375 suggest retailers are licensed and trained.
Marketing	<ul style="list-style-type: none"> ▪ Sub #386 recommend the prohibition of marketing outside Australia by Australian companies (that would be illegal in Australia).
Minister for Justice and Customs	<ul style="list-style-type: none"> ▪ Sub #10 mention the requirements for Ministers to seek the agreement of the Minister for Justice and Customs to the criminal law and civil penalty aspects of their legislative proposals, including the text of amendments to legislation administered. It is normal for Office of Parliamentary Counsel or the agencies sponsoring the legislative proposal to consult with the Attorney-General's Department and settle the bill at a departmental level before the agreement of the Minister for Justice and Customs is sought. The letter to the Minister for Justice and Customs should outline the criminal law and civil penalty aspects of the Bill and explain why the amendments are necessary.
Review of Act	<ul style="list-style-type: none"> ▪ Sub #386 recommend the TAPA should be reviewed again within three years of commencement of an amended Act to see whether it is proving effective or not.
Sponsorship	<ul style="list-style-type: none"> ▪ Sub #378 propose the broadening of the ban on tobacco sponsorship to include political parties. ▪ Sub #386 propose the section 10(5) exception (the publication of an acknowledgment of assistance or support) should be removed to prevent the use of that exception to achieve things that are against the object of the TAPA. Along with a requirement for anti-smoking advertisements to be run where tobacco-sponsored events are broadcast.
Smoking cessation products –Nicotine Replacement Therapy (NRT)	<ul style="list-style-type: none"> ▪ Sub #361 suggests tobacconists provide NRT products as part of their service.
Tobacco Advertising on land and/or	<ul style="list-style-type: none"> ▪ Sub #386 recommend that section 9(3) be tightened in a similar manner to section 9(2)(c).

buildings	The TAPA should state that the only exception to the TAPA that may appear on such land or buildings, and that is visible from a public place, is the name of the manufacturer. The exception should only apply to land or buildings at which the manufacturer carries out an aspect of its ordinary business.
Tobacco Advertising and Sport	<ul style="list-style-type: none"> ▪ Sub #386 recommend no further exemptions are granted for sporting and cultural events under section 18 of the TAPA. ▪ Sub #392 recommend where Australian Sport teams are representing Australia, the sporting team should not be allowed to accept sponsorship from tobacco companies.
Tobacco Regulator	<ul style="list-style-type: none"> ▪ Sub #392 recommend the appointment of a tobacco regulator that would be responsible for regulating the sales of tobacco, have legal authority to deal with breaches of tobacco advertising, monitor the tobacco-related illness and be proactive in attempts to prevent harm.
Framework Convention on Tobacco Control (FCTC)	<ul style="list-style-type: none"> ▪ Sub #386 recommend ratifying the FCTC and playing a leading role in the development of protocols in areas where international cooperation is needed to prevent activities outside Australia which weaken the capacity of the TAPA to achieve its objects.

**Country of Origin Proposal P292
Comparative Table**

Current Transitional Standard	Proposed Standard
Packaged foods	Packaged foods
<p>(1) The label on a package containing food shall include a statement that identifies the country in which the food was made or produced.</p> <p>(2) If the label on a package containing food includes:</p> <ul style="list-style-type: none"> (a) a statement that identifies the country in which the food was packed for retail sale; and (b) if any of the ingredients of the food does not originate in the country in which the food was packed for retail sale, a statement - <ul style="list-style-type: none"> (i) identifying the country or countries of origin of the ingredients of the food; or (ii) to the effect that the food is made from ingredients imported into that country or from local and imported ingredients, as the case requires; <p>the label shall be taken to comply with subclause (1).</p> <p>(3) The material included on a label under this clause may include</p>	<p>The label on a package of food must include –</p> <ul style="list-style-type: none"> (a) a representation that identifies the country of origin of the food; or (b) a statement that the food is imported; or (c) a statement – <ul style="list-style-type: none"> (i) that identifies the country where the food was made, manufactured or packaged for retail sale; and (ii) to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients as the case may be. <p>Note: <i>Applies to whole foods only – not ingredients</i> <i>Where foods packed locally - can use packed in Aus/NZ from imported/local ingredients</i> <i>TPA guidance as to use of words “made of, produce of, or qualified claims etc”. TPA is essentially the test – therefore when using “made in” or “product of” regard should be had to the provisions of the TPA governing those claims (safe harbour defences).</i></p>

Current Transitional Standard	Proposed Standard
Packaged foods	Packaged foods
<p>a comment on or explanation of that material.</p> <p>(4) Where the name and address of the manufacturer are set out on the label and the address contains the name of the country in which the food was made or produced, the name and address shall be taken to satisfy the requirements of subclause (1).</p> <p>(5) In this clause, ‘ingredient’ does not include food additives.</p> <p>Note: <i>Can be satisfied with</i></p> <ul style="list-style-type: none"> a. <i>Name of country on the label</i> b. <i>Name and address of manufacturer if it includes name of country</i> <p style="text-align: center;">Fruit/orange juices</p> <p>Fruit juices and purees etc - Where juices and juice products contain any imported ingredients (but processed/packed in Australia) – must, unless the label expressly indicates that the food is a product of a country other than Australia, include other than in the ingredient list -</p> <ul style="list-style-type: none"> (a) a statement identifying each country of origin of the imported ingredients; or (b) a statement to the effect that the food is made from: <ul style="list-style-type: none"> (i) imported fruits; or 	<p style="text-align: center;">Note – for orange/fruit drinks/fruit juices, spirits and wine, these will be governed by the general labelling provisions for packaged foods (above)</p>

Current Transitional Standard	Proposed Standard
<p align="center">Packaged foods</p>	<p align="center">Packaged foods</p>
<p>(ii) imported fruit ingredients and local fruit ingredients ;</p> <p><i>Note – there are some minor variations as between orange juices, fruit juices, and fruit drinks, but the essential thrust is as above</i></p> <p align="center">Spirits</p> <p>Bottled in Australia to be used where only water of caramel added, but country of origin can be stated according to origin of the spirits Where blends used must declare country of origin of each element of blend</p> <p>Wines (NZ only) Country of origin of wine to be declared on label. Where wine products use grape juice, grape or potable spirit from another country – then this to be declared</p> <p>Wines (NZ only) Country of origin of wine to be declared on label. Where wine products use grape juice, grape or potable spirit from another country – then this to be declared</p>	

Current Transitional Standard	Proposed Standard
Unpackaged	Unpackaged foods
<p>Specified unpackaged imported foods Fish, Fruit, vegetables, nuts (Aus, NZ are excluded)</p> <p>Requirement: To have either country of origin label or statement that the fish, fruit, vegetables, nuts is imported</p> <ol style="list-style-type: none"> 1. Information to be on a label, or displayed on or in connection with the food (9mm type). 2. Does not apply to fish coated with or mixed with other foods, and does not apply to cooked fish other than cooked prawns 	<p>Specified unpackaged foods – Fish, Fruit, vegetables, nuts – regardless of origin</p> <p>Requirement: A statement of country of origin or to the effect that the food is imported</p> <ol style="list-style-type: none"> (a) displayed on or in connection with the display of the food; or (b) provided to the purchaser upon request <p><i>Note: This treats imported and local foods in like manner.</i></p>

Next steps:

1. Comments closed 4 May
2. Review of submissions
3. Reworking of proposed standard and review of regulatory impact analysis
4. Stakeholder consultation
5. Recommendations to FSANZ Board
6. Further consultation
7. Recommendation to FSANZ Board (final)
8. To Ministers

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-001

OUTCOME 1: Population Health

Topic: PETROL SNIFFING DIVERSION PROJECT

Written Question on Notice

Senator Carr asked:

There is a separately identified line item in the Health and Ageing table in the Indigenous Affairs Budget fact sheets called the Petrol Sniffing Diversion Project. The estimated funding is nearly \$382,000 in 2004-05 and almost \$317,000 in 2005-06. What does this project entail?

Answer:

The Petrol Sniffing Project funded under the National Illicit Drug Diversion Initiative is a preventative based project for youth wellbeing in communities in Central Australia. The project aims to provide early intervention and prevent the increase of petrol sniffing in Indigenous communities. The project service area includes the regions of Pintubi/Luritja, Walpiri, Arrente, Pitjantjatjara and Alice Springs.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-002

OUTCOME 1: Population Health

Topic: PETROL SNIFFING DIVERSION PROJECT

Written Question on Notice

Senator Carr asked:

- (a) Please describe how the activities of the existing Comgas scheme and the diversion project are coordinated, if at all?
- (b) How are the activities of the Commonwealth in relation to petrol sniffing coordinated with those of state/territory governments (particularly the Northern Territory Government)?

Answer:

- (a) The project assists communities to build capacity and works with them to identify and engage other programs such as the Comgas scheme. For example, the communities are provided with information, education and assistance to apply for access to the Comgas scheme.
- (b) All diversion activities are coordinated through a reference group in each state or territory. In the Northern Territory, the Diversion Action Group includes representatives from the Commonwealth and Territory Governments, the Northern Territory Police and various non government service providers.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-072

OUTCOME 1: Population Health

Topic: PETROL SNIFFING DIVERSION PROJECT

Written Question on Notice

Senator Carr asked:

The footnote to the Diversion Project item in the Indigenous Affairs budget information states that the services related to this project cover the period 2003-04 to 2005-06. Does this mean the program is due to cease at the end of 2005-06?

Answer:

The program consists of one contract which finishes on 30 June 2006. The program is subject to an evaluation prior to that point.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-034

OUTCOME 1: Population Health

Topic: NATIONAL FAMILY PLANNING PROGRAM

Written Question on Notice

Senator Harradine asked:

I note from question E05-054 (b) that Public Health Outcome Funding Agreements (PHOFAs) for the National Family Planning Program include a number of performance indicators.

- (a) What are the specific indicators?
- (b) Please provide copies of the reports of each family planning organisation against these performance indicators for the last two years.

Answer:

- (a) The current PHOFAs (2004-05 to 2008-09) incorporate funding to all states and territories for sexual and reproductive health. All states and territories are required to report annually on a number of performance indicators including sexual and reproductive health. The performance indicators specific to sexual and reproductive health include:
 - Specialist education and training on sexual and reproductive health, including clinical training and practicums;
 - Health promotion/education activities to communities and consumers with a focus on sexual and reproductive health; and
 - Sexual and reproductive health, including counselling and advice on the full range of options. Options are defined to include, for example, pregnancy support, advice on the viability of single parenthood and adoption.
- (b) The first annual report on the performance indicators under the current PHOFAs (2004-05 to 2008-09) is due by 30 November 2005 from each state and territory, who are now responsible for contractual arrangements with the family planning organisations funded through the PHOFAs.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-040

OUTCOME 1: Population Health

Topic: NATIONAL FAMILY PLANNING PROGRAM

Written Question on Notice

Senator Harradine asked:

I note in question E05-066 that the Department says the National Family Planning Program 'aims to provide a philosophically balanced approach to differing family planning service models'. How does providing more than 90% of funding to the philosophy favoured by family planning associations and less than 10% to organisations that do not promote abortion achieve philosophical balance? How does the Department plan to achieve more balance?

Answer:

The Australian Government has committed \$16.78 million in 2004-05 to provide a range of sexual and reproductive health services under the Family Planning Program. Of this amount, some \$15.4 million is provided through the Public Health Outcome Funding Agreements between the Commonwealth and individual states and territories for the eight state and territory Family Planning Organisations. These organisations are not funded by government to 'promote abortion'. They provide independent non-directive counselling for unplanned pregnancy. The Australian Government has no plans to change these arrangements.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-035

OUTCOME 1: Population Health

Topic: PREGNANCY COUNSELLING

Written Question on Notice

Senator Harradine asked:

Of the women who seek pregnancy counselling from family planning organisations, how many and what proportion of these women have been referred for an abortion? How many women were referred to an organisation which would offer them assistance to continue their pregnancy? Please provide this information for each family planning organisation over each of the last three years.

Answer:

The department does not require this information to be provided by Family Planning Organisations.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-036

OUTCOME 1: Population Health

Topic: PREGNANCY COUNSELLING

Written Question on Notice

Senator Harradine asked:

- (a) Is the Department aware that before Family Planning WA ceased publishing this information in its annual reports, the proportion of women seeking pregnancy counselling and referred for abortion was consistently around 75% every year?
- (b) Does the Department have any reason to believe that the proportion is lower in other states than in Western Australia?
- (c) If an organisation refers three women in four for abortion, does the Department believe that such an organisation is providing non-directive counselling including offering clients information on alternatives or the opportunity of referral to other agencies?

Answer:

- (a) & (b) The Department is not aware of any such data.
- (c) The Family Planning Organisations are funded through the states and territories to provide independent and non-directive counselling for unplanned pregnancies. This includes counselling and advice on the full range of options available to women. Options are defined to include, for example, pregnancy support, advice on the viability of single parenthood and adoption.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-033

OUTCOME 1: Population Health

Topic: FAMILY PLANNING

Written Question on Notice

Senator Harradine asked:

In answer to question E05-053 the department stated that 'the objective of the Family Planning Program is to provide a balanced approach to differing family planning service models'. Given that less than ten per cent of the program funds go to organisations that do not refer to abortion and instead offer women practical support to continue their pregnancies, how can you call that balanced?

Answer:

The Australian Government committed \$16.78 million in 2004-05 to provide a range of sexual and reproductive health services under the Family Planning Program. Of this amount, some \$15.4 million was provided through the Public Health Outcome Funding Agreements between the Australian Government and individual states and territories for the eight state and territory Family Planning Organisations that provide independent non-directive counselling for unplanned pregnancy. This includes counselling on the full range of options available, continuing the pregnancy, adoption and termination of the pregnancy.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-037

OUTCOME 1: Population Health

Topic: FAMILY PLANNING

Written Question on Notice

Senator Harradine asked:

In answer to question E05-057 the department states that family planning associations provide 'independent, non-directive counselling for unplanned pregnancy'.

- (a) Is the department aware that Sexual Health and Family Planning ACT (SHFPACT), between 1994 and 2004, was the full owner of the ACT's private abortion clinic?
- (b) Does this suggest a lack of independence and if not, why not?
- (c) How does the department react to concerns that SHFPACT had a clear conflict of interest and a financial incentive to refer women for abortion in order to maintain their business?
- (d) How will the department require SHFPACT to pay back their funding given they were obviously unable to provide independent, non-directive counselling?

Answer:

- (a) Yes.
- (b) The department provides funding to a wide range of organisations for particular purposes and puts in place contractual arrangements, including key performance indicators, to ensure that Australian Government funding is spent in accordance with the purpose for which it was provided. The department does not usually seek to regulate or govern other activities which are not covered in the funding agreements.
- (c) The department does not provide opinions on these matters. The government is committed to ensuring the ongoing provision of a balanced approach to sexual and reproductive health training and education as well as providing all Australians with access to differing perspectives on family planning and their associated approaches.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-038

OUTCOME 1: Population Health

Topic: FAMILY PLANNING

Written Question on Notice

Senator Harradine asked:

- (a) Is the Department aware of legal action against family planning associations and abortion providers by women who believe they were not adequately informed of abortion-related health risks in the counselling process?
- (b) How many women have taken such action and against whom?
- (c) How will the Department revise its funding arrangements with family planning organisations which have been subject to multiple legal actions?

Answer:

- (a) No.
- (b) This is not known by the Department.
- (c) The Australian Government does not directly fund state and territory Family Planning Organisations. Family Planning Organisations have funding agreements with their relevant state or territory governments.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-039

OUTCOME 1: Population Health

Topic: FAMILY PLANNING

Written Question on Notice

Senator Harradine asked:

How many other family planning organisations funded by the Commonwealth have formal or informal associations with abortion providers which would of course compromise their independence?

Answer:

The Australian Government does not require the reporting of this information.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-142

OUTCOME 1: Population Health

Topic: FAMILY PLANNING

Hansard page: CA24 2 June 2005

Senator Allison asked:

In reference to the Episcopal grant: is the copy of six-monthly reports available? What do they report on? What sort of stats?

Answer:

On 15 June 2005, the motion that you, Senator Allison moved, was agreed by the Senate. Copies of all reports, including financial statements, provided as part of their reporting requirements for the past five years by all agencies that receive funding for pregnancy counselling and/or family planning activities from the Department of Health and Aging will be provided to the Senate Table Office by Friday 22 July 2005.

This will include the six-monthly reports provided by the Australian Episcopal Conference of the Roman Catholic Church (AECRCC).

The AECRCC must report progress against an agreed project plan. This plan must include forecasted expenditure of funds identifying how the AECRCC will undertake the outputs listed in the contract for the funding period.

The outputs include: vocational training and education to health and other professionals; sexual and reproductive health education services; agreed reporting narrative and statistical data proforma; collaborative national partnerships with other agencies that provided fertility awareness; and other related services and common service standards.

The AECRCC reports statistics on the number of clients, the type of service provided to clients (either to avoid or achieve pregnancy) and the trends by state. They report on take up rates for education services and trends by state. They also report gender, Aboriginal and Torres Strait Islander background and age of new clients.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-143

OUTCOME 1: Population Health

Topic: FAMILY PLANNING

Hansard Page: CA 24-25

Senator Allison asked:

- a) Can I ask the same question about their penetration (regionally based call centres)? Are they in every state? If it is mostly a national telephone based one, is there a call centre somewhere?
- b) It would be useful to know whether there is a requirement for those counsellors to be trained and what level that training is?

