



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

ESTIMATES

(Budget Estimates)

THURSDAY, 24 MAY 2007

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**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS
Thursday, 24 May 2007**

Members: Senator Barnett (*Chair*), Senator Crossin (*Deputy Chair*), Senators Bartlett, Kirk, Ludwig, Parry, Payne and Trood

Participating members: Senators Allison, Bernardi, Bob Brown, George Campbell, Carr, Chapman, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Heffernan, Hogg, Humphries, Hurley, Joyce, Kemp, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McGauran, McLucas, Milne, Murray, Nettle, Patterson, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Watson and Webber

Senators in attendance: Senators Barnett, Bartlett, Crossin, Chris Evans, Ferguson, Fifield, Heffernan, Kirk, Ludwig, Parry, Patterson, Payne, Siewert, Stott Despoja and Trood

Committee met at 9 am

ATTORNEY-GENERAL'S PORTFOLIO

Consideration resumed from 23 May 2007

In Attendance

Senator Johnston, Minister for Justice and Customs

Attorney-General's Department

Management and Accountability

Mr Robert Cornall AO, Secretary

Mr Miles Jordana, Deputy Secretary, Criminal Justice and Security

Mr Ian Govey, Deputy Secretary, Civil Justice and Legal Services

Ms Jan Blomfield, Acting General Manager, Corporate Services Group

Mr David Finlayson, Assistant Secretary, Public Affairs

Mr Graham Fry, General Manager, Information and Knowledge Services

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

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

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

Output 1.1

Mr Kym Duggan, Acting First Assistant Secretary, Civil Justice Division

Ms Sandra Power, Assistant Secretary, Civil Jurisdiction and Federal Courts Branch

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch

Mr Peter Arnaudo, Assistant Secretary, Family Law Branch

Mr David Syme, Assistant Secretary, Dispute Management Family Pathways Branch

Ms Alison Playford, Assistant Secretary, Administrative Law and Civil Procedure Branch

Mr Matt Minogue, Assistant Secretary, International Family Law Branch

Output 1.2

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

Ms Janet Power, Assistant Secretary, Office of Legal Services Coordination

Ms Amanda Davies, Assistant Secretary, Classification Policy Branch

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Output 1.3

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

Ms Helen Daniels, Assistant Secretary, Copyright Law Branch

Ms Joan Sheedy, Assistant Secretary, Information Law Branch

Ms Gabrielle Mackey, Acting Assistant Secretary, Human Rights Branch

Output 1.4

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

Mr Greg Manning, Assistant Secretary, International Security and Human Rights Branch

Mr Stephen Bouwhuis, Assistant Secretary, International Law and Trade Branch

Output 1.5

Ms Marjorie Todd, Acting First Assistant Secretary, Office of Legislative Drafting and Publishing

Output 1.6

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

Ms Tamsyn Harvey, Acting Assistant Secretary, Claims and Legislation Branch, Native Title Unit

Mr Geoffrey McDougall, Acting Assistant Secretary, Future Acts and System Coordination Branch, Native Title Unit

Output 1.7

Ms Katherine Jones, Acting First Assistant Secretary, Indigenous Justice and Legal Assistance Division

Mr John Boersig, Assistant Secretary, Indigenous Law and Justice Branch

Mr Albin Smrdel, Acting Assistant Secretary, Legal Assistance Branch

Output 1.8

Dr James Pople, First Assistant Secretary, Personal Property Securities Division

Mr Richard Glenn, Assistant Secretary, Personal Property Securities Branch

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

Dr Dianne Heriot, Acting First Assistant Secretary, Criminal Justice Division

Dr Karl Alderson, Assistant Secretary, Criminal Law Branch

Ms Sheridan Evans, Assistant Secretary, Identity Security Branch

Mr Anthony Coles, Acting Assistant Secretary, Strategic Policy Coordination Branch

Mr Craig Riviere, Principal Legal Officer, Strategic Policy Coordination Branch

Mr Craig Harris, Assistant Secretary, National Law Enforcement Policy Branch

Output 2.2

Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division

Ms Catherine Hawkins, Assistant Secretary, Mutual Assistance and Extradition Branch

Mr Steven Marshall, Acting Assistant Secretary, International and Assistance Branch

Output 2.3

Mr Geoff McDonald PSM, Acting First Assistant Secretary, Security and Critical Infrastructure Division

Ms Annette Willing, Acting Assistant Secretary, Security Law Branch

Ms Meegan Fitzharris, Director, Counter Terrorism Strategic Policy Unit

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

Mr Mike Rothery, Assistant Secretary, Critical Infrastructure Protection Branch

Output 2.4

Mr Tony Pearce, Director General, Emergency Management Australia

Ms Diana Williams, Assistant Secretary, Emergency Management Policy

Mr Trevor Clement, Assistant Secretary, Community Development

Output 2.5

Mr Martin Studdert, Executive Director, Protective Security Coordination Centre

Ms Belinda Moss, Assistant Secretary, Information Coordination Branch

Ms Leonie Horrocks, Acting Assistant Secretary, Policy and Services Branch

Ms Leonie Mack, Assistant Secretary, Security Programs Branch

Output 2.6

Ms Elizabeth Kelly, Executive Director, AusCheck

Ms Annette Bouchier, Assistant Secretary, AusCheck

Ms Jamie Lowe, Assistant Secretary, AusCheck

Administrative Appeals Tribunal

Mr Doug Humphreys, Registrar

Ms Sian Leathem, Assistant Registrar

Mr Steve Wise, Finance Manager

Australian Commission for Law Enforcement Integrity

Prof. John McMillan, Integrity Commissioner (Acting)

Australian Crime Commission

Mr Alastair Milroy, Chief Executive Officer

Mr Kevin Kitson, Executive Director, Criminal Intelligence Strategies

Mr Paul Southcott, Acting Chief Financial Officer

Mr Joseph Stablum, Chief Information Officer

Mr John Veale, Human Resources Manager

Australian Customs Service

Mr Michael Carmody AO, Chief Executive Officer

Ms Marion Grant, Deputy Chief Executive Officer

Mr Jon Brocklehurst, Deputy Chief Executive Officer

Mr Neil Mann, Deputy Chief Executive Officer

Mr Murray Harrison, Chief Information Officer

Rear Admiral James Goldrick, Commander (Border Protection Command)
Mr Tom Marshall, Director General (Border Protection Operations)
Mr Brian Hurrell, National Director (Enforcement and Investigations)
Ms Jane Bailey, National Director (Cargo)
Ms Jan Dorrington, National Director (Passengers)
Ms Sharon Nyakuengama, National Director (Compliance)
Ms Sue Pitman, National Director (Trade)
Mr Ian Grey, National Director (People and Place)
Mr Jeff Buckpitt, National Director (Intelligence and Targeting)
Ms Tonie Differding, National Manager (Research and Development)
Mr Geoffrey Johannes, National Manager (Trade Measures)
Mr Matthew Corkhill, National Manager (Cargo Operations)
Ms Jo Corcoran, National Manager (Industry Engagement and User Services)
Ms Gillian Savage, National Manager (Strategic Development—Passengers)

Administrative Review Council

Ms Margaret Harrison-Smith, Executive Director
Mr Robert Cornall AO, Member

Australian Federal Police

Mr Mick Keelty, Commissioner
Mr Peter Drennan, Acting Deputy Commissioner
Mr Tony Negus, Acting Chief Operating Officer
Mr Andrew Colvin, Chief of Staff
Mr Alan Gaukroger, Chief Financial Officer

Australian Government Solicitor

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

Australian Institute of Criminology and Criminology Research Council

Dr Toni Makkai, Director
Mr Tony Marks, General Manager Corporate

Australian Law Reform Commission

Professor David Weisbrot, President
Mr Alan Kirkland, Executive Director

Australian Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General

Australian Transaction and Reporting Analysis Centre

Mr Neil Jensen PSM, Chief Executive Officer
Mr Alf Mazzitelli, Chief Finance Officer
Mr Thomas Story, Executive General Manager

CrimTrac

Mr Ben McDevitt AM, APM, Chief Executive Officer
Ms Nicole McLay, Chief Financial Officer

Family Court of Australia

Mr Richard Oliver, Acting Chief Executive Officer,
Mr Grahame Harriott, Executive Director Corporate Services

Ms Teresa Kane, Acting Principal Registrar

Family Law Council

Mr Kym Duggan

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive Officer

Mr Philip Kellow, Deputy Registrar

Mr Gordon Foster, Executive Director, Corporate Services

Federal Magistrates Court

Mr John Mathieson, Chief Executive Officer

Ms Charlotte Stockwell, Executive Director, Operations

Mr Glenn Smith, Chief of Staff

Ms Louise Kenworthy, Coordinator of Court Services

High Court of Australia

Mr Christopher Doogan AM, Chief Executive Officer and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Tony Martin, Manager, Finance and Administration

Human Rights and Equal Opportunity Commission

Hon. John von Doussa QC, President and Acting Sex Discrimination Commissioner and Commissioner Responsible for Age Discrimination

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

Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Commissioner Responsible for Race Discrimination

Ms Susan Roberts, Executive Director

Ms Karen Toohey, Director, Complaint Handling

Insolvency and Trustee Service Australia

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

Mr David Bergman, Adviser, Policy and Legislation

Mr Peter Lowe, Executive Director

National Native Title Tribunal

Mr Chris Doepel PSM, Registrar and Chief Executive Officer

Mr Franklin Gaffney, Director Corporate Services and Public Affairs

Mr Max Szmekura, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Damian Bugg AM, QC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Ms Stela Walker, Deputy Director, Corporate Management

Office of Film and Literature Classification

Mr Donald McDonald, Director

Mr Paul Hunt, Deputy Director

Ms Kelly Williams, Assistant Secretary

Mr Jeremy Fenton, Senior Classifier

Office of Parliamentary Counsel

Mr Peter Quiggin, First Parliamentary Counsel

Ms Glenyce Francis, General Manager

Office of the Privacy Commissioner

Ms Karen Curtis, Privacy Commissioner

Mr Timothy Pilgrim, Deputy Privacy Commissioner

Mr Mark Hummerston, Assistant Privacy Commissioner

Mr David Richards, Finance

CHAIR (Senator Barnett)—I declare open this public meeting of the Senate Legal and Constitutional Affairs Committee. The committee will continue its examination of the Attorney-General's portfolio beginning with the Federal Court of Australia. I remind witnesses of the procedural advice contained in yesterday's opening statement. I welcome the Minister for Justice and Customs, Senator Johnston, and officers.

[9.01 am]

Federal Court of Australia

Senator LUDWIG—Can you advise the number of vacancies for judges in the court and the turnover that has occurred since the annual report in the last 12 months? I would like to know the number of new appointments, existing vacancies—that is, positions that have not been appointed—and the total number.

Mr Soden—The total number of judges?

Senator LUDWIG—Yes.

Mr Soden—At present, there are two vacancies—Justice Young in Melbourne and Justice Wilcox in Sydney are yet to be replaced. The last appointment to the court was Justice Michelle Gordon on 20 April 2007 and the one before that was Justice Gilmour on 11 December 2006. There are three other appointments that have occurred in recent times—24 July 2006, Justice Richard Tracey; 31 July 2006, Justice Middleton; and 8 September 2006, Justice Buchanan. There are two vacancies.

Senator LUDWIG—So there are two vacancies. How long have they been vacant for?

Mr Soden—Justice Young was earlier this year. I am sorry, I cannot recall when Justice Wilcox retired.

Senator LUDWIG—I am happy for you to take that on notice.

Mr Soden—I think it was December. Yes, I will take it on notice.

Senator LUDWIG—There has been no announcement to fill those at present. Let us go back to 2004-05. I want to understand whether the number of judges from that period to now has remained relatively static with only replacements, whether there have been additional judges appointed to the Federal Court, or whether the number has declined? We currently have two vacancies and one at least has been vacant since December—so that is about six months—and another which may be of a similar period. I am trying to understand the number of judges, the trend in the number of judges and whether it has declined or increased from 2004-05, and the period of vacancies that have fallen and the length of time they have fallen, because that also can affect workload. You can appreciate if there is a turnover of one, two or

three judges in a particular year and their positions remain vacant for X number of months then effectively it is the reduction of one judge for one year.

Mr Soden—Judicial strength, yes. I do not have the extent of that detail with me here in terms of the length of all of those vacancies that occurred. But over that period of time there were four additional judges over our complement in relation to the workplace relations jurisdiction.

Senator LUDWIG—And they have been—

Mr Soden—They have all been appointed.

Senator LUDWIG—Are they doing industrial relations work or a more broad range of work?

Mr Soden—All of the work of the court.

Senator LUDWIG—Were they appointed specifically for the workload that might be generated by the Work Choices legislation?

Mr Soden—Not to specifically do that but in relation to that work.

Senator LUDWIG—They were appointed because of the increase in workload that was anticipated as a consequence of the introduction of Work Choices. Will you be able to have a look at the number of vacancies in 2004-05 and the average length of vacancies for that period?

Mr Soden—That will all be available.

Senator LUDWIG—Has there been any work done on the projected workload over the out years—in other words, the judges needed to deal with the expected workload?

Mr Soden—Not in detail. Workload trends have gone up and down in recent years. We are not assuming any dramatic change and are working on the basis that our present complement will be sufficient for the foreseeable future.

Senator LUDWIG—The work that is done through the Federal Magistrates Court will hopefully lessen the work of the Federal Court. Has any work been done in the last year or so as to how that workload will affect the work of the Federal Court between now and the out years?

Mr Soden—Not in detail. The most important workload related initiative—and I have mentioned it here in the past—was the transfer of the first instance migration jurisdiction from the Federal Court to the Federal Magistrates Court. Prior to that occurring, every migration case essentially required four Federal Court judges, one at first instance and three on appeal. The initiatives that were taken to move the jurisdiction to the magistrate avoided the need for our court to grow exponentially for the migration work. The migration work is now primarily done by magistrates at first instance. The other initiative that has been very successful is that appeals from the magistrates are now able to be dealt with by one federal judge. So we have gone from a situation four years ago of four Federal Court cases dealing with every migration case to one on appeals from magistrates. A lot of those appeals are on interlocutory matters, which can be dealt with quite quickly. That was the major workload issue for our court. That

has essentially been resolved. At the moment, I do not envisage any substantial additional transfer of work from our court to the Federal Magistrates Court.

Senator LUDWIG—Are you able to quantify the workload in the industrial relations or Work Choices area and tell me the number of cases that have been filed, the number of matters that have been dealt with and the resourcing implications of that?

Mr Soden—I do not have the connection between the numbers and the resourcing implications, other than to say that the number of cases commenced is probably not as many as were originally anticipated. Just to give you an indication of that kind of direction, in 2005-06 there were 246 of those sorts of cases filed across the court. As at the end of April this financial year—that is, with only a couple of months to go—there are only 135 of those workplace relations cases filed in the court across Australia. I have a whole lot of information in relation to the breakdown of those sorts of actions and how they are disposed that I am quite happy to table. Following on that line of questioning last time, I have come armed with the answers to those questions, which might be of assistance to the committee.

Senator LUDWIG—It would be. I was just about to launch into it. Do you have that in a table that you are happy to provide?

Mr Soden—I am happy to table it, Senator.

Senator LUDWIG—That would be helpful, thank you. Did you want to talk to it for a little bit to explain it?

Mr Soden—I might just mention what it has, and you might have some questions that arise from that.

Senator LUDWIG—We might do it that way if you do not mind.

Mr Soden—There is a table of actions commenced by case type. There is a table of actions finalised by case type. There is a table of the nature of the finalisation as to whether it was dismissed, heard or withdrawn et cetera; the age of the cases; the age of the pending cases; and then a breakdown by state of the types of matters filed in each state. So you can see, for example, if there were unlawful termination actions commenced in Victoria compared with Tasmania. There is also a table showing the finalised cases by state and by nature of case.

Senator LUDWIG—Do they deal with those on appeal?

Mr Soden—I am hesitant to say yes; I am assuming they do.

CHAIR—So these would include appeals as well?

Mr Soden—Yes, as well as first instance. There are appeals in the totals. They are in the second row on the front page in each of those boxes.

Senator LUDWIG—So there is not a significant number of appeals. They have mainly been dealt with to conclusion in the Federal Court.

Mr Soden—That is my impression.

Senator LUDWIG—If it differs from that, you could let the committee know.

Mr Soden—Yes. I am happy to take on notice the question of the extent of appeals from our court to the High Court.

Senator LUDWIG—Yes, thank you; just on those.

Mr Soden—Just on those appeals?

Senator LUDWIG—Yes. It is more than likely that you will now be dealing with migration cases on appeal.

Mr Soden—Yes. Almost all of the migration cases are appeals from the magistrates. There is a provision to enable a magistrate to refer a matter to our court if the magistrate thinks it ought to be dealt with by the Federal Court. Only a handful of those come.

Senator LUDWIG—And then those remitted from the High Court on immigration matters—

Mr Soden—are few.

Senator LUDWIG—Miniscule.

Mr Soden—They are very few, yes. We set ourselves a target of disposing of those appeals within 90 days. I had a look at those figures earlier this morning. We have done about 1,300 since the amendments came into effect. At the moment our median disposition time for those matters is 112 days, so just over three months for most of the matters and most of the matters are disposed of, so there is no backlog.

CHAIR—I refer to matters filed by case type and the gap at the bottom and the numbers at the bottom. It does not have a case type. So are they for all other related matters to do with IR?

Mr Soden—You are looking at the column for 2003-04. They were not categorised as well as they were in subsequent years. Do you follow that?

CHAIR—Yes, I see. And in 2004-05 it is likewise.

Mr Soden—Yes, in 2004-05, 2005-06 and 2006-07 you will see that there is a much broader breakdown by category. In other words, in 2003-04 they were not categorised carefully.

CHAIR—I am with you. Thank you for that.

Senator LUDWIG—Those immigration matters are now dealt with at first instance effectively on appeal in the Federal Court from the Federal Magistrates Court?

Mr Soden—Almost exclusively.

Senator LUDWIG—If they are appealed again, do they go to the full court?

Mr Soden—No, a single judge of our court exercises full court jurisdiction on appeals from the Federal Magistrates Court. So it would be by leave to the High Court.

Senator LUDWIG—The other area is self-represented litigants. On page 48 of your annual report you said:

... during the reporting year judges of the Appeal Division have been engaged in dealing with procedural hearings which are essentially directions hearings for appellants. Due particularly to the numbers of appellants who are self-represented litigants, this task is both time consuming and difficult.

Do you keep statistics as to the number of self-represented litigants?

Mr Soden—We do. As I have explained before, the problem that we have with those statistics is that people are not categorised as unrepresented in the same way as they proceed through cases. Sometimes they are represented—it might be an appearance—and sometimes they are not. It is very hard to say during the life of a case whether or not someone is unrepresented all of the time. There are some assumptions from the information that we have that I can clearly use. A large number of people in migration appeals are unrepresented. I do not have the statistics with me in relation to that proportion, but a large number are unrepresented. I am certainly happy to take on notice the question of the information that we have about unrepresented litigants. There is a large number of them.

Senator LUDWIG—I am trying to understand the workload that might be generated by self-represented litigants, particularly over the last couple of years. I know, and I think I mentioned this to the High Court people yesterday, that there is a report by the Federal Magistrates Court on self-represented litigants which was based on an evaluation done in 2004. I will come to that shortly. But what I am trying to more particularly understand is whether there has been a rise, whether it has been a feature of the Federal Court for a while and whether there has been a steady rise. As a consequence, there are the types of issues that emerge as a consequence in the registry itself in dealing with self-represented litigants. It is whether you have had to change your procedures to deal with self-represented litigants and whether you expend additional resources, both from the registry's perspective and the court's perspective, on self-represented litigants and then—I know this is a long question but we will deal with it in part—it is whether ultimately you change practices both in the registry and the court to assist self-represented litigants and then there are the consequences of that.

Mr Soden—My answer to all of those questions is yes.

Senator LUDWIG—I thought that might have been the case.

Mr Soden—It is yes in the sense that we have changed out practices at the registry as a result of litigants in person. Is there an increase? Not necessarily so, from my looking at the information, apart from saying that there is a steady proportion of unrepresented litigants in migration cases and they get special assistance at the counter in relation to their applications and staff are specially trained in how to deal with those people. They do take a little bit more time in court because the judges have to spend more time on explaining procedures that they would not otherwise have to do. But that is just all part of the way that it is done these days. There is no trend of it going up or down. It is just part of the system, particularly with migration work.

Senator LUDWIG—A broader issue in terms of self-represented litigants is this: do you have registry staff who are trained to talk to them about non-court based decisions? In other words, there are self-represented litigants, I am anecdotally told, who are pursuing a matter which we could put in the category of hopeless but in many instances, as I understand it, they will want to pursue it to have their day in court. That is understandable. The question then is this. If they were properly informed or properly helped they might seek a non-court based solution and in fact might realise a solution rather than pursue a day in court, which then removes them from your court.

Mr Soden—That is a standard approach that we would take across Australia in relation to litigants in person if they come to the court and they do not have a matter that on the face of it looks as if it is going to be successful. You do, as you said, get some people who demand for things to be filed and processed. But a standard practice is to talk to them to discuss the matter with them to see whether there really is another option that they should pursue.

Senator LUDWIG—Do you have in the registry someone in particular nominated or trained for that role?

Mr Soden—Yes. How it works is that the counter staff are especially trained to deal with litigants in person but, if it gets to a situation where some special procedural assistance needs to be given, we have arrangements in the registries so that one of the legal officers—the legally qualified staff; a deputy registrar—will sit down with that person in an interview room and go through the proceedings with them. They will not give legal advice per se but will give procedural assistance short of that legal advice. That assistance always includes the option of looking at another solution to the problem that they have.

Senator LUDWIG—Do you keep any statistics on non-court based solutions or referrals for when the registry sits down and goes through the procedures?

Mr Soden—No, we do not.

Senator LUDWIG—I imagine that it is quite time consuming for the registry staff.

Mr Soden—It is time consuming, but we have taken the view that that time is well spent for us, because it avoids the problem of what might occur in the court. If someone has a proceeding that is unlikely to be successful, the other parties are going to incur costs and the system is going to incur a lot of costs, so it is an investment up-front.

Senator LUDWIG—Have you considered whether or not statistics should be kept on the time that the registry is spending on self-represented litigants, both for court based and non-court based solutions?

Mr Soden—To be frank, we have not considered it as something important to do in the resourcing sense, because we have the resources there to meet the need at the moment. We would certainly look more closely at the resource impact if the extent of what we were doing increased and we were having problems in being able to meet that increase. At the moment, I can say that we are able to meet the needs with the resources that we have.

Senator KIRK—Senator Ludwig referred to a report that was undertaken—an evaluation of services for self-represented litigants.

Mr Soden—Yes, he mentioned that.

Senator KIRK—I understand that there are a number of recommendations in that report. Have they been implemented?

Mr Soden—The report mentioned was a report produced for the Federal Magistrates Court, from memory. I can recall seeing that report some years ago. It did, from memory, make recommendations in relation to what that court should do for its self-represented litigants. To be frank, I cannot remember the detail of those recommendations. The report was not for our court. However, I know that it did have an impact on our registries, because we

provide the registry services for the Federal Magistrates Court. The only thing I am able to say is that I can just assume that our registries implemented those recommendations. I cannot say categorically, as it was a number of years ago. It might be better asking the Federal Magistrates Court that question.

Senator KIRK—Yes, of course. The issues may well be quite similar, though. The two different courts attract a different kind of clientele, if I can say that, so perhaps the recommendations would not apply across both courts. Is that fair to say?

Mr Soden—There are some differences, but they are really at the extremes. There is a core of people that is common to both courts, particularly in the migration area. To assist you in that, a self-represented litigant making a migration application in the Federal Magistrates Court goes to a counter of the Federal Court to lodge that application in the Federal Magistrates Court. If they are unsuccessful and they want to appeal, they come back to the same counter to lodge the appeal in our court. In that sense, it is the same issue.

Senator KIRK—Exactly. I am interested in the administrative costs of the court. Can you provide us with a breakdown, particularly in relation to staffing numbers in your court? What is the spread of the staff? The judges are the primary resource, but what is the breakdown across the court of IT staff, human resources staff, communications staff, marketing staff and so on?

Mr Soden—That is a fairly complex collection of information.

Senator KIRK—It is, really.

Mr Soden—I have some of that to hand, but it would be better if I took that on notice and gave you a page that spread it all out—I am happy to do that.

Senator KIRK—Yes. I was not expecting it all to be here; I am just trying to get an overview as to how it works. You mentioned before the fact that the registry services are shared between the Federal Magistrates Court and your court. Is that about the limit of the sharing of resources between your court and the Federal Magistrates Court? Are there other resources that are shared—for example, IT, administrative staff and so on?

Mr Soden—Yes. There is property, information technology, some corporate services and the library. There is a collection of resources that we provide to them. I think that covers it.

Senator KIRK—So the two are quite integrated, in a sense.

Mr Soden—Very much so.

Senator KIRK—Where are you in relation to IT at the moment? Have you developed any new software or had any upgrades to your systems?

Mr Soden—I would like to say that we are a world-leading court in IT.

Mr Cornall—Go ahead and say it!

Mr Soden—We are an internationally acclaimed and world-leading court in IT. You might notice in our annual report that there is a page in there—I forget which page it is—which records that we were awarded a prize for having one of the best 10 websites for any court in the world.

CHAIR—It is page 17.

Mr Soden—Thank you for that assistance.

CHAIR—I have it here; in fact, I will hold it up for all to see.

Mr Soden—Thank you. We do not often put things other than documents we produce in our annual report, but that is a record—

CHAIR—It is an exception.

Mr Soden—Yes. That is against all of the courts around the world. We were pretty pleased about that. It is not just the website; it is the services available on that website. They are mainly information technology services for users of the court. We have an e-search facility which the profession—the users—love. From their desktop, they can get access to information about the cases. The next major change, which we will implement later this year, is a new system called ‘My Files’. My Files will be those files that the profession have in our court, in the Federal Magistrates Court and in the Family Court of Australia—it is a joint effort by all of the courts. They will be able to get access to their files from their desktop and work on them. That is world-leading technology for courts.

Senator KIRK—So that would be across all three of the courts?

Mr Soden—Yes. That has been a joint effort. The Federal Court took the lead in a lot of the proof of concepts, with electronic filing, the e-court forum and those sorts of things. The Family Court developed the Casetrack system. It is a very good and robust Oracle database. We use that. The Federal Magistrates Court uses that. Collectively, we have joined resources in different areas of expertise to produce that new system. We had a meeting yesterday in Canberra to look at some elements of it, and it is world-leading stuff—it is great.

Senator KIRK—How do you apportion the cost for that system across the three courts if it is being used by all three as you describe?

Mr Soden—I would describe it as an equitable sharing of the costs.

Senator KIRK—What sort of cost are we talking about? Is this something that is being rolled out over a number of years and therefore is being paid for progressively?

Mr Soden—This new system, yes. The best way of describing the financing of it is that we put away capital reserves over the last few years to pay for this capital expenditure. It is not a lot of money in IT terms—\$800,000—to produce this sort of result.

Senator KIRK—So this is the whole integrated system—My Files, the case management—

Mr Soden—Yes. That is on top of the Casetrack system. You will see a lot of institutions in our business spending tens and tens of millions of dollars on computer systems. We did not.

Senator KIRK—How were you able to do it so cost effectively? I am interested.

Mr Soden—We did not rush too quickly and took advantage of the work of others. The Family Court made a large investment in its Casetrack system. We decided to use that, modify it for our purposes and, as I said, use those proof of concept initiatives—which were low-cost pilot projects—to proof things like e-filing, e-lodgement and the electronic courtroom. Now

we can take the benefit from that in a very cost-effective way, rather than going to the market and asking for a new system and being locked into a project that would cost tens of millions of dollars at great risk.

Senator KIRK—Could you outline for me a bit more about the My Files system? I am quite interested in that. All of the information in relation to a particular case is held on this electronic file; is that right?

Mr Soden—Judges have My Files. They are their dockets. Practitioners have My Files, those being the cases that they have filed in our court. The staff have My Files, those being the cases allocated to staff to work on. The logic is that practitioners will be able to sit at their desk, go to the web, come to the Federal Court, Family Court or Federal Magistrates Court and work on their files by going through a user ID and logon process that is secure and manageable. They will get access directly to their files to be able to work on them and to get information that is available on the file electronically. They will be able to lodge documents. The orders that are made in our court are now recorded on our e-search immediately, so they can go back to their office after court and look at the orders that have been made—which are usually procedural orders and directions about what needs to be done. It is a very efficient way of working.

Senator KIRK—It is a great system. If there are going to documents lodged and the like and there is money to be paid for the lodgement of those documents, can that be done electronically at the same time?

Mr Soden—Yes. That is happening now.

Senator KIRK—It is a long way from the old paper—

Mr Soden—It is a long way from that. It is one of the reasons why we won that international award.

Senator KIRK—Congratulations.

Mr Soden—Thank you.

CHAIR—You keep mentioning that! Well done.

Senator KIRK—In relation to the combined registry that you have with the Federal Magistrates Court, is there any prospect of that being extended to the Family Court—in other words, having a combined registry for all of the federal courts? Seeing as you are starting to have this My Files system, which is all integrated, I wonder if there are moves towards that.

Mr Soden—There are some initiatives. In some of the Family Court registries, it is now possible to file physically Federal Court documents, as well as Federal Magistrates Court documents. But I have to say that the strategy that our court is employing is one in which we would be able to deliver most of our services electronically rather than expecting people to go to a registry. That way, they can do what they need to wherever they are.

Senator KIRK—That would certainly make it a lot more efficient, wouldn't it?

Mr Soden—It will reduce their costs and reduce our costs. We are talking about 24/7 services.

Senator KIRK—You are always going to have to maintain a basic sort of registry, aren't you, because there are going to be a lot of people who—

Mr Soden—Of course—particularly for the work with the self-represented litigants and those sorts of things. But there is a lot of assistance on our website for people who are not represented. There are a lot of guides and a lot of easy-to-use forms, and we know that a lot of people go to the website to get that to prepare their documents and do not necessarily come into the registry. So the assumption that we can make is that more and more people are going to work in that way in the future.

Senator KIRK—It is clearly much more cost-effective. Has there been any study or analysis done as to how these changes in technology have impacted upon costs to litigants at all? I would have thought that, by the way you are describing it, it would have the effect of reducing costs significantly for litigants. I wonder if there has been any sort of analysis as to how it has impacted on the cost of litigation generally.

Mr Soden—I am not aware of any major study done, or any study at all. If you ask anyone in the business—practitioners, courts, judges, lawyers—they will all tell you that if you can speed up the process and reduce the effort, you are going to save costs.

Senator KIRK—Absolutely. Finally, going back to information technology, is the IT that you have in place essentially done in-house or do you still have a provider who assists you?

Mr Foster—We have a fairly small IT group in-house that is supplemented from time to time with contractors. We rely on a large number of external contracts for the provision of network services and application development, so we do not employ a large number at all in terms of the in-house resources.

Senator BARTLETT—I have a couple of questions. With regard to the migration jurisdiction in particular, you have noted in your report that it is a dramatically increasing proportion of your overall work. There are a couple of things I want to clarify. The table in your annual report on page 38 lists the number of migration appeals as 1,050 in the last financial year, which is the same number as the year before. On the page prior to that, in the second bottom paragraph on page 37, you mention that your migration workload decreased in 2005-06 with 128 migration matters commenced in its original jurisdiction. I appreciate the distinction between a matter commencing in your jurisdiction and ending up there by way of appeal, but I want to get a sense of how your migration workload decreased. It would seem from the table that it has not actually decreased in terms of total appeals and related actions.

Mr Soden—There is an explanation for that. Our first instance jurisdiction—that is, fresh applications—dropped dramatically in number because most applications were being made to the Federal Magistrates Court. Our appeals went up as a result of the magistrates doing the first instance work. There were a large number of magistrates and a large output so our appeals went up. Those kinds of figures are pretty much the same now.

Senator BARTLETT—Your number of appeals have gone up but the number of original jurisdiction cases have gone down, so in total it has still gone down a bit.

Mr Soden—In numbers of cases it was about the same, yes, but in resource consumption or effort there was a dramatic reduction. As I said earlier, we only have one judge dealing with migration cases now compared to four judges in the past.

Senator BARTLETT—Obviously, it is costing a lot more for the magistrates' side of things but you would not be able to say whether that still balances out in terms of overall net. We would have to look at those sorts of costs and tack them onto your drop. Could that sort of calculation be made about whether there has been a net reduction in costs for migration cases?

Mr Soden—I do not know whether that calculation has been made. Intuitively, I would say that if one magistrate and one judge is dealing with a migration case, compared to one judge at first instance and three judges on appeal, the net cost for disposition of every migration case would be substantially less.

Senator BARTLETT—Leaving aside the cost arguments and all those sorts of things, the actual total number of appeals and the like that are going through the court system in the migration area and up into your court is still around about the same, as you say—now nearly 80 per cent of your total workload, by the look of it.

Mr Soden—It is 80 per cent of appeals.

Senator BARTLETT—I can recall quite a number of changes to the Migration Act over the last 10 years with the stated aim of reducing the number of cases going through the courts. It is reasonable to assume from what is in your report and from what you have just said that that has not necessarily happened. The total number of appeals going to courts has not dropped; it is just that you may have found a more efficient way of dealing with them in a cost sense; is that right?

Mr Soden—If we are looking just at appeals in the last couple of years, the number of appeals is about the same, but that arises from an acceleration of the throughput in the Magistrates Court, and you would need to ask that court the questions for the details. There are many magistrates that have been devoted to migration cases.

Senator BARTLETT—Is it possible—I do not know if it is—that with that 1,050 appeals and perhaps this year's case load to break them down into ones that deal with protection visa applications versus the rest, or would that be rather arduous?

Mr Soden—No. We can take that on notice. I do not have that information with me, but I can break down all of the migration appeals by those criteria and others to explain the different sorts of migration appeals.

Senator BARTLETT—The main stream I am interested in is that of the protection visa and any others that would come through the refugee tribunal and the ones that come through the MRT perhaps for the year to date and a couple of years back as well, if that is okay.