Answer:

- a) The Australian Federation of Pregnancy Support Services has affiliated agencies in most states with the exception of the Northern Territory. Each affiliated agency offers face to face counselling as well as telephone counselling. Affiliated agencies have their own agency numbers which they advertise locally.

The Australian Federation of Pregnancy Support Services runs a 1300 number, 24 hour telephone pregnancy counselling service. This service is based in Sydney and the calls are transferred to a counsellor on duty from one of the affiliated agencies. That counsellor may be located anywhere in Australia; however, they have information on services in each state and territory.

- b) All counsellors with the Australian Federation of Pregnancy Support Services are required to be trained to a minimum standard set by the Federation and to complete a professional development short training course run by the Federation, and approved by the Australian Counselling Association, which is specifically designed for face to face and telephone pregnancy counselling.

The Australian Federation of Pregnancy Support Services must also gain and maintain accreditation as an Australian National Training Authority recognised registered training organisation for training health educators, health professionals and other workers.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-144

OUTCOME 1: Population Health

Topic: FAMILY PLANNING

Hansard: page CA28 2 June 2005

Senator Allison asked:

- (a) Is it the case that the department is gathering information from the states and territories and from professional associations with respect to accreditation requirements that apply to counselling and to women seeking abortion?
- (b) Is the department gathering information on accreditation requirements for all agencies that provide counselling or advice to women with unplanned pregnancies or only those that refer to terminations?
- (c) What professional associations will the department go to for collecting information?

Answer:

- (a) Yes, in the context of responding to a parliamentary question on notice asked by Senator Ron Boswell on 31 January 2005.
- (b) The department is in the process of gathering information from states and territories and professional associations in respect of any accreditation requirements that may apply to counselling and women seeking abortion.
- (c) That is not yet decided.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-041

OUTCOME 1: Population Health

Topic: FAMILY PLANNING FUNDING

Written Question on Notice

Senator Harradine asked:

The Family Planning WA annual report for 2004 states that \$1,637,942 comes from a Federal grant, \$1,090,390 from state grants, and \$334,321 from other grants - but only \$1,105 from membership income, and \$125 from fundraising and donations. So less than one per cent of its funding comes from membership income or donations.

- (a) What proportion of funding does each of the other family planning organisations achieve through membership income and donations from the public?
- (b) Why does the Commonwealth fund organisations which have almost no community support? Please explain why the Commonwealth does not require family planning organisations to have a minimum level of community support before they receive Commonwealth Government funding.

Answer:

- (a) The department does not require reporting of this information.
- (b) A minimum level of community support for state and territory family planning organisations was not part of the funding agreement with the Australian Government. The Australian Government now does not directly fund state and territory family planning organisations. Family planning organisations have funding agreements with their relevant state and territory governments.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-042

OUTCOME 1: Population Health

Topic: FAMILY PLANNING ORGANISATIONS

Written Question on Notice

Senator Harradine asked:

Why wouldn't the general public be justified to think that family planning associations have almost no members, speak for no-one but themselves, and wield disproportionate influence in public almost entirely on the strength of public money?

Answer:

The department provides funding to the states and territories through the Public Health Outcome Funding Agreements to support family planning activities. This includes independent non-directive counselling for unplanned pregnancy, education and training for health professionals, and strategies relating to fertility awareness for those wanting children.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1-2 June 2005

Question: E05-139

OUTCOME 1: Population Health and Safety

Topic: BOWEL CANCER SCREENING

Hansard Page: CA 7 – 2 June

Senator Forshaw asked:

What proportion of the target population now would be actually having this testing (colonoscopy) done?

Answer:

The table below shows the proportion of the target age groups used for the Bowel Cancer Screening Pilot who had colonoscopies in 2004 funded through the Medicare Benefits Schedule (MBS).

Proportion of MBS colonoscopies by age category in 2004

	Population	Number of colonoscopies	Proportion of population
55-59 years	1,190,297	45,523	3.82%
60-64 years	895,740	39,669	4.43%
65-69 years	739,182	34,783	4.71%
70-74 years	627,489	29,669	4.73%

Notes:

1. These statistics only relate to services rendered on a 'fee-for-service' basis for which Medicare benefits were paid. Services provided to public patients in hospital and to Veterans' Affairs patients are not included.
2. The statistics above include Medicare items 32084, 32087, 32090 and 32093. Items 32084 and 32087 relate to procedures which may also be carried out using a flexible fiberoptic sigmoidoscopy.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-090

OUTCOME 1: Population Health

Topic: GENE TECHNOLOGY COMMUNITY CONSULTATIVE COMMITTEE

Written Question on Notice

Senator Stott Despoja asked:

Please provide details of the meetings of the Gene Technology Community Consultative Committee over the last three years, including: dates of the meetings; the number of members present; matters discussed; and, meeting outcomes.

Answer:

The Gene Technology Community Consultative Committee (GTCCC) held eight meetings since 2002. Meeting dates and number of members present were as follows:

Meeting Number	Date held	Number of members attended
1	17 & 18 April 2002	12
2	15 & 16 July 2002	12
3	19 November 2002	11
4	20 February 2003	9
5	5 June 2003	12
6	1 December 2003	10
7	29 April 2004	7
8	4 August 2004	11

Information concerning the items discussed and outcomes are contained in the GTCCC communiqués, which are available on the web at <http://www.ogtr.gov.au/committee/gtccc.htm>

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-091

OUTCOME 1: Population Health

Topic: GENE TECHNOLOGY COMMUNITY CONSULTATIVE COMMITTEE

Written Question on Notice

Senator Stott Despoja asked:

Has the membership of the Gene Technology Community Consultative Committee for 2005 been approved yet? If yes, please provide details.

Answer:

The membership of the Gene Technology Community Consultative Committee (GTCCC) has not been finalised at this stage. The appointment process of Committee members for the GTCCC requires consideration by all state and territory Ministers represented on the Gene Technology Ministerial Council, and the approval of a two thirds majority of jurisdictions before formal approval can be undertaken. The membership is expected to be finalised in the second half of this year.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-092

OUTCOME 1: Population Health

Topic: SAFETY BREACHES

Written Question on Notice

Senator Stott Despoja asked:

Please provide a detailed update on how ARPANSA is responding to all of the supervising scientist's reports regarding safety breaches over the last two years.

Answer:

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) does not undertake activities that fall within the environmental supervisory, audit and inspection role of the supervising scientist. Consequently, no reports have been received by ARPANSA from the supervising scientist in respect safety breaches over the last two years.

In respect of the supervising scientist's reports regarding safety breaches at the Ranger mine site in 2004, the Minister for Industry, Tourism and Resources imposed conditions on Energy Resources Australia and asked ARPANSA to audit compliance with those conditions relating to clearance of plant and equipment from the mine site. These audits were carried out in September 2004, November 2004 and January 2005.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-097

OUTCOME 1: Population Health

Topic: PAN AND VIOXX RECALLS - COMPARISONS

Hansard Page: CA 39-40 – 2 June

Senator Allison asked:

Can we just draw some comparisons between the Pan recall and that of Vioxx? Why was it that Vioxx was given a Class II recall?

Answer:

Recalls are classified in accordance with the requirements of the Uniform Recall Procedure for Therapeutic Goods (URPTG). The URPTG is the protocol agreed with the therapeutic goods industry, Commonwealth and state governments and consumers for use in the recall of therapeutic goods.

The URPTG categorises recalls using three separate classifications: an internationally accepted class system (Class I, II or III); the level to which the product is recalled (eg. consumer, retail, wholesale or hospital); and whether the recall is Urgent or Routine.

The Class I, II, III system is an international classification used primarily as a safety alert system between other countries with which Australia has international agreements in place.

The definitions for each class are:

Class I recalls occur when products are potentially life-threatening or could cause a serious risk to health.

Class II recalls occur when product defects could cause illness or mistreatment, but are not Class I.

Class III recalls occur when product defects may not pose a significant hazard to health, but withdrawal may be initiated for other reasons.

Both Class I and II recalls are classified as Urgent Medicine Recalls and all safety related recalls follow similar processes. Class III recalls are classified as Routine Medicine Recalls. The 'level' of classification defines the reach in Australia of the action.

Examples of the different levels of recalls and the institution/person covered by each are:

Wholesale level recalls include:

- medicine and device wholesalers; and
- state purchasing authorities etc.

Hospital level recalls include:

- nursing homes, hostels and other institutions;
- clinical investigators and the institutions in which clinical investigations are performed;
- hospital pharmacists, blood banks, pathology laboratories, operating facilities, fractionators, human tissue banks and personnel in other hospital departments; and
- wholesale level.

Retail level recalls include:

- retail pharmacists;
- medical, dental and other health care practitioners;
- other retail outlets, eg. supermarkets and health food stores; and
- wholesale and hospital levels.

Consumer level recalls include:

- patients and other consumers;
- wholesale, hospital and retail levels; and
- must be advertised to the public.

The following points of comparison can be drawn in relation to the Vioxx and Pan Pharmaceuticals recalls:

The Vioxx recall was:

- classified as an Urgent Class II, Consumer level recall. Overseas regulatory authorities such as the United Kingdom Medicines and Healthcare Products Regulatory Agency similarly classified the recall as Class II;
- based upon results of a clinical trial which showed a relatively small increase in risk of non-fatal myocardial infarction (heart attack) following prolonged use; and
- initiated by the sponsor (Merck Sharp and Dohme) as a world wide recall.
- Classification as either Class I or Class II did not affect the process of product recall or the speed at which the recall was undertaken or the advice given to the public in relation to the recall.
- As a consumer level recall, it was advertised to the public.

The Pan Pharmaceuticals Ltd recall:

- Was classified as an Urgent Class I Consumer level recall based upon the risk identified by the Therapeutic Goods Administration (TGA) following detailed and extensive investigations that had identified widespread Good Manufacturing Practice (GMP) and quality control defects and evidence of deliberate manipulation of test results, such that there could be no confidence in the safety or quality of any Pan manufactured product.
- Advice from an Expert Advisory Committee to the TGA on the health risk posed by Pan's critical GMP breaches were such that they could lead to the "risk of death, serious illness or serious injury", the "risk would increase over time" and the "risk could be realised at any time."
 - The Expert Committee further indicated that "some risks could be realised immediately" such as those coming from cross contamination or substitution of ingredients due to inadequate operating procedures and poor compliance with existing procedures could lead to severe allergic reactions including anaphylaxis.
- As a Consumer level recall, it was advertised to the public.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-134OUTCOME 1: Population Health

Topic: BT10 CORN

Hansard Page: CA 51 – 2 June

Senator Forshaw asked:

In relation to the Bt10 corn, will you give me the dates:

- (a) that Food Standards Australia New Zealand (FSANZ) became aware of the production of Bt10 corn;
- (b) that FSANZ first contacted Syngenta; and
- (c) that FSANZ contacted the US agency concerned.

Answer:

- (a) FSANZ first became aware of information that a small quantity of a genetically modified corn variety, known as Bt10 corn, was inadvertently grown and released into the food and feed supply in the United States between 2001 and 2004 when it was announced in the journal, *Nature*, on 22 March 2005.
- (b) FSANZ contacted Syngenta on 23 March 2005.
- (c) FSANZ contacted US agencies via the Agricultural Counselor, US Department of Agriculture, US Embassy, Canberra on 31 March 2005.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-135

OUTCOME 1: Population Health

Topic: COUNTRY OF ORIGIN LABELLING

Hansard Page: CA 53 – 2 June

Senator Forshaw asked:

Would you provide a summary of the current transitional standard for country of origin labelling and the proposed new standard?

Answer:

A summary of the current standard and an option that has been canvassed, but not decided on, is attached.

Country of Origin Labelling Comparative Table

Current Transitional Standard	Option canvassed
Packaged foods	Packaged foods
<p>(1) The label on a package containing food shall include a statement that identifies the country in which the food was made or produced.</p> <p>(2) If the label on a package containing food includes:</p> <p style="margin-left: 40px;">(a) a statement that identifies the country in which the food was packed for retail sale; and</p> <p style="margin-left: 40px;">(b) if any of the ingredients of the food does not originate in the country in which the food was packed for retail sale, a statement -</p> <p style="margin-left: 80px;">(i) identifying the country or countries of origin of the ingredients of the food; or</p> <p style="margin-left: 80px;">(ii) to the effect that the food is made from ingredients imported into that country or from local and imported ingredients, as the case requires;</p> <p>the label shall be taken to comply with subclause (1).</p> <p>(3) The material included on a label under this clause may include a comment on or explanation of that material.</p> <p>(4) Where the name and address of the manufacturer are set out on the label and the address contains the name of the country in which the food was made or produced, the name and address shall be taken to satisfy the requirements of subclause (1).</p> <p>(5) In this clause, ‘ingredient’ does not include food additives.</p>	<p>The label on a package of food must include –</p> <p style="margin-left: 40px;">(a) a representation that identifies the country of origin of the food; or</p> <p style="margin-left: 40px;">(b) a statement that the food is imported; or</p> <p style="margin-left: 40px;">(c) a statement –</p> <p style="margin-left: 80px;">(i) that identifies the country where the food was made, manufactured or packaged for retail sale; and</p> <p style="margin-left: 80px;">(ii) to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients as the case may be.</p> <p>Note: <i>Applies to whole foods only – not ingredients</i> <i>Where foods packed locally - can use packed in Aus/NZ from imported/local ingredients</i> <i>TPA guidance as to use of words ‘made of, produce of, or qualified claims etc’. TPA is essentially the test – therefore when using ‘made in’ or ‘product of’ regard should be had to the provisions of the TPA governing those claims (safe harbour defences).</i></p>

Current Transitional Standard	Option canvassed
<p style="text-align: center;">Packaged foods</p> <p>Note: <i>Can be satisfied with</i></p> <ul style="list-style-type: none"> c. <i>Name of country on the label</i> d. <i>Name and address of manufacturer if it includes name of country</i> <p>Fruit/orange juices Fruit juices and purees etc - Where juices and juice products contain any imported ingredients (but processed/packed in Australia) – must, unless the label expressly indicates that the food is a product of a country other than Australia, include other than in the ingredient list -</p> <ul style="list-style-type: none"> (a) a statement identifying each country of origin of the imported ingredients; or (b) a statement to the effect that the food is made from: <ul style="list-style-type: none"> (i) imported fruits; or (ii) imported fruit ingredients and local fruit ingredients ; <p><i>Note – there are some minor variations as between orange juices, fruit juices, and fruit drinks, but the essential thrust is as above</i></p> <p>Spirits Bottled in Australia to be used where only water of caramel added, but country of origin can be stated according to origin of the spirits Where blends used must declare country of origin of each element of blend</p> <p>Wines (NZ only) Country of origin of wine to be declared on label. Where wine products use grape juice, grape or potable spirit from another country – then this to be declared</p>	<p style="text-align: center;">Packaged foods</p> <p><i>Note – for orange/fruit drinks/fruit juices, spirits and wine, these will be governed by the general labelling provisions for packaged foods (above)</i></p>

Current Transitional Standard	Option canvassed
Packaged foods	Packaged foods
<p>Wines (NZ only) Country of origin of wine to be declared on label. Where wine products use grape juice, grape or potable spirit from another country – then this to be declared</p>	
Current Transitional Standard	Option canvassed
Unpackaged	Unpackaged foods
<p>Specified unpackaged imported foods Fish, Fruit, vegetables, nuts (Aus, NZ are excluded)</p> <p>Requirement: To have either country of origin label or statement that the fish, fruit, vegetables, nuts is imported</p> <p>1. Information to be on a label, or displayed on or in connection with the food (9 mm type).</p> <p>2. Does not apply to fish coated with or mixed with other foods, and does not apply to cooked fish other than cooked prawns</p>	<p>Specified unpackaged foods – Fish, Fruit, vegetables, nuts – regardless of origin</p> <p>Requirement: A statement of country of origin or to the effect that the food is imported</p> <p style="margin-left: 40px;">(c) displayed on or in connection with the display of the food; or</p> <p style="margin-left: 40px;">(d) provided to the purchaser upon request</p> <p><i>Note: This treats imported and local foods in like manner.</i></p>

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-165

OUTCOME 1: Population Health

Topic: REVIEW OF BUSINESS PROCESSES SUPPORTING ARPANSA'S
REGULATORY FUNCTION

Hansard Page: CA 65 – 2 June

Senator Forshaw asked:

Please provide an explanation of the impact on the normal responsibilities of ARPANSA as a result of having to redirect \$350,000 to fund the Regulatory Review.

Answer:

The Australian Radiation Protection and Nuclear Safety Agency has not been given any additional funding to meet the cost of the review. The \$350,000 project budget is made up of \$300,000 in salaries and \$50,000 in project operating expenses. Two of the three project positions are filled by transferring existing staff from areas within the agency with consequent effects on regulatory and corporate programs. The remaining amount is funded by savings in the administration of the agency.

TOTAL FAMILIES REGISTERED FOR MEDICARE SAFETY NET

	Total families registered at end of calendar month*	Number of families registering during month	Cumulative numbers of families and singles qualifying for safety net
Feb-04	1,697,681		
Mar-04	1,840,910	143,229	26,246
Apr-04	1,942,867	101,957	47,660
May-04	2,245,232	302,365	94,781
Jun-04	2,956,733	711,501	161,663
Jul-04	3,244,878	288,145	224,221
Aug-04	3,412,300	167,422	303,831
Sep-04	3,506,766	94,466	389,176
Oct-04	3,580,160	73,394	476,288
Nov-04	3,641,980	61,820	569,831
Dec-04	3,686,743	44,763	661,441

▫ The original costing did not forecast registration of families, month by month.

EXTENDED MEDICARE SAFETY NET: 2004

	Cumulative monthly cash flow estimates		Cumulative monthly expenditure \$m	Variation from cumulative monthly estimate	
	2003-04 Budget Estimates \$m	PEFO Estimates \$m		\$m	%
March	2.3		0.2	-2.0	-90.0%
April	5.0		3.6	-1.3	-27.1%
May	9.1		9.5	0.4	4.5%
June	14.1		20.2	6.1	43.3%
July	22.0		35.3	13.3	60.4%
August	31.5		54.1	22.5	71.4%
September		76.6	77.2	0.6	0.8%
October		102.7	103.2	0.5	0.5%
November		133.4	132.3	-1.1	-0.8%
December		164.6	166.4	1.8	1.1%

- the scheme commenced on 12 March 2004
- based on claims processed in 2004



Australian Government
Department of Health and Ageing

Mr Elton Humphrey
Secretary
Senate Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Humphrey

SENATE ESTIMATES HEARING 1 & 2 JUNE 2005: OUTCOME 2

I am writing to correct statements I made as an officer of the Department of Health and Ageing attending the Senate Community Affairs Legislation Committee - Senate Estimates hearings on 1 June 2004.

On the Hansard transcript at page CA 18, Line 1. I answered "Yes" to a question from Senator Evans at page CA 17, Lines 45-46 "So the budget forecast figures from the Charter of Budget Honesty reflect the savings from the measures that will be introduced from 1 January 2006 if the legislation is carried?"

My answer is incorrect due to a misunderstanding of whether Senator Evans was referring to the costs before or after the introduction of the measure on 1 January 2006. My answer should have been "No, the Portfolio Budget Statements at page 28." This was clarified in the discussion between Senator Evans and Ms Halton at page CA 18, Lines 2-4.

On the Hansard transcript at page CA 23, Line 17, I referred to weekly reports showing the numbers of families registered. My statement requires clarification in that it could be assumed that I was referring to weekly reports from the Health Insurance Commission (HIC). The weekly reports were in fact compiled by the Department of Health and Ageing from reports received almost daily from the HIC. Further references by me to weekly reports in the Hansard transcript refer to the reports compiled by the Department of Health and Ageing from data supplied by the HIC.

On the Hansard transcript at page C24, Line 2 I nominated the Policy Interpretation and Professional Review Section as being the section responsible for cost estimates and registrations. This is not entirely correct. There are two sections responsible for the cost estimates and registration of families, the MBS Costings and Modelling Section and the Policy Interpretation and Professional Review Section.

Yours sincerely

Judy Blazow
First Assistant Secretary
Medical and Pharmaceutical Services Division
22 June 2005

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-045

OUTCOME 2: Medicines and Medical Services

Topic: IVF – ASSISTED REPRODUCTIVE TECHNOLOGY

Written Question on Notice

Senator Harradine asked:

- (a) Please provide me with the total number of women who, between 1990 till 2002, claimed Medicare Item Number 16519 or 16522 who had also claimed one (or more than one) of the following item numbers within the previous five to twelve months – 13200, 13206, 13212, 13215, 13218?
- (b) Of these same women who met the condition in (a) and only those women (ie. only those same individuals, with the same Medicare identity number), please present total figures of these women who subsequently claimed Medicare item number 16519 or 16522 and did not claim within the preceding five to twelve months one or more of the following item numbers – 13200, 13206, 13212, 13215, 13218?

Answer:

- (a) Item 16519 was introduced into the Medicare Benefits Schedule (MBS) on 1 November 1995 while Item 16522 was introduced into the MBS on 1 November 1999.

The relevant items in the MBS covering confinements at some time during the period 1990 to 2002, are Items 16506, 16507, 16510, 16513, 16515, 16516, 16517, 16518, 16519, 16520 and 16522.

IVF items are contained in Subgroup 3 of Group T1 of the MBS.

Medicare data suggests that between 1 November 1990 (the commencement date for the relevant IVF items) and 31 December 2002, 29,230 women had a claim for any of the IVF items in Subgroup 3 of Group T1, followed by a private confinement within 5 to 12 months.

- (b) Medicare data suggests that of the 29,230 women claiming any of the items in Subgroup 3 of Group T1 between 1 November 1990 and 31 December 2002, 5,420 subsequently had one or more private confinements that do not appear to be associated with the IVF items in question.

Notes to the Statistics

These statistics relate to services rendered on a 'fee-for-service' basis for which Medicare benefits were paid. Excluded are details of services to public patients in hospital.

The statistics were extracted from a Medicare 10% patient sample file. The estimates have been extrapolated to population.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-228

OUTCOME 2: Medicines and Medical Services

Topic: IVF SERVICES - STATISTICS

Hansard page: CA97

Senator Allison asked:

- (a) What proportion of Australian women have accessed Medicare rebated IVF services in the last ten years? What is the trend?
- (c) What are the range and average number of IVF services undertaken by women?
- (d) Was there a request for advice on IVF from the Minister's office in the six months prior to the Budget?
- (e) Was there a request for advice about IVF from Finance, Treasury or PM&C in the six months leading up to the Budget?

Answer:

- (a) The following table provides information on the proportion of women accessing IVF services under Medicare, and the changes to that proportion over the last ten years. The estimate of population is those women of reproductive age (15 to 54 years) based on Australian Bureau of Statistics (ABS) data.

**MEDICARE - IVF
NUMBER OF PATIENTS
WITH ONE OR MORE IVF SERVICES
1995 TO 2004 (YEAR OF SERVICE)**

Year	No of Patients	Population Estimate	Patients as % of Population
A:1995	15,430	5,213,806	0.3%
B:1996	16,550	5,288,480	0.3%
C:1997	17,180	5,349,121	0.3%
D:1998	18,460	5,404,509	0.3%
E:1999	18,770	5,457,059	0.3%
F:2000	19,690	5,513,198	0.4%
G:2001	20,420	5,576,947	0.4%
H:2002	21,570	5,606,200	0.4%
I:2003	22,500	5,646,320	0.4%
J:2004	24,860	5,710,911	0.4%

(Source: Medicare Claims Statistics 10% sample – extrapolated to population, ABS Catalogue 3101.0)

- (b) The number of cycles undertaken by women in the ten year period 1 January 1995 to 31 December 2004 has been used. The number of cycles undertaken in this period by a woman has been calculated using item 13209. Item 13209 covers the planning and management of any IVF cycle. It is used in conjunction with superovulated cycles (13200), artificial insemination and superovulated cycles of less than nine days (13203), non-stimulated cycles (13206) and cycles involving the transfer of either frozen eggs or embryos or donor eggs or embryos (13218).

In the period 1 January 1995 to 31 December 2004, the average number of cycles undertaken by a woman was 3.9, with a range of 1 to 54. (*Source: Medicare Claims Statistics 10% sample*)

- (c) Yes.
- (d) Actual information on IVF use and expenditure was provided through the Departments of Prime Minister and Cabinet, Finance and Administration and the Treasury in the six months prior to the 2005 Budget.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-054

OUTCOME 2: Medicines and Medical Services

Topic: PREGNANCY SERVICES

Written Question on Notice

Senator Nettle asked:

Has the department been asked to review Medicare Benefits Schedule item 35643? If so, please provide details.

Answer:

No, the Department of Health and Ageing has not been asked to review Medicare Benefits Schedule item 35643.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-058

OUTCOME 2: Medicines and Medical Services

Topic: PREGNANCY TERMINATION

Written Question on Notice

Senator Nettle asked:

In response to question on notice 325, the department noted that Medicare benefits are not available for termination of a pregnancy in the third trimester. Why is this the case? How long has this restriction been in place?

Answer:

The department has not been asked to include an item in the Medicare Benefits Schedule (MBS) for termination of pregnancy in the third trimester. There has never been an item in the MBS for third trimester terminations.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-059

OUTCOME 2: Medicines and Medical Services

Topic: PREGNANCY TERMINATIONS

Written Question on Notice

Senator Nettle asked:

I'm aware that prior to the answers provided by the department to question on notice 325 the Health Minister has been indicating that 100,000 abortions occurred each year. I am also aware that Minister Abbott continued to refer to the figure of 100,000 abortions per year in public after the release of more accurate figures from the department in response to questions on notice (ABC Insiders 29.5.05 "I think the fact that we have about 100,000 abortions a year in Australia is a tragedy, and I think we're better than that.")

- (a) Were the department's more accurate figures on abortions provided in response to question on notice 325 also provided to the Minister; and
- (b) Has the department provided any subsequent briefings to the Minister to ensure that he is aware of the department's most accurate figures on number of terminations per year in Australia?

Answer:

- (a) Yes.
- (b) Consistent with his portfolio responsibilities the Minister has received information on a range of issues.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-060

OUTCOME 2: Medicines and Medical Services

Topic: PREGNANCY TERMINATIONS

Written Question on Notice

Senator Nettle asked:

- (a) In answer to question on notice 325 you indicated that services in a public hospital must be provided within a clinically appropriate period regardless of geographic location. In what way does the department ensure that the principles governing public hospitals services are delivered 'within a clinically appropriate period' when it comes to terminations?
- (b) Can you provide figures showing, particularly in rural areas, how many women were denied such services in a clinically appropriate period given that each additional week increases the risk of abortion to the woman?

Answer:

- (a) As with all medical procedures provided in public hospitals, questions of clinical practice and timing arising in relation to terminations are matters for the appropriate medical professionals and the state and territory health authorities to determine. The department monitors state and territory performance at a general level against the recommended times for elective surgery urgency categories.

Of the 13,949 public patients undergoing termination of pregnancy in a public hospital in 2003-04 (identified in our answer to question on notice 325), 1,749 or 12.5% were placed on an elective surgery waiting list. Of these, 80% were admitted within one week, and 96% were admitted within two weeks.

The 87.5% or 12,200 remaining patients were not recorded on a waiting list.

- (b) The department does not have access to information at this level.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-046

OUTCOME 2: Medicines and Medical Services

Topic: ANTICIPATED GROWTH RATE FOR THE PHARMACEUTICAL BENEFITS
SCHEME (PBS) OVER THE NEXT FOUR YEARS

Written Question on Notice

Senator Nettle asked:

What is the anticipated growth rate for the cost of the PBS for the next four financial years, commencing with 2005-06?

Answer:

The expected annual growth in total PBS expenditure ('expense' - concessional, general & pharmaceutical benefits other) from the Forward Estimates after Budget 2005-06 are as follows:

2005-06	8.0%
2006-07	7.5%
2007-08	9.7%
2008-09	10.9%

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-048

OUTCOME 2: Medicines and Medical Services

Topic: IMPACT ON NUMBER OF SCRIPTS DUE TO INCREASE IN SAFETY NET
THRESHOLD

Written Question on Notice

Senator Nettle asked:

Did the department undertake any research into the likely impact on the number of scripts filled of increasing the Pharmaceutical Benefits Scheme safety net thresholds, as announced in the May 2005 Budget? If so, please provide details.

Answer:

The department did not undertake any research into the impact on script numbers due to the increase in the Pharmaceutical Benefits Scheme safety net thresholds.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-066

OUTCOME 2: Medicines and Medical Services

Topic: PHARMACEUTICAL BENEFITS SCHEME (PBS) SAFETY NET THRESHOLD
INCREASE

Written Question on Notice

Senator Nettle asked:

Did the department examine alternative savings measures to lifting the PBS safety net thresholds? If so, please provide details.

Answer:

There were a number of measures relating to the PBS announced as part the Budget 2005-06. These include increases to the PBS safety net thresholds, reinforcing safety net arrangements for co-payments, price reduction for new generic brand listings, cessation of the PBS community awareness campaign, provision of generic medicines information for consumers, cost recovery for Pharmaceutical Benefits Advisory Committee processes, delisting of calcium tablets, cost effectiveness reviews for some already-listed PBS medicines.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-100

OUTCOME 2: Medicines and Medical Services

Topic: MANDATING PRICE LISTS IN PHARMACIES

Written Question on Notice

Senator McLucas asked:

- (a) How is it expected that this list will be developed?
- (b) Will each individual pharmacy have to develop their own list?
- (c) How often will this list need to be updated?
- (d) Will this list need to include brand premiums that may be charged?

Answer:

- (a) Consultation will occur with the Pharmacy Guild and other stakeholders.
- (b) Price list information could be made available through a variety of means including point of sale material at pharmacies and electronic publication.
- (c) The Pharmaceutical Benefits Scheme (PBS) schedule is currently published in hard copy every four months. Where changes occur between publications, updated information is posted to the PBS website. Use of electronic methods for compiling price lists will assist in keeping lists current.
- (d) The required format for price lists has not been determined. In order to allow consumers to include consideration of price in making informed decisions about the medicines they buy, it is intended that the lists will include the full amount to be paid by the consumer.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2004-2005, 1 & 2 June 2005

Question: E05-185

OUTCOME 2: Access to Medicare

Topic: POTENTIAL SAVINGS FROM PHARMACY DEREGULATION

Hansard Page: CA 58-60 – 1 June

Senator Forshaw asked:

- (a) Did the Minister in fact request this report [Potential savings from pharmacy deregulation prepared by ACIL Tasman and commissioned by Woolworths Limited]?
- (b) Do you know whether the Commonwealth footed the bill for the preparation of the report?

Answer:

- (a) This is a question for the Minister for Health and Ageing.
- (b) The Commonwealth did not pay for the preparation of the report.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-208

OUTCOME 2: Medicines and Medical Services

Topic: WHOLESALER REMUNERATION

Hansard Page: CA 65 – 1 June

Senator Forshaw asked:

Did the Government make a decision not to implement the recommendations of the report into wholesaler remuneration? If so, on what date?

Answer:

The review was established by the Australian Government in September 2001 to examine options for improving the efficiency and effectiveness of current remuneration arrangements for the wholesaling of pharmaceuticals under the Pharmaceutical Benefits Scheme.

The report has been provided to the Minister for Health and Ageing and is under consideration by the Government.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-205

OUTCOME 2: Medicines and Medical Services

Topic: 10% WHOLESALE MARGIN

Hansard Page: CA 66 – 1 June

Senator Forshaw asked:

Can you indicate when the government decided that no action would be taken on the report? (Report of the Review of the Arrangements for the Wholesaling of Pharmaceutical under the Pharmaceutical Benefits Scheme).

Answer:

The review was established by the Australian Government in September 2001 to examine options for improving the efficiency and effectiveness of current remuneration arrangements for the wholesaling of pharmaceuticals under the Pharmaceutical Benefits Scheme (PBS).

The report has been provided to the Minister for Health and Ageing and is under consideration by the Government.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-210

OUTCOME 2: Medicines and Medical Services

Topic: DELISTING OF CALCIUM TABLETS

Hansard Page: CA 69 – 1 June

Senator Forshaw asked:

What is split between concessional and general patients who will be affected by the delisting of calcium tablets from the Pharmaceutical Benefits Scheme (PBS)?

Answer:

For calcium tablet prescriptions subsidised under the PBS in financial year 2003-04, approximately 98.5% of prescriptions were supplied for concessional beneficiaries and 1.5% for general patients. (These figures do not include prescriptions supplied under the Repatriation Pharmaceutical Benefits Scheme.)

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-211

OUTCOME 2: Medicines and Medical Services

Topic: SAVINGS ACHIEVED THROUGH GENERIC MEDICINES BUDGET
MEASURE 2002-2003

Hansard Page: CA 72 – 1 June

Senator Forshaw asked:

What savings were achieved by the 2002-03 budget measure on generic medicines in the years 2002-03 and 2003-04? What is the expectation for 2004-05?

Answer:

The claimed saving from these budget measures was as follows:

2002-03	\$ 3,995,000
2003-04	\$10,380,000

The current estimate of saving for 2004-05 is \$11,207,000 in cash terms or \$11,316,000 in expense (accrual) terms. There are difficulties in the analysis of these savings as it is necessary to separate price reductions that resulted from the measure from other price reductions that occurred in the same period.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-212

OUTCOME 2: Medicines and Medical Services

Topic: MEMORANDUM OF UNDERSTANDING WITH PHARMACEUTICAL
MANUFACTURERS

Hansard Page: CA 72-73 – 1 June

Senator Forshaw asked:

How many Memorandum of Understanding (MOU) were signed with pharmaceutical manufacturers under the 2002-03 budget measure on generic medicines, for what medicines, and with which manufacturers?

Answer:

Under the 2002-03 budget measure agreements have been made with six generic manufacturers to implement this budget measure. Each is a member of Generic Medicines Industry of Australia. The six companies were: Alphapharm, Arrow, Biochemie, Douglas Pharmaceuticals, Hexal and Faulding.

92 drugs (673 products) are monitored for saving under this 2002-03 budget measure.

These are drugs for the treatment of a range of conditions, including:

- anti-arrhythmics
- anti-virals
- anti-bacterials
- anti-inflammatory and anti-rheumatics
- anti-depressants
- beta blockers
- gastrointestinal disorders
- parkinsons disease
- ophthalmologicals
- endocrine disorders
- cardiac disorders.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-213

OUTCOME 2: Medicines and Medical Services

Topic: IMPACT ON SCRIPT VOLUMES FROM PATIENT CO-PAYMENT INCREASE

Hansard Page: CA 77 – 1 June

Senator Allison asked:

What decrease in script volumes has been assumed in estimates of the impact of the PBS patient co-payment increase measure?