Mr Soden—I am happy to take that on notice.

Senator BARTLETT—Could you tell me what preparations or changes you have put in place—or any that are required—with the changes in the native title laws, both the ones that have just gone through and ones that are about to go through. Does that require any particularly significant rearrangements of things, training or that sort of stuff?

Mr Soden—No, it does not require a substantial rearrangement of things. But some key changes will be made, and we are working with the tribunal right at the moment on how those changes will operate. The essence of the changes will be that we will be focusing on managing the workload on more of a regional basis, working closely with the tribunal to try and identify priorities. In the past, although there was a regional focus, it probably was not as tightly managed as what we are planning to do into the future in order to try and progress things in a sequential way—in a better managed way—more closely consulting with the tribunal. On that basis I can indicate that we expect to issue a fairly substantial practice note in the near future which will explain all those new approaches.

CHAIR—Mr Soden, I have a number of questions following up on your earlier comments. Congratulations again on your international best practice.

Mr Soden—Thank you, Senator.

Senator PAYNE—What did they win, Chair; I'm sorry?

CHAIR—We could go through that again, but—

Mr Soden—I am happy to!

Senator PAYNE—Would you, Mr Soden?

CHAIR—You are happy to outline further and better particulars.

Mr Soden—There will be a lot of people watching this in our court who will be pretty chuffed about that, let me say, because a lot of people have done a lot of hard work to achieve that result.

Senator PAYNE—So they should be, Mr Soden.

CHAIR—So they should be, as Senator Payne has indicated. On behalf of the committee, may I congratulate you and your court for the success that you have had. Please pass that on to your colleagues at the court.

Mr Soden—Thank you.

Senator BARTLETT—I thought I was being too sucky pointing out the immigration department's award in its annual report. I only mentioned it once!

CHAIR—Mr Soden, I am looking at page 19 of your annual report, which goes to migration matters. You indicated in your earlier comments that one of the successes of the last few years for the court has been the considerable drop in migration matters since the Migration Litigation Reform Act 2005, which commenced on 1 December 2005. On page 125 of your annual report you have figures for the Migration Act matters filed. The figure was 2,591 in 2003-04 and then there was a huge drop in 2004-05 to 464. There was a further drop in 2005-06 to 128. Are those figures evidence of the success that you were referring to earlier?

Mr Soden—Yes, but to be clear: again, that is the drop in the original applications or first instance applications. They are now all commenced in the Magistrates Court rather than in our court.

CHAIR—We will be able to ask the Magistrates Court about their increased workload from those cases. That is what I want to gain clarity on. Do you have the latest statistics since 2005-06 on those cases?

Mr Soden—Yes. As at the end of April, for this financial year there have only been 40 migration applications filed in our court. That will not go up all that much between now and the end of the year, so that is probably another halving of that 128.

CHAIR—Indeed. Thank you for that. Page 21 of your report refers to the judgements to be delivered within three months. It indicates that in the 2005-06 year you handed down 2,164 judgements and 94 per cent of the appeals were dealt with within three months—89 per cent of judgements within the first instance. They seem pretty good figures. I am interested to know whether there are any international comparisons of best practice. Are there comparisons of that sort of record? Is that a good record? Should we be pleased with those figures?

Mr Soden—I would suggest so. We as a court have set the goal of disposing of judgements within the three-month time frame. We set that on the basis of our understanding of what internationally would be thought to be pretty good practice. It is not perhaps best practice but it is pretty good practice, and we report on it. We report on it because we think it is a pretty good performance.

CHAIR—Can you advise us about the other 11 per cent and six per cent that do not get dealt with? Is that reported on? Can you provide further and better particulars for those and any reasons why.

Mr Soden—I am happy to take that on notice. There is a simple explanation for why there is such a variation in the time and that is that some of the cases are small and easy and some of the cases are very large and take a long time. The best example I can give at the moment is the C7 litigation before Justice Sackville. This is just from memory. I think something like 84,000 documents were tendered in that matter. He is presently reserved in the judgement. It will probably be an enormously substantial judgement involving hundreds of millions of dollars. That is going to be a little bit longer than three months.

CHAIR—If you are happy to take that on notice, I would be interested to know further and better particulars regarding those other cases that are not dealt with within that time, the types of cases we are talking about and the length of time for those cases, if you could.

Mr Soden—Yes. I would be happy to do that.

CHAIR—As background for my next question I would say that I have just been looking at section 72 of our Constitution—the appointment of your judges by the Governor-General. They cannot be removed except by the Governor-General in Council on an address from both houses of parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity. That is reflected in section 6 of the Federal Court of Australia Act and, regarding the Magistrates Court, in section 9 of the Federal Magistrates Act 1999.

I am just interested to know what procedures you have in place in terms of conflict of interest matters that might arise where a judge needs to take that into account. Are there any codes of practice or particular procedures that you have in place? There might be a speeding fine or a minor misdemeanour. How do you deal with those within the court, bearing in mind

that it is a very high threshold in terms of removal from the court? I am interested to know what procedures you have in place to deal with those types of matters.

Mr Soden—There is a very helpful publication called *Guide to Judicial Conduct* published by the Australian Institute of Judicial Administration and approved by the Council of Chief Justices. One of the substantial authors of that was our chief justice—Chief Justice Black. That is a guide to judicial conduct which deals with those issues that you mentioned. It is not there because it is absolutely necessary; it is there because it is a very helpful guide in those very grey areas that come up from time to time.

I can say from my experience that the judges are acutely aware of those issues that you mentioned in terms of the ethical issues that arise. It is quite often the case that judges will let the parties know of a particular issue or a particular matter that the parties might be concerned about, in order to avoid any scintilla of a question of apprehended bias. They think about that all of the time. It is critically important.

CHAIR—Yesterday we heard from your like colleague from, I think, the High Court who indicated that he had never heard of a case, or was not aware of any case, that had come before the court in answer to a question in this place. He answered that probably in a similar manner to you. But I am interested from a public interest point of view in how those matters are dealt with if they arise. I am not saying that they are arising or that they do arise, but, if they do arise, you are saying essentially that the *Guide to Judicial Conduct* is the key document that is abided by within your court system?

Mr Soden—It is a guide. It deals with those issues. If someone wants to complain about a judge they can make a complaint about a judge.

CHAIR—How do they do that?

Mr Soden—They can write the chief justice. We have advertised that capacity. We get the occasional complaint about a judge.

CHAIR—I thank the officers of the Federal Court and I congratulate you once again on your success over the past 12 months. Thank you.

Mr Cornall—While we are changing to the next agency, I wonder if I could pick up on the point about APEC security details that I said I would come back to the committee on. I have spoken with the Attorney's office and confirmed my clear understanding that it is not Commonwealth policy to talk about any deviation from the standard policy about no carrying of guns by foreign security agents, in past, present or futures cases. For very clear and understandable security reasons, the application of the policy and any consideration of any application for exemption from the policy about carrying guns are not discussed publicly.

CHAIR—Thank you for clarifying that.

[9.54 am]

Federal Magistrates Court

CHAIR—I welcome the officers from the Federal Magistrates Court and call for questions.

Senator KIRK—I wonder if you can give me an update as to where the court is at in terms of the number of magistrates, their location, any changes that have occurred in recent times and any changes that are due to happen in the short-term future.

Mr Mathieson—I am not sure that I can speak about changes that are about to happen, but I can certainly tell you about things that have happened. As of today, there are 48 federal magistrates, including the Chief Federal Magistrate. From memory—and I will check for you—I think there have been 15 appointments so far this year. That includes, I think, a replacement appointment. There were 34 federal magistrates at the end of 2005-06, and there are 48 today.

Senator KIRK—That is quite a significant increase, isn't it, over a period of 12 months?

Mr Mathieson—Yes, it is.

Senator KIRK—That would be about 30 per cent?

Mr Mathieson—Yes.

Senator KIRK—That is very significant. You mentioned that there was one vacancy. Was that as a consequence of retirement, or how did that come about?

Mr Mathieson—There was a retirement. In fact, there were two retirements during the year.

Senator KIRK—And the location of the new magistrates, 15 in total, that have been appointed? Whereabouts have they been located?

Mr Mathieson—I can quite easily give you the total of the 48 federal magistrates around the country. It would take me a little bit of work to extract the 15 new appointments.

Senator KIRK—That is okay. If you could just provide us with the list of the current magistrates and their locations, that would be helpful. If you have it in front of you, I would be interested as to the breakdown for, say, Sydney, Melbourne, Adelaide—

Mr Mathieson—The breakdown is that there are 14 in the Sydney central business district, three in Parramatta, two in Newcastle, six in Brisbane, one in Townsville, five in Adelaide, one in Brisbane, one in Launceston, two in Canberra, 11 in Melbourne, one in Cairns and one in Perth.

CHAIR—You do not have one in Hobart?

Mr Mathieson—There is no resident federal magistrate in Hobart.

CHAIR—Just Launceston?

Mr Mathieson—The Launceston federal magistrate, however, I think sits for 19 or 20 weeks in Launceston, some time in other regional centres in Tasmania and the balance of his time in Hobart.

Senator KIRK—I notice that there is only one magistrate in Perth. Is the reason for that the existence of the Family Court of Western Australia?

Mr Mathieson—Primarily. The workload in Perth from general federal law is not significant in comparison with the overall workload in the other regions because of the combination of both general federal law and family law.

Senator KIRK—Going back to the vacancy that you mentioned—you mentioned that one of the federal magistrates retired—I am just wondering about the process for replacement of a magistrate. I suppose if it is a retirement you would know in advance that he or she—was it a he?—is going to retire. Do you then advertise in the lead-up to the person's retirement, or how do you go about that?

Mr Mathieson—The appointment process of course is not for the court; it is for the government. A government will make a decision at the time as to how it wants to go about it, in terms of whether it will or will not advertise, or whatever. What the court tries to do is to flag it with the government as soon as possible once it becomes aware of circumstances that may result in a need for appointment action.

Senator KIRK—In the case of this magistrate, I take it that there was no gap between the person leaving and the new appointee coming in?

Mr Mathieson—As I mentioned, there were two retirements during the year. One was with little warning; the other had a little bit more warning. I am sorry; there have in fact been so many appointments during the year that I have lost track of what appointment was in relation to what situation. However, from memory alone, I think there was some gap in relation to both appointments, but they were filled in a reasonable period of time. I think—again from memory—that both have now been filled.

Senator KIRK—I only ask because the workload is so great.

Mr Mathieson—Yes.

Senator KIRK—If there were to be a significant delay in the appointment then that would put additional pressure on the other magistrates of course. Last time we met, I remember asking questions arising out of a newspaper article where it was suggested that the magistrates are very overworked and that there is a lot of stress and all those kinds of things happening. I wonder if you can give us an update on where things are at currently.

Mr Mathieson—We have always been, and continue to be, a very busy court. The court was established to deal with high volumes of less complex work. Over time, the complexity of the work that the court is dealing with has increased. When the court was established, it only had a very limited jurisdiction in family law. Today it has virtually the same jurisdiction as the Family Court, except for the appellate jurisdiction. In general federal law, the complexity of the jurisdiction that the court originally had has been considerably expanded. The thing that has changed mostly, I suspect, since we were last talking is the additional appointments. That has certainly enabled the court to handle its workload with less pressure on the individual judicial officers, but the court does remain a busy court.

Senator KIRK—Is the workload continuing to increase?

Mr Mathieson—Yes, it is.

Senator KIRK—Proportionately with the number of—I know it is difficult to make a judgement.

Mr Mathieson—In some respects it is a self-fulfilling situation in that, the more judicial officers you have, the more work you attract. The Federal Magistrates Court and the Family Court are actively attempting to restructure where the workload is being dealt with in family law. We have been implementing a program, which we call the Combined Registry Program, which will ultimately—we have a way to go yet—stream cases to the most appropriate court. Under that scenario, if we are able to implement it fully, basically all the family law will come through the Federal Magistrates Court and then be streamed by a federal magistrate to the court that is best equipped to deal with that individual case.

The raw numbers of filings that are coming through the door will increase considerably the filing workload of the Federal Magistrates Court and reduce considerably the filing workload of the Family Court. That distorts some of the numbers that you see. Certainly there is an ongoing increase in the Federal Magistrates Court workload as measured by filings. On figures for the current year to 30 April, the Federal Magistrates Court is now receiving 68 per cent of the filings in family law nationally, if you ignore the workload of the Family Court of Western Australia because it is not in the equation that we are dealing with.

Senator KIRK—How does that compare with the previous financial year in relation to family law filings?

Mr Mathieson—I have not got those numbers in front of me, but, from my recollection, it is about a 10 per cent increase on the position nationally. It is not a uniform situation. For example, in Darwin, where there is only a resident federal magistrate, the proportion of filings is at 90 per cent. In other places the proportion is much lower. It tends in some respects to follow the judicial officer availability in those locations.

Senator KIRK—It would be better if you could take this on notice, but could you provide us with a summary of how the workload has increased over the last 12 months?

Mr Mathieson—Yes. I have some statistics, which I will hand up now, which will go part of the way to explaining that. What I have just handed up is some details of the numbers of cases in the current year that have been filed and finalised, both in family law and in general federal law. It includes details of the time spans taken for cases that have been finalised, again broken into both family law and general federal law. It includes information about judgements, again broken into family law and general law, and then as a total. That shows numbers of judgements that have been delivered over the last five years. There are also some details there about the timeliness of judgement delivery and some appeal statistics, in the sense of pure numbers. But that would go a way to answering the question.

Senator KIRK—That is very helpful.

CHAIR—Are you tabling that?

Mr Mathieson—Yes.

CHAIR—Thank you.

Senator KIRK—You mentioned a moment ago the combined registry. I was asking the Federal Court a few questions about this. You say that it is in train. Is there an expected completion date—in other words, a date for when it will be completely up and running?

Mr Mathieson—I think—to not answer your question!—that it is a case of, in the managerial language, ‘continuous improvement’. We have gone a long way. I think there were some 22 separate projects within the program and we have completed the majority of them. The number that we have completed is in the high teens. However, there are a number of things that we yet need to do. We need to harmonise the rules of both of the courts, and that is a very big project. We need to resolve the streaming model. Where we are with that is that we have had a workshop in Adelaide involving the department, both of the courts and the local practitioners.

We looked at a model that had been developed through consultation across Australia and we looked at how that might be implemented in Adelaide. We came out of that workshop with a clear plan of how we might do that, and we are implementing that plan now. I am hopeful that by June or perhaps even early July, we will commence streaming in Adelaide, and that will give us information which will enable us to then look at doing something similar elsewhere.

I am sure that we are going to learn many lessons out of those implementations, which will mean that we will need to adopt other things. They are the two major remaining aspects of the program but we are certainly learning from our earlier implementations of how we can improve. We have done things such as establishing a national call centre to deal with all the telephone inquiries coming to both courts. We have removed a lot of work from the registries, which enables those staff to devote time to the handling of cases.

I just want to distinguish what I am talking about there from what you were asking Mr Soden earlier. I am talking about a combined registry in respect of the family law in that context. In terms of general federal law, we rely on the registry services and some of the services of the Federal Court, but that is dealt with in an entirely different way.

Senator KIRK—Just going back to that, can we describe what you are doing in Adelaide as a pilot project to see how that works, which may then be implemented across the states?

Mr Mathieson—Yes I refer to it as a pilot. Others use different language and put less emphasis on the tentativeness of it, but I think we have a lot of lessons to learn so I keep referring to it as a pilot.

Senator KIRK—What would be the duration of the pilot—if we can use that term?

Mr Mathieson—We have not attempted to specify it at this stage. I hope that it would be three to six months, but I do not think we are going to turn the tide back. I think that once we implement it, we will implement it and it will stay. It is just how we implement it that will be piloted. We may not necessarily have in place the same support mechanisms in 12 months time as we will have when we roll it out on day one.

Senator KIRK—What is the reason for choosing Adelaide as the jurisdiction for this pilot? Is it the size of the registry?

Mr Mathieson—There were a range of factors. Key to the proper implementation of streaming is to have the right mix of judicial officers in the location. It appeared—it is yet to be finally confirmed—that that was going to be the case in Adelaide. A judge of the Family Court was going to retire and that seemed to give the opportunity to offer up a site where we could test what we thought we needed to test.

CHAIR—Plus, of course, it is a great state! You are responding to Senator Kirk from South Australia.

Senator KIRK—Thank you, Chair. I am wondering how you will determine at the end of this project whether or not it has been successful. How do you do some kind of analysis of this?

Mr Mathieson—We are developing the criteria that we will use to test that now. We are doing that in combination with putting in place mechanisms to give us the right information so that we can evaluate it properly.

Senator KIRK—From what you are saying, by the time we meet next, which will be in November, you may well be down the track and we will be able to get some kind of feedback.

Mr Mathieson—Yes, I expect we will be.

Senator KIRK—You mentioned the harmonisation of the rules. You said that that was a very complex project and that it would take time. Do you have any guide that you can give us as to when that is likely to be completed?

Mr Mathieson—It has already started, but it has started on a fairly small scale. It started in the areas where we had to do it for other reasons. We are taking advantage of, for example, having to implement new child support rules from 1 July to work closely with the two courts. It is not a new phenomenon for us. It has been done in the past on other things, perhaps on a smaller scale in family law and a larger scale in general federal law. As one example, there are harmonised bankruptcy rules between the Federal Magistrates Court and the Federal Court. We work closely with both courts to try and ease the confusion—remove the confusion if we can—for the profession, who are, of course, dealing with matters in both courts where there is concurrent jurisdiction.

Senator KIRK—It makes me wonder why the Federal Magistrates Court rules were not drafted to reflect the rules in the other two courts in the first place. It would have saved a bit of time and effort. I know you probably cannot comment on that.

Mr Mathieson—I was not here; I was in one of the other camps.

Senator KIRK—I asked Mr Soden earlier about the report that your court commissioned: *An evaluation of services for self-represented litigants in the Federal Magistrates Court* and the various recommendations that were made there. I was interested to see whether or not any of the recommendations had been picked up by the Federal Court but, given that it was commissioned for your court, I am interested to know whether or not the recommendations have been actioned in any way.

Mr Mathieson—We have gone a long way to implement that report. Many of the recommendations have been fully implemented and, with those, ongoing work is being maintained. We are still working our way through others—some of them are more

complicated; some of them have been overtaken by other events and hence will never be implemented. However, I will give you some examples. One of the recommendations was to provide information in a variety of languages—of course, how far you go depends on what it is that you are dealing with. As an example, we are now producing a migration brochure in 11 languages. We have made modifications to Casetrack, which is the case management system that the Federal Court and the Family Court use to capture self-represented litigant data better than we were. Despite the capacity of the system, we have not been perhaps as successful in capturing that data to actually produce those statistics, because the workload involved has proven to be very difficult for our staff to manage on top of a busy workload that they already have. We are a high-volume court and that means that there is an awful lot of paper and data entry that comes out of any particular list, so we are stretched. Another of the recommendations was to review websites and provide better information targeted to the needs of self-represented litigants. We have done that. We realise we have a fair way to go, but we certainly have made some improvements in better tailoring that information for those needs.

Senator KIRK—Are you able to provide us with the statistics on the number of self-represented litigants over, say, the last two or three years?

Mr Mathieson—We will certainly provide you with what we can. I have to say that I am not all that confident in some areas. Mr Soden asked the obvious question: at what point of time do you measure whether somebody is represented or unrepresented? If you measure it at the point of filing then you can only ever measure whether the applicant is represented or not. You have no idea about whether the respondent is represented, and people change representation. We see the legal profession looking more and more at bundling and unbundling of legal services. So any point of time is not necessarily a good indicator of whether that party is represented or not in terms of what they need assistance on. But we will certainly provide you with the statistics that we can.

Senator KIRK—I am interested in the extent to which individuals who are self-represented are able to gain information or assistance from registry staff when they ask how they go about lodging their claim—whether it be by turning up at the registry or by phoning. Is any special attention given to individuals who are clearly not fully across what they need to be across in order to commence their proceedings?

Mr Mathieson—We do not provide our own registry services. We rely on the other two courts. I support what Mr Soden said earlier in response to a similar question you put to him. Both the Federal Court and the Family Court, with some assistance from us in relation to our particular needs, do a great deal to train their client service staff in how to assist litigants whom they are dealing with. As Mr Soden said, that is not necessarily in terms of simply answering the question: ‘How do you bring this matter to this court?’—depending on which court it is. It is also about answering the question: ‘What else is out there; what other avenues might there be?’ In family law there are some things that are mandated. From 1 July, you will not be able to file an application—other than in exceptional circumstances, such as situations of family violence—unless you have a certificate from a dispute resolution provider. So there are some things that are mandated, but, even where they are not mandated, the staff do a very good job, sometimes in pretty difficult circumstances, in channelling potential litigants to other avenues that might meet their needs better.

Senator KIRK—I am also interested in your website—and I have had a look at it—particularly in the information contained on it, how much can be done online by individuals and how it operates. Who is it powered by? We heard the other day that AustLII is behind the High Court website, for example. Is that the case with the Federal Magistrates Court?

Mr Mathieson—Yes. The Federal Magistrates Court does use AustLII for its judgements and it donates to the operating costs of AustLII.

Senator KIRK—What amount do you donate?

Mr Mathieson—We donate \$20,000 per annum at the moment. It was increased—I think in the last financial year—when we made a change to fully put our judgements on AustLII rather than on both AustLII and our own website with some duplication. We use AustLII for that purpose, and there is a hotlink from our site to AustLII for people who are looking for judgement information. However, we do maintain the balance of our website ourselves, partly with assistance from an external provider, although mainly with assistance from the Family Court, who pretty well provide all of our IT services. The content, of course, is a matter for us; but, again, because of the combined registry in family law we do much of the family law work in conjunction with the Family Court and we have a separate family law courts website, which has most of the generic information about procedural advice for both courts.

Senator KIRK—You said the content of your website is determined in house. Is that done by IT specialists that you have on staff or is it contracted out?

Mr Mathieson—We have a bit of both. We have a very small number of IT staff who, I suppose, have a greater focus on the analysis type functions rather than the purely technical functions. We do outsource some respects, and we rely heavily on the Family Court for support as well. We also have another product available on our website called divorce.gov.au, which enables applicants to complete a divorce application online.

Senator KIRK—That is very convenient! What kind of budget do you have in total for your website? You say you donate \$20,000 to AustLII. What is the overall budget?

Mr Mathieson—I am not sure that we can provide that information—we certainly cannot provide it today; I am not sure that we actually can separate our funding in that way. We will take it on notice and provide you with what we can.

Senator KIRK—That would be good.

Mr Mathieson—The other thing I perhaps should have said in response to your earlier question about the information, is that, as I mentioned earlier, we have established in family law a national inquiry line. The staff—and, again, this applies regardless of which court—in that call centre are also trained as to other avenues that callers could better be directed to to assist rather than locking themselves into proceedings by the court.

Senator KIRK—In relation to the judgements of the court, you mentioned that they are available by way of link to AustLII. Is that the only way that the judgements are produced by the court or are there printed hard-copy versions also?

Mr Mathieson—Printed copies are available and, of course, when a judgement is delivered a printed copy is provided to the parties in that case.

Senator KIRK—Do the parties have to pay for the printed judgement?

Mr Mathieson—No, they do not. Printed copies are available through the registry for persons who are seeking them, although they will probably be directed to the website because it is probably easier for them get it that way.

Senator KIRK—Certainly. You mentioned that the \$20,000 per year that is donated—is that the right word to use?—to AustLII increased recently. By how much did it increase and over what period?

Mr Mathieson—We were donating \$5,000 per annum for a number of years to AustLII and, in conjunction with our making the move to put all of our judgements onto AustLII, we increased our donation to \$20,000 at that stage.

Proceedings suspended from 10.30 am to 10.46 am

Senator KIRK—In relation to the payment you make to AustLII, you said that until recently your donation was \$5,000 and then you increased it to \$20,000. How did that increase come about? Was it as a consequence of a request from AustLII that a greater sum be paid by virtue of the number of judgements that are being housed by the site?

Mr Mathieson—No it wasn't; we volunteered. We thought it was appropriate that, if in fact we were going to be using the facility, we should be contributing more, and we were also in a better position to do that because we were removing some of our costs of doing it in house.

Senator, over the break, one of my colleagues has found for me some of the costs that I think will go in part to answer your question about the IT expenses. We are budgeting for an expenditure of \$216,574 for computer and internet facilities. That covers things such as software and the outsourcing of our webmaster roles. Mr Soden spoke earlier about the joint contributions that the three courts were making towards the development of My Files—I call it the Commonwealth court portal—and our contribution to that is a sum of \$200,000.

Senator KIRK—Is the \$20,000 that you contribute to AustLII listed in the PBS?

Mr Mathieson—No; it does not go down to that level of detail. Probably the best piece of information about the respective contributions is the Marcus Priest article in the *Financial Review* a few weeks back where he noted all of the various contributions to AustLII.

Senator KIRK—I noted yesterday that the High Court said that it contributed \$5,000 to AustLII. Your contribution is considerably more. Is that to reflect the number of judgements that you are contributing to AustLII?

Mr Mathieson—We think that \$20,000 is an appropriate contribution—

Senator KIRK—It is entirely voluntary, so you just say, 'I'd like to give this much,' and they say, 'Thank you'?

Mr Mathieson—Yes. We think that that amount is appropriate for the services that we get from AustLII.

Senator KIRK—It seems relatively cheap. If you were to publish your judgements on your own website—in other words, if you were to cut ties with AustLII—would it not cost considerably more than \$20,000?

Mr Mathieson—Yes, it would.

Senator KIRK—So there is quite a big cost saving there.

Mr Mathieson—Yes.

Senator KIRK—I notice that on page 372 of the PBS there is a description of some figures of your budgeted departmental income statement. It seems that there is some inconsistency between the figure of \$21.121 million that is given for the estimated value of services provided free of charge and the figure on page 373, in table 5.1, of \$13,575 million. Could you outline for me how that stacks up. There seem to be some inconsistencies. The figures do not seem to quite match the description.

Mr Mathieson—I do not know that I can explain here, now. I think it is something I would have to take on notice. It is a little confusing in the current situation because there has been a transfer of funds between the three courts which has reduced the value of services provided free of charge. I think it would take me a little time to, at least in my mind, unravel the impact of that to be able to respond to your question. I think it would be better if I took it on notice.

Senator KIRK—That would be good. Thank you.

CHAIR—I have some questions. I have been looking through your annual report for an international best practice award. Is there anything in there, Mr Mathieson?

Mr Mathieson—There is nothing I can point to, unfortunately.

CHAIR—Okay. We will look out for it next year!

Mr Mathieson—Yes.

CHAIR—You indicated in your report and verbally to us today the increase in volumes. You have tabled a document on judgement statistics. I want to have a look at that for a moment now so that you can clarify for us the increase in judgements over the last two or three years. Can you summarise that for us. I have judgement totals. The total number in 2004-05 is 2,279, at the bottom of the page. Is that correct? Is that the total number of judgements in that year?

Mr Mathieson—Yes. The increase in judgements over the last three years is primarily the result of the migration work and the increasing volumes of matters that we are finalising in migration.

CHAIR—That is what I am trying to drill down to find: specifically what increase there has been in the migration work. So that I am clear, at the bottom of the page the total for that year is 2,279. For the next year, 2005-06, it is 2,389. The actual for 2006-07 is 1,794. That is to 31 March 2007. Is that correct?

Mr Mathieson—Yes, that is correct.

CHAIR—So if we drill down we can break that into family law and general federal law. Under general federal law you have migration. So there is an increase but there does not seem to be an exponential increase. For the year 2003-04 it was 557, then it went to 1,302 in 2004-05. In 2005-06 it was 1,570. For 2006-07, to 31 March, it is 1,160.

Mr Mathieson—Yes.

CHAIR—I think you used the word ‘exponential’ increase. We have the figures from the Federal Court to say that they had thousands—I have not got the figures with me but it was a couple of thousand—and it has dropped back to 40 so far this financial year. So we have seen a huge drop. I am just wondering if you have picked up all of those or only some of those. What has happened? How do they correlate?

Mr Mathieson—I suppose the exponential increase that I was referring to in terms of the judgements is if you look at the position from 2001-02, when there were only 28 judgements—and I will not blur the situation by looking at the current year because it is only a part year—compared to the position in 2005-06, when there were 1,570 judgements in migration. That is the increase that I was referring to. I might table some other statistics which relate only to migration matters.

CHAIR—Thank you. I have the figures here for the Federal Court: in 2003-04 they had 2,591; in 2004-05, 464; in 2005-06, 128; and for this financial year to date, to April 2007, it was 40. So that is 2,500 down to 40 in those three years. That is as a result of the federal legislative changes which kicked in in December 2005, in large part.

Mr Mathieson—In 2005-06 the Federal Magistrates Court had 2,429 new migration matters filed with it. In the current financial year, to 31 March, there were 1,637 new migration matters filed.

CHAIR—You can take this on notice: can you have a look at the Federal Court figures and look at your own figures and see if they correlate. I am just interested in whether you picked up all of those or whether there has been a drop-off and, if so, for what reason.

Mr Mathieson—They are all new matters—well, hopefully they are all new matters; unfortunately, it is an area where we do get some repeat players. But in terms of applications they are all new applications. It is new business, if I can put it in those terms. There is not necessarily going to be a correlation. However, there may be a correlation in workload. We are happy to look at that.

CHAIR—You say there has been a significant increase in volume. Is the main reason for that the migration increase—is that your prognosis?

Mr Mathieson—I think there are a number of things at play. There is the volume of work that is out there in the community that has to come somewhere, and that is changing and has changed over time. Then there is the forced move: if somebody wants to bring an application post the amendments then they have to bring it in the Federal Magistrates Court. So that will force up the volume of first instance work in the Federal Magistrates Court and force down the volume in the Federal Court. But how much there is in the community is more difficult to gauge.

CHAIR—Thank you. I have a couple of other questions. In terms of the timely delivery of judgements, you have obviously had some significant improvement there in the last 12 months. I am interested to see that 96 per cent of the judgements were delivered within six months. Can you advise what percentage of the judgements were delivered within three months? Also, you have advised that three judgements were delivered more than 18 months after the hearing. In relation to those three, can you advise me now or take on notice: the matter, the time delay and the reason for the delay.

Mr Mathieson—I will take that on notice. I do not have that information with me. If you have a look at judgement delivery timeliness, you will see that the vast majority of judgements in family law are delivered almost immediately—at the end of the hearing of the matter or within a very short period of time. We can, but we do not usually, measure at three months. So I will take that on notice as well.

CHAIR—That would be great. Thank you so much. Finally, I commend you for the section in your report regarding complaints. This in my view is very important in terms of public confidence in the judicial system. You have a system in your jurisdiction which takes on board the complaints, and you have categorised those complaints. I notice that, of the 134 complaints last year, there were six fewer than the previous year and they related to the conduct of federal magistrates and chamber staff, overdue judgements, mediation, primary dispute resolution, registry issues, case outcomes and appeals, and other miscellaneous matters. How are those complaints dealt with? Can you outline for us the procedure?

Mr Mathieson—Firstly, let me say that we take all complaints seriously. We have internally set some time goals. They are that any complaint is acknowledged within seven days and that any complaint is responded to within 28 days of the acknowledgement.

CHAIR—And who responds?

Mr Mathieson—It would depend on the nature of the complaint. The majority of complaints are responded to by our registrar, who is our in-house counsel, in general parlance; some are responded to by me; and some are responded to by the Chief Federal Magistrate. It will depend on the nature of the complaint as to where we see that that complaint should be best considered and responded to.

CHAIR—I notice in the report you say that any complaints should be addressed to the chief executive officer.

Mr Mathieson—Yes. Many, of course, are not; many, particularly if they involve a judicial officer, are addressed to the Chief Federal Magistrate.

CHAIR—The way I interpreted the response by Mr Soden from the Federal Court earlier was it was the Chief Justice of the Federal Court in all cases, but we can get clarity on that. But you are saying that it depends on the type of complaint.

Mr Mathieson—Yes.

CHAIR—I am also interested in the magistrates themselves where there is some conflict of interest, misdemeanour, speeding offences, concern or problem that would damage the public confidence in the court. What procedures do you follow in dealing with those concerns?

Mr Mathieson—Mr Soden has already mentioned the *AIJA Guide to Judicial Conduct*. We likewise believe that that is a very useful and valuable document to assist federal magistrates. Certainly our practice is that any incoming federal magistrate is provided through their initial induction with a copy of that publication. The AIJA within the last month has released a revised version of that publication and we have—I am not sure that they are actually on their desks as I speak now—certainly acquired and are distributing the revised version to all of our federal magistrates.

CHAIR—I will certainly have a look at the revised guide. Is there anything in the revised guide that is different from the former guide?

Mr Mathieson—There is better clarity in respect of some things, but there are no revelations or revolutions in terms of the guidance that it provides. As Mr Soden said—and I think this is true of all federal judges and probably all judges in Australia—a lot of consideration is given to conflicts. There will be disclosures if there is any concern. There will be disqualification, by the individual concerned, from any further involvement in a matter if they have concerns. We certainly see it in our court, where federal magistrates will disclose and will disqualify themselves. We have already spoken about the complaints system. If a complaint questions any aspect of a federal magistrate's partiality, or a bias, that will be drawn to the attention of the Chief Federal Magistrate, and the Chief Federal Magistrate, if he considers it appropriate, will have a discussion with the federal magistrate. The Chief Federal Magistrate does not have the power in terms of the exercise of the judicial function to give a direction to a federal magistrate, but at a head-of-jurisdiction level there certainly can be a discussion about it.

CHAIR—Has that occurred within the last 12 months?

Mr Mathieson—I am not privy to those discussions, so I cannot say categorically whether it has or has not occurred, but I believe that some discussions have taken place. These are often initiated by—forgetting the complaints process—the individual judge, who seeks the guidance of the head of jurisdiction about how he or she should behave in a particular circumstance.

CHAIR—So it is more of a counselling type of process.

Mr Mathieson—Mentoring, I would say, rather than counselling.

CHAIR—Would you say, if you wanted to be technical and legal about it, that in every case the disqualification occurred as a result of the individual's self-disqualification rather than by the chief judge or by some committee?