Answer:

The reductions in prescription volumes estimated to flow from the co-payment increase were as follows:

2004-05	1,626,000 prescriptions
2005-06	4,542,000 prescriptions
2006-07	4,360,000 prescriptions
2007-08	4,487,000 prescriptions

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-131

OUTCOME 2: Medicines and Medical Services

Topic: PHARMACEUTICAL BENEFITS SCHEME BUDGET ESTIMATES

Written Question on Notice

Senator McLucas asked:

- (a) With reference to p. CA 76 of the Hansard Wednesday 1 June 2005, please explain why Finance's and Health's estimates of the Pharmaceutical Benefits Scheme (PBS) do not correspond with the Department of Treasury's.
- (b) What input does Health have in the preparation of Treasury's estimates?
- (c) Does this input occur as part of the Budget Process?
- (d) Is there another source from which the Treasury prepares its version of the PBS estimates?

Answer:

- (a) The Department of Treasury and the Department of Health and Ageing's estimates are drawn from the same base of financial data but do not perfectly overlap because they do not cover matching groups of expenditure items.

The Department of Treasury's estimates (in box 6.1, Table 8.1 of Budget Paper No. 1) are reported at function level and contain funding amounts for the whole of government, including programs outside the PBS such as the Repatriation Pharmaceutical Benefits Scheme (RPBS), vaccine funding and payments to Community Pharmacy.

The Health and Ageing Portfolio Budget Statements estimate for the PBS (program 2.3 in Table 3.1.2, page 75) are reported at a program level and do not include any other programs such as Veteran's pharmaceuticals, vaccines or payments to pharmacy. (Vaccines are included under Outcome 1, Table 3.1.1, program 1.6, and payments to pharmacy are included under Outcome 2, Table 3.1.2, program 2.1).

Where Health and Ageing portfolio specific amounts are shown in Table 8.1 of Budget Paper No. 1, they match the amounts used in the Department of Health and Ageing's Portfolio Budget Statements. ie. The amounts shown in Table 8.1 for Pharmaceutical Benefits (Concessional), Pharmaceutical Benefits (General) and Highly Specialised Drugs funding align with the Health and Ageing estimates that make up the estimate in table 3.1.2 of the Portfolio Budget Statements.

However the 'Other' figure in Table 8.1 is collected at the function level which can lead to other portfolios' programs being added or removed from this amount each year dependant upon the functional codes assigned to the program by the relevant agency. This information is not available to Health until after the Budget. As a result figures published in the two documents overlap, but represent two separate pieces of information about Pharmaceutical estimates and therefore do not always align.

- (b) The Department of Health and Ageing updates its estimates at a minimum three times a year. This information is held by the Department of Finance and Administration, and is used to construct the estimates in Box 6.1, Table 8.1 of Budget Paper No. 1. The Department of Health and Ageing does not verify the estimates constructed for Table 8.1 before they are published on Budget night each year.
- (c) Yes. See 2 above.
- (d) No.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-234

Professional Services Review

Agency outcome:

OUTCOME 1 – Australians are protected from meeting the cost and associated risks of inappropriate practices of health service providers.

Addressed at Budget Estimates under:

OUTCOME 2 – Medicines and Medical Services

Topic: NUMBER OF CASES WHERE SANCTIONS APPLIED

Hansard Page: CA 104

Senator Moore asked:

Are you able to tell us how many people have been sanctioned as a result of the investigation that the review agency has done? 80-20s and the rest, since the agency started.

Answer:

The number of practitioners sanctioned since the Professional Services Review (PSR) scheme started, after having been found to have engaged in inappropriate practice, is 186.

	Negotiated Agreements	Committee found inappropriate practice	Committee found inappropriate practice in 80/20 cases	Total
Total Sanctions Imposed	60	113	13	186
Reprimand	53	65	13	131
Counselling	(Note 1)	99	13	112
Repayment of Medicare benefits	\$667,665	\$4,258,145	\$840,117	\$5,765,927
Full disqualification from Medicare	79 months	330 months	59 months	468 months
Partial disqualification from Medicare	34 months	360 months	39 months	433 months
Suspension from PBS	6 months	77 months	0	83 months
Estimate of Medicare benefits not paid due to disqualifications				>\$18.5 million

Note 1: A sanction of counselling is not available under the *Health Insurance Act 1973* in respect of a negotiated agreement. However, in effect, counselling takes place as part of negotiating the agreement.

In addition to the 126 cases where PSR committees found practitioners had engaged in inappropriate practice, 18 other committees found practitioners had not engaged in inappropriate practice.

Further, the Director has dismissed 193 referrals as he was not satisfied a committee would have been likely to find inappropriate practice took place.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-168

OUTCOME 3: Aged Care and Population Ageing

Topic: DEMENTIA - EXTENDED AGED CARE AT HOME (EACH) PLACES

Written Question on Notice

Senator McLucas asked:

- (a) How did the Department determine the number of EACH places announced? How did the Department assess demand?
- (b) How will the EACH packages be advertised and distributed?
- (c) How will the Department ensure that they are placed in areas of need?

Answer:

- (a) The availability of 2,000 EACH dementia specific places was an election commitment.
- (b) The EACH dementia specific places will be allocated through the 2005 Aged Care Approvals Round.
- (c) The distribution of EACH dementia specific places is based on advice from the Aged Care Planning Advisory Committees in each state and territory.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-178

OUTCOME 3: Aged Care and Population Ageing

Topic: RESIDENTIAL ALLOCATIONS - CONCESSIONAL RESIDENT RATIO

Written Question on Notice

Senator McLucas asked:

- (a) Is it correct that when an aged care provider receives additional places in an aged care approvals round they are required to meet the regional concessional target set for that region?
- (b) Does the Department penalise facilities that do not achieve a 40% concessional target even though the regional target may be considerably lower than the 40% global target?
- (c) What is the extent of the financial penalty that is applied against an aged care provider who falls below the 40% global target?

Answer:

(a) Yes.

(b) and (c)

A higher supplement is paid to those services with more than 40% concessional residents as an incentive for services to increase or maintain the number of concessional places they make available to eligible residents.

Alternatively, the Secretary has the power to deduct an amount of residential care subsidy paid to a service if that service does not meet the applicable *regional* concessional ratio. In deciding whether or not to make such a deduction, consideration is given to a number of issues, including:

- the availability of concessional residents in the region;
- the extent to which the region is meeting the ratio; and
- the service's efforts to meet their ratio.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-181

OUTCOME 3: Aged Care and Population Ageing

Topic: TRANSITION CARE PLACES

Written Question on Notice

Senator McLucas asked:

- (a) How are the 2000 transition care places being distributed?
- (b) How does the Department decide where places are to be allocated?

Answer:

- (a) Places will be allocated to states and territories broadly in line with their proportion of older people with allowances being made for scale economics in the smaller jurisdictions.
- (b) The Transition Care Program is a joint Australian - State/Territory Government Program and each state and territory was invited to provide an Implementation Plan which included the proposed location of places.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-182

OUTCOME 3: Aged Care and Population Ageing

Topic: PROMOTING HEALTHY AGEING IN AUSTRALIA

Written Question on Notice

Senator McLucas asked:

Was the Department of Health and Ageing consulted in the development of this report by Prime Minister's Science, Engineering and Innovation Council (PMSEIC) or did it have any input?

If so, what involvement did the Department of Health and Ageing have?

Answer:

Yes.

The independent working group of PMSEIC was supported in the preparation of the report by the Department of Health and Ageing and the PMSEIC Secretariat. The report acknowledges that Dr Judy Straton, then a Department of Health and Ageing officer, 'played a central role in translating the ideas and conclusions of the working group into the final report'.

Source of funds transferred from the Practice Incentives Program to part fund the new Chronic Disease Management MBS items.

Bill 1 Administrative – Alternative Funding for General Practice Services							
	2004-05	2005-06	2006-07	2007-08	2008-09	4 year Total 2004-05 to 2007-08	4 year total 2005-06 to 2008-09
	\$m	\$m	\$m	\$m	\$m	\$m	\$m
PIP/GPII base	1.4	2.5	5.0	5.7	5.7	14.6	18.9
Cervical Screening	0.0	0.0	3.5	4.9	4.9	8.4	13.3
Diabetes	5.3	5.5	13.2	17.3	17.3	41.3	53.3
Asthma	4.9	5.4	7.2	7.4	7.4	24.9	27.4
Mental Health	12.1	11.1	24.0	25.2	25.2	72.4	85.5
Sub-total	23.6	24.6	52.9	60.5	60.5	161.6*	198.4

(totals may not add due to rounding)

* This amount (\$161.6m over four years) was transferred at 2004-05 Additional Estimates (This includes MBS, DVA, HIC and Departmental costs associated with introducing the new items).



Australian Government
Department of Health and Ageing

Mr Elton Humphery
Secretary
Senate Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Humphery

SENATE ESTIMATES HEARING 1 JUNE 2005: OUTCOME 4

I am writing to provide additional information in relation to a statement made by Ms Halton, Secretary for the Department of Health and Ageing when attending the Senate Community Affairs Legislation Committee - Senate Estimates Hearings on 1 June 2005. The relevant statement appears on the Hansard transcript at pages CA 142, Line 18.

As Ms Halton noted, the components of the National Integrated Diabetes Program (NIDP) are largely expended, however, funding originally allocated to the Practice Incentives Program was underspent over the first four years of the NIDP. Delivery of this component of the NIDP is being realigned with funding reallocated in part to new chronic disease management items under the Medicare arrangements, as discussed earlier on 1 June 2005, CA 140, Line 46 to CA 141, Line 15.

Yours sincerely

Margaret Lyons
First Assistant Secretary
Health Services Improvement Division

17 June 2005

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-123

OUTCOME 4: Primary Care

Topic: COMMUNITY HEALTH CENTRES AND ACCESS TO MEDICARE

Written Question on Notice

Senator McLucas asked:

- (a) Is the Department attempting to limit access to Medicare by GPs working in community health centres in Victoria?
- (b) Why?
- (c) Is such action occurring in other states and territories?

Answer:

- (a) No. Medicare access for GPs working in community health centres in Victoria is subject to the same requirements as apply nationally. No specific restrictions have been put in place.
- (b) See (a).
- (c) No.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-124

OUTCOME 4: Primary Care

Topic: COMMUNITY HEALTH CENTRES (CHCs) AND ACCESS TO MEDICARE

Written Question on Notice

Senator McLucas asked:

- (a) Is it true that the corporate structure of CHCs in Victoria cannot give rise to the assertion that GP or other services attracting a Medicare benefit and provided from their premises are provided under 'an arrangement with the state'? – CHCs are not public bodies established and incorporated under the *Health Insurance Act 1973*.
- (b) How does the Enhanced Primary Care Program initiative, which allows allied health and dental practitioners at CHCs to claim against Medicare, overcome this assertion?
- (c) As a corollary why can this not apply to the primary health care given by GPs in Victorian CHCs?

Answer:

- (a) No. Whether services are provided under 'an arrangement with the state' will depend on the specific circumstances involved.
- (b) As is the case for GP and other medical services, access to Enhanced Primary Care allied health items will depend on whether or not services are provided 'under an arrangement with the state' in the context of subsection 19(2) of the *Health Insurance Act 1973*.
- (c) The same arrangements do apply.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-125

OUTCOME 4: Primary Care

Topic: ENHANCED PRIMARY CARE (EPC) - ALLIED HEALTH

Written Question on Notice

Senator McLucas asked:

- (a) Please provide an update to figures on EPC allied health services provided in answer E05-102?
- (b) What are the expected number of services in this time frame vs the actual number of services?
- (c) Why has uptake been so poor/so slow?

Answer:

- (a) See Table 1 below.

Table 1. Uptake of allied health and dental care Medicare Benefits Schedule (MBS) items in nine months to March 2005 – by item number – including number of services and patients, benefits paid, and out-of-pocket costs

Item number and service	Number of services	Number of patients*	Average services per patient	Medicare Benefits paid	Average benefits per patient	Average out-of-pocket cost per service
10950 Aboriginal health	34	23	1.5	\$1,512.15	\$65.75	N/A
10951 Diabetes education**	119	91	1.3	\$5,346.20	\$58.75	\$5.68
10952 Audiology	114	97	1.2	\$5,368.20	\$55.34	\$19.69
10954 Dietetics	27,409	15,453	1.8	\$1,226,056.60	\$79.34	\$11.31
10956 Mental health	335	132	2.5	\$16,922.65	\$128.20	\$30.35
10958 Occupational therapy	816	343	2.4	\$38,434.80	\$112.05	\$16.83
10960 Physiotherapy	70,175	21,223	3.3	\$3,129,361.40	\$147.45	\$4.28
10962 Chiropody/Podiatry	29,004	16,992	1.7	\$1,288,554.05	\$75.83	\$3.80
10964 Chiropractic	6,912	1,945	3.6	\$297,180.10	\$152.79	\$2.74
10966 Osteopathy	2,756	845	3.3	\$123,882.05	\$146.61	\$8.51
10968 Psychology	13,838	5,012	2.8	\$672,767.80	\$134.23	\$36.71
10970 Speech pathology	1,553	450	3.5	\$74,880.55	\$166.40	\$14.69
10975 Dental assessment	924	924	1.0	\$70,518.00	\$76.32	\$31.35
10976 Dental treatment	1136	779	1.5	\$130,736.05	\$167.83	\$68.33
10977 Dental assessment or treatment by dental specialist	11	11	1.0	\$1,325.25	\$120.48	\$45.50
Total	155,136	64,320	2.41	\$7,082,845.85	\$110.12	\$9.99

* The number of patients is not additive across item types as the same patients claim multiple item types.

** Diabetes education services (10951) commenced on 1 November 2004

- (b) Uptake of the new allied health MBS items, introduced on 1 July 2004, was projected to be around 150,000 patients with EPC multidisciplinary care plans, accessing up to five allied health services each per year.

In the nine months to March 2005, a total of 64,320 patients claimed Medicare rebates of \$7,082,846 for 155,136 allied health and dental care services.

- (c) Uptake in this first year cannot be used to accurately predict whether future uptake will reach projected levels. This is a new innovative initiative with Medicare rebates for certain allied health and dental services becoming available for the first time. GPs, allied health professionals, dentists and consumers are still getting used to the new arrangements.

The number of EPC multidisciplinary care planning items claimed has significantly increased, up by nearly 100% on the same period in the 2003-04 financial year. This increase would appear to be in response to the introduction of new allied health items.

The Department is working closely with professional groups to monitor uptake and address any issues that arise.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-126

OUTCOME 4: Primary Care

Topic: ENHANCED PRIMARY CARE - ALLIED HEALTH

Written Question on Notice

Senator McLucas asked:

- (a) Given the very real need for dental services, why is the uptake of the dental item so low?
- (b) Is this likely to be due to the large out-of-pocket cost?

Answer:

- (a) This is the first time Medicare rebates have been made available for dental care services. GPs, dentists and consumers are still getting used to the new arrangements.
- (b) At this early stage of implementation, it is too soon to see any trends developing which would support the finding that any one factor is limiting uptake of the dental care items.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-127

OUTCOME 4: Primary Care

Topic: ENHANCED PRIMARY CARE - ALLIED HEALTH

Written Question on Notice

Senator McLucas asked:

- (a) When you assess the uptake of the various allied health services items available under this program and measure this against what is known about community needs – are there any discrepancies that stand out?
- (b) Is there any correlation between out of pocket costs and uptake?
- (c) If so, will anything be done to address this?

Answer:

- (a) Access to Medicare rebateable allied health services is only available to patients who have a chronic condition or have complex care needs, which are being managed by their GP under an Enhanced Primary Care multidisciplinary care plan. GPs refer patients for care and treatment identified as necessary under such care plans. It may be agreed, for example, that a (private) dietitian and a (public) diabetes educator be involved in planning the care of a diabetic patient and providing relevant treatment.

Uptake of the allied health services items is therefore, consistent with needs identified in care plans and referrals provided by GPs, and are based on their knowledge of individual allied health professionals and patients' preferences.

(b) & (c)

At this early stage of implementation, it is too soon to see any trends developing which would support the finding that any one factor is limiting uptake of the allied health services items.

Patient out of pocket expenses for eligible allied health services count towards the Medicare Safety Net which covers 80% of patient out of pocket costs when the threshold has been reached.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-147

OUTCOME 4: Primary Care

Topic: PRACTICE INCENTIVES PROGRAM – CERVICAL SCREENING INITIATIVE

Hansard Page: CA 143 – 1 June

Senator Moore asked:

I want something in a printed format that shows what the old formula was and what the new formula is.

Answer:

Old formula

The number of Pap smears taken by a practice from women aged 20 to 69 years in a 24 month period divided by the total number of women patients in that age group in the practice and expressed in percentage terms. Practices achieving 70% or more were eligible for the outcomes payment.

New formula

The number of Pap smears taken by a practice from women aged 20 to 69 years in a 30 month period divided by the total number of women patients in that age group in the practice and expressed in percentage terms. Practices achieving 50% or more are eligible for the outcomes payment.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-148

OUTCOME 4: Primary Care

Topic: AUSTRALIAN GENERAL PRACTICE TRAINING PROGRAM – RURAL
PATHWAY UPTAKE

Hansard Page: CA 146 -147 – 1 June

Senator Moore asked:

How does the usage rate [of the filled rural pathway places] compare with the previous four years?

Answer:

For the 2005 training year, 72% of available places on the Rural Pathway of the Australian General Practice Training Program were filled. This compares with uptake rates on the Rural Pathway in the previous four years of 80% in 2004, 95% in 2003, 90% in 2002 and 102% in 2001. Fifty more Rural Pathway training places were available in 2004 and 2005 (each year) than in 2001 to 2003.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO

Additional Estimates 2005-2006, 1 & 2 June 2005

Question: E05-150

OUTCOME 5: Rural Health

Topic: RURAL HEALTH STRATEGY

Hansard Page: CA 115

Senator Moore asked:

- (a) Can the department provide an interim response on the timeframe required to answer part (b)?
- (b) Can the department provide a breakdown of how the \$830 million funding over four years for the Rural Health Strategy was allocated during the first year (for the financial year 2004-05)? Which program, and how that funding was allocated and spent?

Answer:

(a) & (b)

Details of the Rural Health Strategy programs including a list of programs, how the funding was allocated and what funding was expended will be provided on Monday 15 August 2005.

[Secretariat note: as at 9 September 05 this information was not available]

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Additional Estimates 2005-2006, 1 & 2 June 2005

Question: E05-186

OUTCOME 5: Rural Health

Topic: SENIOR AUSTRALIANS – INCREASING RURAL AND REMOTE AREAS

Hansard page: CA123 2 June

Senator Moore asked:

- (a) How many beds in Multipurpose Services are allocated as respite beds?
- (b) What is the total number of aged care beds in Multipurpose Services?
- (c) Does the Department keep data on the level of use of respite beds in Multipurpose Services? If so, what has been the level of use of these beds by state/territory in 2003, 2004 and 2005 to date?

Answer:

- (a) Multipurpose Services do not receive an allocation of respite beds, however they can and do provide respite services.
- (b) There are 2154 flexible aged care places in Multipurpose Services as at 27 June 2005.
- (c) The Department does not keep data on the level of use of respite provision in Multipurpose Services.



Australian Government
Department of Health and Ageing

Mr Elton Humphrey
Secretary
Senate Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Humphrey

SENATE ESTIMATES HEARING 1 & 2 JUNE 2005: OUTCOME 6

I am writing to correct statements made by myself as National Manager for the Office of Hearing Services of the Department of Health and Ageing when attending the Senate Community Affairs Legislation Committee - Senate Estimates hearings on 1 June 2005. The relevant statement appears on the Hansard transcript at page CA 110, Line 4.

The correct terminology should have been:

‘They are set in a Deed of *Standing Offer* that we negotiate with manufacturers.’

This does not change the meaning of the answer, it merely provides the correct reference to the contract between the Department and hearing aid manufacturers.

Yours sincerely

Tony Kingdon
National Manager
Office of Hearing Services

21 June 2005



Australian Government
Department of Health and Ageing

Mr Elton Humphrey
Secretary
Senate Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Mr Humphrey

Senate Estimates Hearing 1 & 2 June 2005: Outcome 7

I am writing to correct statements made by Ms Larkins and Mr Thomann, officers for the Office for Aboriginal and Torres Strait Islander Health and Ms Halton, Secretary of the Department of Health and Ageing attending the Senate Community Affairs Legislation Committee – Senate Estimates Hearings on 2 June 2005.

The relevant statement of Ms Larkins appears on the Hansard transcript at page CA 65, Line 31. Ms Larkins incorrectly stated there was money allocated in the 1995-96 budget for the Eye Health Program. The National Aboriginal and Torres Strait Islander Eye Health Program commenced in 1998, and funds were allocated in the 1998-99 budget.

The second statement appears on the Hansard transcript at page CA 67, Line 49. Mr Thomann incorrectly stated it would be Administered funds for travel as it initially appeared that the question referred to the administered Eye Health Budget. Departmental staff travel is managed out of the Departmental allocation.

The final statement appears on the Hansard transcript at page CA 73, Line 20. Ms Halton incorrectly indicated that the Department had not provided funding for the COAG Trial Site in the Anangu Pitjantjatjara Lands (AP Lands) in 2002-03. In 2002-03 \$20,000 was provided to APY Lands Council to employ a consultant to develop a business case for the Rural Transaction Centre initiative, which is a COAG Trials endorsed project.

I would appreciate if you could notify the Committee of these changes.

Yours sincerely

Alison Larkins
A/g First Assistant Secretary
Office for Aboriginal and Torres Strait Islander Health
21 June 2005

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-074

OUTCOME 7: Indigenous Health

Topic: EXPENDITURE ON INDIGENOUS HEALTH

Written Question on Notice

Senator Nettle asked:

- (a) What is the total amount of Commonwealth funding allocated to Indigenous health in 2005-06?
- (b) How does this compare with 2004-05?

Answer:

- (a) The Australian Government Indigenous Expenditure table (refer pages 11 and 12 of the Portfolio Budget Statements 2005-06 Health and Ageing Portfolio) reports that the total of administered and departmental funds appropriated to the Health and Ageing portfolio in 2005-06 specifically for Indigenous health is \$423.511 million. Of this amount \$374.069 million has been appropriated to Outcome 7 (Office for Aboriginal and Torres Strait Islander Health [OATSIH]).
- (b) The total estimated expenditure of administered and departmental funds on Indigenous health by the Health and Ageing Portfolio in 2004-05 as reported in the Australian Government Indigenous Expenditure table of \$358.366 million. Of this amount the estimated expenditure by Outcome 7 (OATSIH) was \$308.015 million.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-075

OUTCOME 7: Indigenous Health

Topic: PETROL SNIFFING

Written Question on Notice

Senator Nettle asked:

- (a) What work has the department undertaken to address the problem of petrol sniffing in Indigenous communities?
- (b) Has the department been involved in discussions with communities about the problem? If so, please provide details. If not, why not?

Answer:

- (a) The department has sustained and strengthened its effort in addressing petrol sniffing in Indigenous communities over time. The work includes: consulting directly with communities, funding organisations to provide services from prevention to treatment, subsidising the supply of a substitute fuel under the Comgas Scheme (since 1998), and conducting research and working with state and territory governments, industry and other organisations.
- (b) In addition to working directly with communities, the department participates on key forums such as the Central Australian Cross Border Reference Group on Volatile Substance Use, the National Inhalant Abuse Taskforce and works closely with key peak and service agencies such as the NPY Women's Council and the Central Australian Youth Link Up Service.

Consultation with communities and stakeholders most commonly occurs through community workshops which the department organises – for example the Comgas Scheme workshops held in the Northern Territory and Queensland in November 2004.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-061

OUTCOME 7: Indigenous Health

Topic: PETROL SNIFFING

Written Question on Notice

Senator Nettle asked:

- (a) How much money is allocated for 2005-06 towards addressing this (petrol sniffing) problem?
- (b) On what will the funds be spent?

Answer:

- (a) In 2005-06 the department will provide \$3.6 million to address petrol sniffing specifically consisting of:
 - The Comgas Scheme - \$3.3 million
 - The Petrol Sniffing Diversion Project - \$317,000
- (b) The Comgas Scheme will continue to supply the substitute fuel *Opal* to the existing 37 registered Indigenous communities. The scheme will expand to include a further seven communities in 2005-06.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-164

OUTCOME 7: Indigenous Health

Topic: COMBATING PETROL SNIFFING

Hansard Page: CA 81 – 2 June

Senator Moore asked:

- (a) How much of the additional funding for *Combating Petrol Sniffing* is allocated to each of the three activities identified in the health portfolio fact sheet 'Helping Aboriginal and Torres Strait Islander people to better health'?
- (b) Have you put notional allocations against each of those three action items with your bulk funding?

Answer:

- (a) The expanded Comgas Scheme will be financed by both the new *Combating Petrol Sniffing* budget measure and the continuing \$1 million annual internal allocation sourced from the Aboriginal Health Program.

The 37 Indigenous communities currently registered on the Comgas Scheme are able to access *Opal* and are funded from the existing annual allocation of \$1 million.

The *Combating Petrol Sniffing* measure provides a total of \$9.6 million over the four year period 2005-06 to 2008-09. The measure includes the supply of *Opal* to an additional 23 communities – including the scope to trial regional approaches in two selected COAG sites. A notional allocation for the supply of *Opal* to a further 23 registered communities is \$4.6 million.

- (b) The additional \$9.6 million over the four year period 2005-06 to 2008-09 has been notionally allocated as: *Opal* subsidy - \$4.6 million; communication and support activities - \$2.7 million; improved data collection and reporting on prevalence - \$0.7 million; evaluation to inform further action - \$0.4 million; departmental - \$1.2 million.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-154

OUTCOME 7: Indigenous Health

Topic: EYE HEALTH

Hansard Page: CA 65-69 – 2 June

Senator Crossin asked:

- (a) Provide details of money allocated in the 1998-99 Budget for the Eye Health Program.
- (b) Provide details of the Eye Health Program (including Trachoma) prior to 1998.
- (c) What is the expenditure to date to the Eye Health for 2004-05?
- (d) What is the allocation for 2005-06 for the Eye Health Program?
- (e) Provide details of the underspend for Eye Health Program between 2001 and 2004.
- (f) Provide the figures equated to the drop in trachoma rates in Mulan.
- (g) Do you have a state-by-state allocation for the Eye Health Program?

Answer:

- (a) In February 1998, the Prime Minister announced \$4.8 million to support the implementation of the recommendations of the national review of Aboriginal and Torres Strait Islander Eye Health.
- (b) Summary information is as follows:

1976-79: The National Trachoma and Eye Health Program (NTEHP) began in 1976 and ran from 1976 to 1978¹ (1979²) under the direction of the late Professor Fred Hollows. The NTEHP received \$1.4 million in Commonwealth funding, provided to the Royal Australian College of Ophthalmology (RACO) for its administration. It aimed to eliminate trachoma in Aboriginal people and screen, diagnose and treat eye diseases in rural Australia (cited in Taylor).

1 Taylor, H.R. (1997). Eye Health in Aboriginal and Torres Strait Islander Communities. The Report of a review commissioned by the Commonwealth Minister for Health and Family Services, the Hon. Dr Michael Wooldridge, MP.

2 Briscoe, G, Jones, J.N & Henderson, G. In search of a health promotion policy on eye care in Indigenous Australia. Abstract for presentation at the International Union for Health Promotion and Education conference. April. 2004.

The NTEHP 'examined and treated 62,000 Indigenous people and about 39,000 non-Indigenous people throughout much of rural Australia'³.

1980: The findings of the NTEHP were detailed in a report (Hollows Report) which recommended improved environmental conditions and access to a full range of food for people in rural Australia. It also recommended the appropriate continuation of a national program.

1981: The RACO did not intend to continue to administer the ongoing program. Ms Naomi Mayers was commissioned to provide recommendations for future administration and management arrangements.

1982: As a result of Mayers Report, the RACO established state and territory based trachoma committees and secretariats, together with decentralised treatment programs.

1983: The RACO withdrew total management responsibility, at which time the then Minister for Health appointed a task force to determine the future of the program.

1984: The Task Force Report recommended a national secretariat in preference to state-based, to oversee a revitalised NTEHP consisting of a national field program and a national data collection and epidemiology surveillance unit. Concerns were raised about the lack of statistical information and data.

1985: Aboriginal programs were transferred to the Commonwealth Department of Aboriginal Affairs and the Minister for Aboriginal Affairs requested another review. Major recommendations were:

- to retain a national program and establish a secretariat;
- wind down state and territory trachoma and eye health committees; and
- increase resources for Aboriginal Community Controlled Health Services.

There was little support for the recommendations.

1990: Responsibility for Indigenous health funding was transferred to the newly established Aboriginal and Torres Strait Islander Commission, including the NTEHP.

1995: Transfer of Aboriginal health programs to the then Commonwealth Department of Human Services and Health.

1996: Dr Wooldridge commissioned Professor Hugh Taylor to review eye health in Aboriginal and Torres Strait Islander communities (1997-98). The recommendations from this review resulted in the establishment of the current regionally based eye health infrastructure, to integrate into primary health care systems. This was to replace the remaining elements of the NTEHP.

- (c) Specific expenditure on eye health to date, in the 2004-05 financial year is \$2,559,870.
- (d) In 2005-06 recurrent eye health funding has been rolled into a global allocation to Aboriginal and Torres Strait Islander Health Services, under a single funding agreement. Eye health is a component of the overall Aboriginal and Torres Strait Islander health program. Primary health care services funded by the office provide

3 Ibid

both routine primary health care services as well as targeted activities such as eye health, according to local needs.

(e)

Year	Underspend	Details
2000-2001	\$0.79 million	<ul style="list-style-type: none">- Delays in purchasing equipment in Western Australia and the Northern Territory.- Northern Territory training allocation unexpended.- Tasmania allocation unexpended (pending commencement of the program there).
2001-2002	\$0.42 million	<ul style="list-style-type: none">- The need for a second tender process to engage a consultant to undertake the Implementation Review delayed its commencement.- Delay in Coordinator's Workshop (pending commencement of Review).- The Western Australia equipment funding was not fully expended.- The Northern Territory training allocation was unexpended.- The Tasmania equipment funding was not expended pending commencement of program.
2002-2003	\$0.35 million	<ul style="list-style-type: none">- The allocation for Tasmania was not expended.- Some expenditure for the Implementation Review was carried forward to the 2003-2004 year.- Training allocation exceeded requirements.
2003-2004	\$0.61 million	<ul style="list-style-type: none">- The release of the Review of the Eye Health Program Report and the Australian Government Response in May 2004 was too late for the planned Commonwealth facilitated state and territory and national workshops to proceed.- Negotiations with Vision 2020 with regard to a project were not concluded.- The allocation for Tasmania was not fully expended.

(f) The Kimberley Public Health Unit has advised that there were 12 children in the Mulan community found to have trachoma in 2003. The data for 2004 are too small to publish. The Australian Bureau of Statistics standard is that numbers less than or equal to five cannot be published.

(g) No. Funds are allocated to specific Aboriginal Community Controlled Health Services for recurrent regional eye health coordinator positions. The aggregated state/territory allocations for 2003-04 are as follows:

State or Territory	Allocation
New South Wales	\$473,496
Queensland	\$512,947
Northern Territory	\$440,725
Victoria	\$156,518
Western Australia	\$443,932
South Australia	\$295,378

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-155

OUTCOME 7: Aboriginal and Torres Strait Islander Health

Topic: CAPITAL WORKS

Hansard Page: CA 71 – 2 June

Senator Moore asked:

- (a) Are the deadlines for the completion of the 17 Capital Works Program being met?
- (b) Are you aware of how the various health services and other organisations that have been funded have gone in meeting the appropriate staffing levels for the new services?

Answer:

- (a) Set out below is a list of the capital works projects that were planned to be completed during 2004-05. Of those, 14 projects have been completed and five projects have been delayed. The delays have been caused due to various issues with each project and this detail is provided in the table below.

Expenditure of the project budgets has been undertaken over multiple years in line with the achievement of approved project milestones.

State	Organisation	Project Type	Project Value (ex GST)	Status	Cause of delay	Location
ACT	Winnunga Nimmityjah Aboriginal Health Service	Redevelopment	\$426,000	Project delayed from June until July 05	Planning of project with organisation slow.	Narrabundah
NSW	Bulgarr Ngaru Medical Aboriginal Corporation	New	\$1,127,273	Completed June 05		Grafton
NSW	Bourke Aboriginal Community Controlled Health Service	Redevelopment	\$938,432	Completed Feb 05		Bourke
NT	Demed Association Incorporated Homeland Resource Centre	Redevelopment	\$827,000	Completed March 05		Oenpelli
NT	Katherine West Health Board Aboriginal	Upgrade	\$963,000	Completed June 05		Minyerri

State	Organisation	Type	Project Value (ex GST)	Status	Cause of delay	Location
NT	Nguiu Health Centre	New	\$3,770,690	Completed Dec 04.		Bathurst Island
QLD	Gumbi Gumbi Aboriginal and Torres Strait Islander Corporation	Upgrade	\$465,000	Completed May 05.		Rockhampton
QLD	Charleville and Western Areas Aboriginal and Torres Strait Islander Corporation for Health	Redevelopment	\$400,000	Completed May 05.		Roma
QLD	Goondir Aboriginal and Torres Strait Islanders Corporation for Health Services	New	\$1,100,000	Completed June 05.		St. George
QLD	Wunjuada Aboriginal Corporation for Alcohol and Drug Dependence	Upgrade	\$90,000	Project delayed from April 05 until Sep 05.	Service is experiencing management issues.	Cherbourg
SA	Tullawon Health Service Incorporated	New	\$1,950,000	Project delayed from March until Aug 05.	Delays with accessing additional power supply to meet clinic demand.	Yalata
SA	Nganampa Health Council	New	\$371,000	Completed April 05.		Nyapari
SA	Nganampa Health Council	New	\$371,000	Completed April 05.		Watarru
SA	Nganampa Health Council	New	\$371,000	Completed April 05.		Yunyariny
SA	Goreta Aboriginal Corporation	Redevelopment	\$344,850	Project delayed from June until July 05.	Replacing project manager.	Point Pearce
VIC	Moogji Aboriginal Council East Gippsland Incorporated	Redevelopment	\$1,039,000	Completed June 05.		Orbost
VIC	Lake Tyres Aboriginal Health and Childrens' Services	New	\$1,011,755	Project delayed from June until September 05.	Dispute between organisation and project manager.	Lake Tyres
WA	Derby Aboriginal Health Services Council	New	\$4,824,090	Completed May 05.		Derby
WA	Noongar Alcohol and Substance Abuse Service Incorporated	New	\$2,699,964	Completed April 05.		Perth
			\$23,090,054			

(b) All 19 projects listed above involved upgrading, redeveloping or replacing existing facilities. Where an organisation receives funding for upgrading, re-developing or

replacing its facilities, it is usually the case that staff relocate to the new or upgraded facility on completion of the project and these organisations continue to function with their existing staff.