Mr Mathieson—It certainly cannot occur by the Chief Federal Magistrate. He has no power to do that. It will be as a result of an individual federal magistrate deciding that he or she should not have any further involvement in the case and disqualifying themselves. Sometimes it may be after hearing the parties. An objection may be raised in the courtroom, circumstances may be brought to the attention of the federal magistrate or an argument may be put to the federal magistrate.

CHAIR—In a case where a judgement has not been delivered for 18 months, what would happen? Would there be counselling with that judge?

Mr Mathieson—That would not be a matter for disqualification. The disqualification would be from being involved in a matter.

CHAIR—A conflict of interest matter, yes. But I am moving on to a separate issue, in terms of the delivery of judgements and the timeliness of it. Eighteen months seems like a long time to be waiting for a judgement, and I am sure the public would see that as so. What methods and procedures do you put in place to improve timeliness?

Mr Mathieson—We have a time goal that all judgements will be delivered within three months. Like all time goals, it is aspirational rather than mandatory, but that is the goal that everybody is working to. To some extent, that is self-policing. With the size of the court as it is now, it is simply impossible for the Chief Federal Magistrate to be managing all of the issues that are involved. He has delegated, largely on an administrative basis, some of those responsibilities on a regional basis to other federal magistrates. We have coordinating federal magistrates, and part of their function is to monitor what is happening with reserved judgements in their region and to offer assistance if the workload of a federal magistrate is preventing him or her from getting to writing judgements, rescheduling matters to give them judgement-writing time, which might assist. The coordinating federal magistrate takes responsibility for that.

CHAIR—Would those sorts of procedures kick in once the three months—

Mr Mathieson—As soon as the three months are up. At a more formal level we produce a monthly report of all judgements that are more than six months old. That goes to the Chief Federal Magistrate. Legal practitioners and parties over the years have expressed to all courts a reticence in coming forward and saying, ‘This judgement is more than six months old,’ or 12 months old or 18 months old, for fear that that might impact on the final result that they get when they get it. Most courts, and certainly we are in that category, have an arrangement in place where practitioners can raise an issue with the head of their representative body—the law society for solicitors and the bar association or bar council for barristers—and the issue will be raised with the head of the jurisdiction without identifying which particular party it was in the matter. It just gives them more confidence. We have that arrangement in place.

CHAIR—Do you meet with them quarterly or monthly? How does that work?

Mr Mathieson—On a regional level there are regular meetings. The Chief Federal Magistrate and/or I will meet with representative bodies when we can. We will more often than not meet with the law council rather than the individual; for example—now Senator Kirk has gone, I can perhaps say it—the Law Society of South Australia. So there is that ongoing liaison. If necessary, the Chief Federal Magistrate will speak to individual federal magistrates. If necessary, the Chief Federal Magistrate or the coordinator will give a federal magistrate time out of court so that they can attend to outstanding judgements.

CHAIR—That is very helpful. I appreciate your feedback. Where I am coming from is public confidence in the system and the public being confident that you have the procedures in place to deal with these types of issues—the timely delivery of judgements and so forth. Are there any other key benchmarks in terms of performance or building public confidence that you have in place and that you would like to explain to the committee or that we should be aware of? I have looked at your annual report, your governance procedures and your complaints procedures and so on. Are there any other key benchmarks or key performance indicators that we should be aware of and the public should be aware of that we are not?

Mr Mathieson—The key one is probably that we have another time goal that all matters will be completed within six months. Again, it is aspirational. It is our goal. We are not fully achieving it but we are going a substantial way towards achieving it. In 2005-06, 89 per cent of family law matters were resolved within six months and in the current year 89.33 per cent

of family law matters were resolved in that time. In general federal law in 2005-06, 66.7 per cent of those matters were resolved within that time. In the current year it is 68.32 per cent.

CHAIR—Are there any other questions? Thank you for your time and attendance here today. We appreciate it.

Mr Govey—Chair, I wonder if I could qualify some of Mr Mathieson's comments in relation to appointments, which came up earlier?

CHAIR—Yes, Mr Govey.

Mr Govey—As Mr Mathieson mentioned, there have been a considerable number of appointments during the course of the financial year. Indeed, on our count, there were 16 federal magistrates appointed to the court during the year. I think it is worth saying that the number of new appointments means that it can be quite difficult—indeed, somewhat artificial—to talk in terms of who has replaced who when a particular magistrate has retired or resigned. I thought that was a point worth making in terms of the query about replacements and retirements. The other thing I should mention is that we understand that the Attorney-General does have some further appointments that are in the process of being finalised, so the process of new appointments is not completed yet.

CHAIR—Thank you for that feedback. Thank you very much, Mr Mathieson, and your colleagues.

[11.16 am]

Family Court of Australia

CHAIR—Welcome, Mr Oliver, and your colleagues. Thank you for being here.

Senator KIRK—I would like to get an update on where the court is at with its judicial officers—the change that may have occurred in the period since we last met; that is, appointments, resignations, retirements and the like?

Mr Oliver—Richard Foster has written to the committee and gives his apologies for not being here. He is overseas. He does pass his apologies on in that regard. As of May 2007, in the first instance there are 32½ judges—the half is, of course, one of the judges who sits on both the appeals bench of the court and hears first instance matters. In the appeals division of the court we of course have the Chief Justice of the Family Court of Australia; the Deputy Chief Justice, who sits half the time on the appeals bench; and six judges. There are a total of 40 judges at present, as of May 2007. We have four judicial registrars and one senior registrar in the court at this point in time. I can go through the recent appointments and retirements if you wish. From roughly when would you like that information?

Senator KIRK—In the last financial year might be helpful, thank you.

Mr Oliver—Justice Lawrie retired on 9 March 2007, Justice Murray retired on 16 December 2006 and Justice Buckley retired on 31 August 2006. There was one judicial registrar retirement: Judicial Registrar Ramsden, who retired on 3 July 2006.

Senator KIRK—Thank you. Of those retirements, in relation to the judges particularly, were those individuals replaced with others? I am trying to work out what has been the total

change in the membership of the court. You say it is currently 40. Has that gone down as a consequence of these retirements or have they been replaced?

Mr Oliver—No, the total number of judges in the Family Court of Australia has gone down since June 2006. The total number of judges in June 2006 was 41 and the total number in May 2007 is 40. I can go through the appointments this financial year if you would like.

Senator KIRK—That is okay. I am actually more interested in the overall number. So it has gone down by only one in 12 months?

Mr Oliver—Yes.

Senator KIRK—I am not sure if you are able to answer this, but is it intended that the number will increase again to 41 or beyond, or for the short term is going to be at 40? I suppose it is for the government to answer that.

Mr Oliver—I cannot answer that. It is a matter for the government.

Senator KIRK—Perhaps I can ask the government minister whether it is intended to increase the number to 41 again or is the number on a steady decrease?

CHAIR—Minister, could you take the question from Senator Kirk as to the number of judges to be appointed in the next 12 months?

Senator KIRK—I suppose I am interested as to whether it is going to go back to 41 or if it is intended to leave it at 40 and allow the numbers to steadily decrease as there are retirements.

Senator Johnston—That is a matter for the Attorney, of course, and I will take it on notice and put it to him.

Senator KIRK—Thanks. I am also interested as to the shift of work that is obviously occurring from the Family Court to the Federal Magistrates Court. I think I was told earlier today that approximately 68 per cent of family law jurisdiction is now finding itself in the Federal Magistrates Court.

Mr Oliver—I can give a little information on that.

Senator KIRK—That would be helpful. Thank you.

Mr Oliver—Clearly, for the year 2006-07 this is a projected number and I do not in any way dispute the number that Mr Mathieson gave you. Ours varies slightly but that is probably because of the nature of the timing and so on. The number of projected transfers for the 2006-07 period from the Family Court of Australia to the Federal Magistrates Court will increase over the 2005-06 period from 1,200 matters to 2,100 matters. This would be an increase in matters transferred from the Family Court of Australia to the Federal Magistrates Court from 62 per cent of total transfers to 74 per cent of total transfers.

Senator KIRK—Obviously, that is impacting on your court considerably, given that the workload is reducing, which brings me back to the number of judges you have. I notice that, as we have established over the last 12 months, the number of judges has stayed fairly much the same but the workload is decreasing. Is that fair to say?

Mr Oliver—It is misleading in that the Family Court of Australia, as you may well know, is moving to handling the more complex family law matters. We are losing judicial officers. The net number is one less, but there has been quite a sizeable increase in the number of federal magistrates, so we have an increase in the complexity of the cases that we are dealing with. We also have worked very hard over the more recent period to go into our pending case inventory and deal with, bring forward, transfer, some of the most longstanding cases in the court to the Federal Magistrates Court. So it is a combination: you cannot simply say that the workload of the Family Court of Australia is in any way decreasing; what you can say is that, with the Family Court moving to handle the more complex family law matters, those matters clearly by the nature of their substance take longer to handle, they are more complex and they take more judicial time. We do not see that the work of this court is decreasing; what we see is that the work of the court at present is relatively stable.

Senator KIRK—But there must have always been throughout time cases which had a degree of complexity. That would not have changed, so I do not really follow what you are saying, because there always would have been a number of complex cases. I understand that the division between the Federal Magistrates Court and the Family Court of Australia is the complex versus the less complex, but there have always been complex cases for the Family Court to determine.

Mr Oliver—That is true. I might preface my remarks a little by pleading some ignorance. I have been at the Family Court of Australia for a total of three months—I think it is just coming up to my 12th week. I am not as well versed in the corporate history of the staffing numbers across many years but I understand that in the past the court has had a significant number of senior registrars, more judicial registrars and a greater number of judges to handle the volume of work that the court now finds itself with.

In recent years the number of judges has come down. Clearly, the government, for its own very good reasons, has not chosen to replace some of those judicial officers. Similarly, some years ago senior registrars who used to participate in the judicial process did so no longer. To a large degree their position disappeared out of the corporate structure of the court, and of course, as we have seen, there has been a decrease in the number of judicial registrars that are able to assist with the less complex matters in the court. So, as we move forward, we as a court are transferring a whole range of matters to the federal magistrates' jurisdiction and I think there is still work to be done on the definitional line between what is complex and what is not complex. Therefore what might be considered to be some less complex matters remain in the Family Court of Australia. The total quantum of cases that remain in the Family Court of Australia is still substantial and we are handling that work with considerably fewer people than we had some years ago.

Senator KIRK—Over the seven-year period since the creation of the Federal Magistrates Court what has been the decrease in the number of judges? In other words, in 2000 how many Family Court judges did you have and how did that number steadily decrease?

Mr Oliver—I would have to take that on notice. I do have figures that go back to June 2005, but predating that I could answer that question on notice very easily.

Senator KIRK—If you would that would be helpful. Is it fair to say that your figures indicate that the efficiency of the court has increased as a consequence of the creation of the Federal Magistrates Court? You indicated that now the majority of the more complex cases are being dealt with by the Family Court. But are complex cases, taking that description, now being handled more efficiently and more quickly with the turnaround time for the cases decreasing?

Mr Oliver—I think probably the best way to answer that is to say I do not think it is appropriate for me in any way or specific sense to comment on what you might roundly say is judicial productivity. I think that is a matter for the Chief Justice of the Family Court. Chief Justice Bryant is ultimately responsible for the administration of the court and for ensuring that the workload of the court is as effectively carried out as the resources provided to the court permit. I think that in this regard the Chief Justice ensures that the available hearing time is maximised as best she is able to do and that judges are available to sit and hear cases having regard to the workload and the other requirements on judges—for example, case management functions and maintaining judicial availability after hours to deal with urgent matters and personal needs such as leave. This is really a matter for the Chief Justice of the Family Court of Australia. I do not think it is within my purview to comment on judicial productivity.

Senator KIRK—But you must keep some kind of figures—I am sure you do—as to the number of cases that are finalised in, say, a six-month period or a 12-month period.

Mr Oliver—We do. I made the comment a little bit earlier that we have worked extremely hard to lessen the number of cases in our pending case inventory. For your information, in the past 12 months the number of cases nationally in the determination phase in the pending case inventory has been reduced by 1,495. In the process the court is reaching what we consider to be some of the oldest cases. This is reflected in the increase of time from filing to trial commencement. There is a very small increase in the amount of time there. Sorry, would you go back to the last part of your question?

Senator KIRK—I suppose what I am trying to get at here is this. Given that so much of the less complex work is being transferred to the Federal Magistrates Court, one would have thought that the complex matters that you are left to deal with as being within the purview of the Federal Court of Australia, given that resources have increased as a consequence of the shift of the other matters, ought to be dealt with more quickly and more efficiently. I wonder if you have been tracking over time, as matters have shifted to the Federal Magistrates Court, whether or not the matters that you do have within your court have been dealt with more expeditiously.

Mr Oliver—In terms of the most recent period, I think what we can say is that, for instance, during 2005-06 75 per cent of final order applications were disposed of within 17 months of being filed. That is a statistic that we have. Funnily enough, that compares with 17 months year to date during the 2006-07 period. If you want figures that go back over a longer period of time, I am very happy to take that as a question on notice and come back to you on that. We can provide that information as we certainly do have that information but we tend, for the purposes of the estimates briefings, to concentrate on the more recent years.

Senator KIRK—I would not mind if you could take that on notice because I would like to look at it over the period of the seven years since the creation of the Federal Magistrates Court. Since the introduction of the family relationship centres, what impact, if any, have you seen on the workload of the Family Court?

Mr Oliver—As you would be aware, the section 60(i) compliance certificate is required as from 1 July 2007 and means that people must have gone to a family relationship centre or a recognised alternative dispute resolution provider. We do not perceive at this point in time that there has been a significant decrease in the level of work. We still see people come through the door and speak to the Family Court of Australia in the first instance. We are putting in place measures to ensure, as people come through the door and begin to lodge documents, that we check the compliance of that certificate and ensure that they have been to a dispute resolution provider. We are not collecting statistics on that at this point in time but, anecdotally, we do not notice a sizeable decrease in the level of our clientele simply because of the family relationship centres. In the relatively short period of time that I have been at the court, I have visited the regions where we have registries. I have met some of the people that are working in and providing the services in the family relationship centres and they speak very positively about the processes that are enabling them to assist people. The clear-cut relationship between numbers of people visiting family relationship centres and the Family Court of Australia at point of filing is not clear at present.

Senator KIRK—FRCs have only been around for a relatively short time?

Mr Oliver—Yes, they have and there are, I think, only 15 of them with more to come on line from 1 July this year.

Senator KIRK—You said that it is from 1 July that the compliance certificates are going to be mandatory. Is that right?

Mr Oliver—That is right.

Senator KIRK—I have asked a few questions today about self-represented litigants in the various courts. Do you keep figures as well on the number of self-represented litigants and, if so, how do you go about measuring them? I had the exchange with Mr Mathieson I think it was and he indicated—

Mr Oliver—I can draw a sort of a general picture for you. The figures that I give you will not be in raw figure numbers but will be in percentage figures. During the 2005-06 financial year 36 per cent of trials were conducted where at least one party was self-represented. These are 2005-06 figures, I do not have year-to-date figures for 2006-07. The percentage where both parties were represented in our cases for the 2006-06 period was 64 per cent. The percentage with at least one party self-represented was 36 per cent. There were a number of other categories. The percentage of matters filed where no party was represented was six per cent. The percentage with only the applicant representative present when the matter arrived at its first hearing was 18 per cent. The percentage with only one respondent represented if present was 12 per cent.

Senator KIRK—You may need to take this on notice. I would be interested to see the comparison of the figures that you have just given me with previous years—2004-05, 2003-04.

Mr Oliver—I can give you that comparison now if you like.

Senator KIRK—That would be beautiful. Yes, thank you.

Mr Oliver—You asked a question about self-represented litigants. The proportion with at least one party self-represented in 2003-04 was 45 per cent; in 2004-05 it was 40 per cent, and in 2005-06 it was 36 per cent. So the number of self-represented litigants for the Family Court of Australia is decreasing.

Senator KIRK—What do you attribute that to?

Mr Oliver—Primarily, to a move in the Family Court to hearing the more complex cases—and the more complex the case the more likely the parties are to be represented, in our view.

Senator KIRK—I was asking questions earlier about the report that was commissioned by the Federal Magistrates Court about the evaluation of services for self-represented litigants in the FMC, and the recommendations that came out of that. Primarily, of course, my questions went to the FMC and whether they had implemented the recommendations. I wonder whether your court has taken notice of this report and whether any of the suggestions that were made in there had been implemented in your court. Perhaps this may account for some of the decrease in the number of self-represented litigants.

Mr Oliver—I am broadly aware of the report you are talking about but I cannot necessarily link what we do in the court back to an outcome in that report. I can talk more generally about what we do to assist self-represented litigants.

Senator KIRK—That would be helpful.

Mr Oliver—I suspect that much of the implementation of what the court has put in place in the more recent years ties back to that report but, as I have only been around a couple of months, I am not as familiar with that report as I possibly should be. We have developed a training package and delivered that package to all court client service staff to assist them to understand what information they could and could not provide to self-represented litigants. We have developed a pamphlet. I have one and I am quite happy for you to have a copy. It is about what the Family Law Court staff can and cannot do for clients. It is quite simply written so that if a self-represented litigant comes up we can talk to them about what we are able to do and not able to do. We give them a pamphlet.

We have also developed information in collaboration with our colleagues in the Federal Magistrates Court and other agencies, which is available to self-represented litigants on the Family Law Court's website. You would know that that is www.familylawcourts.gov.au. We also provide assistance for self-represented litigants with preparation for trial. All self-represented litigants are contacted by phone and through a letter to offer procedural assistance with preparation for their trial. That letter is written to them and the offer is made, if they require or would like it. You would also be aware that the court is moving to a less adversarial approach to managing cases, particularly those involving children. The whole less adversarial approach provides a trial process that is easier for self-represented litigants to understand and negotiate, for children's cases only. We have those assistance avenues for people who present either through our national inquiry centre or at one of our client service counters in the

registries that we have around the country. As to how those tie back to the report that you spoke about, I have not been around long enough to know.

Senator KIRK—That is fine. The information contained in the brochure that you referred to would be on your website?

Mr Oliver—It is.

Senator KIRK—Do you keep any sort of record or are you able to track the number of hits you have on your website every year?

Mr Oliver—We will be able to do that and I can provide that on notice for you. Unfortunately, our chief information officer is not in attendance at the estimates hearing today but we can certainly provide that information for you. I have no doubt that the court keeps those statistics.

Senator KIRK—That would be helpful. I have been asking questions this morning about AustLII and the relationship between it and the various federal courts. I understand that the Family Court also publishes its judgements via AustLII.

Mr Oliver—It does.

Senator KIRK—Over what period of time has the court been doing that now?

Mr Oliver—I was looking for a precise date from my colleague. I am not sure precisely how long we have been making a contribution to AustLII, but we have certainly made it over the immediate past years.

Senator KIRK—How much does the Family Court donate to AustLII?

Mr Oliver—Ten thousand dollars per annum.

Senator KIRK—How did you arrive at that figure?

Mr Oliver—With three months under my belt, I cannot answer that question. I could certainly try to provide an answer for you on notice. I suspect it was in early discussions with the organisation itself about what was considered to be fair and reasonable for us lodging our judgements on the AustLII site. I think it was probably simply a result of those early discussions.

Senator KIRK—Has it remained at \$10,000 for the recent past?

Mr Oliver—Our contribution has always been \$10,000. As far as I understand it, we go back some five years or more with that contribution.

Senator KIRK—That is in relation to the judgements. What about the remainder of your website, the content aspect: is that developed and maintained in house or is it outsourced?

Mr Oliver—It is maintained in house. We are predominantly an in-house IT environment. We do not have in any way a large IT staff. We have a mixture of people who work for the Family Court of Australia and assist us in a contracting capacity. I am sorry, I do not know the precise numbers of staff in our IT environment. I could provide you with that information on notice. I think it is around 40 to 45 staff members. As I say, we use a combination of consultants to assist those staff but we are predominantly serviced by our in-house team.

Senator KIRK—What proportion of your budget is directed towards the maintenance of the website, taking into account the number of staff that you have there and the associated costs?

Mr Oliver—I will have to take that on notice. I cannot answer that question.

Senator KIRK—Thank you. That is all I have.

CHAIR—I want to follow through with some questions that I asked earlier courts. They relate to the timeliness of the decision or resolution. I have had a look at your annual report. It is not abundantly clear to me how you measure that. The report does explain it to some degree. Can you provide further and better particulars on the timeliness of the decision or the resolution?

Mr Oliver—I can provide information on judgements that you would call reserved judgements—in other words, the time between when the matter has been finalised and the hearing has concluded and when the judge passes a determination on the case. I can provide you with information on that. We strive to finish first-instance reserved judgements within three to six months. I have figures that I can provide you with for a period between three and six months and a period of more than six months, for more recent periods: April 2006, June 2006, June 2005, June 2004. Would that assist you?

CHAIR—Yes, it would. As I asked others: could you give us an indication of how many there are in excess of the six months and the reasons for the delays. I would like to know what those figures are as well, if you could take that on notice.

Mr Oliver—We can certainly do that. I can give you the time that each reserved judgement has taken for those periods. But clearly the cases that stretch past the six months stretch past the six months for a variety of reasons. It may be because further information is required from the applicants; it may be because of sickness on the part of the judicial officer; it may be because of the complexity of the case. It is for many and varied reasons, but I can in fact provide that information.

CHAIR—Could you identify the reasons? Thank you. Do you have a complaints procedure? It is not overtly clear in your report or not that I can see. Do you have one and how does it work?

Mr Oliver—Like my colleagues in the other court—and, as I said to Senator Kirk, I have not been at the court for an extensive period of time so some of this corporate history is a little unclear to me—we abide very strictly by the protocols established for judges and developed by the Council of Chief Justices. The Family Court of Australia does have protocols for its judges to declare their conflicts of interest and like potential concerns.

CHAIR—I am about to come to that. Can we just deal with the complaints. Do you recommend that complaints be forwarded to you?

Mr Oliver—We do.

CHAIR—If so, how many complaints do you have, what types of complaints do you have and how are they dealt with?

Mr Oliver—There is a process for the handling of complaints. In relation to complaints regarding judicial officers, those complaints quite often come to a variety of sources within the court. They might come to the chief executive officer. They might go to the Chief Justice herself. They might come to one of our registries. But when they are about a judicial officer they are always forwarded to the Chief Justice of the Family Court. The Chief Justice then has her own internal mechanisms for the investigation or examination of that complaint.

In relation to court administration more generally, the complaint is always forwarded to the chief executive officer of the court who may then, and probably quite often does, pass the complaint to my nominal position, which is executive director, client services, for the court. As executive director, client services, I would work with the regional registry managers to examine and consider that complaint. I do have some statistics that I would be happy to provide for you in terms of the number of complaints received by the court.

What we try to do is examine complaints from two perspectives. Within a complaint quite often there are a number of issues raised, so we do actually record statistics on the number of complaints and what we consider to be the number of issues raised within any one complaint. For the 2006 year to date the court has received 182 complaints compared to 220 complaints for the same period in 2005-06. The total number of those complaints represents less than one-half of one per cent of all applications received by the court. We acknowledge complaints within five days and ensure that the complaint is replied to within 20 days of receipt of the complaint.

You asked about outstanding complaints. There are currently 35 replies outstanding—that is, 29 are beyond the 20 days and the delays inevitably are due to a lack of technical support, sometimes staff turnover or an inability to focus as quickly on the examination of a complaint as the court might like simply because the appropriate officer is not available to do so. But we certainly do keep the complainant informed as to the progress of that particular complaint by both correspondence and telephone.

CHAIR—If you can take it on notice, I would like to know the nature of the complaint if you could advise me in due course in terms of those figures that you have provided to us. The Federal Magistrates Court annual report has a section that is probably a good indicator for you as to what I am seeking. Could you take that on notice?

Mr Oliver—Certainly.

CHAIR—Just going back to the *Guide to Judicial Conduct*—this is the point that you were alluding to earlier—I am interested to know if this is the key document that is abided by in your court. If that is the case, can you confirm that?

Mr Oliver—I will ask my colleague Ms Teresa Kane, who is acting in the place of our principal registrar for the court, if she can add anything to this, but I cannot, I am sorry. What I would need to do is go back and find out, give some further consideration to the processes that we do have in place and give you a more fulsome answer. Teresa may or may not be able to add to what I have already said.

Ms Kane—Senator, I can assist in that I am also aware of the *Guide to Judicial Conduct*. It has been distributed to the judges within the court and does form the basis upon which those

matters are considered within the court. That is probably the greatest extent of the information I can provide to you today.

CHAIR—Thank you.

Senator LUDWIG—I was just looking at the progress of the combined registry with the Federal Magistrates Court. The Federal Magistrates Court is now accumulating a range of jurisdictions other than Family Court matters; it is doing a range of matters including bankruptcy. It struck me that the original impetus for the combined registry was that the Federal Magistrates Court was going to do, and it still does, a lot of the primary Family Court dispute resolution matters, except that you now have family relationships centres which will do non-court mediation and the like. In terms of the combining of the registries, how will you cope with or deal with the fact that the Federal Magistrates Court now has a broader range of tasks? In other words, the synergy between the two may have been, in my words, more relevant when it was more of a primary Family Court oriented court.

Mr Oliver—My response to you would be that the Family Court of Australia had a combined registry project with 18 subprojects that were very much focused around family law matters. So we have a very strong collegiate relationship with our colleagues in the Federal Magistrates Court on family law matters and we are working towards a combined registry, primarily around family law matters. I note Mr Soden's comments a little earlier in the day that in our registries you can now file federal law matters in a number of our registries where there is no presence of the Federal Court. To date, that capability has been used very little by applicants filing in a family law courts registry attempting to file Federal Court matters in a family law courts registry, but the capability does exist.

But in the context of a combined family law registry, as I say, some time ago when the project was first set in place there were 18 subprojects to that, 13 of which are completed. The remaining five are well advanced and ongoing. Some of those relate to things like where the court goes with its business into the future, and the need to clarify some process issues for the handling of businesses within the family law courts base going into the future. I can, if you would like, give you a very brief rundown as to the sort of projects that I am talking about. But, in essence, we are well advanced in the combined registry family law courts project.

Senator LUDWIG—It would be helpful, and also to understand what needs further work—in other words, are all the registries now combined or are there still some separate?

Mr Oliver—Predominantly they are all combined now; they are family law court registries. I will very quickly run through them. The first of the projects was around telephony, and the purpose was to improve the family law courts telephone system by creating a toll-free 1300 number and a family law telephone inquiry centre. We now have a fully operational national inquiry centre, a 'one point of contact' for family law matters. That national inquiry centre is located in our Parramatta registry. It is an inquiry centre that handles matters for both the Federal Magistrates Court in family law matters and the Family Court of Australia in its matters. That is completed. It is a fully functional system that has been outstandingly successful, in our view.

The second is an after-hours service. The purpose of that after-hours service project was to provide registrar support to the federal magistrates on an after-hours duty basis and registrars

to provide the same level of after-hours services provided to Family Court of Australia judges. As of 24 December, registrars now provide that level of support to the federal magistrates, and so we see that project completed to a large degree but ongoing, and we continue to provide the service.

The third of the projects was around a single hard-copy file. The purpose was to integrate the Family Court of Australia and the Federal Magistrates Court of Australia hard-copy files into one family law file cover. That arrangement was introduced into registries on 1 January 2007. So we see now that that is predominantly complete.

File transfers was another small project within the wider environment. The purpose was to improve the system of transferred files between state courts, the Federal Magistrates Court of Australia and the Family Court of Australia, and between the Federal Magistrates Court and the Family Court. So that to a large degree is also complete. Changes to Casetrack have occurred, allowing for the improved process. The family law courts have provided state courts with advice regarding the transfer process, so predominantly we see that as, to a large degree, complete.

The purpose of the family report working groups was to determine an improved system for the allocation of resources for the production of family reports between the Family Court of Australia and the Federal Magistrates Court of Australia. Working groups produced a range of recommendations about the piloting of a new style of family report based on a hybrid of the Canberra registry approach and the new child responsiveness model. The original pilot was conducted in Sydney, Dubbo and Canberra, and recommendations have been made from that evaluation. At the end of the day, although there will be further work carried out there and that work remains ongoing, it is about the remaining clarification of how the two different court organisations are going to operate. So we see that as not complete yet but ongoing, but there is a fairly sizable amount of work that has been done there and, to date, both courts are relatively happy with the progress.

In relation to the internet, one of the projects was to create a new family law courts website, and I am sure you have probably had a look at www.familylawcourts.gov.au. The website went live on 1 July 2006, providing a single point of web entry for the family law clients. That is up and running and well advanced.

There was a project to revamp our intranet. The fundamental purpose was to redevelop the Family Court of Australia intranet, develop a Federal Magistrates Court intranet and create shared family law content for each of the intranets. The first site went live on 31 October 2006, with all sites live as of 10 November. So we see that as predominantly complete and we simply continue to work with our colleagues in the Federal Magistrates Court to ensure that that is a high-standard product available for all staff in both courts.

There were a number of projects around communications. It was really to create a new, consistent visual theme for all family law courts and web content, and also to ensure that all family law courts published publications content in as generic a form as possible so that the Family Court of Australia and the Federal Magistrates Court of Australia had generically standard forms. To a large degree, most of the little internal projects within that space have been completed, but we do see that there is a continued refinement of some of those forms

and communication strategies. That is one of the 18 that I would see as ongoing and not complete but well advanced.

There was a project to standardise where appropriate a range of letters used by all registries handling family law matters. The number of letters used by registries has reduced significantly. All content has been rewritten and updated in accordance with the legislative and other changes, so we see that as complete and we see letters used by the family law environment as now standard. There are procedural matters that we have moved to re-examine. The purpose was to redesign the internal manual, formerly our case management manual, detailing operational procedures to include changes in process and to improve the use and content of these manuals. The redesign has been completed and the management of the manual has been handed over to the National Enquiry Centre. We see to a large degree that smaller project as complete.

I have already mentioned the combined registry model. We are in effect in a combined registry. The model was also to improve the efficiency of dealing with family law matters by implementing a new case management pathway. This is one that is not yet complete. There continues to be a significant amount of work done in redesigning and agreeing the case management pathway for family law matters. My colleague Mr Mathieson said that a workshop was held on 1 February 2007 in Adelaide with a view to introducing a streaming pilot at that location. Primarily there was agreement reached, with recommendations to the Family Law Courts Board to adopt the proposed streaming model for implementation. It is intended that as far as possible that streaming model will commence in very early July 2007. The first of the steering committee meetings for the streaming model was very recently held and there was general agreement by the group to move forward with the model that is being currently considered.

Regarding alignment of support to the new streaming model, clearly there is a lot of work still to be done within the law courts environment to ensure that our processes are consistent with whatever models the family law space implements. Work is to a large degree continuing on that. The project in itself was really around developing pilots to support federal magistrates, involving registrars and our child dispute services family consultants to ensure that the support for registry clients in the form of staff procedures and structures is aligned with whatever new model is put in place in terms of streaming business into the family law environment. The greater part of the alignment work is complete but there are still some matters needing final agreement in terms of that model.

With signage, to a very large degree we have strived in the intervening period to ensure that all family law court registries are badged in that way. They are no longer badged as Family Court of Australia or Federal Magistrates Court registries. So we see, I think with the very minor exception of a couple of signs to be changed over, that as a project that is primarily complete.

Senator LUDWIG—I just want to stop you there. Does the badging include the registry for the Federal Magistrates Court as well, then?

Mr Oliver—That is right.

Senator LUDWIG—So the badging will be ‘family law courts’.

Mr Oliver—That is right.

Senator LUDWIG—And that is all but done?

Mr Oliver—All but done.

Senator LUDWIG—Thank you.

Mr Oliver—I will very quickly round these off. As both Mr Soden and Mr Mathieson have commented, the Family Court of Australia has worked collegiately with the other two courts, particularly to ensure that Casetrack is able to service the Federal Magistrates Court in family law matters, but we have also worked extensively with the Family Court of Australia to ensure that Casetrack as a basic application is available for all of the courts. To a large degree, apart from continuous improvements that will be made to the Casetrack system, that as a project is complete. Certainly Federal Magistrates Court staff and Family Court staff in the family law environment all use the one Casetrack application.

I have already mentioned the developments along the lines of a single application form and greater consistency of forms. To a large degree we see those projects as complete. The forms are now consistent across the family law environment. Rules harmonisation is an ongoing project that is yet to be completed. It is about ensuring that courts have harmonised rules. Both Mr Soden and Mr Mathieson have made comments about it already and, as you are aware, there is still further work to be done. The project on criteria for certification and transfer is about identifying matters that should be dealt with by each court, and we have established a working group. In the normal scheme of the family law environment business that remains ongoing. It is one of the outstanding 18 projects.

The last of the projects that I would make a brief comment about is our statistical reporting process. This is about identifying effective methods of statistical reporting to the Family Law Courts Board. As you know, the Chief Executive Officer of the Family Court of Australia, the Chief Justice of the Family Court of Australia, the Chief Executive Officer of the Federal Magistrates Court and the Chief Federal Magistrate form the membership of the Family Law Courts Board. To a large degree the need for a common statistical reporting base to the Family Law Courts Board is also complete.

Senator LUDWIG—Are there any registries which are not combined?

Mr Oliver—No.

Senator LUDWIG—The annual report indicates that ongoing work is also taking place to ensure consistent management of Magellan cases in the court's registries. Is that project continuing?

Mr Oliver—It is continuing. I can give you a very brief snapshot of where we are up to with Magellan if you would like me to.

Senator LUDWIG—In doing so, could you also mention its interrelatedness, if any, with the family relationship centres. They will obviously be the first port of call for families. They will have three hours of compulsory mediation and then get to your court if they have not already resolved the matter before then. At that point, as I understand it, Magellan might kick in.

Mr Oliver—My understanding is that Magellan matters can be lodged directly without a certificate of compliance and without needing to go to a Family Relationship Centre.

Senator LUDWIG—That is what I wanted to understand.

Mr Oliver—Those matters can be filed directly with the Family Court of Australia, and the Magellan matters, as you are aware, are not handled by the Federal Magistrates Court; they are handled within the Family Court.

Senator LUDWIG—Yes.