Of the 19 projects listed above, four of the organisations did identify the need for additional staff – although the requests for additional staff were not directly linked to the capital works activity. Funding for these additional positions was provided through the Primary Health Care Access Program in 2004-05. These organisations are as follows:

State	Organisation	Staff required	Project value per annum (ex GST)	Status	Location
QLD	Gumbi Gumbi Aboriginal and Torres Strait Islander Corporation	Admin officer	\$35,000	Funded	Rockhampton
QLD	Charleville and Western Areas Aboriginal and Torres Strait Islander Corporation for Health	1 GP, 1 nurse, 1 AHW, 1 substance use worker, pt program coordinator	\$573,377	Funded	Roma
QLD	Goondir Aboriginal and Torres Strait Islanders Corporation for Health Services	1 GP, 1 nurse, 1 AHW, 1 substance use worker, p/t program coordinator	\$661,703	Funded	St.George
SA	Nganampa Health Council	Clinical Services Manager	\$49,000	Funded	Nyapari

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-156

OUTCOME 7: Indigenous Health

Topic: ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH

Hansard Page: CA 72-73 – 2 June

Senator Moore asked:

- (a) How often has the department's Secretary visited the Anangu Pitjantjatjara (AP) Lands?
- (b) What has been spent on the COAG trial to date (both administered and departmental)?
- (c) Where does the funding for the senior people's involvement in this trial come from?
- (d) Provide details expenditure by activity for the 2003-04 and 2004-05 financial years for the COAG trial.

Answer:

- (a) The Secretary of the Department of Health and Ageing, Jane Halton, has visited the AP Lands four times since May 2003.
- (b) An estimated \$1,087,886.63 of Department of Health and Ageing funding has been spent on the AP Lands COAG trial site to date. This comprises \$602,367.65 administered funding and \$485,518.98 departmental funding.
- (c) The department does not have a separate allocation for funding senior people's involvement in the AP Lands COAG trial. Members of the executive contribute time and effort to the COAG trial as part of their broader responsibilities within the department.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-157

OUTCOME 7: Indigenous Health

Topic: ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH

Hansard Page: CA 73-74 – 2 June

Senator Moore asked:

- (a) When did the department take ownership of the Anangu Pitjantjatjara (AP) Lands COAG trial?
- (b) Have interpreters been used in the AP Lands COAG trial?
- (c) Where is funding for interpreter services allocated from?
- (d) How many languages are there in this trial area?
- (e) Is the use of interpreter services the protocol in the AP Lands COAG trial?
- (f) Has this COAG trial been involved in communication methods pilot projects being conducted in other trial areas, in terms of looking at communication methods?

Answer:

- (a) The department formally took ownership of the AP Lands COAG trial in May 2003.
- (b) Interpreter services have been used in the AP Lands COAG trial on an as needed basis.
- (c) The department does not have a separate allocation for the funding of interpreter services, and to date, these costs have been met as part of departmental expenditure.
- (d) There are two primary languages spoken in the AP Lands COAG trial site. These are Pitjantjatjara and Yankunytjatjara.
- (e) In recognition of the importance of comprehensive and thorough community consultation, the department use interpreters where necessary in the AP Lands COAG trial.
- (f) The AP Lands COAG trial site has not been involved in the communication methods pilot projects being undertaken by the Office for Indigenous Policy Coordination.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-158

OUTCOME 7: Indigenous Health

Topic: ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH

Hansard Page: CA 74-75 – 2 June

Senator Moore asked:

- (a) My understanding was that the project that the Office for Indigenous Policy Coordination (OIPC) were doing that would involve COAG sites. Why is this COAG trial not involved in the project?
- (b) Have there been any consultancies that you have taken as part of this COAG activity? If so, was it internal or external? Provide budget allocation and function details of any consultancies.
- (c) What are the names of the consultants that have been engaged as part of the COAG trial?
- (d) The website indicates three staff are identified under the COAG trial website as contacts within Health and Ageing. Where are these staff located? Are they only staff specifically employed in supporting the COAG trial? Do other areas of Health and Ageing get involved in the trial as well?

Answer:

- (a) The Department of Health and Ageing understands that OIPC conducted short communication methods pilot projects in three regions based on Indigenous Coordination Centres (ICCs) not on COAG trial sites.
- (b) Three external consultancies have been undertaken to date as part of activity in the Anangu Pitjantjatjara (AP) Lands COAG trial site:
 - \$72,000 was provided to the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands Council to employ a consultant to undertake the development of a Regional Transaction Centre (RTC) feasibility study and funding submission. Completed in November 2003, this work proposed the establishment of a networked group of offices in the main communities and homelands across the AP Lands (the Pitjantjatjara Yankunytjatjaraku Ku Network) as a means of improving access to a wide range of financial and community services.

- \$109,970 was provided for the employment of a consultant between 2 February 2004 and 2 February 2005 to provide advice on and oversight of the development, management and implementation of the RTC project.
 - \$193,030 is being provided between 3 February 2005 to 30 June 2006 for the employment of a consultant to support the next stage of work associated with the RTC initiative, namely the establishment of a networked group of seven offices in the main communities and homelands across the AP Lands.
- (c) Peggie Jane Nicholls has been engaged, firstly by the APY Lands Council and then directly by the department, to undertake all of the consultancies to date in the AP Lands COAG trial site.
- (d) The two staff and the consultant identified on the COAG trial website as Health and Ageing contacts are located in the department's South Australian office in Adelaide. Staff in the Office for Aboriginal and Torres Strait Islander Health, and members of the executive, including the Secretary, also spend time on the trial. Other areas of the department are involved in the AP Lands COAG trial on an 'as needs' basis.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-159

OUTCOME 7: Indigenous Health

Topic: ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH

Hansard Page: CA 77 – 2 June

Senator Moore asked:

- (a) Does the new Tjungungku Kuranyukutu Palyantjaku (TKP) steering committee include all the groups identified as community partners on the COAG website? Do all organisations have representatives on the steering committee? Is anyone else on the committee?
- (b) Is information about the seven organisations on TKP on the health website?
- (c) Provide an update on the progress towards the new regional partnership agreement. Have milestones been determined?

Answer:

- (a) All of the groups identified as community partners on the COAG website (Anangu Pitjantjatjara (AP) Lands Council and Pitjantjatjara Yankunytjatjara (PY) Services, Nganampa Health Council, PY Education Committee, Ku Arts, PY Media Corporation and Ngaanyatharra Pitjantjatjara Yankunytjatjara (NPY) Women's Council are represented on the TKP Steering Committee. These groups represent all of the primary Anangu service providers on the AP Lands.

Other organisations with members on the committee include the Australian Government Department of Health and Ageing; the Office of Indigenous Policy Coordination; the Australian Government Department of Immigration, Multicultural and Indigenous Affairs (DIMIA); the South Australian Department of Premier and Cabinet; and the South Australian Department of Aboriginal Affairs and Reconciliation. It is expected that another state government department (yet to be named) will be joining the committee in the near future.

- (b) The Department of Health and Ageing website does not currently include information about the seven community organisations on TKP. The DIMIA website maintains information on the COAG trial sites, identifying the seven community partners of TKP.

- (c) TKP is meeting at the end of July in Alice Springs to discuss the draft Regional Partnership Agreement. It is anticipated that this will replace the original COAG Shared Responsibility Agreement. The setting of milestones will be discussed at the next meeting of TPK.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-160

OUTCOME 7: Indigenous Health

Topic: ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH

Hansard Page: CA 78 – 2 June

Senator Moore asked:

- (a) Is the existing Shared Responsibility Agreement operating as normal?
- (b) How many regional councils were there in this area under the old Aboriginal and Torres Strait Islander Commission (ATSIC) regional councils system? Does it balance across the previous Council Regions?
- (c) Has there been any consideration of expanding the area covered by the Anangu Pitjantjatjara (AP) Lands COAG trial to include the wider self-identified region?

Answer:

- (a) The existing Shared Responsibility Agreement (SRA) (based around Pipalyatjara community's need for a mechanic) is operating as normal. Negotiated through the Port Augusta Indigenous Coordination Centre, this SRA was signed on 19 April 2005.
- (b) There was one regional council in the AP Lands under the ATSIC regional councils system. The COAG trial area does match the previous council regions.
- (c) There has not been any formal consideration of expanding the area covered by the AP Lands COAG trial to include the wider self-identified region. Structures established under the COAG trial (eg. Tjungungku Kuranyukutu Palyantjaku) work very closely with other stakeholders in the broader region on cross border issues such as petrol sniffing and justice.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO

Additional Estimates 2005-2006, 1 & 2 June 2005

Question: E05-161

OUTCOME 7: Indigenous Health

Topic: ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH

Hansard Page: CA 79 – 2 June

Senator Moore asked:

- (a) What is Pitjantjatjara Yankunytjatjara Media Incorporated (PY Media's) role? Are they on the steering committee?
- (b) Was the existing Shared Responsibility Agreement (SRA) part of the COAG trial or a separate initiative of the Indigenous Coordination Centre (ICC) in Port Augusta?
- (c) The Secretaries Group on Indigenous Affairs indicated that the lead Secretary in the COAG trial sites could continue to sign the SRA agreements. Did the Secretary for the Department of Health and Ageing sign off on the AP Lands SRA?

Answer:

- (a) PY Media is a non-profit organisation delivering communication and IT services across the Anangu Pitjantjatjara (AP) Lands. PY Media is represented on the Tjungungku Kuranyukutu Palyantjaku Steering Committee.
- (b) The existing Shared Responsibility Agreement (based around Pipalyatjara community's need for a mechanic) was negotiated by the ICC Manager in Port Augusta. Staff in the Department's Adelaide office were consulted as part of this process.
- (c) The first bulletin from the Secretaries Group states that in COAG trial sites, the lead Secretary will continue to sign SRAs on behalf of the Commonwealth. In this case however, the Port Augusta ICC Manager signed-off on the existing SRA on the AP Lands. We expect the Secretary to sign any future SRAs on the AP Lands.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 February 2005

Question: E05-162

OUTCOME 7: Indigenous Health

Topic: ABORIGINAL AND TORRES STRIAT ISLANDER HEALTH

Hansard Page: CA 80 – 2 June

Senator Moore asked:

Provide details of lessons learnt as part of the COAG trials.

Answer:

Please refer to the Attachment *Lessons learned to date from the COAG trials: Report provided to OIPC, April 2005*.

LESSONS LEARNED TO DATE FROM THE COAG TRIALS
Report provided to OIPC, April 2005

On 5 April 2002, COAG agreed to trial a whole-of-governments cooperative approach in selected indigenous communities. The aim of the Trials has been to improve the way governments interact with each other and with communities to deliver more effective responses to the needs of indigenous Australians. On 25 June 2004, COAG reaffirmed its strong commitment to the Trials.

1. What has been achieved to date? (the bigger picture eg governance etc)

- **What has been delivered more effectively in response to the needs of indigenous Australians?**

There have been two outstanding partnership projects developed on this site and endorsed by the then COAG steering committee.

The Mai Wiru Regional Stores Policy

The implementation stage of this policy has been funded (\$1.337 million) by DoHA over three financial years from 2004-05 to 2007-08. Its initial stages were developed and funded by FaCS.

The project aims to increase the availability and affordability of healthy foods on the AP Lands. The policy re-positions community stores as essential services delivering health and social benefits, rather than as economic enterprises. The policy seeks to:

- identify and fix the prices of healthy foods and essential health items.
- implement a regional approach to the issues of food security, food availability and food affordability as well as to the administration of stores and the recruitment, training and support of stores staff.
- promote the Anangu management and staffing of stores on the AP Lands.

Retail training has been established with the support of the Australian Government Departments' of Employment and Workplace Relations and Education, Science and Training along with TAFE SA. Another partner, the SA Department of Health has produced a list of 'Healthy Product Lines' and are currently finalising the Nutrition Handbook for the APY Lands.

Strategic linkages have been developed with industry, including Metcash / Campbells Cash and Carry, Independent Grocers and the Arnhem Land Progress Association. The potential for development of a community business partnership in the future is being explored.

The PY Ku Network (Rural Transaction Centre)

The Department provided \$72,000 for the development of a Rural Transaction Centre (RTC) submission/feasibility study, which was completed in December 2003. Partnerships were developed and agreed with around a dozen government and non-government organisations agreeing to either resource or deliver services through a network of RTC's, including \$2.23 million building infrastructure funds from the Department of Transport and Regional Services and a further \$3 million from a range of other agencies.

The regional RTC network model (called the PY Ku Network) involves a networked group of seven offices in the main communities/homelands across the APY Lands. It will deliver

improved and increased services to the APY Lands and link service delivery with training and employment opportunities.

The Network will also provide office and administrative support facilities for visiting professionals, public and professional access to video-conferencing and internet facilities and may provide management of overnight visitor's accommodation in some locations.

Work on building construction is expected to be completed by December 2005. Negotiations of service pricing, contracts, staffing, training etc has commenced. Trials of some SA Government services (e.g. vehicle registration, license renewal services) are expected to commence in May 2005. Centrelink activities are expected to gradually transfer over the period May to December 2005. Further services and partnerships will continue to be developed.

Both of these projects:

- Enjoy Anangu endorsement and universal community support
 - Have undergone extensive community consultations
 - Require active cooperation and involvement of both State and Commonwealth Government agencies
 - Will impact significantly on training and employment opportunities for Anangu
 - Provide a platform and activity base for the development of a regulated financial services infrastructure for the AP Lands.
-
- **What improvements have been achieved in the way governments and communities interact?**

A new regional forum Tjungungku Kuranyukutu Palyantjaku (TKP) has been developed to be more inclusive of Anangu involved in service delivery. The group is aiming to achieve better results through improved services for Anangu through shared responsibility for:

- Policy development;
- Service planning and coordination (including priorities, gaps, barriers and opportunities);
- Reporting on progress and results; and
- working towards the establishment of a Regional Partnership Agreement reflecting the needs and aspirations of all of the partners

Members include the Directors of Anangu regional organizations who are prominent community members and fully waged Anangu staff and representatives from the Australian and South Australian Governments. Currently there is one representative of the Aboriginal and Torres Strait Islander Commission's Nulla Wimila Kutju Regional Council (or possibly an alternative regional community representative in the future).

The group will report back to stakeholders as follows:

- The Anangu Directors will report to the Anangu Taskforce
- The SA Government will report to the Aboriginal Lands Task Force
- The Australian Government will report to the Australian Government SA Heads of Agencies

A secretariat funded by the OIPC will support the Anangu Taskforce and the COAG team in Adelaide provides assistance to TKP.

- **What improvements have been achieved in the way governments interact with each other?**

Besides TKP there are interactive structures for this COAG site such as SA State government Aboriginal Lands taskforce and its subgroups relating to issues such as health and well being, education, employment and training and legislative reform. The Australian government through its lead agency DoHA, the OIPC/ICC , DEWR, DEST and FACS are well represented on these groups

The local OIPC hosts a heads of agency forum that brings together Australian government state managers and relevant state government departmental heads. The SA state manager of DoHA and a COAG team member attend these meetings.

The local COAG team maintains a high level of contact with a range of government stakeholders at both the strategic and field level. There is a close working relationship with the local ICC in Port Augusta.

2. What *has* worked and why? (specific examples of programmes, services, activity, interventions or new ways of doing things etc)

- **What worked to make the delivery of responses to the needs of indigenous Australians more effective and why?**

For both COAG endorsed projects there has been a flexible use and interpretation of government funds by the lead agency. For Mai Wiru, this involved interpreting primary health in a more social and economic capacity. For PY Ku, the department funded the business case proposal which led to the successful acquisition of funds through the Department of Transport and Regional Services

- **What worked to deliver improvements in the way governments and communities interact and why?**

The formation of TKP despite being early days is positively regarded by all stakeholders primarily because it increases ownership by Anangu in strategic directions and policy for the AP Lands. TKP is also seen as an Anangu initiative.

- **What worked to deliver improvements in the way governments interact with each other and why?**

See response to Q 1.

- **What evidence supports this (including community perspectives)?**

The range of representations on TKP and in particular the enthusiasm expressed by Anangu has supported the new regional forum. Both PY Ku and Mai Wiru projects have community based steering groups that advise the sponsor and government funders.

3. What has *not* worked and why?

- **What did not work in the delivery of more effective responses to the needs of indigenous Australians and why?**

The size of the site and disparate communities has been a challenge.

We still need to pursue flexible use of program funds and to have single funding agreements with organisations

- **What did not work to improve the way governments and communities interact and why?**

The new TKP forum was developed in response to an overall concern about inadequate and selective Anangu representation. The previous restriction of one Anangu representative on the former COAG steering committee alienated other Anangu and community based organisations.

- **What did not work to improving the way governments interact with each other and why?**

Governments both at the Australian and the State have been through some significant changes. At an Australian Government level, change has occurred through introduction of the Office of Indigenous Policy Coordination (OIPC) and Indigenous Coordination Centres (ICC). These have been established as part of the new arrangements for Indigenous affairs introduced in April 2004, following the government's decision to abolish the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Aboriginal and Torres Strait Islander Services (ATSIS). At a State level, the COAG trial responsibility moved from the Department for Aboriginal Affairs and Reconciliation to Premier and Cabinet. Both the above changes have resulted in a lack of continuity in government staffing in these government departments.

These changes have often complicated how governments work together. We need to be better prepared when new arrangements inter and intra government take place. More detail needs to be put in place around process and protocols including the sharing of information and each agency's roles and responsibilities.

4. What has been demonstrated to date that could usefully be applied more broadly to future activity and arrangements?

- **To deliver more effective responses to the needs of indigenous Australians:**

The primary lesson learnt on this site has been to be more inclusive of Anangu participation and focussing the community participation through Anangu directors of service delivery agencies.

Flexibility in health funding and understanding health in a cross portfolio context has been valuable

- **To improve the way governments and communities interact:**

There has been a recognition of the diversity of the community and region in this site. The TKP forum involving all the community based service deliverers is a model that has ensured adequate community representation across disparate communities, as well as supporting Anangu leaders in community based controlled organisations.

- **To improve the way governments interact with each other:**

See response to Q 1.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-163

OUTCOME 7: Indigenous Health

Topic: ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH

Hansard Page: CA 76 – 2 June

Senator Moore asked:

- (a) Do you now have people from Health and Ageing in all the Indigenous Coordination Centres (ICCs) around the country?
- (b) Are most staff employed in ICCs ex-Aboriginal and Torres Strait Islander Services (ATSIS) staff?
- (c) What level is anticipated for the Health and Ageing officer in the regional ICC office?

Answer:

- (a) The Department of Health and Ageing does not have staff in all of the ICCs across the country. The department's presence in ICCs will be built up over time as resources become available.
- (b) Around half the positions transferred to the department were unoccupied. Of the four departmental staff currently located in ICCs, one is an ex-ATSIS employee. Other staff transferred from ATSIS are located in departmental offices.
- (c) It is anticipated that departmental officers located in regional ICCs will be at the APS 6/EL1 level.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-076

OUTCOME 8: Private Health

Topic: PRIVATE HEALTH INSURANCE

Written Question on Notice

Senator Nettle asked:

- (a) What research has the department undertaken or commissioned into the financial viability of the private health insurance industry?
- (b) If the department has not undertaken or commissioned any research into the financial viability of the private health insurance industry on what basis has it been able to assess the public policy benefit of the Private Health Insurance Rebate?

Answer:

- (a) The Department of Health and Ageing has not undertaken or commissioned research into the financial viability of the private health insurance industry. However, the Private Health Insurance Administration Council publishes an annual report on the Registered Health Benefit Organisations which contains information on the financial viability of the private health insurance funds.
- (b) The department monitors the proportion of the population with private health insurance and the proportion of in-hospital episodes delivered to privately insured patients and publishes these performance indicators in its annual report.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-077

OUTCOME 8: Private Health

Topic: PRIVATE HEALTH INSURANCE

Written Question on Notice

Senator Nettle asked:

- (a) What is the total cost of the Private Health Insurance Rebate since the rebate commenced, including the forecast cost for 2005-06?
- (b) What assumptions have been made about the rate of membership and any premium increases in forecasting the cost of the Private Health Insurance Rebate for 2005-06?

Answer:

- (a) The total cost of the rebate over the eight year period from 1998-99 until 2005-06 is estimated to be \$17,360 million.
- (b) Forecasts of changes in membership and premium increases are the basis of the growth component of the estimates of the rebate which are contained in the Contingency Reserve. The forecasts are not published and this is consistent with the treatment of other information in Budget estimates that are of a commercial-in-confidence nature. The forecasts are not disclosed separately because, if revealed to industry, they could affect the behaviour of the market.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-107

OUTCOME 8: Private Health

Topic: PROSTHESES AMENDMENTS TO THE NATIONAL HEALTH ACT

Written Question on Notice

Senator McLucas asked:

Are the implementation arrangements following the passing of this Act running to schedule?
If not, why not?

Answer:

The *National Health Amendment (Prostheses) Act 2005* (the Act) did not stipulate a date as to when the new prostheses arrangements would be implemented. The Act will commence either on a date set by proclamation or nine months from Royal Assent (21 March 2005).

Stakeholders had been advised that the aim was to issue the first schedule under the new arrangements in May 2005 with the new schedule to come into effect two months after it had been released ie. August 2005. This timetable would have maintained the existing six monthly schedule release. The legislation was passed in March 2005, and negotiation with the industry commenced as soon as possible thereafter.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-109

OUTCOME 8: Private Health

Topic: PROSTHESES AMENDMENTS TO THE NATIONAL HEALTH ACT

Written Question on Notice

Senator McLucas asked:

- (a) What resources are involved in developing this new scheme? Are there additional DoHA staff costs for the new scheme? What are these costs?
- (b) What involvement do the private health funds have in this process? What will be their ongoing role?

Answer:

- (a) The development and implementation of the new prostheses arrangements have required the forming of expert committees to provide recommendations to the Minister for Health and Ageing to assist the Minister in making decisions regarding the listing and benefit setting for prostheses.

The table below shows the number of committee meetings required and the cost of these committees. The cost of general administrative support is also included.

Resource	Number of Meetings	Cost for 2004-05
Policy Advisory Group	13	\$6,424
Prostheses and Devices Committee	10	\$93,071
Clinical Advisory Groups	25	\$173,896
Panel of Clinical Experts	9	\$90,146
Administrative Support		\$1,405,607
TOTAL		\$1,769,224

The cost of developing and implementing the new arrangements has been met from departmental funds.

- (b) Health funds are represented on the Policy Advisory Group by the Australian Health Insurance Association. Nominees from health funds are also members of the following:
 - The Prostheses & Devices Committee (four nominees)
 - Clinical Advisory Groups (one nominee on each)
 - Benefit negotiators (10 nominees).

The nominees on the above committees are appointed for a specified term of two to four years, with the opportunity for re-nomination.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-110

OUTCOME 8: Private Health

Topic: PROSTHESES AMENDMENTS TO THE NATIONAL HEALTH ACT

Written Question on Notice

Senator McLucas asked:

- (a) Will there be a limit on out of pocket gaps?
- (b) Is there a maximum gap amount being considered for high value prostheses such as defibrillators and pacemakers?

Answer:

- (a) The new Prostheses Schedule will identify the maximum gap that a patient may have to pay.
- (b) The legislation provides for the following:
 - i. a no gap prosthesis has a minimum benefit and requires no out of pocket costs to the contributor.
 - ii. a gap permitted prosthesis requires the health fund to pay the minimum benefit of the no gap prostheses for private patients in private hospitals, and up to the maximum benefit payable.

The maximum gap amount a health fund member will have to pay will be the difference between the minimum benefit (no gap) and the maximum benefit, both determined by the Minister. The gap amount may be lower if health funds pay part of the gap and/or if the supplier charges a lower amount.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-111

OUTCOME 8: Private Health

Topic: PROSTHESES AMENDMENTS TO THE NATIONAL HEALTH ACT

Written Question on Notice

Senator McLucas asked:

What action has the department taken to promote consumer interests by making health fund members and members of the wider community aware of the introduction of new out of pocket costs?

Answer:

The Department of Health and Ageing, through its role as Chair of the Policy Advisory Group, is developing a comprehensive communication strategy to ensure that, in particular, health fund members are well informed of the new arrangements for prostheses.

The Consumers' Health Forum (CHF) has a representative on the Policy Advisory Group and a nominee on the Prostheses & Devices Committee as well as on each of the Clinical Advisory Groups associated with the new arrangements. The CHF members are assisting these committees to make recommendations that take consumer interests into consideration.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-101

OUTCOME 8: Private Health

Topic: PORTABILITY

Written Question on Notice

Senator McLucas asked:

- (a) What is the Ombudsman's role in the review of portability?
- (b) When did this review commence?
- (c) How did this review come about, how was it initiated?
- (d) How long is the review's consultation period?

Answer:

- (a) There is no process that is identified as "the review of portability".

However, there have been a number of aspects of health insurance administration and policy related to portability that have been the subject of correspondence and discussion within the industry and with other stakeholders over the last 18 months.

The Ombudsman circulated a discussion paper on *Portability and Hospital Purchaser Provider Agreements* (HPPAs) in March 2004. The discussion paper was provided to health funds, health insurance associations, private hospital associations and the department. Responses and comments were invited.

The Ombudsman also consulted with a range of individuals associated with the health insurance industry.

In July 2004, the Ombudsman circulated a further paper for industry comment that included draft recommendations. The Ombudsman received further responses and comments on that paper.

Since that time some further industry discussions have taken place, in an attempt to reach an agreed industry position on some of the key issues. The Ombudsman was advised of the outcomes of those discussions, which included agreement on some issues but left some issues unresolved.

In late 2004, the Ombudsman circulated draft protocols to industry representatives dealing with transition and communication issues that arise following the termination of HPPAs and sought endorsement of the protocols by industry representative bodies.

In March 2005, the Ombudsman circulated a redraft of his brochure on portability.

The Ombudsman has also participated in some other discussions with industry stakeholders and the department on issues associated with health insurance portability.

- (b) There is no process that is identified as “the review of portability”.

Discussions on portability policy and administration have occurred regularly throughout the industry since 1998. However, most of the issues discussed recently arose from the implications of a dispute between Bupa Australia (the HBA and Mutual Community health funds) and the Healthscope hospital group in August 2003.

- (c) See answers to questions (a) and (b) above.

- (d) See answers to questions (a) and (b) above.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-102

OUTCOME 8: Private Health

Topic: PORTABILITY

Written Question on Notice

Senator McLucas asked:

- (a) How many submissions have been received?
- (b) Who made submissions? What were the dates of these submissions?

Answer:

- (a) See answers to question 101 (a) and (b).

However, the Ombudsman did receive responses and comments on the discussion paper, the draft recommendations, the proposed transition and communications protocols and the redraft of the portability brochure. Responses were received from the health insurance and private hospital associations and from some individual funds (including Medibank Private).

- (b) See answer to question 102 (a).

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-103

OUTCOME 8: Private Health

Topic: PORTABILITY

Written Question on Notice

Senator McLucas asked:

- (a) Were there any hearings, public or private?
- (b) Have consumers or consumer groups been consulted formally?

Answer:

- (a) See answers to question 101 (a) and (b).
- (b) See answers to question 101 (a) and (b).

The Ombudsman has had discussions with the Australian Consumers Association and other groups on the issues in the course of developing the papers circulated in March 2004, July 2004 and protocols in late 2004.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-104

OUTCOME 8: Private Health

Topic: PORTABILITY

Written Question on Notice

Senator McLucas asked:

What is the Minister's role in this review?

Answer:

See answers to question 101 (a) and (b).

The Minister has not had any role in the correspondence and discussions initiated by the Ombudsman but the Ombudsman has advised the Minister in general terms about his activities.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-105

OUTCOME 8: Health Investment

Topic: PORTABILITY

Written Question on Notice

Senator McLucas asked:

- (a) When will this review conclude?
- (b) Will its report or outcomes be made public?

Answer:

- (a) See answers to question 101 (a) and (b).
- (b) See answers to question 101 (a) and (b).

Outcomes of the Ombudsman's activity have and will be reported in the Ombudsman's Annual Report (see pages 6 and 7 of the Ombudsman's Annual Report 2004). The issues and the Ombudsman's activities were also reported in the Australian Competition and Consumer Commission's *Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance – for the period 1 July 2003 to 30 June 2004*.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-106

OUTCOME 8: Private Health

Topic: PORTABILITY

Written Question on Notice

Senator McLucas asked:

- (a) Is the Ombudsman aware of correspondence sent from Shadow Minister for Health to the Minister for Health in June 2004 regarding portability and its review?
- (b) Has the Ombudsman been asked by the Minister's office to provide advice regarding this correspondence?

Answer:

- (a) The matter was referred to at a recent Senate Estimates Committee hearing, which the Ombudsman attended. Otherwise the Ombudsman was not aware of the correspondence.
- (b) The Ombudsman has been consulted by the Minister's office on the portability issue, but not the Shadow Minister's letter.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-137

OUTCOME 8: Private Health

Topic: PORTABILITY

Hansard Page: CA 105 – 2 June

Senator Forshaw asked:

Could you provide us with details of the meetings regarding portability that were held: the number of meetings and the representation at the meetings?

Answer:

Date of meeting	Representation at meeting	# of meetings
13/04/2005	Patrick Tobin , Senior Policy Analyst Catholic Health Australia Linda Addison , Assistant Secretary Private Health Insurance Branch, Department of Health & Ageing Veronica Hancock , Director Consumer Strategies Section, Department of Health & Ageing Deborah Edwards , Departmental Officer Department of Health & Ageing	1
14/04/2005	Russell Schneider , Chief Executive Officer Australian Health Insurance Association Norman Branson , Executive Director Health Insurance Restricted Membership Association of Australia Linda Addison , Assistant Secretary Private Health Insurance Branch, Department of Health & Ageing Veronica Hancock , Director Consumer Strategies Section, Department of Health & Ageing	1
18/04/2005	Michael Roff , Executive Director Australian Private Hospitals Association Linda Addison , Assistant Secretary Private Health Insurance Branch, Department of Health & Ageing Veronica Hancock , Director Consumer Strategies Section, Department of Health & Ageing Deborah Edwards , Departmental Officer Department of Health & Aging	1

Date of meeting	Participants	# of meetings
18/04/2005	John O’Dea , Executive Director Australian Medical Association Linda Addison , Assistant Secretary Private Health Insurance Branch, Department of Health & Ageing Veronica Hancock , Director Consumer Strategies Section, Department of Health & Ageing Deborah Edwards , Departmental Officer Department of Health & Aging	1
24/04/2005	John Powlay , Private Health Insurance Ombudsman Linda Addison , Assistant Secretary Private Health Insurance Branch, Department of Health & Ageing Veronica Hancock , Director Consumer Strategies Section, Department of Health & Ageing Deborah Edwards , Departmental Officer Consumer Strategies Section, Department of Health & Ageing	1

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-116

OUTCOME 8: Private Health

Topic: PORTABILITY REVIEW

Written Question on Notice

Senator McLucas asked:

- (a) What is the department's role in the review of portability?
- (b) When did this review commence?
- (c) How did this review come about, how was it initiated?
- (d) How long is the review's consultation period?

Answer:

- (a) to (d) The Department of Health and Ageing has not conducted a review on portability. As part of the normal policy process, the department has received advice from industry about aspects of portability provisions. Work is continuing to consider the advice that has been provided.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-117

OUTCOME 8: Private Health

Topic: PORTABILITY REVIEW

Written Questions on Notice

Senator McLucas asked:

- (a) How many submissions have been received?
- (b) Who made the submissions? What were the dates of these submissions?

Answer:

- (a) & (b) As noted in response to E05-116, no submissions were received. Industry advice has been sought in bilateral meetings with the Department of Health and Ageing. A written submission that was provided by the Australian Private Hospitals Association to the House of Representatives Standing committee on Health and Ageing has been provided to the department to assist its deliberations, refer E05-121.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-118

OUTCOME 8: Private Health

Topic: PORTABILITY REVIEW

Written Questions on Notice

Senator McLucas asked:

- (e) Where there any hearings, public or private?
- (f) Have consumers or consumer groups been consulted formally?

Answer:

- (a) & (b) As noted in response to E05-116, the Department of Health and Ageing has not conducted a review on portability. As noted in response E05-137, industry advice has been sought in bilateral meetings with the department.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-119

OUTCOME 8: Private Health

Topic: PORTABILITY REVIEW

Written Questions on Notice

Senator McLucas asked:

- (a) What is the Minister's role in this review?
- (b) When will the review conclude?
- (c) Will its report or outcomes be made public?

Answer:

- (a) to (c) As noted in response to E05-116, the Department of Health and Ageing has not conducted a review on portability. The department has provided advice to the Minister.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-120

OUTCOME 8: Private Health

Topic: PORTABILITY REVIEW

Written Question on Notice and also asked by Senator Forshaw at the hearing CA 106.

Senator McLucas asked:

- (a) Is the Department aware of correspondence that was forwarded to the Minister regarding the issues of portability? It was in June last year and it was from Julia Gillard, the Shadow Minister for Health. Can you recall being advised of that correspondence?
- (b) Has the Department been asked by the Minister's office to provide advice regarding correspondence sent from the Shadow Minister for Health to the Minister for Health in June 2004 regarding portability and its review?
- (c) When was this advice provided to the Minister?

Answer:

- (a) Yes.
- (b) Yes.
- (c) 30 May 2005. The Shadow Minister for Health will be advised of the Government's decisions. These decisions can be expected shortly.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-121

OUTCOME 8: Private Health

Topic: PORTABILITY REVIEW

Written Question on Notice and also asked by Senator Forshaw at the hearing CA 109 –
2 June

Senator McLucas asked:

- (a) Is the department aware that a report by Access Economics on portability found that: ‘there is no empirical evidence that funds have experienced problems of this nature; the reinsurance arrangements are the appropriate tool for dealing with this [portability] issue. If there is any substance in the argument; then it is a matter that should be addressed in the review of the re-insurance arrangements’.
- (b) Is the department aware of any other evidence which suggests that funds have experienced problems with the adequacy of the current re-insurance arrangements, with regard to the application of portability?
- (c) If there are problems or shortcomings, how is the re-insurance review addressing these?

Answer:

- (a) Yes.
- (b) No.