Mr Oliver—So those matters can come straight to a family law court registry and be filed in the Family Court of Australia.

Senator LUDWIG—I am not sure if Senator Kirk has already asked for it, but could we have the separate figures about those matters that have come to the Family Court through Magellan?

Mr Oliver—I was not asked by Senator Kirk about that, and I am not sure whether I can provide those figures now but I will happily take that on notice.

Senator LUDWIG—I am happy for you to take it on notice.

Mr Oliver—I do not have any figures with me that I can give you.

Senator LUDWIG—Could you tell us whether it has been externally evaluated at this time, what those findings are and whether there will be a report made public about it.

Mr Oliver—The briefing note I have here states that the Family Court of Australia has conducted an internal evaluation of the Magellan project which highlighted some of the benefits of Magellan—

Senator LUDWIG—Was that external or internal?

Mr Oliver—It was internal. But my briefing note goes on to state that the Family Court National Magellan Committee has finalised the terms of reference for an external evaluation and has engaged the services of the Australian Institute of Family Studies to conduct a review. It is expected that the evaluation report will be available in August 2007.

Senator LUDWIG—How much is that contract for?

Mr Oliver—I have no idea, I am sorry.

Senator LUDWIG—Perhaps you could take it on notice.

Mr Oliver—The Attorney-General's Department has provided some funding to the value of \$50,000 for that report to be done.

Senator LUDWIG—Are the remaining funds from your internal budget?

Mr Oliver—Yes.

Senator LUDWIG—That is why I was curious as to the total amount. Then I was going to ask Mr Govey about the contribution that the Attorney-General may have provided.

Mr Govey—I can confirm the \$50,000.

Mr Oliver—Because the evaluation is yet to be finalised I do not know what level of funding the court will be required to make. I can probably find that out, noting the quantum of the quote for the external research.

Senator LUDWIG—The annual report would have been prepared around October. It was reported at that point that the Family Court National Magellan Committee was in the process of finalising terms of reference. It is now late May this year. The annual report indicated that it was more likely to occur at the end of last year or early this year, and we are still in the process of finalising terms of reference. I am curious as to where that has got to. Is it any more advanced than was indicated in the annual report last October?

Mr Oliver—I presume it is. I do not have the terms of reference with me, but I presume that those terms of reference have now been set. As the evaluation is due for completion in August, I suspect that there is work underway on that project. But I would have to come back to you on notice with that, and I will happily do so, if you would like.

Senator LUDWIG—No doubt there is work underway—otherwise, it is going to be a busy couple of months.

Mr Oliver—That is right.

Senator LUDWIG—The other area is the dispersion of the Federal Magistrates Court and the Family Court judges. There was some commentary in Townsville about the removal of a Family Court judge. Has there been any decision taken to either maintain a Family Court judge in Townsville or remove the position?

Mr Oliver—There has been no position finalised regarding that. You may well be aware that the Hon. Neil Buckley has been asked to carry out a review on judicial workloads in North Queensland. We have not seen a draft report of that review, and it would not be appropriate for me to comment on that. When the Hon. Neil Buckley has concluded that review, he will pass that to the chief justice. That, I expect, will occur when she returns from overseas. It will be considered by her and her colleagues. The position about a judge or a judicial officer of the Family Court of Australia remaining in Far North Queensland or North Queensland will be clearer. Until that report is passed to the chief justice and she considers it, I do not feel capable of making—and nor do I feel it appropriate for me to make—any comment.

Senator LUDWIG—Are you able to say what the terms of reference were for the Hon. Neil Buckley's review? Were they made public? Did they include local community consultation or consultation with stakeholders?

Mr Oliver—It certainly involved consultation with representatives of the profession in North Queensland and members of the profession in North Queensland. I do not see there being any difficulty in my reading out the terms of reference for you. I have a set of the terms of reference here. The terms of reference for the review on behalf of the Federal Court of Australia and the Federal Magistrates Court of Australia are as follows:

To examine

1. The present and, so far as possible, the projected future family law work in far North Queensland, North Queensland and related regional areas, having regard to the fact that there are now

resident federal magistrates in Townsville and Cairns and at present a resident Family Court judge in Townsville;

2. The nature and volume of work which might most appropriately and efficiently be undertaken by each of the two courts;

3. In considering the above, to take into account any agreed criteria for work more appropriate to the Family Court of Australia;

4. The imperative of providing effective and timely justice to all litigants wherever they may live; and

5. The efficient and effective use of resources, particularly judicial resources, of both courts.

Senator LUDWIG—Have you looked at the likely impact that that might have on the delivery of justice and access to justice from the perspective of residents of North Queensland and Far North Queensland?

Mr Oliver—I think that uppermost—

Senator LUDWIG—Hearing you read that, it did not appear to go to that point, but I stand to be corrected.

Mr Oliver—If I were to paraphrase the objective of the review it would be along these lines: to enable the courts to most effectively align the judicial resources of both the Family Court of Australia and the Federal Magistrates Court of Australia for the people of Far North Queensland so that they continue to have family law disputes resolved and determined as appropriate, at low cost, convenient to their location and by the most appropriate court in a timely manner. I think primary in the aim of this particular review is access to justice by local people in the Far North Queensland and North Queensland area.

Senator LUDWIG—You might need to take this on notice, given where the report is up to and its confidential nature. I am interested to know who of the community stakeholders was consulted in Queensland and Far North Queensland by the Hon. Neil Buckley.

Mr Oliver—I will take that on notice. I do not have that information.

Senator LUDWIG—It may be a confidential list. If it is, could you perhaps inform the committee of the nature of the community groups or the types of community groups or other stakeholders, such as businesses, that might have been consulted.

Mr Oliver—We will provide what information we can legitimately provide.

Senator LUDWIG—Is there a timetable for delivery of the report? You seem to suggest you are waiting.

Mr Oliver—I am looking for a precise date. From my understanding, the report was to be concluded by the end of June and available for consideration by the chief justice in that time.

Senator LUDWIG—If anything has changed perhaps you could let us know. It did seem that you were waiting for the return of the chief justice from overseas, but I did not think that was going to be the point at which the report would be handed down.

Mr Oliver—I understand that a draft of the report has been done and is awaiting the chief justice's return, but I certainly have not seen a draft and nor has anybody else in the court, as far as I am aware.

Senator LUDWIG—It is a report to the chief justice, then?

Mr Oliver—It will be, yes. Sorry—I will correct myself. It is a report to the Family Law Courts Board.

Senator LUDWIG—I see.

Mr Oliver—It obviously includes the Federal Magistrates Court of Australia, so clearly the chief executive officer of both organisations and the Chief Federal Magistrate will be participants to its outcome.

Senator LUDWIG—How often does the board meet?

Mr Oliver—My colleague advises that it is as necessary but it is in a regular format about every two months.

Senator LUDWIG—When was the last one?

Mr Oliver—My colleague Mr Mathieson might have that, because he goes to the meeting; I do not. It was on 4 April.

Senator LUDWIG—I can see how the time line will come together. Thank you.

CHAIR—Thank you for your assistance today, Mr Oliver, in your acting role. We appreciate it very much. Thank you to your officers.

[12.19 pm]

National Native Title Tribunal

CHAIR—Thanks very much, Mr Doepel and your colleagues, for being here with us today.

Mr Doepel—Thank you, Chair.

Senator LUDWIG—I see that, just in terms of staffing, in 2005-06 the estimated staffing level of the NNTT was 250 and was forecast to fall to 240 in 2006-07, but it looks like it actually fell to 214, which was a total decrease of nearly 15 per cent in two years. Is that right?

Mr Doepel—The general trend you have identified is correct. At the moment we have 231 full-time equivalent staff. We staffed up a few years ago, expecting certain levels of workload around the country, and that did not materialise, so we took a conscious decision over a period of two to three consecutive years to trim back the staffing. At the moment, we have 240 full-time equivalent positions on establishment, but we have not recruited up to that level. How we will be over the next few months with the amendments in this year's amendment bill is another question, and we hope for some capacity to increase in certain areas if we need to.

Senator LUDWIG—Whereabouts were the staffing cuts made?

Mr Doepel—They were spread across the organisation. Certainly in the regional network there were some consolidations of functions in the larger states and a reduction in numbers of administrative support staff, and over the last year or so we have had some reductions in the corporate areas such as the IT areas within the principal registry.

Senator LUDWIG—Why were they made? I think you alluded to the reason in part, but perhaps you could expand on that.

Mr Doepel—They were made because of downturns in workload in a couple of key areas, particularly around agreement making, where there has been a less than expected rate of output. We were working on the basis that we would prefer to keep the organisation reasonably lean if we could and anticipate staffing up where there were clear indications of increased workload around the corner. I might also say that part of our staffing loss—and none of this has been pushed by us—has been natural attrition, because we continue to induct and train a range of staff, case managers, geospatial professionals, legal professionals and others, whose skills are quite sought after once they have been with us for three or four years. We are in a competitive marketplace out there, and we tend to lose some of these people over time to state government, particularly in the resource province states, to companies and to others who are working in native title as well.

Senator LUDWIG—I do not think you are the only group that that is happening to at the moment!

Mr Doepel—I think in Western Australia, if you stood on Adelaide Terrace, you could have the same tale of woe shared by just about everybody who is in government or business there at the moment.

Senator LUDWIG—In terms of the staffing reductions, you have indicated that the workload is one reason, but has it been uneven reduction in workload—and therefore is it only in the agreement making—or is it across the board?

Mr Doepel—That is a good question. It is uneven. For example, if you were to look at overall trends of workloads for the tribunal over the last year or so, you would find that agreement making has dipped, but in the so-called statutory decision-making functions around my office, the registration functions that I perform, and the statutory decision-making functions under the future act part of the organisation that are performed by members there have in fact been consistently high workloads, to workloads that have gone beyond what was originally projected. For example, under my functions I maintain a pool of delegates based in the Sydney registry of the tribunal. We have maintained the numbers and in fact added to them recently, and we plan to add more because of the requirements of the 2007 amendment act. So, in a short answer your question, it is not even, and also you can look across various registries and say: ‘Well, some states go through busy patches over a year or so depending on external environmental factors, in particular the positions of state governments. They do their work through their cycle, and another state is quiet, and then 18 months later the position is reversed.’ I think a very good example at the moment is South Australia, which has been quiet for a while. We are in the process of adding additional case managers to the establishment in that office, anticipating increased workload over the next six to 12 months.

Senator LUDWIG—In the areas where staff have been reduced, are they areas where the functions are no longer being performed or the function has reduced in the need for that number of staff?

Mr Doepel—There are two things in answer that question. There is less to be done; it is not that the functions are not there. The functions are there right across the organisation, but

the volume in certain parts of the organisation varies. Also, we are experiencing a gradual shift in the way we are doing work. I think it would be fair to say that, in the earlier days of the tribunal, we were very regionally oriented, with case managers supporting members out in the field. As native title work has become more sophisticated, we find that we are using principal registry based professional and technical resources to support the members and their case managers. By those resources I mean things like geospatial analysis, mapping and product; and legal and other research input. As the tribunal has matured in its approach to native title work, we find that we are using those professional technical resources as required and attaching them to the original teams.

Senator LUDWIG—Where did the staff savings costs go? In other words, if you reduced the level of staffing there would then have been intended savings, I presume.

Mr Doepel—There are savings, and we have simply held back those savings; we have not necessarily put them anywhere else. We have supplemented one or two of the professional technical areas over the last couple of years. We certainly have a very dynamic geospatial area because it is providing a large level of product to clients, members and case managers, and also we have been supplementing the research areas as well.

Senator LUDWIG—So you say some of those savings have been reallocated within the NNTT, but what level has been saved or—

Mr Doepel—I could not give you a figure. I would mislead you if I tried to guess a figure. I could come back to you and show you overall savings from staffing reductions and offsets over the last couple of years, if that would assist you.

Senator LUDWIG—That would be helpful—and where they have been allocated to. Have they been returned or rephased?

Mr Doepel—No, in the last year or so they have not been returned to budget; they have been part of a carry forward.

Senator LUDWIG—Are you able to say more broadly how much has been carried forward?

Mr Doepel—I will just ask our chief financial officer, Mr Szmekura. Max, can you remember how much we carried forward last year? About \$2 million?

Mr Szmekura—Last year it was about \$2.1 million, from memory, but I can confirm that figure later if you wish.

Senator LUDWIG—Thank you. Do you expect the same this year?

Mr Doepel—We expect a bit more this year. There has been a decline in activity around agreement making. We are expecting the figure to be somewhat higher, probably in the order of about \$3 million, or it could be more.

Senator LUDWIG—Is there any consideration of returning the staff levels to the pre-2006-07 level?

Mr Doepel—The short answer is yes. We will need to see how work increases and where it increases, coming out of our and others' implementation of the outcomes of the Claims Resolution Review. Certainly in the short term there is an increase around my functions—that

is, the registrar's office. As you know, I have to go back and apply the registration test to some 120 matters, and also I have to report to the court on completed future acts, so there is a hump of activity there around my office over the next 12 months or so, and we are already, as I have indicated, looking at supplementation of staffing to carry us through. For example, our expected outcomes for registration test decisions this year are in the order of 60 decisions. In our budget papers, for the forthcoming year, we are projecting that we will have to double that capacity of decision making to deal with the transitional provisions in the amendment act of 2007. So, yes, we will need more staffing. How that will translate on the mediation side is yet to be worked through as we develop protocols and understandings with the court, as Mr Soden referred to earlier this morning.

Proceedings suspended from 12.31 pm to 1.30 pm

CHAIR—Order! We will resume.

Senator LUDWIG—I think we were talking about staffing levels. You indicated a little earlier today about the likely increase, depending on the workload. I think you mentioned also the technical amendments themselves. When those amendments are passed and those are in operation, will the changes from the Hiley and Levy report require additional staffing? Have you looked at that issue more broadly?

Mr Doepel—The changes from the amendment act of 2007 could potentially lead to more resources being required, depending on the extent of pick-up within the system, the rate of activity and, in particular, critical mediations leading towards resolution of claims. There are a couple of things that have the potential to drive that increase in workload. Mr Soden referred in part to one of them this morning, and that is the establishment within the amendment act of regional bases of reporting, a much better basis of regional reporting now recognised within the legislation. The tribunal will proceed that way in placing regional plans before the Federal Court, seeking to encapsulate in those reports the overall picture of disposition of partners in the system, their resources and their capability to actually move forward.

One of the other measures that is internal to us but will feed into those processes of reporting to the court is that we have upgraded our business approach to case flow management. We are in the process now of rolling out a new national case flow management scheme. One of the deputy presidents and I have been working our way around our regional registries talking through this case flow management scheme with members and our staff. This, in one sense, is independent of the amendments this year, but it is complementary to it. It will actually sharpen up our understanding of the critical features of the case flow right across the country. It provides for a method of regional management of claims that sits neatly with the legislation that was passed earlier this year and allows us to build into those reports that we did for the court a much clearer picture of the critical points that matters have reached and whether they are in adequate shape to go on to the next stages of mediation towards resolution of the claim. We are keen to implement that internal measure, to get that well underway in the first part of the new financial year and to begin working with the court. As Mr Soden said this morning, we are talking to the court about a range of protocols and practice directions in both institutions that will try to move things through more rapidly. If we can leverage off that—to use that terrible phrase—I think you will see inside the next financial year some upturn in movement through the system.

Senator LUDWIG—What about the non-legislative recommendations of the report? There are a few of them, but I was thinking particularly of recommendation No. 4, that consideration be given to formulating a good-faith obligation to be included in the NTA and developing a code of conduct for parties involved in native title mediation. From the submissions to the inquiry on the Native Title Amendment Bill 2007 I noted that in fact the department had begun trying to take work on the development of the code of conduct. Will that type of work—and I will come to that shortly—have an impact? Have you considered whether those recommendations will have an impact on the tribunal, the nature of the work and the workload?

Mr Doepel—They will, I think. I will leave it to the department to explain where things are in drafting that best practice guideline. That is a work that is continuing at the moment. The issue for the president of the tribunal is the way in which that best practice guideline is integrated into the practice of the membership of the tribunal. There are provisions in the amendments that look at the possible sanctions for breach by parties to native title proceedings of good faith, and they are there for all to see. The view that we certainly take in the tribunal is that a good-practice statement like that is essentially a normative statement that sets out what the ideal behaviours or conduct should be around mediation. That is something that we would be putting out as values within the context of mediation. If there are people who consistently breach them, we would need to see what sorts of reports were provided. But I think the time is probably right for a well-understood general statement of how mediation should proceed in a conduct sense and that that be put before all people participating. That could be quite useful in the long run.

Senator LUDWIG—Mr Anderson, can you answer the question about the code of conduct?

Mr Anderson—We have shown a first draft to the tribunal, to the Federal Court and to the Social Justice Commissioner. We have received comments from each of those bodies and we are considering those comments with a view to sending a further draft out more widely to the states and territories, the representative bodies, industry bodies and, again, to the tribunal, the court and the Social Justice Commissioner.

Senator LUDWIG—Is there a time line for completion?

Mr Anderson—No, there is not. As you would appreciate, we are still actually working through the legislative part of the reforms, and that has priority at the moment.

Senator LUDWIG—Did you undertake consultation with stakeholders before the development of the code?

Mr Anderson—The first draft was developed by the department.

Senator LUDWIG—And it is now gone, as you have indicated, to some participants or stakeholders and then, only after that, will it be released to stakeholders more broadly for consultation?

Mr Anderson—That is correct.

Senator LUDWIG—Why would you not have consulted with them at the principal stage?

Mr Anderson—A range of comments was already provided to us during the consultation phases on the claims resolution review and following that, while the government was considering the recommendations of the claims resolution review. We already had some starting material to work with to inform us to prepare an initial draft document, and we thought it was appropriate to go to those three bodies first—the tribunal, the court and the Social Justice Commissioner—to see what they thought about that first draft before we went more broadly.

Senator LUDWIG—Recommendation No. 5 reads:

... the Court should convene regular user group meetings and regional call overs involving the NNTT. The NNTT and the Court should actively seek new methods of improving institutional communication.

You have spoken about some of that in terms of the Federal Court act, which I take it to be improving institutional communication. What about the regular user group meetings and regional call-overs?

Mr Doepel—There have been user group meetings in the past. We have attended a national user group meeting that the court has convened. We have attended some local ones. The thrust of several of these recommendations is to try to draw the court and the tribunal into a more uniform practice across the country. For example, with respect to regional reporting, we had that well developed in some parts of the organisation working with the court, but it is underdeveloped or not developed at all in other parts. What you are effectively seeing, I think, are some statements there that are calling for an extension across the board, if possible, of what has been seen as good practice in various parts of the system. We would certainly be part of that process. In fact, we are talking to the court at the moment about some stakeholder liaison at the beginning of the new financial year, working possibly through user group or other fora, around the principal users of the system to talk about how the court and the tribunal will work together in implementing the 2007 amendments.

Senator LUDWIG—How long ago were the last regular user group meetings?

Mr Doepel—I cannot answer that, because these are done largely at regional level and would have been participated in by members and employees of the tribunal at that level. I think the court would be in the best position to answer about when those were.

Senator LUDWIG—Perhaps you could take it on notice and just have a look at where you have last been—

Mr Doepel—I will happily do that.

Senator LUDWIG—As to the regional call-overs, you can always ask the regional registries.

Mr Doepel—Regional call-overs are done on a regular basis throughout the system. Different judges of the court approach them in slightly different ways. But one of the threads that you can see coming out of the reforms is, again, a move towards some broad consistency in how these processes would be managed. For example, as part of call-overs I would envisage that there would be increased use around the system of our regional reports. One of the other features that the amendments put in place is a right to appear for the NNTT. We have appeared before the court in some capacities in some states in the past, but until the law was

amended we did not have a right to appear. I think you will see our selectively using that right to appear in relation to various call-overs and reporting milestones to talk more openly with the court in full court about what is going on in the regional management of the claims.

Senator LUDWIG—In terms of the work on the new methods of institutional communication, do you have a view as to what that recommendation wants you to do?

Mr Doepel—Consult more, I think, at all levels. The president and I have been working with the court already, looking at an overview of this and establishing the need for higher level practice directions and guidelines. We also seek to improve the use of regional reporting that we have had in various parts of our organisation over the past few years, and selectively using the right to appear to supplement the picture to the court, and within those regional reports engaging a broader range of stakeholders in discussions about the resourcing and capability of parties within the system so that when we go into the court there are no surprises and there is a pretty fair indication with key parties, such as applicants, respondents, state government and any other key respondents about where the matter or matters are and what is required to actually start taking them through to conclusion. We do all of that to some degree now, but I would have to say that our practice is not uniform and, as you would expect in any organisation, there is always room for improvement around the system.

Senator LUDWIG—Recommendation No. 9 states ‘further consideration be given to how claims can be better particularised at an earlier stage of proceedings in order to assist the identification of relevant issues’. Are you able to indicate what stage that consideration is at?

Mr Doepel—Mr Anderson might like to deal with that one.

Mr Anderson—That is one for the department. At this stage, we are not actively progressing with that recommendation. We are going to see the impact of the other reforms before we go further with that one. There have been concerns expressed throughout the consultative processes about the fundamental importance of the quality of claims. If a claim is well formulated in the first place, it means that all the respondent parties know what area it covers and what rights and interests are actually being asserted. It makes it easier for them to then enter into a meaningful mediation about that claim. Whereas if the claim is poorly formulated, often people are wary of engaging and they wait to see whether the claim will be improved before they actually accord it any priority. Having good-quality claims is very important. A number of the recommendations and the reforms go to those issues of how well claims are prepared. This would be a further step to actually require even greater detail than is currently required. There have been suggestions put to us that you could require evidence and things like that to be provided by the claimants. We currently see that as being more onerous than is required.

Senator LUDWIG—Is it the case that it is on the backburner or is it still a matter that you might actively consider? Or is it now off the table?

Mr Anderson—It is somewhere between it might receive active consideration and being on the backburner. It has not been shelved, but it is not one that is being actively progressed at the moment. We are waiting to see whether the other reforms have an impact on the quality of claims.

Senator LUDWIG—Does it then come down to what your view about the quality of the claims are and how they progress through the system? What this talks about, of course, is how claims can be better particularised at an early stage of proceedings. Is that what you understand to be a better quality of claims?

Mr Anderson—Yes, that is what I understand it to be. It is about better-quality claims.

Senator LUDWIG—Do you think that you can assist in that or do you not think you can assist in that? Or do you think that the current amendments to the NNTT will do that for you?

Mr Anderson—It is amendments to both the court and tribunal processes. It is amendments to the registration processes and having the registration test reapplied, for example, to claims that have currently failed the registration test. It is also caught up in capacity building measures for the representative bodies. There is a range of different reform components that go to that question of the quality of claims. It is also caught up partly in the communication and transparency aspect of the reforms in terms of how governments themselves communicate their views of claims, because they are generally going to be in a very good position to form a view of a claim and then to share that view with other respondent parties. If governments can continue to be more transparent and to communicate their views, that will assist those other respondents as well, and it might not be necessary to go that further step of having more onerous particularisation requirements.

Senator LUDWIG—Recommendation No. 11 states that ‘further consideration be given to assisting the NNTT to continue to develop a database of current tenure material’, and that this ‘database should be publicly accessible to parties and their legal representatives’. You responded to that by saying that the ‘government notes there are ceiling and technical and legal issues associated with the proposal for a database of current tenure material’ and that the ‘government is seeking further advice from the NNTT on this recommendation’. Are you providing further advice at this point?

Mr Doepel—Not at this point. We have spoken with the department in the past about this. The logistics of building that sort of database are considerable. You need to have a couple of things in place. One of the things you need to have in place is that you need to be able to get hold of current tenure information from the various state tenure custodians. The other thing is that we need a legal regime in which the various indemnities and agreements between the Commonwealth through the tribunal on one side and the state government providers on the other are all adequately squared away. We have been in discussions for the past year or two over the level of indemnities for this geospatial information, and it is only in the last few months that I can honestly say we have begun to work through them to the point where we can start to be assured that we are going to get a flow of recent information.

People are naturally conservative in state government institutions when their information is out on the Commonwealth intranet or internet on display and people are showing reliance on that information. There are a number of issues. Ideally we would like to be in the position where we can—it depends on the quality of the tenure information as you work around the country—provide layer-by-layer analysis of the predominant tenures that are within individual states. For some states we can do that very well because of the high quality of information that we have. With others, there is still some way to go.

Senator LUDWIG—I was trying to understand whether there is a process in train for advice to come from the NNTT about this recommendation? In other words, have you asked for a report or a review to establish whether a database of current tenure material is worth while?

Mr Anderson—My recollection is that we have had some initial discussions with the NNTT about that, but it is still only at a very early stage. As Mr Doepel indicated, you could actually craft something which would be a very significant undertaking, and we need to be sure that it would deliver commensurate value.

Senator LUDWIG—Have you then started any undertaking to establish the nature of the work and how much it is going to cost?

Mr Anderson—Our priority has actually been dealing first of all with the legislative phase of the amendments. Once that is completed, which hopefully will be soon, then we will be able to put more resources to some of the other measures.

Senator LUDWIG—You are not able to say at the moment what the technical and legal issues associated with the proposal are, which you say is one of the significant reasons why you are not going to look at it?

Mr Anderson—Mr Doepel indicated that—

Senator LUDWIG—Some of them, I know, but it is you I am asking. This is your response, I take it?

Mr Anderson—It is the government's response.

Senator LUDWIG—Yes; 'you' as in the government, or at least a representative of the government.

Mr Anderson—There are other issues as to the cost of such a system, how that cost would be met, and talking further to prospective users as to the use that they would actually make of such a system.

Senator LUDWIG—Is that all?

Mr Anderson—That in combination with the other factors that Mr Doepel mentioned, about how you actually get the information to populate that database with. He mentioned the issues to do with some of that data being provided by states and territories.

Senator LUDWIG—Have you sought to consult with the states about that at this time?

Mr Anderson—Not yet, no.

Senator LUDWIG—Have you asked that it be put on a roundtable or SCAG for them to be able to then consult to see whether or not they can?

Mr Anderson—Not yet, no.

Mr Doepel—We have an elaborate process of consultation with state tenure providers that we work through continuously. The issues about supply and indemnities are well known between ourselves and the state tenure providers. As a general proposition, you could say that there is a disposition to assist the Commonwealth here to try to get this data in recent current form with all the legalities ironed out. But we are talking about significant holdings of data

and quite sophisticated manipulation of it. We would like to do this. We have found that one of the most powerful tools in assisting mediation and other forms of agreement making is the geospatial tool. When you can see something represented, when you can see the extent of a claim, what is in it, what is potentially out of it, where boundaries are and where boundaries are not, to remove the potential for disputation, the geospatial tools are extraordinarily powerful. There is a strong incentive within our organisation to work through some of these issues and see how far we can go.

Senator LUDWIG—It did strike me, in explaining this area today, that it was one of those matters where it does seem that it could advance the claims, because they can then establish geospatially where they are, and what are the limits, as you have indicated.

Mr Doepel—That is correct. We are working on some pilot projects where we actually marry the research information about a claim with the geospatial information about a claim, so that applicants and respondents can see at a glance where relevant reports or events or elders or others are located physically in relation to the claim. That has the potential to be a very powerful tool.

Senator LUDWIG—Has any assistance been provided by the Attorney-General's Department to assist in that process or are you committing some of your own resources?

Mr Doepel—We commit our own resources, and I would say we get encouragement to do so. This is for us to do. This is part of delivering our core business. We have, I think, a very accomplished geospatial group with good industry links and good state and territory government links, and it is consistently trying to develop better product. In fact, to echo Mr Soden, we were in the short list last year for the national e-government excellence awards for our geospatial product, Native Title Vision, which is a product that goes a long way towards showing exactly the boundaries of claims and the physical attributes of them along the lines that we are talking about now.

Senator LUDWIG—In terms of the work that is currently being dealt with—agreements and the other decisions of the tribunal—can you say what the current workload is? Can you break down the statistics a little bit?

Mr Doepel—If you bear with me for a moment I can give you a bit of a tour of the horizon. I will just find my summary. Our output groups are based on three clusters: output group 1, which comprises capacity building and strategic and sectoral initiatives; output 2 is Agreement Making, which includes Indigenous land use agreements, agreements proceeding towards determination or otherwise of native title and future act agreements within the mining and resource area; and then another group called Decisions, which comprises registrations around my functions of claims and Indigenous land use agreements and the members functions for decisions around future act determinations and objections.

As a broad general proposition, in terms of activity and workload levels around the decisions around my office and around the future act members functions, demand for our services remains high there. By and large, projected outcomes for most of those categories will be met. As to capacity building and sectoral initiatives, we have several planned there. There are nine major projects and initiatives, and several hundred events around assistance and information. By and large we will meet or exceed those projections. It is when you come

to agreement-making work that there has been a slowing in activity, which is what I referred to before lunch when we were talking about staffing capacity. I think it is fair to say that during this year there has been a downturn in activity against the projections that we had put up in the portfolio budget statement in May 2007.

Why is that happening? I think there are various elements. When you are in a period of reform, as we were back in 1998 and then in 2006 coming into this year, there is an element of wait and see. There is also, I think, an element whenever you have a significant court decision that still has some impacts on the caseload. As to the agreement-making activity, where there has been some slowing down, it is precisely that area of activity that the reforms that have been enacted this year, and are still proposed, are designed to try and give more oomph to the system.

Senator LUDWIG—In terms of the nature of the workload, in those areas that you have indicated can you say how many matters are on hand and how many matters have been completed?

Mr Doepel—I can tell you how many matters have been completed as of this month. I could provide the committee with a performance report table that would show that for you.

Senator LUDWIG—That would be helpful.

Mr Doepel—I can provide that quickly.

Senator LUDWIG—While we are waiting for that, I can move to a slightly different topic. As to web services, do you use Austlii at all?

Mr Doepel—I have that table here if someone—

Senator LUDWIG—We probably need a—

Mr Doepel—A pair of hands there?

Senator LUDWIG—Yes.

Mr Doepel—Yes, we do participate with Austlii; we provide them with \$5,000 a year. We use Austlii to publish the decisions made by the members of the tribunal in the statutory future act area of the tribunal. Many of those determination/decisions would not otherwise be published. That is what we use it for.

Senator LUDWIG—Output 2.3, the future act agreements—sorry, the decisions—

Mr Doepel—Decisions and determinations. We provide those to the Austlii secretariat and they are progressively put up in Austlii's information database.

Senator LUDWIG—They are decisions by the—

Mr Doepel—The members of the tribunal. That is correct.

Senator LUDWIG—How many decisions are made per annum? Is that on the chart?

CHAIR—How quickly are the decisions put up? You said that they are progressively put up?

Mr Doepel—I think it is fair to say a year or so ago there was a lag of several weeks. I corresponded with Austlii this year about this very matter, and the gap has reduced considerably.

CHAIR—Could you take that on notice and let us know?

Mr Doepel—I can do that, yes.

CHAIR—Thank you.

Mr Doepel—We were looking at decision making around the future act area, I think, weren't we?

Senator LUDWIG—Yes.

Mr Doepel—I can give you, for example, last year's annual report figures just to give you a flavour of this. As to output 3.3, Future act determinations and decisions whether negotiations were undertaken in good faith, last year we estimated that we would complete 47. The result for the full year was 80, so it was well up over our estimate. Let me check the table that I have just presented to you. We projected 50 this year. We have done 155 of those and expect to do about 185 before the end of the year. My advice is that one or two of the representative bodies have been pretty active in working through some backlogs and that is the reason there has been an increased demand for our services in that area. As to the other one, for example, finalised objections to the expedited procedure—last year we projected that we would do 1,096. Of those we ended up doing 1,387. This year so far—I will just go to my table here—we have projected 1,100 in round figures. We will probably do about 840. There is some variation there, but the order of magnitude is basically the same.

Senator LUDWIG—In terms of those areas, is there an understanding of the lag time between lodgement and decision making, or agreement making as the case may be?

Mr Doepel—Which areas in particular?

Senator LUDWIG—All areas, if we can go through from both mediation to claim—

Mr Doepel—The short answer is that it is easier to work towards established time frames for decision making. For example, if you go to the performance reports in the annual report, you will find in relation to those matters that I have just referred to, output groups 3.3 and 3.4, not only do we have a numerical estimate, but one of our quality targets is that, for example, for future act determinations and decisions we will strive for 80 per cent of future act determination applications finalised within six months of the application being made. The result for last year was 97 per cent. Similarly for output 3.4, I will give you one of the indicators. We aimed for 80 per cent of the objections to be resolved other than by agreement within nine months of the section 29 closing date—a fairly technical concept—but in the order of 89 per cent were resolved within that time frame. Where we have, I think, extensive control over the process, whether it be through my office, through the various forms of registration tests that are applied in my office, or through the future act stream, where the members are constituting themselves more like a traditional tribunal, we can strive for those targets. Mediation is a different kettle of fish. As our president has, I think, spelt out in a number of preliminaries to our various annual reports over the last few years, the rate and progress of mediation is influenced by a critical number of factors, with which you are no

doubt familiar, not the least being the disposition of the parties but also the policy positions of state governments and various other factors. It is hard to put a positive time frame on mediation.

Senator LUDWIG—Do you keep statistics about the time of lodgement and the end of the mediation process?

Mr Doepel—I do not have those with me, but we do have those.

Senator LUDWIG—If one of you would make those available to the committee that would be helpful.

Mr Doepel—We will give you the best we have got.

Senator LUDWIG—You say that you are doing—my words—‘well’ in the outputs under 3, or the future act decisions. With respect to the performance in agreement making—estimate 67, result 185—does that mean you are also picking up some of the tail as well? I am looking particularly at page 57 of your annual report.

Mr Doepel—What are you looking at there?

Senator LUDWIG—The performance at a glance—quantity, estimate, quality and result.

Mr Doepel—Within that figure there are several agreements that we would call process or milestone agreements as well. These are critical agreements that can be identified or reasonably objective stages of negotiation—for example, an overall framework agreement or some other agreement; it is not the final Indigenous land use agreement, but is a critical part of the way. The way we break out our outputs is that we record those as well. For example, in the current year we have a reasonably high number of framework or process agreements around Indigenous land use agreements. That is because we have seen a surge of activity as the year has progressed. It is very difficult to estimate these quantities. For example, we went into the current financial year believing that there would be a significant number of Indigenous land use agreements in one state dealing with a pipeline development. Within months the major proponent of that project changed its mind. The best information we have relied on looking at our workloads evaporated literally within days. It is quite hard to estimate.

Senator LUDWIG—Do you host your own website or does AustLII?

Mr Doepel—We do.

Senator LUDWIG—What is the cost of that website? Do you maintain it and then you have links with AustLII, which then produces the cases?

Mr Doepel—We have just revamped it. Mr Gaffney should be able to give me a cost on that.

Mr Gaffney—We have just started the process of revamping our website. The last time we had done that was in 1998. We went out to tender. I understand that the website will be done by October this year and we are looking at a cost of around \$125,000.

Senator LUDWIG—If you had to host your own decision making on your own website, have you worked out how much that would cost? Would it cost more than the \$5,000?

Mr Gaffney—We have not factored that into the tender. My understanding is that we are going to continue using AustLII. We have not even looked at that issue.

Senator LUDWIG—You do not know whether it costs more or less?

Mr Gaffney—I do not know. I cannot give you those figures. I could look into it, but we have not looked into it.

Senator LUDWIG—If you would not mind doing that; it strikes me that, if you are paying \$5,000 to AustLII and you have not looked into whether or not you can host your own decisions, it is an issue that might be worth examining—should it be less expensive or more, as the case may be.

CHAIR—I have some questions with regard to, firstly, the three main areas of timeliness of decisions; secondly, any complaints and how they are dealt with; and, thirdly, the code of conduct. I notice that is mentioned in your report. Firstly, in terms of the timeliness of decisions, do you have an outline or a record of how quickly those are made and the timeliness of them?

Mr Doepel—That will come out, I think, in the table that I have undertaken to provide to Senator Ludwig. It was to look at the lodgement of annual disposition of matters.

CHAIR—Can you indicate, perhaps when you are getting that back to us, the reason for the delay, if there is a delay past the benchmark you set for yourselves? That would be helpful.

Mr Doepel—Yes.

CHAIR—How do you deal with complaints?

Mr Doepel—We do not receive many, fortunately, but our processes are fairly straightforward. Complaints about the members of the tribunal, if any, are referred to the president of the tribunal to be dealt with. Complaints about the conduct or behaviour of employees of the tribunal are referred to me. Our complaints handling process is set out in our client service charter, and in fact the back panel of the client service charter is serrated; it can be taken off and used by a client or customer and filled in to ask for something, to compliment us on something—it does happen—or, very rarely, to complain about something.

CHAIR—Is every client given one of those?

Mr Doepel—They are freely available in our regional registries, and we take them out into the field. We have not had many complaints historically as an organisation. The president occasionally receives complaints, but I think we need to distinguish between those that might be looking at the conduct of the presiding member and those that, to be quite blunt, are a tactical approach to try and have the member removed and the president remove another member. Our president has been reasonably robust in dealing with some of those over the years.

CHAIR—Can you perhaps take on notice and advise the committee of the number of complaints and the nature of those complaints?

Mr Doepel—I can probably do that for the last few years; we can deal with that. You will not see large numbers, though, I can tell you now.

CHAIR—That is good. Well done on that. I notice in your report at page 97 you say that members of the tribunal continue to be subject to various statutory provisions relating to behaviour and capacity. Can you just alert me to those provisions?

Mr Doepel—I do not have a copy of the act. There are clear provisions in the act that deal with conflict of interest for tribunal members. I can point that out to you in our return. Over and above those statutory provisions, about five years ago the members of the tribunal agreed to be bound to a voluntary code of conduct. This was around the time that the Council of Australasian Tribunals was looking at codes of conduct for administrative and other tribunals. Their code of conduct is about behavioural things that you would probably expect to find, say, for Australian Public Service employees. It also dealt with issues, because we have part-time members, about the position of people who are legal practitioners or consultants working in the native title area and how perceptions and actual conflicts might be managed if they were to do tribunal work as well.

CHAIR—That code of conduct is referred to in your report, which I appreciate. Is that code of conduct consistent for all federal tribunals or tribunals set up under the federal system, or just to your tribunal? Is it specific to you?

Mr Doepel—It is specific to our tribunal, but if you were to read through it you would find things there that you would see are prevalent in codes of conduct in the tribunal.

CHAIR—Is that on your website? Is it freely available?

Mr Doepel—It is freely available, yes. I am happy to provide the committee with a copy of that.

CHAIR—It talks about procedures for dealing with alleged breaches of the members' voluntary code of conduct. Can you outline what they are? I assume they are in that code of conduct, but can you outline just briefly how that works?

Mr Doepel—Basically, as you would expect, there are various signposts as to whom complaints should be made and the form in which they should be made. The president was very careful to include in those procedures appropriate levels of procedural fairness and protocols of communication with all concerned, particularly the person who was the subject of the complaint but also the person bringing the complaint. They are fairly standard procedural guidelines that make sure that there are appropriate checks and balances through the process. I think we were one of the first tribunals to actually put in place an all-embracing code of conduct. The code report came down around the same time. The members considered what they had been working on over the previous year or so and asked themselves whether in fact they should revise or reissue, but it was pretty robust and they have stayed with what they have got.

CHAIR—So they did review it in the last 12 months?

Mr Doepel—Not in the last 12 months, but after the COAT guidelines for tribunals came out there was some discussion about whether ours needed to be revisited, and it was not considered necessary.

CHAIR—That was five years ago?

Mr Doepel—Mr Govey, can you recall when the COAT did its model code of conduct? It was about five years ago, I think.

Mr Govey—I cannot actually remember that. That sounds about the right time line, but we could certainly find out.

CHAIR—If you could let us know that would be helpful.

Mr Doepel—It was published and disseminated in booklet form at the time.

CHAIR—Thank you for that. I notice with respect to the Federal Court, the Federal Magistrates and the High Court and so on they refer to the *Guide to Judicial Conduct 2nd edition* by the Australasian Institute of Judicial Administration Incorporated. You are referring to the code and you say that it is voluntary. I am just getting confirmation that every member of the tribunal has signed the voluntary code and has willingly agreed to adopt it?

Mr Doepel—I do not think I could go as far as saying that they have signed, but they have indicated to the president that they will be bound by the code.

Senator CHRIS EVANS—I may not be at the right spot in the sense that it is probably partly AGs, but I was going to ask about the activities of third parties in tribunal hearings, and the issue of the funding of third parties—and I do not know whether that is the right phrase—to native title applications. We have the legislation dealing with some of those changes to funding. I was particularly interested, first of all, in the experience of third party engagement with applications before the tribunal, and whether that was increasing or decreasing. Obviously at the start of the native title process there was a lot of fear about native title and a lot of people wanted to be at the table. Firstly, I wanted to ask about your experience of third party attendance and participation, and then I was going to ask about the funding for that.

Mr Doepel—Let me see if I understand you correctly. When you are talking about third parties, are you talking about people without any right or interest affected?

Senator CHRIS EVANS—Those who had, say, marginal rights. I should not say that, but not necessarily the people operating on the land. I am looking for an idea of some of the other organisations that had an interest in matters but were not direct parties.

Mr Doepel—Beekeepers—that is a good example of a third party.

Senator CHRIS EVANS—We were funding a range of parties who could appear in native title matters who were not necessarily direct parties, as I understood it.

Mr Doepel—I think the department is probably in a better position to talk about this than I am. But, yes, that is correct; there has been funding in the past for peak or representative groups to represent the interests, I understand, of their constituent members. I think that is probably a more accurate way of describing it.

Senator CHRIS EVANS—So we do not call them third parties?

Mr Doepel—No, I do not think so.

Senator CHRIS EVANS—How do we refer to them?

Mr Doepel—Peak groups or bodies.

Senator CHRIS EVANS—How do you refer to them in terms of how they appear in the tribunal?

Mr Doepel—They will be a peak body representing other interests—representing people with interests in the proceedings.

Senator CHRIS EVANS—Yes, I know what they do. You do not refer to them as third parties, so is there another phrase?

Mr Doepel—No, we call them peak bodies or representative groups.

Senator CHRIS EVANS—I thought I might have to talk to the department about the funding issues, but I was interested in your experience concerning their engagement in native title matters before the tribunal.

Mr Doepel—I could say as a generalisation that these days the overall experiences are very positive. For example, we have worked in Western Australia over recent years with the Pastoralists and Graziers Association, and we find them extremely collaborative. I do not know what their current status is in relation to other funding, but they have come in to various discussions at various times with us and have been extremely helpful.

Senator CHRIS EVANS—Maybe I am not making myself clear. When you have an application between the Kimberly Land Council and someone, obviously the state government often seeks to appear and participate in the proceedings. Senator Johnston has probably represented a few of them.

Mr Doepel—They are the first main respondent.

Senator CHRIS EVANS—But are these peak bodies actively now engaged in these processes or are they dropping off as they understand the systems better? It is a general question about the level of activity, interest and engagement from across—

Mr Doepel—I would say in general that they are dropping off. As they have come to understand more what is involved, and as they have become more comfortable with the process over time, and as their constituents are better informed and better understand what they have to do, they are dropping out.

Senator CHRIS EVANS—Are you able to track that in any way statistically?

Mr Doepel—Not easily, no. They would appear in our databases as representing respondents, but we would have to go fishing for them.

Senator CHRIS EVANS—I am not trying to create work for you. I was just interested in their level of activity. We will come to the funding, because obviously that might be better reflected in—

Mr Doepel—We have not plotted it over time. It is not one of the things that we have actually plotted as we have gone through.

Senator CHRIS EVANS—What stage of proceedings are they generally engaged in? Where do they engage with the process?

Mr Doepel—Senator Johnston just said ‘settlement’. Yes, very much so—

Senator CHRIS EVANS—Do not adopt the cynical attitude of Senator Johnston.

Senator Johnston—They come out of the woodwork at settlement. They just cruise along on the face of the register and do not turn up very often, and then when there is a settlement that is when they will put their hand up and represent their constituents.

Mr Doepel—They come in at various stages along the way.

Senator CHRIS EVANS—Are you finding that they are actually engaging later in the process?

Mr Doepel—I could not give you a general proposition on that. A lot of this I hear through people who are doing the work. From where I sit I do not get a good view of that.

Senator CHRIS EVANS—I think it is quite an important issue, though, because it is about whether or not we are dealing with their concerns early in the process or only dealing with them right at the end.

Mr Doepel—Historically through the assistance side of the organisation we have put a lot of time and energy into dealing with peak bodies at earlier stages of the process, and not only individual processes or groups of processes that are on foot now but those which go back four or five years and beyond. We, as an institution, spent an enormous amount of time and effort dealing with sectoral groups, within the context of specific mediations and outside of that as well, as part of the general information provision to those with an interest in native title generally. To respond to your question, we have over the last few years reaped some of the benefits of that effort from a few years ago because various sectoral groups, whether they be fishing, pastoral or mining, have in our assessment become progressively more sophisticated in their understanding of the various processes that their constituents are engaged in and are better equipped to advise them if necessary—not necessarily even on a fee basis but just as a peak body—about what they should be doing and, above all, not to panic because they are caught up within the system.

Senator CHRIS EVANS—Quite frankly, there is quite a mind shift in the mining industry about that—

Mr Doepel—Very much so.

Senator CHRIS EVANS—led by some of the miners.

Mr Doepel—Fishing is a good example where there has been very progressive and collaborative approaches around some parts of the country to issues affecting commercial and recreational fishing.

Senator CHRIS EVANS—What about the smaller miners? It always struck me that if you are dealing with Rio or BHP they have the resources to be informed about these things and they can employ expensive lawyers. I found most of the fear and misunderstanding tends to be those that operate at a lower level in the industry.

Mr Doepel—We do talk to prospecting and other associations. I think that is a fair comment on your part. They are not resourced to the same extent but even then I would generalise and say things have improved.

Senator CHRIS EVANS—I know we are having a change in the funding arrangements. Has that bill gone through yet? I know I should know.

Ms Jones—In relation to funding for respondents there were some revised guidelines that were implemented on 1 January 2007. The key thrust of the revision of the guidelines was to have a greater focus on agreement making as a way of resolving the respondents' involvement in the native title dispute.

Senator CHRIS EVANS—When you use the word 'respondents' is that the peaks that the other officer was referring to, or are you referring to the actual respondents to the proceedings?

Ms Jones—It can be both. We fund peak organisations as well as individual respondent parties.

Senator CHRIS EVANS—Wasn't there a change to the quantum and the regulations regarding those peak bodies or was that picked up in a general change in terms of funding of appearances by peak bodies before native title tribunals? I am interested to know what has changed and from when.

Ms Jones—The guidelines that governed the funding that was provided to respondents were revised and the new guidelines commenced as of 1 January this year. Essentially in terms of eligibility for funding there was not a significant change but there were changes in the types of activities that would be approved under the funding guidelines.

Senator CHRIS EVANS—So for the peak bodies what did that mean in effect?

Ms Jones—Essentially the funding would be provided with a greater focus on getting them involved in mediation processes as opposed to litigation. There are some restrictions, for example, on the type of funding they might receive in relation to court processes as opposed to being involved in long-term mediations. There was an amendment also to section 183 of the Native Title Act.

Senator CHRIS EVANS—I thought there was an alleged amendment. I was just trying to remember where we are up to with it. I remember reviewing the bill. Where is that at in the process? Has that gone through?

Ms Jones—It has, yes.

Senator CHRIS EVANS—There were two Native Title Bills. One has gone through and the other one has not—is that right?

Mr Anderson—One was passed in the last sitting. The other is currently before the parliament. It is being inquired into by this committee and hopefully will be debated in this sitting. It has been through the House of Representatives but has not been through the Senate.

CHAIR—Just on that, this committee reported on it less than two weeks ago. It is a public document.

Senator CHRIS EVANS—Thank you. I was aware that there were two bills going through. I was not sure at what stage they were. I knew one had gone through. I saw Senator Ludwig handling it very expertly in the Senate at the time. Are the changes to section 183 in the bill that is passed or the one that is still going through?

Ms Jones—The bill that was passed was an amendment to enable funding for people or organisations to negotiate template agreements in relation to mining agreements.

Senator CHRIS EVANS—But that is a separate matter to the regulations which determined the—

Ms Jones—The guidelines—which govern under what circumstances financial assistance can be provided.

Senator CHRIS EVANS—What was the change in terms of the template issue?

Ms Jones—Previously our funding for template agreements was not covered by the scope of section 183, which covers financial assistance for respondents. So there was a minor amendment to section 183 that enabled funding to peak organisations to negotiate with state governments and other parties to develop template agreements that could be used in mining agreements.

Senator CHRIS EVANS—Is there an allocated budget for the funding of peak organisations?

Ms Jones—Yes, there is.

Senator CHRIS EVANS—Can you tell me what the experience has been and what the budget for 2007-08 will be?

Ms Jones—For 2007-08 the allocation is \$17.723 million, but that covers all our financial assistance funding. It is not just the native title funding; it is all the other financial assistance schemes for which the department is responsible.

Senator CHRIS EVANS—For peaks?

Ms Jones—I think that is correct.

Senator CHRIS EVANS—What I was after is the figure for the appropriation for the funding of peaks and respondents in native title matters, which I presume now is a subset of that. I cannot believe that we are funding them for \$17 million.

Ms Jones—No, there has been some rephrasing of that funding.

Senator CHRIS EVANS—I understood that the change in the regulations was effectively to reduce the cost of funding. That was not necessarily the driver, but they would effectively be spending less in supporting those third parties or peaks in terms of the native title process. Is that a fair understanding of what is likely to flow from the change in the regulations?

Ms Jones—I am sorry, I missed the first half of the sentence. I can get that breakdown for you on the exact figure for the amount of funding for the peak organisations; I just do not have it with me at the moment.

Mr Cornall—I will just say that my understanding of the change to the guidelines was to reflect the Attorney's wishes that there be more focus on negotiation and settlement rather than protracted litigation. It was not to save money; it was to achieve objectives and outcomes more quickly.

Senator CHRIS EVANS—That is very well put. That was my understanding too and I would hope therefore that that would mean that we were forking out less money for lawyers in terms of their engagement.

Mr Cornall—That may well be the case.

Senator CHRIS EVANS—I was trying very crudely to track whether or not that was actually happening.

Mr Anderson—I will add to that as well. The amendment to section 183 was to make it clear that there was power to fund agreement making more broadly, rather than just the litigation. That in itself is likely to see an expansion of funding because now agreement making more broadly can be funded, as opposed to just litigation.

Senator CHRIS EVANS—Yes, but one would hope that the template would be a one-off type expense, wouldn't it, rather than the whole idea of templates?

Mr Anderson—That is the idea.

Senator CHRIS EVANS—Do you anticipate it being a peak in template funding that then reduces quite quickly?

Mr Anderson—That would be the expectation. Native title processes sometimes take a while to work through, of course, because you have got the ongoing processes.

Senator CHRIS EVANS—Yes, but your answer to me was that it would be more expensive because you have the template regulations. I am saying to you that I would have thought one would have offset the other and that the template costs would peak relatively soon and then subside.

Mr Anderson—Hopefully there will be a shifting of activity away from the litigation into broader agreement making.

Senator CHRIS EVANS—I am hopeful, too. I guess I am trying to get some understanding through your funding process of whether that is true and how we track it.

Ms Jones—I would like to correct something that I said before. That \$17.723 million is just for native title financial assistance. It does not include the other schemes. I should note that figure is after a rephasing of money. In relation to the native title financial assistance, we make commitments for funding of grants but, because it is dependent on the progress of litigation through the courts, the payment does not become due until further on. Thus we have to rephase moneys to cover the forward commitment that we have made to those grants. I will just point to some of the recent expenditure over the last several years. It does note that there is a downward trend in the amount of funding under the scheme to respondents. In 2004-05 expenditure was \$6.9 million. In 2005-06 it was \$5.2 million and, to date, in 2006-07 it is \$4.177 million.

Senator CHRIS EVANS—Those are figures only for what we describe as peaks?

Ms Jones—Or respondents.

Senator CHRIS EVANS—How do you define 'respondents'?

Ms Jones—They are any parties that have been recognised as parties by the Federal Court in a native title matter.

Senator CHRIS EVANS—That could include Aboriginal bodies?

Ms Jones—No, they are excluded. They are funded separately through the Department of Family, Community Services and Indigenous Affairs. They fund claimants to native title matters.

Senator CHRIS EVANS—But Aboriginal bodies can be respondents as well with competing claims?

Senator Johnston—I think it can include non-claimed Aboriginal bodies. We will take that on notice.

Senator CHRIS EVANS—I would assume we would not exclude Aboriginal people from being respondents.

Senator Johnston—My understanding is that, where there are interests other than native title interests and they are Indigenous interests, they can also receive funding as respondents.

Mr Anderson—That funding for Indigenous respondents would come through FACSIA though.

Senator CHRIS EVANS—Do you only fund white fellas?

Mr Anderson—Non-Indigenous, yes. There is a limitation in the act.

Senator Johnston—They are often industry groups. They can be Indigenous industry groups. We do not distinguish in that regard.

Senator CHRIS EVANS—The Kimberley Pastoralists Association is predominantly Aboriginal.

Senator Johnston—Predominantly Aboriginal, exactly.

Senator CHRIS EVANS—I am just amazed that the respondents are classified according to their Aboriginality. That is not why I am asking the questions.

Senator Johnston—You have to be very careful in that area.

Senator CHRIS EVANS—I am trying to understand. You have a decreasing call on your funding for those peak respondent bodies over the years. What is the allocation for 2007-08 for those activities?

Ms Jones—That is the figure that I referred to before, \$17.723 million.

Senator CHRIS EVANS—You are telling me that we have gone from \$4 million to \$17 million for the same function, or am I confusing apples with pears?

Mr Cornall—What Ms Jones was saying is that money that has not been spent in prior years has been moved forward. It has not been given back to consolidated revenue.

Senator CHRIS EVANS—How much is carried over?

Ms Jones—Approximately \$8 million.

Senator CHRIS EVANS—So \$8 million is rolled over money.

Ms Jones—To cover the forward commitment that has already been made.

Senator CHRIS EVANS—That still means you have \$9 million in new money. Is that right—\$17 million, subtract away \$8 million?

Ms Jones—Approximately \$10 million.

Senator CHRIS EVANS—I was close. Why has it gone from \$4 million to \$10 million?

Ms Jones—It is to make provision for the total forward commitment that we have to the future call that may be made on the scheme because of commitments that have been made in prior years.

Senator CHRIS EVANS—It has cost you \$6 million, \$5 million and \$4 million. You have \$8 million rolled over, but we have to find \$10 million new money for this year. It seems counter-intuitive.

Ms Jones—The money is there as a provision. When we may be called upon to make those payments is subject to the time frames of the litigation, and it is very difficult to predict that in advance, so we need to make sure that we have got a provision there so that, in the event that those commitments did require payment, we have the capacity to do so.

Senator Johnston—You have to understand that, if you have a really big claim that is litigated, it will go for three or four months and it will take up a sizeable proportion of that carried-over sum.

Senator CHRIS EVANS—Generally I accept that, except that we have had three years experience where there is no evidence of that. It was not what I was originally after, so I am not going to get hung up on this, but I am just trying to understand the likely cost impact on the Commonwealth of these changes to how we are funding various bodies? In a sense, we have gone off on a little diversion from what I was after, but that is probably how you stumble across interesting things. So you have \$10 million new money and \$8 million rolled over, but you do not actually have a budget forecast for what you expect to spend this financial year? This is obviously a subitem of a broader pool, is it?

Ms Jones—In terms of financial assistance, it is, yes. I go again to the issue that we need to be able to cover the forward commitment. The amount of funding there is to cover not only the expected expenditure within the financial year but also the potential expenditure in relation to the forward commitment.

Senator CHRIS EVANS—You still have \$8 million in the piggy bank for that, which you have rolled over. Now you have another \$10 million.

Senator Johnston—But you have to consider whether all the trials were brought on and all the matters were listed and commenced.

Senator CHRIS EVANS—That is why we have supplementary estimates.

Senator Johnston—And here we are.

Senator CHRIS EVANS—Putting what seems an interesting thing to one side, can you help at all with the answer that I am really trying to get at: what is the impact of these changes to the regulation and the act on how much the Commonwealth will be funding third-party respondents and/or claimants?

Mr Cornall—The answer is that it is too soon to say. The experience in legal aid organisations generally is that the quicker matters are settled, the cheaper they are and the more satisfied the parties are. So the ambition of having matters settled more quickly by

mediated outcomes would, I expect, produce a reduction in costs for legal assistance for the representative bodies over time.

Senator CHRIS EVANS—That was my best guess as well, but I am trying to tease that out. Mr Anderson indicated that he thought there might be a spike because of the template.—

Mr Cornall—That is possible. It is also because you bring matters forward. Expenditure that might be spread over several years through litigation might be less in total but brought forward and expended more quickly, so you can have an increase in expenditure for that reason as well.

Senator CHRIS EVANS—We have no actual budget estimates for funding these things other than a global budget of \$17 million

Mr Cornall—On past experience we would not expect to spend that.

Senator CHRIS EVANS—How do we then track what the history or progress of funding is? Are you going to separately track whether you are funding for litigation or for mediation? Hopefully, I will not have to ask you again, but if I am in the unfortunate position of having to ask you again, how will you be able to help me next time to be able to break down whether we are still funding litigation, mediation, or just rolling over more money?

Ms Jones—We are able to track the percentage of our grants and assistance that is allocated to litigation and the percentage that is allocated to mediation. The vast majority is allocated for the mediation aspects of native title processes. The figure is approximately 98 per cent but I can take that on notice and check it.

Senator CHRIS EVANS—All right.

Ms Jones—It is mainly for mediation.

Senator CHRIS EVANS—That is under the old system?

Ms Jones—And under the current system, yes.

Senator CHRIS EVANS—Can you get those figures for me?

Ms Jones—Yes.

Senator CHRIS EVANS—Whatever is easy in terms of the last few years so I can have a look at that.

Ms Jones—Yes. In relation to the type of Indigenous/non-Indigenous parties that are funded under the scheme, I would like to take that on notice because I am aware of at least one Indigenous organisation that we have funded under the respondent funding scheme and there may be others, so I would like to check on that.

Senator CHRIS EVANS—I appreciate that. Will we also be able to break down what funding has gone to template production versus mediation and/or litigation?

Ms Jones—I will take that on notice. I think we should be able to provide that information, but I will need to check.

Senator CHRIS EVANS—I would appreciate it if you could. Obviously the system is only just starting but I think people would be interested in seeing how that is tracking. The parliament is making a change so I would be interested to see whether it has worked in terms

of the number of templates that are being used. How are we going to track how they show up in agreements? Is the Native Title Tribunal the right one to ask?

Mr Doepel—We will see some of the product of this but I do not think we would be consciously catching that as a statistical count. I can alert our members, keep an eye on it and perhaps if the issue comes up again we can give you some comment or even mention it in our annual report.

Senator CHRIS EVANS—I appreciate that. I guess it is more a question for the department. There has been a legislative change. There has been some funding provided for a new process. How are we going to measure the outcome?

Mr Anderson—There is a body called the Native Title Coordination Committee, which is the department—both the respondent funding part and the other part of the department dealing with native title—the court and the tribunal and we work together to give advice to government on the operation of the native title system. On a periodic basis we do report to government. That committee will be particularly looking at trying to track the effect of the reforms. I should say the advice that it gives to government is in the context of the budget.

Senator CHRIS EVANS—I am just flagging that the committee will be interested in that as well. Obviously we cannot ask about advice to government but it seems to me that it should be reflected in the accounts of the annual reports. When we pass these things it is nice to know they work. Thank you for that. I have one other question about the tribunal.

CHAIR—We have quite a busy program today.

Senator CHRIS EVANS—Has the funding of the Native Title Tribunal and the change that was made with the calculation been followed through? Was there a change?

Mr Doepel—No, not for us. We had our funding reviewed as part of the overall system funding a couple of years ago and our forward estimates have been set out for the next three or four years. There have been no dramatic changes in our funding.

Senator CHRIS EVANS—Thank you.

CHAIR—Thank you to the members of the National Native Title Tribunal. We will now move to the Administrative Appeals Tribunal.

[2.46 pm]

Administrative Appeals Tribunal

CHAIR—Good afternoon, Mr Humphreys, and welcome to you and your officers.

Senator LUDWIG—I would like an overview of the staffing structure and the tribunal members.

Mr Humphreys—First of all, do you want me to deal with members or do you want me to deal with staff?

Senator LUDWIG—Either way you want to go.

Mr Humphreys—There have been no appointments of members since the last time I came before the committee. There are some seven appointments that expire this year. There are two that are due to expire—one on the 31st of this month and one on 30 June. There are another

four positions that expire on 30 September, and Justice Robert Nicholson, who is a presidential member from Western Australia, will retire from the court on 6 August 2007. We are actually in a lull, if I can use that term, in the appointment process. We went through a very intense period over three years. We have a lull this year, a lull next year and then we will be back to a large number in 2009.

Senator LUDWIG—How many tribunal members are full time and how many part time?

Mr Humphreys—We have 19 full-time members. That includes the president. The rest are part time.

Senator LUDWIG—Of all of those, except the president, what are the terms?

Mr Humphreys—The majority of them are five-year appointments.

Senator LUDWIG—When does the next cohort come up for the five years?

Mr Humphreys—That would be 2009. As I said, we went through a period where there were a large number of appointments. That started in 2004 and a majority of them expire in 2009.

Senator LUDWIG—We will deal with the staffing now. Do you deal with that in full-time equivalents or number of bodies?

Mr Humphreys—We can deal with both. If you go to appendix 2 of the annual report 2005-06, it shows a total of 152 staff as at 30 June 2006, but that includes part-timers. If you go over the page to table 2.3 where it shows employment statistics as at 30 June, we have 152 staff: 103 women, 49 men, 12 part time, 121 full time, 19 irregular or intermittent—basically casuals of which we have a number mainly in the hearing room attendants—and there are six who are on AWAs, giving us a total of 126 full-time equivalents.

Senator LUDWIG—That is in the annual report. Has that changed since then? Has it trended upwards or trended downwards?

Mr Humphreys—It has trended upwards slightly. We have a number of positions, mainly project positions, that relate to some of our IT requirements.

Senator LUDWIG—What is the cost of the total wages bill for this budgeted year and then for the out years?

Mr Humphreys—For employees, if you go to table 5.3 of the portfolio budget statements—and I should add that this includes members—our estimated actual for 2006-07 is \$18.24 million. The budget estimate for 2007-08 is \$18.457 million. The forward estimate 2008-09 is \$18.392 million; 2009-10 is \$18.191 million, and 2010-11 is \$18.466 million.

Senator LUDWIG—That is what the expected wage costs are for the out years?

Mr Humphreys—That is right.

Senator LUDWIG—In terms of the locations, you might have to remind me—I might have asked this last time we were here—but your registries are, I think, in most capital cities. Are they co-located with any other bodies?

Mr Humphreys—I will go through it. In Brisbane we are located in the Commonwealth law courts building. There is part of the principal registry there. We also provide

accommodation and facilities for the MRT-RRT. They currently have three part-time members situated there and one administrative staff person. In Sydney we have the balance of principal registry plus the Sydney registry. Melbourne is again in commercial accommodation. In Tasmania we are situated in the Commonwealth law courts building and our registry services are provided by the Federal Court. So we only actually have one staff member in Hobart other than the part-time members. In Canberra we are situated in the city.

In Adelaide we are co-located with the National Native Title Tribunal; they have part of the floors that they are on that they occupy solely and there is part that we provide to them that they share. They also use our facilities. In addition, we provide both registry facilities and accommodation for the MRT-RRT, and they have one part-time member co-located with us in our premises in Adelaide.

In Perth we have again, I think, one MRT-RRT member there who is a part-timer and we provide registry and other services for the MRT-RRT from there. We do not have a presence in Darwin; it is administered through Brisbane. We have a capacity to lodge documents there but they are sent down to us and we go up there four times a year, roughly, on a circuit in the same way. The Brisbane office services that, but they also do circuits all up the north coast of Queensland and go inland as well, as required.

Senator LUDWIG—Are you able to break down the accommodation costs by location where you have to actually provide the accommodation—that is, the commercial accommodation—and, where it is in the Commonwealth law courts, whether you pay rent or nominal rent to the Commonwealth for that service? I am happy for you to take that on notice if you want to.

Mr Humphreys—Given what you have just asked, it is probably best if I give it on notice, but I have a detailed property break-up. We went through, in the last two years, a property exercise because the leases on Sydney, Canberra, Melbourne, Adelaide and Perth actually ran out and we had to go through a process of property solutions for each of those premises. I can tell you that we stayed in all of the premises except in Perth. In Perth the—

CHAIR—Mr Humphreys, if you could take it on notice. I think the senator was happy with that.

Senator LUDWIG—I do not mind witnesses talking sometimes!

Mr Humphreys—I am sure you do not. I am simply saying in Perth we had to move because the landlord kicked us out.

Senator CHRIS EVANS—They give you training programs not to talk, don't they?

Mr Humphreys—Unfortunately, I am lawyer. It comes naturally.

Senator LUDWIG—We can start with various locations, but, with the IT that is available to the AAT, do you provide that in-house or is that through a contract or service provision? There may be a range of IT. There will be the data processing or the case management and then there may be as well your financials, plus if there is court-based IT as well.

Mr Humphreys—The case management database that we use is provided internally, and the financial and human resources IT systems are done internally. We host our own website. We obviously rent telecommunication lines and that from a variety of providers for different

solutions. We have contracts in relation to firewall and security services with an external provider.

Senator LUDWIG—What is the general cost of the website that you maintain, or is it managed internally?

Mr Humphreys—It is managed internally.

Senator LUDWIG—Do you subscribe to AustLII? In other words, do you have a portal that provides links or do you put all your decisions on AustLII?

Mr Humphreys—All the decisions go on to AustLII and, if I can anticipate the next question, it is \$10,000 a year.

Senator LUDWIG—How is that arrived at?

Mr Humphreys—By negotiation.

Senator LUDWIG—Have you looked at the cost, if you had to do it yourself, as to what it would likely be?

Mr Humphreys—We have not because we have been very happy with the service that has been provided. In fact, we have been enhancing the database by going back and capturing in electronic form, previous decisions—and I am talking about decisions from 1976 to about 1989—by going through a process of actually capturing paper based decisions that were not in electronic format and we have been steadily converting those to electronic format and then QAing them and then putting them up on AustLII. We have been very happy with the service.

Senator LUDWIG—In terms of the overall IT, do you provide internal upgrades or is there scheduled maintenance or scheduled upgrading?

Mr Humphreys—We have a vast number of IT projects that we have been working through. As part of bringing in the new case management system we went through and upgraded all of our hardware and we upgraded servers as a result of that. So we have at the moment a very good suite of IT hardware. The new case management system has been introduced and it is up to date. We have a maintenance contract with the provider and we will be looking at further enhancements in due course.

Senator LUDWIG—Was there an estimated cost of that?

Mr Humphreys—I think I provided that to you in the answer to the question on notice that you asked last time.

Senator LUDWIG—That has not changed?

Mr Humphreys—No.

Senator LUDWIG—The maintenance contract?

Mr Humphreys—The maintenance contract is still the same. It is approximately \$100,000 per annum. That includes, I should say, some enhancement capacity.

Senator LUDWIG—Do you have a snapshot from the annual report of the number of decisions you make, the time that it takes to make those decisions and the cases on hand, so to speak, and then how long it takes—the elapsed time perhaps? The annual report shows some

data, but does that fluctuate from year to year? That data was captured approximately midway through last year.

Mr Humphreys—That data was as at the end of the financial year, and we have some internal data that we provide throughout the year and then we obviously produce the same data each year in a similar format so one can compare years.

Senator LUDWIG—So you are able to update that data up to, what, the last month or this month?

Mr Humphreys—I can. I am going to be a little bit careful in what I say simply because we are still quality-assuring the report-writing process in the new case management system and I am not in a situation where I would be prepared to put my hand on my heart and say they are 100 per cent accurate. But I can give you a general trend as to where they are going.