Reinsurance is used to protect community rating. Reinsurance is neither designed to nor is it an appropriate tool to address the questions raised about the portability provisions where mass transfers of members might occur.

Reinsurance works by sharing 79% of the cost of the benefits paid by funds for people over the age of 65 and memberships that experience more than 35 days in hospital in a rolling year. For 2003-04, the Private Health Insurance Administration Council reported that 48% of total hospital benefits were reinsurable.

The benefits paid for these higher risk members are shared amongst all funds regardless of which fund they are in when the benefit is paid. Reinsurance doesn't lessen the impact of a large transfer of members.

The impact is felt by the receiving fund due to the benefits paid for the transferring members that are not covered by reinsurance. These transferring members will make claims against the fund immediately and the fund receiving the members has not built up reserves from these members' contributions during their earlier non-claiming period.

(c) See (b).

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-138

OUTCOME 8: Private Health

Topic: PODIATRIC SURGERY

Hansard Page: CA 109 – 2 June

Senator Knowles asked:

What is MBF in particular doing about alerting their members to the fact that they will not cover podiatric surgery?

Answer:

Clarification was sought from MBF and the fund advised it was informing members on an individual basis (as requests for information are received) that it does not cover podiatric surgery because the services do not have a related Medicare Benefit Schedule number.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-145

OUTCOME 8: Private Health

Topic: MEDIBANK PRIVATE'S HOSPITAL PURCHASING STRATEGY

Hansard Page: CA 97 – 2 June

Senator Moore asked:

How long was the tender documentation? At the moment we are asking how complex and how long all tender documentation was.

Answer:

Medibank Private's Hospital Purchasing Strategy Request For Proposal tender documentation is 40 pages long.

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-146

Private Health Insurance Administration Council

Agency outcome:

OUTCOME 1 – The prudential safety of registered private health insurance funds, the best interests of members of those funds, and a competitive level of private health insurance premiums, are efficiently regulated to support a viable industry.

Addressed at Budget Estimates under:

OUTCOME 8 – Private Health

Topic: CONSULTANCY FEES - PRIVATE HEALTH INSURANCE ADMINISTRATION COUNCIL (PHIAC)

Hansard Page: CA 103 – 2 June

Senator Forshaw asked:

Can you provide us with some figures of the annual cost of where that work has been undertaken in the last couple of years?

Answer:

Actuarial Costs for PHIAC are as follows:

FY 2002-03	\$130,941
FY 2003-04	\$19,599
FY 2004-05	Estimate \$30,259

In 2002-03, PHIAC conducted a review of the Prudential Standards required as part of the introduction of the new Standards in 2001. The work was performed by Trowbridge Deloitte Limited and the Australian Government Actuary. This was the reason for the high cost of actuarial advice in that year.

In 2003-04, a total of \$62,781 was spent on actuarial fees including \$43,182 for KPMG Actuaries services in relation to the inspection of a health fund. This amount was recovered from the fund under section 82G(1)(k) of the *National Health Act 1953* and is therefore not included in the total shown above.

During 2004-05, PHIAC sought additional advice from the Australian Government Actuary in relation to pricing.



Australian Government
Department of Health and Ageing

Mr Elton Humphrey
Secretary
Senate Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Humphrey

SENATE ESTIMATES HEARING 1 JUNE 2005: OUTCOME 9

I am writing to correct a statement made by Professor John Horvath, Chief Medical Officer, Department of Health and Ageing, during his attendance at the Senate Community Affairs Legislation Committee - Senate Estimates hearings on 1 June 2005. The relevant statement appears on the Hansard transcript at page CA 132, Line 3.

The transcript currently reads:

“... its terms of reference are also on the web site, as are the 97 public submissions that were called for.”

There were in fact only 80 submissions. Also the reference to “public submissions that were called for” is slightly unclear. I would therefore be grateful if you would amend the transcript to read as follows:

“... its terms of reference are also on the web site, as are the 80 submissions that were publicly called for.”

Yours sincerely

Beth Slatyer
Assistant Secretary
Safety and Quality Review
23 June 2005

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-068

OUTCOME 9: Health System Capacity and Quality

Topic: HEALTHCONNECT INTEROPERABILITY STANDARDS

Written Question on Notice

Senator Stott Despoja asked:

When will a draft of the interoperability standards for the *HealthConnect* system be publicly released?

Answer:

The National e-Health Transition Authority (NEHTA) is currently developing the Interoperability Framework for e-Health. As outlined in its work plan, NEHTA will develop an e-Health Interoperability Framework defining organisational, semantic and technical interoperability requirements and guidelines by 30 December 2005.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-069

OUTCOME 9: Health System Capacity and Quality

Topic: THE NATIONAL HEALTH PRIVACY CODE

Written Question on Notice

Senator Stott Despoja asked:

When does the government expect the proposed National Health Privacy Code to be finalised?

Answer:

The National Health Privacy Code is being jointly developed by the Australian Government, and the states and territories, to support health information initiatives and ensure consistency across the public and private sectors. The code is still to be discussed by Australian Health Ministers.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-070

OUTCOME 9: Health System Capacity and Quality

Topic: HEALTHCONNECT LESSONS LEARNED REPORT

Written Question on Notice

Senator Stott Despoja asked:

When will the Lessons Learned from the MediConnect and HealthConnect Field Test and Trials report be released?

Answer:

On 6 May 2005, the Minister for Health and Ageing Tony Abbott released the Lessons Learned from the MediConnect Field Test and the HealthConnect Trials report.

It is now available electronically on the HealthConnect website (www.healthconnect.gov.au) and in hard copy, which can be obtained by emailing healthconnect@health.gov.au

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-071

OUTCOME 9: Health System Capacity and Quality

Topic: HEALTHCONNECT LEGAL ISSUES REPORT

Written Question on Notice

Senator Stott Despoja asked:

When will the HealthConnect Legal Issues Report be finalised and released publicly?

Answer:

On 6 May 2005, the Minister for Health and Ageing Tony Abbott released the Legal Issues report.

It is now available on the HealthConnect website (www.healthconnect.gov.au) and in hard copy, which can be obtained by emailing healthconnect@health.gov.au

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-086

OUTCOME 9: Health System Capacity and Quality

Topic: HEALTHCONNECT STAKEHOLDER FEEDBACK

Written Question on Notice

Senator Stott Despoja asked:

When will stakeholder feedback on *HealthConnect* documentation be publicly released?

Answer:

Outcomes of consultation with key stakeholders, research and evaluation information from the trials have been brought together to guide the development and implementation of *HealthConnect*. The *Lessons Learned* report is available on the *HealthConnect* website at www.healthconnect.gov.au and in hard copy, which can be obtained by emailing healthconnect@health.gov.au

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-087

OUTCOME 9: Health System Capacity and Quality

Topic: HEALTHCONNECT FUNDS

Written Question on Notice

Senator Stott Despoja asked:

A report in the Australian dated 31 May 2005 ('Early start to HealthConnect') quotes Dr Brian Richards as saying "We haven't had the resources to put the material on the website".

- (a) Hasn't the Government allocated \$128 million over four years for the implementation of the HealthConnect system?
- (b) Is the cost of publicising the details of that system, including the Legal Issues and Lessons Learned reports and the interoperability standards, covered by that specific appropriation of funds?
- (c) If not, why not?

Answer:

- (a) Yes.
- (b) Yes.
- (c) Not applicable. See answer part (b).

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-088

OUTCOME 9: Health System Capacity and Quality

Topic: HEALTHCONNECT TASMANIA

Written Question on Notice

Senator Stott Despoja asked:

Will the government proceed with the first phase of implementation in Tasmania before the various documents mentioned above has been publicly released?

Answer:

No.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-141

OUTCOME 9: Health System Capacity and Quality

Topic: STAPHYLOCOCCAL INFECTION

Hansard Page: CA 36 – 2 June

Senator Forshaw asked:

Professor Horvath undertook to provide a copy of the Quality and Safety Council report 'National Strategy to Address Health Care Associated Infections'.

Answer:

The electronic version of the *National Strategy to address Health Care Associated Infections* report is attached and is also available on the Council website at <http://www.safetyandquality.org/index.cfm?page=Action#hcai>

Senate Community Affairs Legislation Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Additional Estimates 2005-2006, 1 & 2 June 2005

Question: E05-151

OUTCOME 9: Health System Capacity and Quality

Topic: NATIONAL RURAL AND REMOTE HEALTH SUPPORT

Hansard Page: CA 118 – 1 June

Senator Moore asked:

What outcomes have been achieved by this program over its life?

Answer:

The National Rural and Remote Health Support Service Program provides targeted funding for initiatives that support, educate or train the rural and remote health workforce, thereby assisting in removing barriers to the recruitment and retention of rural and remote health workers. This ensures greater access to health services for people living in rural and remote communities.

This program has funded a number of initiatives including postgraduate scholarships for rural nursing and allied health professionals, a range of training and support initiatives under the Rural Health Support Education and Training Program, and a 24 hour telephone counselling and debriefing service for rural and remote health practitioners and their families.

Initiative	Outcome
<u>Rural Health Support, Education and Training Program</u> Funding of approximately \$1 million is provided for each two year funding round to organisations or individuals to undertake projects that contribute towards the recruitment and retention of rural health workers.	Over 600 projects have been funded to improve access by rural and remote communities to appropriate health services. All projects are designed to support, educate and train rural and remote health workers.
<u>Rural Health Education Foundation Satellite Broadcasts</u> Funding of \$1.7 million over three years (2004-05 to 2006-07) to produce and broadcast national satellite programs that provide education and training for rural and remote health professionals.	Nine satellite education and training programs were broadcast in 2004-05 on topics such as lung cancer, skin cancer, prostate cancer, osteoporosis, depression, and injury prevention in indigenous communities.

<p><u>Bush Crisis Line</u></p> <p>Funding of \$1.21 million over three years (2002-03 to 2004-05) for a 24 hour free-call service which provides crisis debriefing and counselling for job related trauma to isolated rural and remote health practitioners and their families.</p>	<p>Since its inception in 1997, the Bush Crisis Line has received over 2700 telephone calls.</p>
<p><u>Rural and Remote Health Professionals Scholarship Scheme</u></p> <p>Funding of \$2.1 million over three years (2002-03 to 2004-05) to provide scholarships to support and encourage allied health professionals living and working in rural and remote areas of Australia to further their professional qualifications.</p>	<p>325 scholarships have been awarded since 2002.</p>
<p><u>Rural and Remote Nurse Scholarship Program: Postgraduate Scheme</u></p> <p>Funding of \$2.45 million over three years (2002-03 to 2004-05) to provide scholarships and support to nurses wishing to build on a career in rural and remote nursing. The scholarships are awarded for postgraduate training and attendance at conferences.</p>	<p>844 scholarships have been awarded since 2001.</p>

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-153

OUTCOME 9: Health System Capacity and Quality

Topic: GP COMPUTING GROUP

Hansard Page: CA 125 – 1 June

Senator Moore asked:

What is happening with General Practice Computing Group and its funding?

Answer:

When the current work-program for the General Practice Computing Group (GPCG) ends on 30 September 2005, the Australian Government will not be providing further funding for the Group.

The GPCG, which was established in 1997, led the initial work to assist with the introduction and uptake of computing in general practice and in providing advice to governments on ways to improve medical services through more effective use of technology.

The Australian Government will continue to actively engage general practice on matters of information management and information technology in health.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-080

OUTCOME 10: Acute Care

Topic: MEDICAL INDEMNITY – 2005 POLICY REVIEW WORKING PARTY

Written Question on Notice

Senator Nettle asked:

- (a) Has the composition of the 2005 Policy Review Working Party been determined? If so, what is the proposed composition?
- (b) What are the terms of reference for the working party?

Answer:

- (a) & (b) The Minister expects to announce the membership and terms of reference for the review shortly.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-081

OUTCOME 10: Acute Care

Topic: MEDICAL INDEMNITY

Written Question on Notice

Senator Nettle asked:

What was the cost of additional assistance for rural procedural GPs in 2003-04, 2004-05 and the projected cost for 2005-06?

Answer:

	2003-04	2004-05	2005-06
Expenditure (\$million)	1.7	3.6	3.8

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-082

OUTCOME 10: Acute Care

Topic: UNITED MEDICAL PROTECTION SUPPORT

Written Question on Notice

Senator Nettle asked:

What was the cost of the United Medical Protection support arrangements in 2004-05 and what is the projected cost for 2005-06?

Answer:

	2004-05	2005-06
Expenditure (\$million)	38.6	31.8

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-083

OUTCOME 10: Acute Care

Topic: MEDICAL INDEMNITY – HIGH COST CLAIMS SCHEME

Written Question on Notice

Senator Nettle asked:

What was the cost of the high cost claims scheme in 2003-04, 2004-05 and the projected cost for 2005-06?

Answer:

	2003-04	2004-05	2005-06
Expenditure (\$million)	30.0	36.5	48.0

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-084

OUTCOME 10: Acute Care

Topic: MEDICAL INDEMNITY – PREMIUM SUPPORT SCHEME

Written Question on Notice

Senator Nettle asked:

What was the cost of the premium support scheme in 2003-04, 2004-05, and the projected cost for 2005-06?

Answer:

	2003-04	2004-05	2005-06
Expenditure (\$million)	38.1	47.2	45.0

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE
HEALTH AND AGEING PORTFOLIO
Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-085

OUTCOME 10: Acute Care

Topic: MEDICAL INDEMNITY – REVIEW OF THE LAW OF NEGLIGENCE

Written Question on Notice

Senator Nettle asked:

- (a) Has the government received a report on a long-term care program, arising from the review of the law of negligence? If so, what are the details? Will the department make the report available to the committee? If not, when does the government anticipate receiving the report?
- (b) What role has the Department of Health and Ageing had in the development of this report?
- (c) Has the department undertaken any other work examining options for a publicly funded no-fault care scheme? If so, please provide details.

Answer:

- (a) The Ministerial Meeting on Insurance Issues held in Darwin on 8 April this year, and attended on behalf of the Australian Government by the Minister for Revenue and Assistant Treasurer, received a report on long term care. A copy of the report is attached.
[Note: the attachment has not been included in the electronic/printed volume]
- (b) The department has attended a number of meetings with the Treasury and other relevant agencies to discuss the development of the report.
- (c) No.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-024

OUTCOME 11: Health and Medical Research

Topic: HUMAN GENETICS ADVISORY COUNCIL

Written Question on Notice

Senator Stott Despoja asked:

In the Budget, it was announced that the government would provide \$7.6 million over four years to establish and fund the activities of the Human Genetics Advisory Council (HGAC):

- (a) Where did the impetus for the establishment of the HGAC come from?
- (b) Are you aware of the joint Australian Law Reform Commission/Australian Health Ethics Committee report *Essentially Yours: The Protection of Human Genetic Information in Australia* (ALRC 96) that was released more than two years ago? Is this announcement in response to the number one recommendation of that report that calls on the government to "establish a Human Genetics Commission of Australia (HGCA) under federal legislation as an independent statutory authority with sufficient resources to fulfil its mission"?
- (c) When can we expect the government's formal response to the entirety of that (ALRC 96) report? Please provide details of the progress on the development of the response.

Answer:

- (a) The impetus for the establishment of the HGAC came primarily from the increasing use of genetic technologies and the need to ensure that ongoing, high-level, technical and strategic advice about the use of these technologies and current and emerging issues in human genetics is provided to Australian governments.
- (b) Yes, the Australian Government is aware of the joint ALRC/AHEC report ALRC 96. This announcement is in response to one of the recommendations of that report.
- (c) The government's formal response to the entirety of the joint ALRC/AHEC report ALRC 96 is currently being considered by the government and an announcement is expected shortly.

Senate Community Affairs Legislation Committee
ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Budget Estimates 2005-2006, 1 & 2 June 2005

Question: E05-025

OUTCOME 11: Health and Medical Research

Topic: HUMAN GENETICS ADVISORY COUNCIL

Written Question on Notice

Senator Stott Despoja asked:

In the Budget, it was announced that the government would provide \$7.6 million over four years to establish and fund the activities of the Human Genetics Advisory Council (HGAC):

- (a) Who was consulted about this initiative prior to the Budget announcement? Were the states consulted?
- (b) What can you tell us about the process for establishment; structure (including appointments and staffing); roles; accountability; independence; and, community and Parliamentary involvement with the HGAC?
- (c) When can we expect further details of the HGAC to be released?
- (d) Is it envisaged that the HGAC will be funded beyond 2008-09?

Answer:

- (a) The Australian Government notes that many stakeholders were consulted as part of the joint Australian Law Reform Commission/Australian Health Ethics Committee process to develop the report *Essentially Yours: The Protection of Human Genetic Information in Australia*. In addition to this, the government undertook informal consultation with a wide range of stakeholders including officials from state and territory governments. The states were consulted through the Human Gene Patents and Genetics Advisory Group of the Australian Health Ministers' Advisory Council.
- (b) The HGAC will be established as a principal committee of the National Health and Medical Research Council (NHMRC). As required under the *National Health and Medical Research Council Act 1992*, the responsible Minister must seek and receive advice from the council before determining the functions of a new principal committee of the NHMRC and the qualifications or attributes of its members. This process has commenced. The HGAC will be accountable to Parliament through the normal reporting arrangements for the NHMRC.
- (c) It is expected that the committee will commence in January 2006. Announcements will be made in a timely manner to meet that objective.
- (d) Funding for the HGAC beyond 2008-09 will be considered as part of the evaluation process for the measure during 2008.