Senator LUDWIG—That would be helpful. Do you keep a financial view on the costs of the decisions themselves, as against the overall budget—in other words, what each decision is worth?

Mr Humphreys—No.

Senator LUDWIG—What performance indicators do you track to see that you are achieving a quick, informal decision-making tribunal?

Mr Humphreys—First of all, we do the annual calculation on what the cost is for matters that do not proceed to hearing. We also provide the figure of the cost of matters that do proceed to hearing. We provide figures on the timeliness of decisions in that we have a target which is reported on each year as to whether or not we have achieved finalisation within 12 months or finalisation within a shorter period of time in relation to the Small Tax Claims Tribunal. They are the performance measures that we use.

Senator LUDWIG—If you can update us since the last ones that you provided in the annual report with the more up-to-date figures, it would be helpful. You could take those on notice.

Mr Humphreys—If you are happy to take them on notice, I am happy to provide them on notice.

Senator LUDWIG—Is the case management system an external product?

Mr Humphreys—Yes. As we indicated in the response on notice, it was provided by SBC Pty Ltd. They are an Australian company. They have provided a case management system to the Supreme Court of Queensland and the District Court of Queensland. They are in use in the Residential Tenancies Tribunal in South Australia and at a number of other places. We took their basic system and we have modified it to our needs.

Senator LUDWIG—How did you arrive at the decision to pick up that particular case management system?

Mr Humphreys—It was by an open tender process in accordance with the procurement guidelines.

Senator LUDWIG—Had you considered Casetrack, which the Federal Court and the Family Court use?

Mr Humphreys—Yes.

Senator LUDWIG—They obviously did not win the tender process.

Mr Humphreys—They did not submit a tender.

Senator LUDWIG—At portfolio budget statement page 97 regarding the purchase of non-financial assets, there was an equity injection last budget and I think it was in respect of the Anti-Terrorism Act (No. 2) 2005.

Mr Humphreys—Yes.

Senator LUDWIG—That was expended. What was purchased or what was it used for? Are you able to quantify that?

Mr Humphreys—We have been using the equity injection to build additional secure stores within locations so as to enable us to store onsite national security information which may be made available to us during the course of security appeals to the tribunal. There are quite stringent requirements as to the type of facility, the various alarms that have to be put on it and the various cabinets and other things that are required, which I will not go into, to comply with the guidelines. They are quite expensive to build. In addition to that, we have been required to increase the number of top secret clearances of staff so that they can handle that material, again in accordance with the guidelines.

Senator LUDWIG—Looking at the tribunal in terms of its non-financial appropriations funded internally, do you have a plan for that that goes to the out years or do they just arrive and then you plan for the purchase when it is required?

Mr Humphreys—We have an asset replacement plan that we update from time to time. In the three years that I have been with the tribunal there has been a fair requirement to update assets and replace assets because of a period of non-investment, if I can use that term, while the Administrative Review Tribunal proposal was under consideration. There was a period where we had to go through and do quite a lot of work, particularly in the IT area, to update things. With the changes, particularly in relation to the leases, we have been going through a process of refurbishment at the various sites. We have refurbished Sydney, we have almost completed Canberra, we are about to commence in Melbourne and we will be commencing next year in Adelaide. When I say ‘next year’ I mean 2007-08.

Senator LUDWIG—How far out do you plan for? You said you plan. Do you plan for one year, two years or three years?

Mr Humphreys—Three years.

Senator LUDWIG—So it is effectively this year, then three out years?

Mr Humphreys—Yes.

Senator LUDWIG—If you look at the last couple of PBSs, the non-financial appropriation has tended to fluctuate quite a lot. Is there any explanation of why that has fluctuated?

Mr Humphreys—In some cases there have been timing issues in relation to our capacity to in fact bring on projects and get them completed within the time period. For example, I would have liked to have commenced the refurbishment in Melbourne this financial year, but

that is simply not going to be possible. So there are fluctuations as a result of that and it just depends on when the decisions are made to replace the various assets. For example, the decision to acquire the case management system, once we got the specifications for that, then dictated the refreshment of all of our computer hardware—the PCs and the laptops—because the new system required a certain level of power, if I can use that term, in relation to the laptops and memory space.

Senator LUDWIG—If you look at it, it was originally about \$3.8 million; then it went to \$0.65 million and then the estimated actual report in the last PBS is \$1.9 million. You have indicated that it is irregular in terms of your purchase of non-financial assets but, if you were planning it, it would be far more even, I would imagine, because you would then have the money. You would plan to spend it and then you spend it, so it would not fluctuate. I am curious as to what sort of reasons you would advance to explain that.

Mr Humphreys—I might ask our financial controller to answer that question.

Mr Wise—We do estimate the amounts, but when the actual time comes to let the contracts it depends on what they come in at. We estimated that the case management system would be a lot more than it actually came in at. Similarly with fit-out, it depends on how much we spend rather than what we have estimated.

Senator LUDWIG—So in those instances where it was originally \$3.8 million, it was a lot less than you thought?

Mr Wise—Exactly. I add that we thought we may have to move premises, but because we remained in the premises we did not have to spend as much money.

Senator LUDWIG—How much have you got to carry over in this year?

Mr Wise—Do you mean cash or accrual?

Senator LUDWIG—Your planned expenditure for non-financial assets—I will rephrase it that way.

Mr Wise—We will have more in our account than we planned, but it will not affect our ongoing costs as much, except there would be less depreciation in the forward years.

Senator LUDWIG—How much do you intend to have?

Mr Wise—In forward years?

Senator LUDWIG—Yes.

Mr Wise—Say it is over 10 years. If we planned on the original cost, this new amount divided by 10. So the difference would be the residual that we will have to spend on other costs.

Senator LUDWIG—But you are planning over three years.

Mr Wise—Do you mean in this current budget?

Senator LUDWIG—Yes.

Mr Wise—Theoretically you are comparing figures from a previous financial period.

Senator LUDWIG—I understand that. What I am trying to understand is that it seems you fluctuate it and the fluctuations have been irregular. One example is that you have come in under budget on your case management system, and I will get to how much that was. The other one was the fit-out. I am not sure whether you said it was under or over budget, but we will get to that as well. But you have a plan; it is a three-year plan. Either you are not planning very well or the plan is not followed, because if you planned then you would have planned expenditure and you would then be able to explain if there was an overcalculation or undercalculation. It would not fluctuate, I wouldn't imagine, as broadly as those figures do.

Mr Wise—I suppose what we can say is that we actually have more money in our bank account remaining than we expected to spend. Also, because we have not moved locations, we actually have to allow for the fit-out when we do move at the end of these existing leases.

Senator LUDWIG—How much extra do you have in your bank account?

Mr Wise—At the end of this financial year we will have nearly \$6 million.

Senator LUDWIG—Will that then carry over?

Mr Wise—The \$6 million is the carryover plus unspent depreciation from previous asset purchases.

Senator LUDWIG—Is that rephased or simply carried over?

Mr Wise—With the current system it just sits in our bank account and it is really identified for future asset replacement.

Senator LUDWIG—In your three-year plan do you have identified future asset replacement?

Mr Wise—That money at the moment is currently not allocated in the next three years but it will be required at some future date beyond that period.

Senator LUDWIG—So your plan does not include the \$6 million?

Mr Wise—No, not the next three-year plan.

Senator LUDWIG—So it will sit there for the next three years?

Mr Wise—It actually sits in the government account, yes. It is not ours to spend, if you like, unfortunately.

Senator LUDWIG—I did not think that.

Mr Humphreys—Nor do we accrue interest on it.

Senator LUDWIG—No. But I do like the accounting. Thank you, Chair.

CHAIR—May I take this opportunity, on behalf of the committee, to welcome Major General Sidarto Danusubroto from Indonesia, along with his delegation. We welcome you to our committee and we thank you for being here. We hope that your visit is both enjoyable and informative. Senator Payne and I and other members of the parliament enjoyed lunch with you and your delegation today. We welcome you to our committee.

I have some questions to put to the AAT. Mr Humphreys, the three issues I am interested in are timeliness of decisions, your complaints procedure and the code of conduct for your

members. Firstly, in relation to the timeliness of decisions, I note at page 28 of your annual report that the tribunal aims to finalise the majority of applications within 12 months of lodgement, and you have indicated some of the outcomes in the tables that follow through on pages 29 and 30. Can you indicate to the committee or provide further particulars of the reasons why some did not meet that 12-month period, and outline some of those to the committee?

Mr Humphreys—The figures that we have there would be best described as aspirational. There are many reasons why matters take longer. We have never actually met those time standards, that I am aware of, except in the social security area. For example, in the tax area we have many matters, particularly in relation to some tax schemes, that cannot be finalised because there is ongoing litigation, including appeals to the Federal Court, the full Federal Court and the High Court. So we have a number of matters that end up banking up, if I can use that term, behind the outcome of litigation in the courts. We are unable to finalise them until that litigation is determined one way or the other.

In relation to workers compensation claims, a multiplicity of claims come in in relation to different conditions. It will be necessary in some cases for an existing claim to be held up while a further claim is actually determined, one way or the other, by the relevant insurer. What will happen is that will then come through. Also, medical conditions may require stabilisation periods so that the full extent of the disability is known. In one area some of the applicants are guests of Her Majesty and are unable to prosecute their appeals whilst they are in custody, and we have to await that. There is a multiplicity of reasons as to why matters do not proceed within the time frame. Generally, it is not because of the incapacity of the tribunal to hear the matter—far from it—it is the incapacity of the parties for one reason or another to get matters on.

CHAIR—That is really the point that I want to get to. I am interested to know whether it is the incapacity of the tribunal to deal with them for whatever reason, or the incapacity of the parties. So could you take on notice the decisions that are made outside your target time frame of the 12 months and, for those that are outside that time frame, just advise the committee of the reasons for that delay.

Mr Humphreys—We can provide general reasons.

CHAIR—Yes, general reasons; that would be fine.

Mr Humphreys—Otherwise I would have to do a manual file search of a large number of files.

CHAIR—No, I am interested in the general reasons. I am interested to know whether it is the parties or whether it is the tribunal's concerns, with the members of the tribunal or their incapacity for whatever reason. I would like you to advise the committee, if you could take that on notice.

Mr Humphreys—Certainly.

CHAIR—At page 32 you have outlined that you have a service charter of how people can make a complaint. Is that simple and easy to understand?

Mr Humphreys—I think so. We get complaints in a variety of forms. We get letter complaints. I have had email complaints. We get verbal complaints that we transcribe into a written complaint. They are then submitted. If they can be dealt with at a very low level, at the registry level, they are dealt with, but we are advised at the principal registry. If they cannot be dealt with or they require higher attention, they are forwarded to principal registry. The president deals with complaints in respect of members and I deal with complaints in respect of the administrative side of the organisation, the registry. I can say to you, if I can just update it, that from 1 July 2006 to date we have received complaints from 26 individuals; in relation to conduct of conferences, four; conduct of members of tribunal, four; complaints about tribunal decisions, eight; general procedural issues, eight; and complaints about tribunal decisions available on the internet, one. In all but four cases we provided initial responses within a 20-day period. The average time this year for complaints to final response is nine working days and the longest period was 34 days. But of course if we cannot respond immediately we advise the complainant that we will take a further period of time.

CHAIR—Do you respond to the complainant immediately you receive it, within seven days? What procedure do you have there?

Mr Humphreys—Within three days, normally. We receive the complaint and it has been processed and then we respond with a further letter afterwards.

CHAIR—Just to confirm again, all of those complaints have been resolved?

Mr Humphreys—There is one outstanding complaint at the moment. We have not resolved it yet, but this is a new complaint.

CHAIR—I notice that the Ombudsman has received two complaints, compared to 11 last year.

Mr Humphreys—Yes.

CHAIR—Have those two been resolved?

Mr Humphreys—There was no further action taken by the Ombudsman. What happens is that the Ombudsman receives a complaint. The Ombudsman will look at it and see whether or not it needs to be referred to us. The Ombudsman resolved those complaints without them being referred to us.

CHAIR—We heard from the National Native Title Tribunal. They referred to the code of conduct.

Mr Humphreys—It is the Administrative Review Council code of conduct for tribunal members, which was published in 2001. Copies of that are made available to tribunal members. In addition, there are chapters in the *Council of Australasian Tribunals Practice Manual*, again a copy of which is provided to each member of the tribunal, which deals with a number of procedural issues in relation to bias and conflict of interest. That is also provided to tribunal members.

CHAIR—I have a number of questions in that regard. It is provided to them. Do they voluntarily agree to abide by the code of conduct?

Mr Humphreys—No. There is no requirement that they sign any document or otherwise within the tribunal that they would do so. I do not think the same applies to judicial members in courts.

CHAIR—That is why I am asking the question. So it is provided to them and there is an expectation, is there, that they abide by the code of conduct?

Mr Humphreys—Yes.

CHAIR—Has the code of conduct been reviewed since 2001 and, if so, who did the review?

Mr Humphreys—It is the Administrative Review Council's document. It is not our document.

CHAIR—But your members abide by that document?

Mr Humphreys—They are given the document. As I said, we do not have an internal code of conduct that they are required to comply with. They are provided with that and they are provided with the code manual.

Mr Govey—It might be worth noting that, like the judicial code that was referred to earlier this morning, the full title of this 2001 publication is in fact a *Guide to Standards of Conduct for Tribunal Members*. I am not sure what turns on the difference between a guide and a code, but I can imagine there might be differences.

CHAIR—I think there is, as far as I know from my legal background in terms of a code of conduct. If it is signed and agreed to, there are usually consequences to not abiding by it. If it is a guide it is probably less of a legal document. It is more ambiguous; it is more of a guide rather than specific.

Mr Govey—That was why I thought it was important to draw attention to the precise term of the publication.

CHAIR—Thanks, Mr Govey. Mr Humphreys, thanks very much for that. I think we have concluded the questions. Thanks for your attendance today. We will have a break for 15 minutes.

Proceedings suspended from 3.24 pm to 3.41 pm

Human Rights and Equal Opportunity Commission

CHAIR—I welcome Mr von Doussa and the members of the Human Rights and Equal Opportunity Commission to our committee. I call Senator Kirk.

Senator KIRK—I have some questions in relation to staff figures at the commission. I notice this year's annual report at page 213 indicates that in 2005 the total number of average staffing levels was 94 and in 2006 it was 95. Is this correct? Are we on the same page?

Mr von Doussa—I was looking at page 178.

Senator KIRK—It is page 213 of the annual report. It shows the staffing levels over the last two financial years. Are we on the same page?

Mr von Doussa—Yes.

Senator KIRK—What I am interested in is projected staffing. I notice that it is projected that for 2007-08 that there will be 114 staff at the commission.

Mr von Doussa—Yes.

Senator KIRK—Given that, I am interested to learn where it is that those additional 20 staff are going to be located and what kind of work it is anticipated that they will be doing.

Mr von Doussa—Ms Roberts can give you the exact breakdown. I know departments, but I do not have the numbers.

Ms Roberts—I do not have the information on the exact breakdown with me, though I can tell you why there has been that increase.

Senator KIRK—That will be helpful, thank you.

Ms Roberts—Over the last two years HREOC's budget funding has grown by 25 per cent. That has meant bringing on new staff to do a range of tasks, including in response to the additional funding that we have received to deal with the increase in industrial relations complaints. We have added a number of staff to our complaint handling unit. We have also, in response to some additional funding that we have received, set up an additional unit within the commission which is situated within the race discrimination unit and reports to our Race Discrimination Commissioner and that is dealing with education and strategic partnerships. Its mandate is related to the funding that we dealt with to engage in some projects with the Muslim community as a result of the government's national action plan.

Senator KIRK—I think you said that you would take on notice an indication as to where the additional staff will be located?

Ms Roberts—The exact numbers, yes, I will.

Senator KIRK—Would you also be able to break it down and also include—I will read them out just for the record—those who will be statutory office holders, those who will be attached to the corporate affairs division, those attached to the legal affairs division, those attached to the complaint handling division, those attached to the Race Discrimination Commissioner's policy unit, those attached to ATSI Social Justice Commissioner's policy unit, those attached to the Human Rights Commissioner's policy unit, those attached to the Disability Discrimination Commissioner's policy unit and those attached to the Sex and Age Discrimination Commissioner's policy unit. Is it the case that the new individuals will be spread across those areas that I have just read out, or are they going to be concentrated more in one or two of those?

Ms Roberts—They are mainly concentrated in one or two, but there have been a couple of other additional positions. I will confirm that and take it on notice.

Senator KIRK—I will wait until I get that answer, thank you. Moving on, as I understand it, the commission has a president and five commissioners, but I believe it is currently the case that those five positions are held by only three persons. Is that correct? Perhaps you could outline for us how it is that the individuals are spread over the place.

Mr von Doussa—They are actually held by two other commissioners at the moment because Commissioner Pru Goward has resigned. You are correct. Commissioner Graeme

Innes holds two portfolios and Commissioner Tom Calma holds two portfolios. There have only been three commissioners plus a president since 1997, I think.

Senator KIRK—So the position of Disability Discrimination Commissioner, for example, has been vacant since 1997?

Mr von Doussa—It is not vacant. There has been an acting commissioner and there is now. Commissioner Graeme Innes is the acting Disability Discrimination Commissioner.

Senator CHRIS EVANS—Are we getting to the point soon that there will be one of you doing about eight jobs? I know you are a lean, mean operation, but you are getting lean to the point of disappearing shortly.

Mr von Doussa—I assume in due course there will be another Sex Discrimination Commissioner appointed.

Senator CHRIS EVANS—Do you know that?

Mr von Doussa—I do not. I am assuming it.

Senator CHRIS EVANS—Has a decision been taken to appoint a replacement?

Mr von Doussa—That is a matter for the government. I do not know.

Senator CHRIS EVANS—All right, I will ask the minister. Has there been a decision taken to replace—

Senator Johnston—No, there has not, and I believe that we are considering applications.

Mr Cornall—We are considering possible candidates.

Senator CHRIS EVANS—The first question was: has there been a decision to replace her? The second question is: have you set in train a process?

Senator Johnston—I think there has been a decision to fill the position and a number of candidates are being considered.

Senator CHRIS EVANS—So what does that mean in terms of a process?

Senator Johnston—It is under consideration by the government.

Senator CHRIS EVANS—So there is no process? I cannot apply?

Senator Johnston—I am sure you can apply.

Senator CHRIS EVANS—How do I apply then?

Senator PAYNE—Are you announcing a by-election there, Senator?

Senator CHRIS EVANS—The good thing about senators is we come and go quite rapidly and no-one mourns our passing, as you well know.

Senator Johnston—I am sure Hansard is recording your interest now and the government is taking note of it.

Senator CHRIS EVANS—Seriously, how does one apply for the job? How do I know there is a vacancy? How does an Australian citizen apply for the job?

Mr Cornall—It is a statutory position which the government can fill as it sees fit and it is under active consideration by the government.

Senator CHRIS EVANS—So there is no application process?

Mr Cornall—At this stage, no.

Senator CHRIS EVANS—That is fine.

Senator Johnston—But there may be one in due course. That is a matter for the Attorney.

Senator CHRIS EVANS—They are not quite the same answer. Will there be an open, public process to fill the vacancy, or will it be a decision internal to government?

Senator Johnston—That is a matter for the Attorney.

Senator CHRIS EVANS—So we do not know?

Senator Johnston—No.

Senator CHRIS EVANS—How have these positions been filled in the past, Mr Cornall?

Mr Cornall—I do not recall precisely, but Ms Lynch says that sometimes they have been advertised and sometimes they have not.

Senator CHRIS EVANS—I guess you have not filled one for a long time, have you?

Mr Cornall—Mr Calma was filled; Mr von Doussa was appointed; Mr Innes was appointed.

Mr von Doussa—Both those were advertised.

Senator CHRIS EVANS—So both those positions were advertised? Mr Innes is the acting Disability Commissioner, is that right?

Mr von Doussa—He is, but he is also the Human Rights Commissioner. It was the Human Rights Commissioner's position that was advertised but it was noted that the appointee would be asked probably to take the acting position as well.

Senator CHRIS EVANS—I was going to ask whether there was any intention to fill the position of Disability Commissioner.

Mr von Doussa—That again is a matter for the government but there are obvious budgetary implications to that.

Senator CHRIS EVANS—Yes, there are, but there is no decision, we take it, to then fill the Disability Commissioner's position in a full-time capacity?

Mr von Doussa—I can only tell you that our budgeting for the current period does not anticipate that and nor has it for the last 10 years.

Mr Cornall—Not that we are aware.

Senator CHRIS EVANS—So if you are to fill a position it will only be the one vacated by Ms Goward?

Mr Cornall—That is what I understand the government has under consideration at the present time.

Senator CHRIS EVANS—So all the others will remain acting appointments?

Mr von Doussa—There are two substantive appointments: the Human Rights Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner. The

acting ones are the acting Race Discrimination Commissioner and the acting Disability Discrimination Commissioner.

Senator CHRIS EVANS—Is there any intention to relieve Mr Innes and Mr Calma of the additional responsibilities that they have taken on in an acting capacity and fill those positions on a permanent basis?

Mr Cornall—That was the question I answered—not that we are aware.

Senator CHRIS EVANS—That is what I thought.

Mr Cornall—As Mr von Doussa said, the position of the Sex Discrimination Commissioner is under active consideration.

Senator CHRIS EVANS—Mr Innes, how long have you been acting?

Mr Innes—I have been in the role of Human Rights Commissioner since December 2005 and I have acted as Disability Discrimination Commissioner since 15 December 2005. One predecessor of mine as Human Rights Commissioner and several previously in permanent commission roles acted as the Disability Discrimination Commissioner. So, as Mr von Doussa has said, that position has been carried out in an acting capacity since around 1997. I cannot give you the exact date; I would have to take that on notice.

Senator CHRIS EVANS—Have they been paying you higher duties allowance?

Mr Innes—No.

Senator CHRIS EVANS—Mr Calma, how long have you been acting? Do not say all your life.

Mr Calma—I was appointed on 14 July 2004 for a five-year term as the Social Justice Commissioner and annually get appointed as the acting Race Discrimination Commissioner.

Senator CHRIS EVANS—Annually?

Mr Calma—Annually.

Senator CHRIS EVANS—Is that the same with you, Mr Innes—it is an annual acting role?

Mr Innes—I have been appointed twice: once on 15 December in the permanent role and in the acting role, and then I was reappointed. My acting role was for 12 months. There was a week gap left and I was reappointed on 22 December 2006 as acting Disability Discrimination Commissioner. My permanent appointment is for a five-year term.

Senator CHRIS EVANS—So can someone explain to me why the acting arrangements roll over on an annual basis for Mr Calma and not for Mr Innes? Is it a legislative requirement about the acting role?

Ms Lynch—The acting positions that are held by Mr Innes and Mr Calma are both yearly, but they fall vacant at different times.

Senator CHRIS EVANS—How long are the acting appointments made for then?

Ms Lynch—I think it is about 12 months.

Senator CHRIS EVANS—Is that a legislative requirement?

Ms Lynch—I think we would have to take that on notice.

Senator CHRIS EVANS—If you have not filled them for 10 years, it is a long acting, isn't it? Mr Calma said he was appointed annually and you have confirmed that. Is that because you are still testing whether he is doing a good job as acting or because there is a legislative requirement?

Mr Govey—The background to this of course was the government had announced an intention to restructure the commission and only have three commissioners. That is the reason that the other positions have been filled on an acting basis. The question about the length of that period and whether it is a 12-month maximum period, we would need to take on notice.

Senator CHRIS EVANS—Given that they could not get that legislation passed, we have been living with that situation for a long time and the structure is just going to go on on that basis, is it?

Mr Cornall—It is a matter for the government to determine how it wants to carry the matter forward.

Senator CHRIS EVANS—So we are going to fill one position but the other two will remain an acting position? There is no intention to fill those?

Mr Cornall—That is our understanding at the present time, yes.

Senator CHRIS EVANS—Thank you for that.

Senator KIRK—I will move on to some other areas I think. I understand that it is a part of a whole-of-government approach to these matters that an Australian government Indigenous expenditure statement is something that each agency is required to prepare. Is that your understanding?

Mr Calma—That is something that I believe happens, but that is something it is best to talk to Minister Brough about.

Senator KIRK—As I understand it, it is the case that each agency of government, particularly those who are affected by Indigenous matters, are required to produce such an Indigenous expenditure statement. Is it the case that your commission has produced a statement in accordance with this policy requirement?

Mr Calma—I could not say for sure. It is something that maybe the Attorney-General's Department may be able to respond to.

Mr Cornall—The departmental statement is on page 72 and the portfolio statement is on pages 18, 19 and 20.

Senator KIRK—So is the amount for the Human Rights and Equal Opportunity Commission detailed down the bottom of page 19? Is that the way to read it?

Mr Cornall—That is what I understand it to be.

Senator LUDWIG—How is that arrived at? I understand what you are saying is that on page 72 the total of the Attorney-General's Department is listed there on table 4.1 and the contribution by each agency is then on the table listed on pages 18, 19 and 20.

Ms Roberts—I understand that that amount in relation to the Human Rights and Equal Opportunity Commission represents the amount of the budget of Commissioner Calma's Social Justice unit, plus his position.

Senator LUDWIG—Do you understand that or do you know that?

Ms Roberts—I have been told that.

Senator LUDWIG—Perhaps you could check that, but we will take that as the position.

Ms Roberts—I will take that on notice.

Senator LUDWIG—You state then that your expenditure on Indigenous issues is allocated in accordance with the statutory requirements of the Social Justice Commissioner and community education programs relating to Indigenous issues. So which part of it relates to education programs relating to Indigenous issues?

Ms Roberts—I would need to take that on notice.

Senator LUDWIG—Yes. Do you see what I am pointing to? What you have is a lump of money; it is already in your budget. You expend it as part of the Human Rights and Equal Opportunity Commissioner or as part of the Social Justice Commissioner and you then subscribe an amount as part of the commitment which the government says relates to Social Justice Commissioner and community education programs relating to Indigenous issues. Therefore, I am trying to understand how that money is then broken up into those different components.

Mr von Doussa—We will take that on notice, but I do not think that we are going to come back with a definitive split, because we approach the whole of our function as education, first and foremost. Everything we do is meant to be educational. We would not specify something as education and split it off.

Mr Cornall—There is a short statement on page 407 of the portfolio budget statement. It does not answer your question but I just direct your attention to that as well.

Senator LUDWIG—What I am trying to understand, though, is your response to the overall requirement for the Attorney-General's Department to ensure that the appropriate money has been identified and then properly placed in the portfolio budget statement as an expenditure on Indigenous affairs. Otherwise it becomes an unusual process where you come up with an amount and you then just write it down, total it up at the end of the year and say, 'This is how much we have expended.' You cannot properly identify how it has been expended, what it has been expended on and what benefit was derived from it as a consequence. If that happens, we just end up at the end of a period with lumps of money that the government says is spent on Indigenous affairs. That concerns me in that sense because this is the opportunity for us to test what the government is, in fact, expending on Indigenous affairs. Do you have an answer to that?

Mr Cornall—As I understand it, the purpose of this schedule is for each agency and each department to endeavour to indicate publicly the amount that it is expending on Indigenous matters so that the government and the public have a comprehensive overview about what is being spent on Indigenous matters and so that it is not brought into the public arena by simply being put into the broader portfolio budget statements. All these amounts represent amounts

that are in the budgets of the agencies concerned, but we have sought to identify them in accordance with the government's requirements so that the government has a full picture of the amount being expended on Indigenous matters.

Senator KIRK—Senator Ludwig is alluding to this: is there any kind of oversight or overview conducted by the department at the top level to ensure that, of the amounts that have been identified by the agency, this amount is actually being spent and put towards Indigenous affairs?

Mr Cornall—They are all agencies with financial accountability requirements in their own right.

Senator KIRK—These figures that we have here are really the anticipated expenditure in each of the various agencies—is that correct?

Mr Cornall—That is what I understand, yes.

Senator KIRK—How is it possible to do any kind of check to see whether or not next year when we come to look at these things we can make some sort of assessment as to whether or not these amounts were in fact put towards Indigenous affairs matters?

Mr Cornall—I am not sure of the answer to that. This is a finance department requirement. You may get a better answer about that from either the finance department or the department of Indigenous affairs.

Senator KIRK—I will move on to maternity leave. I notice that President von Doussa has made a number of public comments in relation to maternity leave in the last week or so. My interest is as to the work, if any, the research that may have been conducted by the commission into maternity leave and the extent to which women leave the workforce in order to take maternity leave. Has there been very much research conducted by HREOC in relation to this matter?

Mr von Doussa—As you know, we have done quite a lot of work on that. Pru Goward did a report back in 2002 and the more recent *It's about time: women, men, work and family* paper reviewed the materials again and put forward the same recommendations. The statistical information that we use is gathered from other sources. And it is all referred and referenced in those papers. We have not ourselves commissioned independent research on those topics.

Senator KIRK—The report you referred to was in 2002. Was the *It's about time* paper 2005 or 2006?

Mr von Doussa—There was a discussion paper but the final paper was launched on 7 March this year: *It's about time: women, men, work and family*.

Senator KIRK—What were the recommendations in that report?

Mr von Doussa—There are 45 recommendations in that report. One of them is a recommendation that there be a 14-week government funded maternity leave standard.

Senator KIRK—Thank you. That is all I have.

Senator BARTLETT—I want to ask, you, Commissioner Calma, about any work you have been involved with on the UN Declaration on the Rights of Indigenous peoples. What sort of role have you, your section or office—or whatever it is called—been playing in that?

Mr Calma—Under the HREOC Act I have a responsibility to report to parliament on how Indigenous people enjoy their human rights and how government exercises programs and so forth to facilitate that enjoyment. It also provides me with the authority to discuss both nationally and internationally issues relating to Indigenous affairs. My office and I have participated in that capacity, as did my predecessor, Dr Bill Jonas, in forums to develop the Draft Declaration on the Rights of Indigenous Peoples. Over a number of years now we have participated in those forums in Geneva. Also, through the permanent forum on Indigenous issues in New York, which is currently meeting, there have been discussions about the declaration.

Senator BARTLETT—As I understand it that is ongoing activity. There are further discussions happening in New York in, I think, a month's time or a few months time.

Mr Calma—The permanent forum on indigenous issues is meeting at the moment. That is a gathering of indigenous peoples from around the world. There is, I believe, somewhere in the vicinity of 2,500 indigenous people representing tribes from around the world. They are caucusing to encourage a number of governments around the world, a number of states, to support the declaration which is due to be considered by the United Nations General Assembly anywhere between September and December this year.

Senator BARTLETT—Your office's role at this stage is, I guess, just monitoring where that is at? Do you provide advice to the Australian government about progress or about perspectives on this?

Mr Calma—Yes. In relation to the first question, you are correct. We do monitor and we do support Indigenous people within Australia to be informed about what is happening through an Indigenous people's organisation. That comprises, mainly, Indigenous NGOs and individuals who are involved through the process, particularly those who have status at the United Nations. During that process of discussions we engage with the Australian government through the Attorney-General's Department and the Department of Foreign Affairs.

Senator BARTLETT—I just want to try and get a sense of what sort of focus you are preparing to put on it in the year ahead, from the point of view of at least providing your viewpoint to the Australian government. I imagine the Australian government is aware of it through its Foreign Affairs people anyway. But you provide your perspective in terms of your mandate about what it involves, I guess?

Mr Calma—I should have added also that the Office of Indigenous Policy Coordination are involved in our discussions nationally. Part of the monitoring role and the discussion is to try and encourage the Australian government to consider favourably some of the articles within the declaration that they are currently opposed to and to give reassurance particularly as has been expressed by Indigenous members of our caucus as well as Indigenous people across Australia that, under particularly the rights to self-determination, it is not an issue that Indigenous Australians are looking to establish sovereign nations or seceding from the government. Our efforts are to encourage government to recognise that.

Senator BARTLETT—If the declaration is adopted later this year, what practical impact does that have? Particularly from Australia's point of view, especially if the Australian government takes a position of not supporting it, in terms of your role does that still provide a

particular single framework as a reference point, or is it something that in a formal sense unless we as a government sign up to it, it does not have any practical impact?

Mr Calma—I think it needs to be recognised that it is a declaration and therefore it is not a binding document as are other treaties. But it does provide guidance to government, as it does to all Indigenous peoples and anybody developing our policies. The declaration is a compilation of elements of all the various treaties that relate to Indigenous peoples and they can refer to that document. But it is a non-binding document so we just have to rely on good faith and good intention.

Senator BARTLETT—I know from a lot of submissions that you and your office put into various Senate committee inquiries into legislation and other sorts of things that you use a lot of these international standards as benchmarks or reference points to measure what we are doing or what we are proposing. That seems to me to be a key part of the role the declaration would serve rather than being any stronger obligation in an international law sense. Given that it is the way you described it then—that is, it is pulling together bits and pieces from a whole range of other documents, many of which are treaties that we would have signed up to—is it likely contain anything that we are not already signed up to through all these other various international instruments?

Mr Calma—Not from my perspective or from the perspective of most of the international lawyers who work on this. They see it as a non-threatening document. But it is open to interpretation and we are working with the government to try and recognise that, particularly in the right to self-determination, the interpretation that Indigenous people are looking at is not necessarily the same as what the government is looking at.

Senator BARTLETT—That interpretation about self-determination which I understand comes from another existing convention is one that you, in your official capacity, comment on or interpret already in a range of circumstances. I seem to recall you drawing on it in a submission on the land rights legislation, for example. I guess in an Australian human rights law context you have already got a precedent—and I know it is not the same as jurisdictional precedents, or jurisprudence, or whatever—of how it is interpreted through our human rights body. Is it correct that you have already used that self-determination principle in some of your assessments?

Mr Calma—That is correct. I must say that there are only a few countries that are interpreting those specific articles in the same way as Australia is interpreting them. The rest of the world seems to be fairly comfortable with those articles.

Senator BARTLETT—One can never predict these things, I guess, but is it likely that it is intended to be coming up for a final resolution towards the end of this year?

Mr Calma—That is correct.

Senator BARTLETT—Thank you.

Senator SIEWERT—My questions are for Mr Calma. I have noticed that you have made some statements in the media about the situation on Tiwi Island as it relates to the new housing agreement. I understand that you had several visits—is that correct?

Mr Calma—Yes.

Senator SIEWERT—Could you outline why you were involved and what the issues were as they relate to human rights and your responsibilities?

Mr Calma—I guess it gets back to what I said earlier on my responsibility as social justice commissioner to respond to how Indigenous Australians enjoy their human rights. I got involved in the Tiwi Islands through the invitation of a number of different members of the Tiwi Islands people who expressed concerns to me about the way processes were happening up there. Through their invitation I visited earlier in the year and they convened a public meeting of probably 150 people; a significant number of those were traditional owners. They were asking me questions about the detail of the lease, which I was not privy to. But the general concern was a lack of information that they had received to enable them to make an informed decision. From my side of it, I was looking at the issue of free, prior and informed consent so that people are being provided with adequate and balanced information and a whole range of different information to allow them to make a decision. That is the extent of my involvement.

Senator SIEWERT—What sort of information did they feel that they did not have on which to make their decision?

Mr Calma—It has been a number of months now; I think it was January when I visited. Since then a reference group has been established by the Tiwi Land Council. I believe that they have met on a number of occasions with Minister Brough and meetings have subsequently been held with members of the Tiwi Islands, although as recently as my trip to Darwin within the last 10 days I bumped into a number of traditional owners who were still uncertain about what to expect. The major issues are whether they should be required to hand over their ownership of the land to an entity to be able to access certain citizenship rights, namely, housing, access to schools and so forth.

The other issue that they were concerned about is if they did not hand it over would they still get access to these services and what measures would take place. It is, I guess, a concern, although Minister Brough has indicated that discussions will progress and that it was only a small number of the traditional owners who were consulted and not the rest of the community. In some regards that is reasonable because it is the traditional owners who will be handing over the lease, but there are a lot of other Indigenous people affected out there on the islands who are very uncertain about their future.

Senator SIEWERT—Have they asked you for any further advice following your visit in January?

Mr Calma—I have had a number of contacts with individuals, both emails and phone calls. Part of it is due to my relationship with the Tiwi Islands, through tribal affiliations and work affiliations in the past. So I guess a number of people have confidence that I will be able to address some of the issues, particularly ones relating to homeownership and what it really means. There are concerns about if they are not able to service a loan what will happen. Will they have the house repossessed and, if so, will they be eligible for other housing? These questions are not answered. There are major concerns about all the financial implications of homeownership and how they will be able to afford it—and to understand the difference between renting and purchasing a home. And if they choose not to purchase can they then still

get access to homes? I believe all of these types of issues are still unresolved to the extent that, if people are uncertain about it, I would not, from my perspective, like to see people signing up to financial commitments if they are not provided with full advice and full assessment about the implications of signing up for a home loan.

Senator SIEWERT—I am conscious that you are probably not the appropriate person I should be asking about the details of the particular agreement, but when people are telling you about this, do they feel that they are going to have to do this? Is that their concern—that they are going to be forced into signing up?

Mr Calma—I think what people are very concerned about is that, if they do not sign up, will services still be provided to the community, and what can they then expect? That is a real issue for them. From the more administrative side of it, the other thing is that, for the local government council over there, trying to understand where revenue is going to come from to that council in the future to be able to maintain the services that are provided that normal shire councils would be expected to provide if, as has been reported in the media, in the future all the rates that are derived from any individual leasing of a home over there will go to the traditional owners. That is a worry that has been expressed, and I think that that is an issue that has not been resolved. On the one hand, we will see homes built over there; we will see people encouraged to buy the homes. But, on the other hand, the local government will not be getting the revenue to be able to service the township. So that is a concern.

Senator SIEWERT—You mentioned earlier the precedence of handing over control and access rights in return for housing. Are there examples of that happening elsewhere, where this sort of arrangement has been entered into?

Mr Calma—From the public media's perspective, the town camps in Alice Springs would be a case in point, in which the negotiation was about handing over a lease to be able to get access to funds for development and so forth.

Senator SIEWERT—I suspect Senator Crossin will be asking questions about that also. I was thinking of examples of overseas experience as well.

Mr Calma—This was covered in my 2005 native title report, very clearly looking at the issue of individual leasing and what that has meant internationally. Probably the greatest concerns are the Canadian, the United States and the New Zealand situations. And, more recently it has been reported in Kenya that, where communal lands have been converted to individual leasing, over time there has not been any noticeable improvement in the creation of wealth. What has been seen in all of those countries has in fact been a loss of communal lands when individuals have sold off their land to outside interests and, therefore, once that process is started, it is a concern. Getting back to the Tiwi situation, a significant concern is in relation to the permit system that is being reviewed at the moment. Tiwi people are concerned that if the 15 per cent of homes that are reported to be able to be sold to outside interests are sold, if the permit system has been withdrawn, then what is to stop any of that 15 per cent inviting people over to traverse all the lands and what controls do the Tiwi people then have over their own lands?

Senator SIEWERT—Thank you.

CHAIR—Senator Crossin.

Senator CROSSIN—I do not have too many questions to ask you, Mr Calma. We will be saving our questions for OIPC. But do you have the same view about the situation that is now happening in the town camps in Alice Springs?

Mr Calma—Very much so. Even though we are looking at two different situations—and this is part of how complex the whole issue of land is—when we look at places like the Tiwi Islands, Hope Vale and there is talk of it in Western Australia and in Central Australia, they all have different forms of land tenure: from traditional owners owning the land of the Tiwi Islands to a shire council owning it in Hope Vale to, in Central Australia, special purpose leases that are collectively owned by the group. But at least in the town camps in Alice Springs the groups have all said that they want to find out more information. It is a grave concern to me. I think Minister Brough mentioned that he made the offer in March, and the offer was withdrawn in May because people had not made a significant decision, like handing over their privately owned land. My question is: would that be a consideration for anybody else other than Aboriginal people?

Senator CROSSIN—Given that Minister Brough withdrew his offer of the \$60 million yesterday, is there any role that you or your office can play in trying to bring these parties back to the table and negotiate a way through this for the benefit of—well, I was going to say both parties, but I am not so sure what benefit the government is going to get out of this if they walk away from it?

Mr Calma—There could possibly be a role. Time is always a consideration—being able to devote time to be able to broker it. But, from my perspective, government needs to maybe look at the role of the Native Title Tribunal and their process of conciliation and negotiation and follow that mediation type of process to be able to broker this deal though. It needs an independent mediation team, similar to what we would see through the National Native Title Tribunal, to sit down as an independent body to work through the issues. From the discussions I have had with Tangentyere and other people in Alice Springs is that there is an interest to improve the situation in relation to housing and infrastructure, but the concern is: what is the expense? What is significantly a concern is that, at the moment, the proposal is that the land will be redeveloped and become a normalised subdivision, as I think Minister Brough has referred to it, and what that really means in the long term for Indigenous people. If they hand over their leases now, what surety is there that into the future they will still be able to get access to land if it goes onto the open market? There is a grave concern that they will no longer be able to afford it and they will be marginalised again into town camps on the outside of these subdivisions.

Senator CROSSIN—Is that a position that you have perhaps put to Minister Brough in the last 24 hours, that some sort of independent mediator should be—

Mr Calma—I have not had the opportunity to present that yet.

Senator CROSSIN—I would like to add one other question about youth discrimination. Do you have any idea of how many complaints have been put before HREOC in the last 12 months that might refer to age as an area of discrimination particularly for young people?

Mr von Doussa—The overall figures for the last financial year were 106 age complaints. It is running at about the same rate this year. For last year's figures, which are much the same as

this year, around 70 per cent were people 55 or over. So most of the complaints are age, but there are a few that deal with people at the younger end of the spectrum.

Senator CROSSIN—My understanding is that the legislation now requires you to prove that, if you feel you are discriminated against on the basis of your age, that has to be a predominant figure in the claim otherwise it is immediately knocked out. Is that correct?

Mr von Doussa—Yes, it has to be the dominant reason.

Senator CROSSIN—Have you looked at how many cases might have been successful if that was just one of many reasons, rather than the dominant reason?

Mr von Doussa—You have to look at our process. Having conducted a preliminary investigation, if there appears to be some basis for the claim, we endeavour to get the parties to negotiate a result. Most of them do arrive at a result by conciliation. Where that does not happen, we terminate them and then the complainant can go to court. There is only one matter that has gone to court and it has not been determined. So we do not have firm findings of fact which would lead on to the next question that you put: ‘Would it have been different had there been a different test of causation?’ We have always said in submissions that we think the dominant purpose test is a difficult one to overcome. It used to be in the Racial Discrimination Act and it was taken out in favour of the test that is now there. As long as the prescribed characteristic is one of the causes for the discrimination, that is sufficient. Our position has always been that that would make the Age Discrimination Act work better.

Senator CROSSIN—Thank you.

CHAIR—I have two questions. I am looking at page 50 your annual report and noting the key performance indicators and the standards. I would like to congratulate you on your continual improvement with regard to the timeliness of the complaint process over the past four years. You have set a benchmark of 80 per cent of complaints to be finalised within 12 months.

Mr von Doussa—Yes.

CHAIR—And in the last 12 months you hit the 93 per cent mark.

Mr von Doussa—Correct.

CHAIR—Well done. In terms of the seven per cent, can you advise the committee, either now or on notice, the nature of those complaints and the reasons for the delay?

Mr von Doussa—To give you detail we will have to take that on notice. Generally speaking, a delay is caused because of the complexity of the issues involved, which may require much more going backwards and forwards to the parties, and sometimes the conciliation process itself can be delayed by people wanting more time. But we will give you the information.

CHAIR—Thank you. Just generally, I notice in your report the list of significant achievements. You have indicated that you have been busy with a whole range of inquiries, hearings and Indigenous health equality issues. You mentioned earlier the ‘women, men, work and family’ and then the national inquiry into discrimination against same-sex couples. How do you decide which inquiries you will undertake? Who decides?

Mr von Doussa—It is a complicated process. We look at areas where we are getting complaints to see if there appears to be a systemic issue that may involve human rights. The units themselves consult to see whether they are identifying something where they think we could do an inquiry. The units then meet together and the commissioners discuss possibilities. Having identified an area that perhaps would be appropriate to look at, we then have to consider if it is an area where we think we could contribute something if we undertook the inquiry and whether we the capacity to do it—whether it something that is going to be manageable. There are some things that we could look at that we would never get to the end of. All of those things are taken into account and we try to set a program which we think is achievable and likely to be very useful.

CHAIR—Is that final decision made by the commissioners?

Mr von Doussa—By the commissioners with the benefit of input from the policy units and so on.

CHAIR—Do you ever get references from either the government or elsewhere?

Mr von Doussa—Yes, we do. The last one was some time ago. Commissioner Innes can tell you of one that we did get recently.

Mr Innes—It was prior to my appointment but it was in my area. It was the inquiry into employment of people with disabilities and the difficulties faced by people with disabilities in that area.

CHAIR—Was that a reference from the Attorney-General?

Mr Innes—That was a reference from the Attorney-General in late 2004 or early 2005. I am sorry but I cannot confirm the date.

CHAIR—Are you obliged to do that under your charter or do you just take the reference and do it because you accept that is appropriate?

Mr Innes—We are obliged to complete an inquiry for which we get a reference.

CHAIR—Where are we up to with the national inquiry into discrimination against same-sex couples?

Mr Innes—The inquiry was transmitted to the Attorney-General last Tuesday, 15 May. It is yet to be tabled in parliament but, counting off the 15 sitting days which the Attorney has to table it, it should be tabled in parliament on or before 21 June.

Mr von Doussa—I would like to correct one thing. I said that the decisions about inquiries were made by the commissioners. Technically, it is made by the commission, but it is the commissioner sitting in meetings.

CHAIR—I am with you and I appreciate your feedback.

Senator LUDWIG—It took a while to come back to me but in one of the answers to Senator Evans you mentioned that you had applications before you already in respect of the Sex Discrimination Commissioner's position.

Mr Cornall—I do not think that was the answer. The gist of the answer is that the government is considering possible appointees.

Senator LUDWIG—How does the government consider possible appointees? Does it get on the phone and ring them?

Mr Cornall—It is a matter for the Attorney-General.

Senator LUDWIG—Minister, how do I find this out? If it is a matter for the Attorney-General, does the Attorney-General phone people and short list it or does the department short list it? This is a matter the minister can answer if he turns his attention to it.

Mr Cornall—When there is an appointment of a statutory officer to be made, the Attorney can decide to make that appointment himself within Parliament House without any input from the department. Alternatively, he can ask us to conduct some sort of search, interview and recommendation process. It is a matter for him which way he goes about it. I imagine other ministers are in exactly the same position. If he chooses to do it without input from the department, how he goes about that is a matter for him.

Senator LUDWIG—My recollection was that you said ‘applicants’..

Mr Cornall—If we have conveyed the wrong impression, that was not meant to be conveyed. The answer is that the government is considering possible appointees to replace Ms Goward.

Senator LUDWIG—So the minister did not ask the department to take on one of the processes that you described?

Mr Cornall—No, not at this stage.

Senator LUDWIG—If we come back to the last appointment, was that done by the Attorney-General?

Mr Cornall—Mr von Doussa answered that as to the most recent appointments.

Mr von Doussa—The previous two appointments were advertised. The department received the applications and then there was a selection process, which would have involved the Attorney, I imagine. There was then the setting up of the selection committee. There was a committee of three that interviewed short-listed applicants and then reported to the Attorney, whose function it was to make the decision.

Senator LUDWIG—When was the last time we had a commissioner appointed by the Attorney-General without going through a process?

Mr von Doussa—Probably my appointment as president.

Senator LUDWIG—And before that?

Mr Cornall—We would have to check. I do not know.

Senator LUDWIG—It concerns me in the sense that that is how we seem to have gotten Donald McDonald, but I will come to that questioning later on.

Mr Cornall—I thought we might.

Senator LUDWIG—I would like to come back to an earlier question that was answered by the commission about staffing. As I understood it, in terms of the question that Senator Kirk was pursuing about staffing, you were talking about present staffing in the 2005-06 year. What the committee would particularly like to know are the staffing levels for 2007-08—we

can have it in terms of full-time equivalents—for the statutory office holders and then for those attached to Corporate Services, Legal, Complaint Handling, the race discrimination commissioner's policy unit, the social justice commissioner's policy unit, the Human Rights Commissioner's policy unit, the Disability Discrimination Commissioner's policy unit and the sex and age discrimination commissioner's policy unit. In other words, we would like the projected figures.

Mr von Doussa—We will take that on notice. We can give you the breakdown of all the staff, because the list that you have given is not actually exhaustive. We will give you the total breakdown of present and anticipated.

Senator LUDWIG—Are you able to provide it today?

Mr von Doussa—It would be difficult. It would be much simpler, if it is acceptable, if we could just let you have it in writing, which we can do quickly.

Senator LUDWIG—You could do what is happening now, though?

Mr von Doussa—Yes. We can give you the exact position now, and the internal budget papers do record the positions which are anticipated.

Senator LUDWIG—Thank you.

Senator CHRIS EVANS—Could I just ask a question?

CHAIR—Senator Evans.

Senator CHRIS EVANS—I asked a question to Mr Calma privately as the hearing started but, for the record: I always look forward to your reports, as many do, and I noticed that I could not find your 2006 reports; so I would like to know, for the record, when we will see both the social justice and the native title reports.

Mr Calma—Thank you, Senator Evans. The reports were transmitted to the Attorney-General on 5 April and, in doing the count back of the 15 sitting days to tabling, it is anticipated that they will be tabled on or before 18 June. The tabling office has all the reports so it is up to the Attorney to determine when he will table them, either in session or out of session.

Senator CHRIS EVANS—So we will not see the 2006 reports until 18 June?

Mr Calma—That would have to be the latest, yes.

Senator CHRIS EVANS—Thank you.

CHAIR—Further questions? Senator Ludwig.

Senator LUDWIG—The *Same-sex: same entitlements* report into discrimination suffered by same-sex couples was due to be handed down, as I understand it, in May and tabled in parliament within 15 sitting days. The website says that the inquiry is currently writing the final report and is aiming to transmit the report to the Attorney-General in May. It also says, 'He will then have 15 parliamentary sitting days to table the report.' The consequence of that could be that the report on 31 May—

Mr von Doussa—No. Commissioner Innes answered this a moment ago. The report was transmitted to the Attorney-General last Tuesday week.

Senator LUDWIG—Last week?

Mr von Doussa—Not this Tuesday.

Mr Innes—On 15 May.

Senator LUDWIG—That is what I was trying to get to.

Mr von Doussa—So our calculation is that it has got to be tabled by 21 June at the latest.

Mr Innes—We need to update our website. That count is of House of Representative sitting days because the House of Representatives is where it will be tabled. That may be the reason for any confusion.

Senator LUDWIG—Has the Attorney-General's Department had any interaction with the task force, Mr Cornall? Did you provide a submission?

Mr Innes—For the same-sex inquiry?

Senator LUDWIG—Yes.

Mr Innes—The department wrote to various government departments and encouraged them to provide factual information which the inquiry was seeking, and that information was provided by a range of departments. I cannot actually recall whether the Attorney-General's Department provided a set of factual information or whether in fact the information was provided by a range of other departments. My uncertainty is from the fact that the Attorney-General's Department is not—and Mr Cornall will probably correct my terminology here—a spending department in the sense that it provides financial or work related benefits. So it may well be that the department specifically did not provide factual information to the inquiry but it certainly facilitated the provision of that information by other departments.

Ms Lynch—My information is that the department did provide some factual information direct to the commission, as did a number of other agencies, after we facilitated a request out to them, but my notes say that we did provide some factual information to the commissioner in the course of that inquiry.

Mr Innes—I am happy to accept that. I just do not recall it. I am fairly certain it is in the schedule to the report.

Senator LUDWIG—I turn to Work Choices. I understand it the press have been reasonably vocal on this issue. There was an article by Misha Schubert, 'Life "tougher" for workers with families', in the *Age* of 31 March 2007. I know the government has pretty tight control of this whole area, but have you been consulted about the changes to the Work Choices legislation?

Mr von Doussa—I am sure the answer to that is no. I certainly have not been.

Senator LUDWIG—Are you able to say whether you provided submissions to the government about the affect of the Work Choices legislation?

Mr von Doussa—Yes, we did at the time that the legislation was before the House.

Senator LUDWIG—That was the first iteration of Work Choices. What about the amendments of recent times that have been mooted?

Mr von Doussa—We have not made any submission on that yet.

Senator LUDWIG—Is it your intention to do so?

Mr von Doussa—Once we see the legislation, in the ordinary course of events we would make a submission.

Senator LUDWIG—From HREOC's view, do you receive complaints that go to issues that come under the heading of Work Choices or the effect of Work Choices?

Mr von Doussa—We get complaints about employment, including a range of discrimination complaints, but not specifically directed to Work Choices because if the conduct is a result of a particular legislative provision it is not the sort of discretionary act that we would consider under the discrimination acts.

Senator LUDWIG—I note in an article that you are reported as saying, in a speech to a conference, 'The new system might benefit skilled workers but vulnerable staff might not fair so well.' The article went on:

He said complaints to the commission showed that "discriminatory provisions are creeping into workplace agreements".

"Since WorkChoices, HREOC is concerned that in the new individual bargaining environment, workers with family and carer responsibilities, largely women, may find themselves sacrificing either family-friendly employment provisions or better levels of remuneration,' Mr von Doussa said.

CHAIR—Are you tabling that document?

Senator LUDWIG—I can.

CHAIR—Thank you.

Mr von Doussa—The source of that information was consultations that were conducted at forums in relation to the paper: *It's About Time: women, men, work and family*.

Senator LUDWIG—Do you want to outline some of those concerns of HREOC?

Mr von Doussa—Anecdotal reports were relayed to us of people trading off conditions of leave and entering into working hour conditions which they found difficult, to increase their remuneration or alternatively were entering into arrangements that continued to provide them with a range of conditions which were suitable to their own particular family environment but at a lower wage.

Senator CHRIS EVANS—Did this come out of your consultations on the earlier report?

Mr von Doussa—The report was published on 7 March this year.

Senator CHRIS EVANS—These are comments from a speech you made?

Mr von Doussa—Yes.

Senator CHRIS EVANS—Where did you deliver the speech?

Mr von Doussa—I think it was delivered in Canberra and I understand Senator Ludwig has got the date there, but I think it was in March.

Senator CHRIS EVANS—Is that up on your website?

Mr von Doussa—Yes.

Senator CHRIS EVANS—I was not aware of it until Senator Ludwig raised it. Was your commentary on the basis of complaints lodged with you or on the basis of the consultations?

Mr von Doussa—The consultations.

Senator CHRIS EVANS—Were any of the complaints lodged with you also used in the analysis that you made in the speech, or was it purely on the basis of the consultations?

Mr von Doussa—It was on the basis of the consultations.

Senator CHRIS EVANS—Thank you.

CHAIR—In your answers you said that your advice regarding Work Choices was based on anecdotal reports. Is that correct?

Mr von Doussa—Yes. These were people that spoke at public meetings. You never know if those things are first-hand or second-hand accounts.

CHAIR—So it may have been first-hand or second-hand anecdotal reports. Are you aware of the number of full-time jobs that have been created since Work Choices and since the new industrial relations systems came into being last year, specifically for women?

Mr von Doussa—The figures are not in my mind at the moment. I have seen some in the newspaper, but not from any other source.

CHAIR—You would not have had that in your mind when you made those comments in March when you made your speech?

Mr von Doussa—No. What I did say in that speech also was that some people were probably benefiting from the ability to negotiate conditions and they would be people in areas where there was a demand for the particular skills that they had. The point that I was making is that if you are in a demand situation you are probably not suffering, but if you are at the other end of the work spectrum there was the potential for people to trade off family-friendly conditions in their dealings with their employer.

CHAIR—Thank you for being with us today. We appreciate your assistance. We will move to the Office of the Director of Public Prosecutions.

Mr Govey—While we are waiting I have a response to an earlier question. Senator Evans asked questions about the Disability Discrimination Commissioner and the Race Discrimination Commissioner. We have been able to check and I am told that section 120 of the Disability Discrimination Act and section 36 of the Racial Discrimination Act enable acting appointments to be made and that section 33A of the Acts Interpretation Act says that acting appointments—and that is generally and not just in relation to those two acts—can be made for a period of up to 12 months. That is the background for the appointments that have been made that we were talking about at that point.

Senator CHRIS EVANS—Effectively, you have been rolling them over for the last 10 years?

Mr Govey—I cannot be sure about the period, but certainly there have been a series of acting appointments.

Senator CHRIS EVANS—Subject to the act not having been changed in the meantime, you would have to have done them on 12-monthly occasions for the last 10 years?

Mr Govey—Certainly for the period in which those actings have been made.

CHAIR—Thank you for that.

[4.56 pm]

Office of the Director of Public Prosecutions

CHAIR—I welcome Damian Bugg and your colleagues from the Office of the Director of Public Prosecutions.

Senator LUDWIG—It is a bit like *deja vu*. There is a question that I have asked over a couple of estimates now relating to Robert Gerard. As you have stated previously at estimates, you do not request briefs—you have said that a couple of times, from recollection—for matters which have not been referred to you. At the moment is there any formal impediment to the Commonwealth Director of Public Prosecutions requesting a brief from the Australian Tax Office or any other agency for that matter, if you believe that there is potentially a case for prosecution, however it might come to your attention, or is it just the case that there are other impediments?

Mr Bugg—Statutorily I do not believe that I have an authorisation to ask for briefs in matters that have not been referred to me. My powers and functions under the act are to conduct prosecutions and to have matters that are referred to me from agencies examined and either prosecuted or not prosecuted.

Senator LUDWIG—In terms of the statutory requirement, is your view that it is silent on the issue or that there is a prohibition on the issue?

Mr Bugg—It is silent on the issue.

Senator LUDWIG—Have you come to the view that, because it is silent on the issue, that you do not have the power?

Mr Bugg—One would make that assumption. I am a creature of statute. I only have those powers that are given to me pursuant to the statute or some other statute, and if they are not there then they are not there. I do not think I can put it any other way.

Senator LUDWIG—That is the view that you have arrived at. The positive powers in the legislation provide you with the role that you say you do, which is Commonwealth Director of Public Prosecutions to prosecute cases and so on and so forth.

Mr Bugg—Yes.

Senator LUDWIG—Which sections is that found in?

Mr Bugg—Section 6 and section 9 of the act.

Senator LUDWIG—In your view, would there then need to be a positive change to those sections to allow the Commonwealth Director of Public Prosecutions to request a brief should it come to your attention?

Mr Bugg—The request for a brief involves the request for an agency to undertake an investigation and to submit a brief to my office to conduct an examination of that brief to

determine whether there is sufficient evidence there to lay a prosecution. There are resourcing implications in such an exercise. You were asking me about Mr Jerrard's matter. I do not know what those resourcing implications may be but, from what I have read in the newspaper, I suspect that it involves overseas investigations and a whole range of other matters. To say I should make that request of that agency—

Senator LUDWIG—I did not do that. I have asked you.

Mr Bugg—It is an implication in your question. You raise it each time I appear before estimates, and I have answered it as fully as I possibly can. It raises a concern in me that you seem to be suggesting, by raising the question, that I should be making a request of that agency.

Senator LUDWIG—To avoid that, I have been very carefully about the question I have asked. I am simply asking about the power and what your view is—whether or not you have the power.

CHAIR—Order!

Senator LUDWIG—I think we are going okay.

CHAIR—Order! We were going okay. Mr Bugg was responding to your question and I want Mr Bugg to have the opportunity to complete his answer.

Senator LUDWIG—He will be able to. We have done this often over a number of years. I will take Mr Jerrard out of it and make it an ordinary matter. The only reason I raised Mr Jerrard was that it focuses on that area that we were talking about, but I see that might colour it. Let us take him out of it for a second. Say a tax matter is raised or an insolvency issue comes by your desk, say an administrative matter or even criminal matters—

Mr Bugg—The matter may, for a variety of reasons, have been dealt with administratively as I said last time I was before this committee. I really do not think I can take the answer any further.

Senator LUDWIG—I guess it becomes speculative to then say that if that was a requirement of the legislation, for example, it would either be through a memorandum of agreement with various agencies if requests were required and the administrative arrangements could then underpin that, but in your view it would be a requirement to have the legislation changed to then provide a positive power.

Mr Bugg—To provide the office with the power to request an agency to undertake an investigation, which was part of its statutory power, and then prepare a brief of evidence for consideration of whether or not a prosecution should take place.

Senator LUDWIG—Are you aware of any other jurisdictions or similar jurisdictions, in a similar role that you play, that have that opportunity?

Mr Bugg—I am unaware of it in terms of that which is a straight prosecuting office. I know that there are statutory powers to provide advice. In my previous office in Tasmania, that power to provide advice to police was removed from the precursor to the state legislation—that, is the Crown Advocate Act. That was seen as an impediment to the proposition that the office was independent from the police. As far as the other state DPPs in

Australia are concerned, I think they all have some acknowledgement of a statutory authority to give advice to the police on matters that are referred to them but, going outside this country, there are so many guises. In England there are three different prosecuting offices, and I think you would find that the Crown Prosecuting Service does not have that power—they are only just now embarking on pre-charge consideration of matters and giving advice to the police. But the Serious Fraud Office may have that power.

Senator LUDWIG—I will take that on notice and have a look. I just want to identify for the years 2002-03, 2003-04 and so on to 2006-07 how many prosecutions there were for which the Commonwealth Director of Public Prosecutions received tied funding. The Portfolio Budget Statement shows funding and a range of activities that are tied. What I want to understand is how that is there?

Mr Bugg—That question is probably almost impossible to answer because some of the tied funding relates to, for example, Centrelink matters of a particular complexity or involving identity fraud. I think it would be impossible to draw from our statistics which of those matters had been referred to the office and prosecuted. They do not come with a particular identifier on them—for example, HIH is a pretty clear example. You could look at that. The HIH cases are referred to in the annual report with some specificity. That tied funding is easily identifiable, and the matters under it, but in some areas it is difficult. Counterterrorism is another area where the figures can be easily provided.

Senator LUDWIG—Where the money is provided in a tied way I would have thought that related to the work that you do, which I think is prosecutions, and that is one of the only performance measures, if not the main performance measure, for you. So if money is provided that is tied, it is to prosecute when the brief comes in and presumably the performance measure is successful or otherwise. So the tied funding is for that specific purpose. It concerns me that you then cannot identify how those resources attach to the tied funding.

Mr Bugg—Your question was in the broad. It was for the years 2002 to 2007: ‘You had a certain amount of tied funding. Can you tell me the cases that were prosecuted as a consequence of it?’ The answer is, ‘No, I can’t because there are some areas where it is impossible to identify with specificity.’ But there are some areas where it can be, such as the HIH tied funding, the counterterrorism tied funding and the initiatives in relation to sea fisheries offences in the north. You can identify those cases because they are quite specific and new to the office; therefore we could produce those answers. But if you said: ‘You have this amount of money from 2002 to 2007. How many prosecutions did you have as a consequence of it?’ I would have to say that, under each identifier, there are some that we can do and there are some that we cannot.

Senator LUDWIG—Can you look at what you can provide, because there is a long list of those moneys. I will ask the question rather than guess: what proportion of your budget is tied funding?

Ms Walker—At last count it ran at about 20 per cent of our overall budget.

Senator LUDWIG—So it is a significant amount of your budget which is tied.

Ms Walker—Just to clarify, we do keep those discrete areas of work such as HIH and counterterrorism very separate from the rest of the budget and we will be able to provide you with those figures.

Senator LUDWIG—What other programs are tied in that 20 per cent? Do you have a short list of those?

Ms Walker—We do have a list of those. There are a number of initiatives in the Centrelink area. There are the illegal fisheries prosecutions that the director mentioned. At the moment we have got some Wickenby money. There are a couple of others, but we could easily give you that list.

Senator LUDWIG—I would imagine the list would also be reflected in Budget Paper No. 2, but of those moneys why will you not be able to provide the range of prosecutions or briefs that you have received in respect of those? That is what the money is for, isn't it?

Ms Walker—Yes. The director was referring to one of the Centrelink initiatives, which talked in the broad about more complex prosecutions, and because it was a general statement about more complex prosecutions they may be hard to identify.

Senator LUDWIG—I think tied funding should be a little more specific than that, but we can isolate that one.

Ms Walker—Yes.

Mr Bugg—I am sorry to cut across. I can take that on notice and provide you with a response to those areas where, as I have said, there are easily identifiable activities that are quite separate and the funding is kept separate and identifiable. But where you have got that broad area—and I used the Centrelink example—I could not give you a clear answer because it washes over to some extent into other areas of work for which there is core funding.

Senator LUDWIG—I understand that for Centrelink, but perhaps less so in some of the others such as illegal fishing and the like.

Mr Bugg—Quite a few of them are easily dealt with, but I do not have the figures here to give you the answer. I will take it on notice and make it available to you.

Senator LUDWIG—Thank you. Can you turn your mind to the program and the amount that was originally allocated by the particular department or agency to you? Is it rolling tied amount? Have they topped it up? Where have they added additional funds over and above the additional allocation, and how much was that? Have all the moneys been expended or have they been rephased or carried over—I am sure there is another term?

Mr Cornall—I think we know what you mean.

Senator LUDWIG—Or tell me if the moneys were returned and if the program has ceased if there was any money left unspent. I would like a broad example of that tied funding area.

Mr Bugg—In those circumstances that money will be returned.

Senator LUDWIG—Do you give it back then?

Mr Bugg—We do.

Senator LUDWIG—I have only found the Australian Federal Police to put their hands up for that one.

Mr Bugg—I would like to have a photograph of handing back the big cheque. We will be reviewing this. For example, obviously with the winding down of HIH prosecutions we have received all the briefs that we will from ASIC on that, and I suspect next financial year will be the last in which prosecutions will be conducted under that initiative or funding arrangement. We will see at the end of it just how that is worked out. If there is money left that will go back to the government.

Senator LUDWIG—Is there any intention to provide money this year back to the government?

Mr Bugg—Yes, there is. We are currently exploring the process of refunding or repaying approximately \$590,000 out of the building royal commission. That is the funding that we got for that for the conduct of prosecutions.

Senator CHRIS EVANS—I will have to get Mr Cornall to pull you aside and tell you about some of the old tricks about handing money back. I am thinking of our earlier conversation with the native title funding. This is not a general proposition that is broad in the public service.

Mr Bugg—This is the DPP. It is a hard conversation to initiate.

Senator LUDWIG—We will just deal with Operation Wickenby and that will conclude my questioning. In the 2006-07 budget you had about \$50 million allocated over four years for the prosecutions arising out of Operation Wickenby. How much money has been spent on that to date? Are you able to say?

Mr Bugg—If I can anticipate your question, it is not a lot. It was \$66 million over six years. The expectations on the lead-in time have not been achieved; therefore we are not conducting prosecutions in the time that we had anticipated. So that will be pushed further forward and obviously, as those matters come through to us for prosecution, we would then pick that up and it would be expended. I can provide you with details of what has been spent to date but once again that is a quarantined amount and I suspect we would see that go beyond the six years and seek some approval to have it extended. But it would be like the HIH amount as well.

Senator LUDWIG—Have you asked for any more money for that operation?

Mr Bugg—No, because we are not spending it yet.

Senator LUDWIG—Roughly how much have you spent to date?

Ms Walker—We have spent something in the order of \$1.8 million to date this financial year.

Senator LUDWIG—And last financial year?

Ms Walker—I do not have that figure with me.

Senator LUDWIG—I am happy for you to take that on notice. Are you able to say what the results of the Operation Wickenby prosecutions are to date?

Mr Bugg—There is no concluded prosecution. There is a matter before the courts in Melbourne in Victoria and there are matters being processed in Queensland. In terms of actually commenced prosecutions we have a number of files but there are only two cases before the courts, one in Queensland and one in Victoria.

Senator LUDWIG—Are there two ongoing matters?

Mr Bugg—That is the start, yes.

Senator LUDWIG—Am I able to ask if there are other briefs? I am just trying to establish the workload without compromising the matters.

Mr Bugg—There are other matters. There will be other matters. The interesting aspect which has probably been spoken about on a number of occasions about Operation Wickenby is that it is a cooperative activity where my office is involved pre charging, as it often is, in giving advice about the various stages of the investigation—warrants and so on—and we are therefore aware of a potential workflow that will come through to us. Because they are very much operational matters I need to be as vague as that and say that there are matters other than the two that are currently before the courts. We anticipate, obviously, that there will be other matters before the courts.

Senator LUDWIG—We know that there are two ongoing matters?

Mr Bugg—Yes.

Senator LUDWIG—Are you able to say what the monetary figures are regarding proceeds of crime orders that the Commonwealth Director of Public Prosecutions has achieved? There are a couple of different stages: that which has been restrained and then forfeited in the criminal forfeiture regime and then the civil forfeiture regime.

Mr Bugg—Yes.

Senator LUDWIG—I think they are the only two. Is there a third? There are assets that you have obviously restrained but that have not yet been forfeited.

Mr Bugg—We have taken proceeds action in relation to two matters. There is one in Queensland and we are seeking pecuniary penalty orders there of \$7.9 million. There has been some litigation about that.

Mr Thornton—Were you speaking about the proceeds in relation to Operation Wickenby?

Senator LUDWIG—No, we were talking generally about proceeds of crime orders.

Mr Bugg—Sorry, it followed straight after Operation Wickenby and I assumed, because there has been some brief publicity about it in the Queensland press and because of your location, that you were probably asking a continuing question about Operation Wickenby.

Senator CHRIS EVANS—You should have asked that one as well.

Senator LUDWIG—Now that you have highlighted that, can we ask that one too?

Senator CHRIS EVANS—You have excited his interest.

Senator LUDWIG—Now I recall.

Mr Bugg—I will deal with the proceeds question first, in the broad.

Mr Thornton—For the financial year to date the recoveries under the POCA 2002 are approximately \$13.4 million. The figure for last year under POCA 2002 was \$14.7 million.

Senator LUDWIG—Has that gone into the kitty, so to speak?

Mr Thornton—That is not money that is in the fund itself. There are a lot of different ways you can measure this and a lot of different points. The figures I have given you are where assets have been forfeited. So from that there might be costs in terms of the sale of the asset; there might be costs if the sale is done by the insolvency trustee service and they might have their costs to come out of it, et cetera. So I do not have the figure that has gone into the trust account. In terms of removing assets from offenders, that is the amount of money we recouped from that.

Senator LUDWIG—That has been restrained and then subsequently forfeited. It is a matter of how you then realise the asset?

Mr Thornton—Exactly.

Senator LUDWIG—And that is for ITSA to do in any event.

Mr Thornton—That is right.

Senator LUDWIG—Back to Queensland. What were you saying before I interrupted?

Mr Thornton—There is ongoing proceeds action in relation to the Wickenby matter in Queensland but it is before the court.

Senator LUDWIG—I see. What is in the public domain to date? Are you able to say that in respect of the matter?

Mr Thornton—It is in the public domain that restraining orders have been obtained in a matter in Queensland where we are taking prosecution action. I do not have the exact figure, but it is quite substantial. It is around \$7 million or \$8 million in terms of the assets that have been restrained. I can get you that figure on notice if you would like that.

Senator LUDWIG—Yes, thank you.

Senator CHRIS EVANS—I have a few follow-up questions. I am keen to learn how the proceeds of crime works. You have indicated the figures that have been obtained over the last couple of years. Can you explain what happens to that money?

Mr Bugg—There are two pieces of legislation. When Mr Thornton answered Senator Ludwig's question he mentioned POCA 2002, which is the Proceeds of Crime Act 2002. That was the improvement or enhancement of the proceeds of crime powers. There are ongoing proceedings under the previous legislation, which was in 1987, but I will hand that back to Mr Thornton because it is an area that he has a particular oversight and expertise in.

Mr Thornton—The money from the 1987 act—that is just those matters that are on hand and have continued since the new act came into force, so that is decreasing amounts—is paid into consolidated revenue. The moneys from the new legislation of 2002 are paid into a trust fund and then the act provides how that trust fund is administered.

CHAIR—Do some of the proceeds of that trust fund end up with the victims?

Mr Thornton—It is administered by the departments.

CHAIR—Unless you would like to comment or lead me in the right direction, Mr Cornall, I am happy to make my own inquiries.

Mr Cornall—The first step is to restrain the moneys on the basis that they may be the proceeds of crime. If it is subsequently established that they are, they are then forfeited and deposited in the fund and then the statute makes provision as to the various things they may then be expended on. They largely come under the minister's determination.

CHAIR—I will have a look at that. You have indicated in your annual report that counterterrorism prosecutions have increased significantly within your office. Can you provide and describe in better and further particulars the volume and the types of activities you are involved with?

Mr Bugg—I can. Mr Thornton has the page open, so I will hand it back to him.

Mr Thornton—There are seven cases on hand, with 28 individuals being prosecuted. They are at various stages. This is a matter of public record. There are two particularly large matters called Operation Pandanus. There is one in Victoria where there are 13 defendants and there is one in Sydney where there are nine defendants. With the one in Victoria they have all been committed for trial and I think the pre-trial hearings start in June this year. With the one in Sydney they have just been committed for trial either earlier this month or late last month, but we do not have a date for that trial as yet.

CHAIR—In your report you referred to guidelines of official conduct for DPP officers. I understand that has only recently been promulgated. Can you clarify if that is the case? How extensive are those guidelines and would we be able to see them?

Ms Walker—We have had guidelines or a code of conduct in place since about 1985. It is a requirement of any new staff member that they have to sign and say that they have accepted the details in the code of conduct, that they understand them and that they will abide by them. We are happy to make a copy of that available to you.

CHAIR—Thank you. That would be helpful. Does every new employee look at that and sign it?

Ms Walker—Absolutely.

CHAIR—Thank you, Mr Bugg, and your colleagues of the DPP. We appreciate your time.

Senator PARRY—I understand, Mr Bugg, that this will be your last estimates appearance?

Mr Bugg—Yes, it will.

Senator PARRY—I think you have been appearing here since 1999. As a fellow Tasmanian, I am certainly proud to have you as the Commonwealth Director of Prosecutions. You are returning to Tasmania to take up the Chancellorship of the University of Tasmania, which I think you have already assumed. I am sure on behalf of the chair and others that we wish you well and thank you very much for your long and distinguished contribution.

Mr Bugg—Thank you. If I could say both on my own behalf and that of the office, I do acknowledge the respect with which the office and those officers appearing before this committee have been treated by this committee. It is good that Senator Payne is here as well because she has chaired the committee since my appointment in August 1999. We have

another Tasmanian on the committee as well now in the chair. I do genuinely say thank you for that. Senator Ludwig, in particular, has asked a lot of searching questions of the office but they have had a focus that we have been pleased to attend to because it identifies the work of the office and how we are spending public funds. So thank you very much.

CHAIR—Thank you again Mr Bugg, and thank you for your contribution over many years.

[5.30pm]

Office of Parliamentary Counsel

CHAIR—Welcome Mr Quiggin and your colleague, Ms Francis. It is good to have you here.

Senator CHRIS EVANS—I wanted to ask about the Parliamentary Counsel's work in relation to the changes to the Work Choices legislation. I asked questions of the Department of the Prime Minister and Cabinet earlier in the week about that and they indicated an involvement of the Parliamentary Counsel's office. Have you been engaged in drafting those amendments?

Mr Quiggin—Yes, we have been engaged in drafting a bill for the government.

Senator CHRIS EVANS—When did you commence that task?

Mr Quiggin—We first received instructions on 4 May and commenced work straight away. Instructions have progressively arrived, with the bulk of the initial instructions was with us by about 13 May.

Senator CHRIS EVANS—Can you explain that for me? I am not familiar with your procedures. You received initial instructions on 4 May. Were they fairly general in nature?

Mr Quiggin—They were covering what was in the government's announcement and since then the Department of Employment and Workplace Relations has been giving more detailed instructions as the drafter has raised issues and as decisions have been made in more detail.

Senator CHRIS EVANS—The first thing you got was what the Prime Minister released on 4 May, which was 11 pages, the document *Stronger safety net for working Australians*?

Mr Quiggin—Yes.

Senator CHRIS EVANS—That is the document he released with the press release on 4 May?

Mr Quiggin—Yes.

Senator CHRIS EVANS—Did they send that over to you on the day they released it?

Mr Quiggin—Yes.

Senator CHRIS EVANS—Was that the extent of the instruction at the time?

Mr Quiggin—They met with us soon after that to provide more detail.

Senator CHRIS EVANS—Who were you meeting with? Was it someone from the Prime Minister and Cabinet or PMO?

Mr Quiggin—No. My understanding is that the instructions have been coming from the Department of Employment and Workplace Relations, which is the instructing department. They have responsibility for the legislation.

Senator CHRIS EVANS—So what did you get on 13 May?

Mr Quiggin—We continued to receive instructions from the 4th to the 13th, and by the 13th we had basically all of the detailed instructions covering everything.

Senator CHRIS EVANS—I am familiar with your outputs but I am not very familiar with your processes, except that very few people can do it or would want to do it.

Mr Quiggin—I would have thought everyone wanted to.

Senator CHRIS EVANS—No. Just my brief attempt to get a couple of simple amendments has taught me that this is not my field. What form do the instructions come in?

Mr Quiggin—They would be a mixture of written instructions and oral instructions. Perhaps I could give a broader description of our more general work, rather than a particular job?

Senator CHRIS EVANS—Yes.

Mr Quiggin—Normally, we would get written instructions that would cover all of the amendments that are required. The drafter would look at those and then generally have face-to-face, or in some matters phone, discussions with the instructors to analyse those instructions to see where there are problems with what has been asked for or areas that require further detail. Normally that process would go on for quite a period with anything other than a quite simple bill. An important part of our role in the office is to analyse the instructions and take them from often a more general idea down to something that can be implemented through legislation. In this particular one, by 13 May we had at least initial instructions on all of the areas. During that period we would have been working with the instructors to get more detail about other areas that have already been instructed on. They would be both oral and written.

Senator CHRIS EVANS—Is this a simple or complex bill?

Mr Quiggin—I would not describe it as a simple bill but it is not one of our most complex ones.

Senator CHRIS EVANS—It is not as complex as the original job?

Mr Quiggin—It is certainly not nearly as large as the Work Choices legislation that we did a few years ago.

Senator CHRIS EVANS—Did you do all of that? We seemed to pay for a lot of non-government employed lawyers on that one.

Mr Quiggin—The Office of Parliamentary Counsel drafted all of the legislation. I understand that some external legal advisers were assisting the department with the instructing process, but the whole bill was drafted by our office.

Senator CHRIS EVANS—I see. You did all the drafting but were they engaged in providing the instructions?

Mr Quiggin—Yes.

Senator CHRIS EVANS—I presume you get a set of instructions and then you say that does not work or you cannot do that, or are your responses purely technical in the sense that you cannot achieve that by that clause?

Mr Quiggin—We would often look at instructions and say, ‘This is not going to work particularly well’ and go back. Again, a major part of our role is not only to say it does not work but also to try to work with the instructors to provide a solution to that.

Senator CHRIS EVANS—I do not want to misrepresent the PM&C, but my sense from their evidence, without going back to check the *Hansard*, was that there was a working group which involved someone from the department, someone from PM&C and someone from Parliamentary Counsel working in Sydney. Is that right?

Mr Quiggin—No. We have not had any staff working outside our office on this job.

Senator CHRIS EVANS—You were not part of that group that was working with Minister Hockey in Sydney?

Mr Quiggin—No.

Senator CHRIS EVANS—They would have been the group drafting your instructions, effectively?

Mr Quiggin—I would assume—

Senator CHRIS EVANS—The PM&C described for me a group of people who were working on building up from the initial announcement. I had the sense that your office was engaged there, but you were not.

Mr Quiggin—No. Nobody from our office was engaged in that.

Senator CHRIS EVANS—By 13 May you had a complete set of instructions. What was the process from then on? Do you still tick-tack back with the major department?

Mr Quiggin—Yes. Basically it is an iterative drafting process of going back and working through either the instructions or planning documents that we prepare or in the end a draft. We work with that until it is at a point where it is ready for introduction.

Senator CHRIS EVANS—Have you completed the draft yet?

Mr Quiggin—It is for the department to determine when the draft has been completed—or the department and the government.

Senator CHRIS EVANS—Have you finished your work?

Mr Quiggin—That depends on whether the government considers it is finished.

Senator CHRIS EVANS—What is the working title?

CHAIR—I ask you to bear in mind what Mr Quiggin can respond to and what he cannot.

Senator CHRIS EVANS—I am not asking for any advice to government. I am just asking in terms of their practical engagement with the process.

Mr Cornall—I have reservations about it.

Mr Quiggin—I will refer that to the minister.

Senator CHRIS EVANS—So you do not have a working title or you are not allowed to tell us what the working title is?

Mr Quiggin—We have a title we are using but I am not aware if that is the title that the government intends to use.

CHAIR—With this line of questioning you may as well ask him about the table of contents and sections 1 through to 30.

Senator CHRIS EVANS—I am about to do that.

CHAIR—We can go down this line but I am not sure that it is all that useful.

Senator CHRIS EVANS—That is fine. You can certainly enforce the rules of the committee but whether you think it is useful or not is of no interest to me. I am asking the officer a question. He can either answer it in the way he sees fit or the minister can take it. Is the department prepared to tell us what the working title is?

Senator Johnston—I do not think they are. The ball has lobbed into my side of the court. The answer is that the government has not finalised that yet, to the best of my understanding. It will be finalised when it is published.

Senator CHRIS EVANS—That is not the question that I asked. I asked what the working draft title was.

Senator Johnston—That is a matter for cabinet and that is a matter for the government. We are not prepared to talk about it.

Senator CHRIS EVANS—You do know that?

Senator Johnston—Actually I do not know that. I have seen a document but I do not know if that is the actual title or anything like that.

Senator CHRIS EVANS—Just look to your left there. It is there.

Senator Johnston—I am not sure what the quality of that is.

Senator CHRIS EVANS—I am happy for you to say to me that you are not prepared to tell me. I am not happy for you to pretend that it is not right on the table in front of you.

Senator Johnston—I have read a document that I do not know the origin of.

Senator CHRIS EVANS—Seek advice from the secretary and the parliamentary counsel and you will know the answer.

Senator Johnston—I am not sure the secretary knows either.

Senator CHRIS EVANS—I suspect he does. I take it that you are not prepared to tell me what the working title is.

Senator Johnston—I am not sure that it is a working title. I do not know whether it is the working title.

Senator CHRIS EVANS—The parliamentary counsel is engaged on a job but they do not know what it is called?

Senator Johnston—It is an amendment to the existing Work Choices legislation, as I understand it. It has not got a generic title that has formally been published or released yet.

Senator CHRIS EVANS—We are waiting for the research brief to come back in before we determine the title?

Senator Johnston—We are waiting to dot the i's and cross the t's and then we are going to announce it.

Senator CHRIS EVANS—So we do not know whether you have finished it. We do not know what the title is. Mr Quiggin, has this been handled by more than one officer in your office or do you assign one person to do this sort of thing?

Mr Quiggin—No. We have got a number of drafters working on it. Basically we have had five out of the office's 30 drafters who have worked on it at some time.

Senator CHRIS EVANS—Is that usual to have that many people working on it? I thought you would have needed a corporate knowledge; like things designed by a committee, with all due respect to my fellow committee members, they do not necessarily come together very well.

CHAIR—Speak for yourself.

Senator CHRIS EVANS—I am speaking about all of us. If we sat down to write the report together it could be a problem. We usually give it to one person and then check it over.

Mr Quiggin—Generally bills are drafted by one team, which is about two or three drafters. With some of our larger jobs the bills are able to be divided in a way where the drafters are not crossing over each other's work. In this one we have basically had two teams working on it.

Senator CHRIS EVANS—You have got two teams working on it?

Mr Quiggin—Yes.

Senator CHRIS EVANS—Is that usual or is this what you do when you are basically under time pressure?

Mr Quiggin—It is not unusual for a lot of the jobs. Probably the majority of our jobs would be done by one team but on jobs that need to be done quickly or which are particularly large we would put on multiple teams.

Senator CHRIS EVANS—How do you prioritise your work? I know a lot of ministers complain that they would like to get their bill through but they are at the Parliamentary Counsel. I must say they do not generally blame you. They know there is a queue. There is certainly a story told around parliament a lot; but whether it is true or not you may be able to tell me. Do you prioritise your work or does the government prioritise it for you?

Mr Quiggin—The government prioritises it through the Parliamentary Business Committee of Cabinet, which sets a program for each sittings.

Senator CHRIS EVANS—Obviously this would not have been on the program for this sittings until quite recently, or was it?

Mr Quiggin—No. It has been added to the program.

Senator CHRIS EVANS—When was it added to the program?

Mr Quiggin—I do not have that information with me.

Senator CHRIS EVANS—Post 4 May?

Mr Quiggin—Yes. Bills can only be formally added to the program on the Monday of sitting weeks, which is when PBC meets, so any bills that were not on the original program would not have been added until the first sitting Monday.

Senator CHRIS EVANS—So it is not as a result of the decision of the government business—what did you describe the body as?

Mr Quiggin—The Parliamentary Business Committee.

Senator CHRIS EVANS—So it has not been added by the Parliamentary Business Committee yet?

Mr Quiggin—No, it has been added by them. They meet the Monday of each sitting week.

Senator CHRIS EVANS—This was as of this Monday.

Mr Quiggin—I am not sure which week it was added.

Senator CHRIS EVANS—The first sitting week after 4 May was this Monday. Is that right? We get locked up in estimates for a couple of weeks and forget that there are other things going on in the world.

Senator Johnston—The sitting week is 8 May, isn't it?

Senator CHRIS EVANS—I am not absolutely sure.

Senator LUDWIG—We are in estimates so it must be.

Mr Quiggin—I think there was a sitting week immediately after that.

Senator CHRIS EVANS—The budget week, of course.

Mr Quiggin—The budget week.

Senator CHRIS EVANS—So it was added at the start of the budget week? Is that right?

Mr Quiggin—I am not sure which week it was added. I would need to check.

Senator CHRIS EVANS—Perhaps if you could take that on notice for me. Anyway that has been added and obviously you got given the instruction to make it a priority on the 4th?

Mr Quiggin—The Parliamentary Business Committee sets the program at the end of the previous sittings and in the usual course of events there will be a number of things that come up between then and the following sittings that are clearly urgent and we start work on those before they are formally added to the program. If we waited until they were added to the program we would not have time to draft them.

Senator CHRIS EVANS—That is what I would have thought. Someone said to you, 'Forget the list we gave you last week, this is a priority.' If the Prime Minister announced it on 4 May I presume it became a priority on 4 May?

Mr Quiggin—Yes. It was clearly a priority.

Senator CHRIS EVANS—So you set about drafting that. How long does it normally take you to turn around a bill?

Mr Quiggin—That really depends on the size of the bill. Some bills are done in a couple of days. Some bills take a couple of years. A lot of bills could take two weeks, four weeks or eight weeks. That is impossible to answer.

Senator CHRIS EVANS—I was not really asking that in relation to the IR bill, it was more so that next time I hear a minister giving me the excuse I will know whether it is right or not.

Mr Quiggin—One of my predecessors said, ‘How long is a piece of string?’

Senator CHRIS EVANS—We are not sure whether you have finished your work yet, but you have obviously put a lot of effort into it in the last few weeks. We do not know what it is called. I will leave my questions there.

Senator LUDWIG—I was trying to understand and get a snapshot of the Office of Parliamentary Counsel. With regard to the drafting activity of government bills, do you do private member’s bills?

Mr Quiggin—We very rarely do private member’s bills. Most of those are done by the clerk’s offices either in the Senate or the House.

Senator LUDWIG—Is there a request for that or does it come through a minister’s office if you are to do a private member’s bill? You said it was very rare but you did not rule it out.

Mr Quiggin—If we got one—

Senator LUDWIG—How would you get one?

Mr Quiggin—Either if the clerks approached us on a bill that they thought was beyond their abilities or we occasionally get members coming directly to us, although generally we direct those back to the clerks in the first instance.

Senator LUDWIG—So I cannot send you the bills that I want drafted?

Mr Quiggin—You could. What we would then do is consult with the Attorney’s office about whether they considered that this was something we should do as a priority or where it should fit within the priorities of the office.

Senator LUDWIG—I see what could happen. With the number of government bills I was trying to understand if you keep records on the number of bills that you do, or the size or resources that might be consumed by government bills?

Mr Quiggin—We do. We keep records that we put in the annual report each year of the number of bills introduced and the number of pages introduced. Also there are tables in each year’s annual report showing the progress of bills on the program.

Senator LUDWIG—Has that annual report provided that over the last couple of years or when did you start doing that?

Mr Quiggin—The numbers of bills and pages was many years ago.

Senator LUDWIG—Can you then compile that into a table? In other words, if you pick a date of say 1996 to now, could you provide the number of government bills?

Mr Quiggin—We could certainly provide you with the number of bills introduced that were drafted by our office and the number of pages introduced.

Senator LUDWIG—And the number of private member's bills during that period?

Mr Quiggin—Certainly for the past few years. I would need to check our records on whether we reported that in earlier years.

Senator LUDWIG—If it is only on the last couple of occasions that you have done a private member's bill, it might be easier?

Mr Quiggin—Yes.

Senator LUDWIG—With the drafting activity, do you do it by the number of bills or the number of pages?

Mr Quiggin—We put both figures in. Both of them are effectively rough measures. Obviously the bills can be of largely varying size and therefore we put both in so that there is a broader comparison. If we were to rely on one figure it might be misleading. For example, if we had a number of very large bills and we just put the number of bills, it would look like we did not do that much. We publish both figures.

Senator LUDWIG—I understand that. Do you keep an understanding within your section of the average time it takes; in other words, the resources, or people, that spend an amount of time on a bill, like a performance indicator or a KPI, for argument's sake?

Mr Quiggin—No. Again, the size of the bill or the amount of effort that it takes to draft a bill of a particular length will vary substantially depending on the subject matter of the bill. A five-page tax bill can take as long as a 30-page bill setting up a statutory authority.

Senator LUDWIG—Do you keep a tally of those bills introduced that are not proceeded with? For instance, if you proceed to drafting instruction, you have drafted a bill, it has not gone to the next level or no-one wants it and it sits in your office so the drafting instruction has been cancelled, do you keep a tally of those? I am not sure how it works. I understand that, once it leaves your hands, it is not something that you have got control of as to whether the bill is proceeded with by government or not.

Mr Quiggin—No. Because of the nature of the legislative program, which is that a program is set for each sittings and then basically the whole of that program lapses at the end of those sittings and departments re-bid afresh, bills can both fall off between sittings for reasons we are not aware of, but also a lot of bills stay on the program for a number of sittings. Trying to keep that sort of information would be quite difficult.

Senator LUDWIG—Some are more hopeful than others in getting their bills drafted?

Mr Quiggin—Yes.

Senator LUDWIG—With prioritising the work, short of the PM asking for a bill to be drafted, how do the ministers bid for the priority? Is there a system that is utilised?

Mr Quiggin—Yes. The Department of Prime Minister and Cabinet actually conduct the bid process. Each department or each minister is asked to submit a bid which lists all of the bills which they wish to have on the program, the priority they wish to have for that bill, and a range of information about that, and then the parliamentary business committee of cabinet can

actually go through all of those bids and come up with a program dividing the bills into four categories: category T—which is for time critical—is for introduction and passage, and then there are categories A, B and C and we then work on the bills. It is basically in that priority order. We do the category Ts first and then the As and, if we have time, the Bs and the Cs.

Senator LUDWIG—In terms of support, do you have an IT section that assists?

Mr Quiggin—Yes. We have an in-house IT section.

Senator LUDWIG—Is that a custom-built precedent database?

Mr Quiggin—We have a range of IT tools. The actual drafting work is done on a highly customised version of Word, which we have customised over the last 10 years or so to suit the drafters' work. For databases we have a textual database of all enacted legislation, all bills before parliament and all draft bills, which is done using software called Folio Views, which is an off-the-shelf product which we have designed as a database. We also have a database which gives us information about bills that we are working on, and that was developed in Access through our internal staff.

Senator LUDWIG—In terms of the practical area, that is not particularly high-tech in that sense. It is a database, an off-the-shelf product, Folio View—which, from memory is not that expensive—and then you use a customised Word from Microsoft?

Mr Quiggin—Yes. I am not quite sure what your question is.

Senator LUDWIG—I am just trying to understand. Is that the sum total of the technology that you use in the office?

Mr Quiggin—Basically. We have a finance system and other normal sorts of software that you would expect in an office, but the main ones that the drafters would use would be Word and this database that we have in Folio, which has all the legislation that they need to know about.

Senator LUDWIG—For delivery of bills, do you then email them or provide a text version? Where does it go next? How do you pass it on to the next process?

Mr Quiggin—Once the bill is ready for introduction, we get it printed by CanPrint, who print a number of the B5 copies that are provided to members and senators, and then the bill is emailed to the relevant table office in parliament. It then becomes part of the parliamentary system, and they deal with it until such time as it is enacted. Once it is enacted, they then send it to the Office of Legislative Drafting and Publishing, who are responsible for actually publishing the legislation.

Senator LUDWIG—Are the CanPrint costs out of your budget?

Mr Quiggin—Yes.

Senator LUDWIG—The 2005-06 annual report at page 28 mentions delays in implementing IT capital expenditure. What did that relate to?

Mr Quiggin—I would need to confirm, but I believe we were looking at changing over our servers which we have within the office, and, for internal reasons, we decided to delay that until this year. That project is currently being undertaken and we expect it to be done just before the end of this financial year.

Senator LUDWIG—How much was that?

Mr Quiggin—My feeling is that it is around \$160,000, but I may need to take that on notice to confirm that figure.

Senator LUDWIG—That has been delayed. Was it to be upgraded with new servers?

Mr Quiggin—Yes, to new servers.

Senator LUDWIG—That has been delayed until when?

Mr Quiggin—We are in the process of doing that now.

Senator LUDWIG—When is that expected to be completed?

Mr Quiggin—Just before the end of the financial year.

Senator LUDWIG—On page 44 of the annual report it lists the contracting of two former members of the OPC as contract drafters.

Mr Quiggin—Yes.

Senator LUDWIG—Is that for experience, workload or requirements? How do you determine whether you require a contract drafter?

Mr Quiggin—It is mainly on workload. As Senator Evans indicated, there has been a demand for more legislation than we can produce, so basically we have tried to use the former staff who have recently retired to basically bolster our drafting capability.

Senator LUDWIG—Was it about workload, not expertise?

Mr Quiggin—The people are selected because of their expertise.

Senator LUDWIG—And now you will not let them retire.

Mr Quiggin—I cannot stop them, unfortunately.

Senator LUDWIG—Page 44 also mentions substantial savings over the in-house provision of personnel services obtained by outsourcing to Ross Logic. What were those savings and what was Ross Logic?

Mr Quiggin—Going back a number of years, we previously did all of our personnel work in house. When we did it in house, we had to pay for a license for the software that we were using, which was quite expensive, plus we had a number of staff, at one point two staff, basically working full time doing personnel processing. Approximately four years ago we outsourced to Spherion, which has since changed its name to Ross Logic, and I believe it has changed it again. The total cost for them is \$23,000, which is obviously substantially less than the licence fee, plus the two salaries that we were paying at one point.

Senator LUDWIG—What was the saving?

Mr Quiggin—I could not give you the exact saving. Initially we think the costs were around \$150,000 for doing it in house and around \$20,000 outsourced.

Senator LUDWIG—At page 46 it lists revenue from other sources. What was that revenue?

Mr Quiggin—That is mainly from the legislation process courses that we run, which are mentioned earlier in the report. They are courses that we run to train the people who will be our instructors on how better to provide us with instructions and on the legislation process generally.

Senator LUDWIG—Do you run courses for various public servants from the ministerial areas or agencies on how they can instruct you?

Mr Quiggin—Yes, the departments. I do not believe that we have had ministerial staff.

Senator LUDWIG—The departments and agencies?

Mr Quiggin—Yes. It is a one-day course, which is conducted by two of our drafters using materials that we developed a number of years ago and obviously have been kept up to date. We get excellent feedback on those courses and there is always a high demand for them.

Senator LUDWIG—With respect to the breakdown of full-time and part-time staff, how many senior executive drafters do you have?

Mr Quiggin—The table at page 47 has the breakdown at the end of the financial year.

Senator LUDWIG—I wanted the present figure.

Mr Quiggin—At the moment the physical staff totals 49, of whom five are currently on extended leave, plus two drafting contractors, and we have three more corporate service staff starting in the next few weeks. Of those staff that are currently available, 30 are drafters, of whom 12 are SES or acting, three are statutory office-holders and the remainder are non-SES legal staff. We have one SES corporate service staff member and the remainder are non-SES corporate service staff.

Senator LUDWIG—Who are the three statutory office-holders?

Mr Quiggin—That is myself and the two second parliamentary counsel.

Senator LUDWIG—Page 529 mentions an office relocation schedule and/or fit-out during 2012.

Mr Quiggin—Yes.

Senator LUDWIG—Have you started planning for that yet?

Mr Quiggin—We have started the investigating. One option is obviously to stay in our current building, so we have started looking into whether we will do that or whether we need to move to new premises.

Senator LUDWIG—But it is early days yet?

Mr Quiggin—It is at this stage, although there is obviously quite a long lead time on such activities.

Senator LUDWIG—Have you set aside an amount for that?

Mr Quiggin—Not a specific amount at this stage.

Senator LUDWIG—Perhaps you need to elaborate. Are you holding capital expenditure or funds for capital expenditure into the future?

Mr Quiggin—What we are doing is making sure that we have sufficient cash so that, if we need to do that, we would have those funds available. At this stage I do not believe we have calculated the cost of doing that. Again, it is at quite an early stage.

Senator LUDWIG—How much available cash do you have on hand?

Mr Quiggin—At the moment we have \$3.399 million in receivables. We do not physically have that cash.

Senator LUDWIG—A number of agencies have used the same phrase. You are doing very well. What is your current location?

Mr Quiggin—We are in the Motor Trades building in Brisbane Avenue, Barton.

Senator LUDWIG—Is that leased?

Mr Quiggin—Yes. We lease the whole of the second floor and a small part of the ground floor.

Senator LUDWIG—What is the lease worth on that?

Mr Quiggin—Last year the actual figure was \$765,257.

Senator LUDWIG—Thank you.

CHAIR—Thank you, Mr Quiggin, Ms Francis and officers.

[6.07 pm]

Office of Film and Literature Classification

CHAIR—We welcome Mr McDonald and his colleagues from the Office of Film and Literature Classification. Are there any questions?

Senator CHRIS EVANS—I wish to ask about the appointment process and how it was conducted. I presume I ask that of Mr Cornall rather than Mr McDonald. We had a discussion earlier about the human rights commission. Was this job advertised?

Mr Cornall—Yes, it was.

Senator CHRIS EVANS—When was it advertised?

Mr Cornall—Some time in the latter part of 2006.

Senator CHRIS EVANS—Did the department handle the selection process?

Mr Cornall—Yes, we did.

Senator CHRIS EVANS—What was the selection process?

Mr Cornall—We called for applications. We considered the applications. We established a short-list and we conducted interviews.

Senator CHRIS EVANS—Was Mr McDonald an applicant?

Mr Cornall—No. I will just go on. We did all of that in 2006. We felt, out of that process, that there were two candidates who were worthy of consideration, but we were not sure that they met all of the criteria that we were looking for in the position. In early 2007 we engaged an executive recruitment firm to see if they could supplement the list of candidates, which they did. We conducted another round of interviews and, as a result of that, one of the people

who was in that second round of interviews stood out to us as the candidate that we felt met the criteria most closely. We then put those details before the Attorney. We told him of the process that we had been through, the people we had interviewed, the candidates we thought were worthy of consideration and the reasons why we thought that. We gave him a report of the process and the matter was left to him at that point. I should stress that, as we discussed before, statutory appointments are matters for government to make. They can ask for a process to be conducted or they can simply make appointments without any reference to the department. They can ask for a process to be undertaken and then not accept the recommendations about potential candidates.

As I understand it, after that point the Attorney had a discussion with Mr McDonald in which it became clear that Mr McDonald would consider appointment if it was offered to him. The Attorney thought that was an outstanding appointment to be made, and the matter went forward from there.

Senator CHRIS EVANS—Thank you for that. You answered a bit quickly for me so I will take you back a bit more slowly through that. PM&C told me the other day it was a cabinet appointment.

Mr Cornall—Yes.

Senator CHRIS EVANS—As you say, it is within the power of cabinet to make whatever decision it wants to make. I might add that I am not casting any aspersions against Mr McDonald or his qualifications for the job. I am not particularly familiar with what the qualifications for the job are. So you short-listed in 2006. Did you make the decision that the two candidates that you came down to were not up to it, or was that a decision the minister made after seeing what you had put up to him?

Mr Cornall—It was a decision that was reflected on by the committee after we had looked at the report that we were preparing at that time.

Senator CHRIS EVANS—Were you on the committee?

Mr Cornall—Yes, I chaired the committee.

Senator CHRIS EVANS—Who else was on it?

Mr Cornall—Amanda Davies, one of my fellow officers; Laurie Glanfield, the Secretary of the Attorney-General's Department in New South Wales; and Josh Faulks, who is an adviser to the Attorney-General.

Senator CHRIS EVANS—Is he a political adviser?

Mr Cornall—He is an adviser to the Attorney-General.

Senator CHRIS EVANS—He is not someone on secondment from the department?

Mr Cornall—No.

Senator CHRIS EVANS—That committee was constituted. You came to two names, but in the end you concluded that you were not going to put either of them forward to the minister?

Mr Cornall—We did not put a formal submission to the Attorney before we decided we might have another look.

Senator CHRIS EVANS—Did you discuss that with the Attorney before you decided to have another look?

Mr Cornall—No, I did not.

Senator CHRIS EVANS—Was that a process done within the selection committee itself?

Mr Cornall—Yes, more or less within the selection committee itself. I did not discuss it with the Attorney and I did not put a submission to the Attorney at that point.

Senator CHRIS EVANS—Who did you get to do the executive recruitment search?

Mr Cornall—Hansen and Searson.

Senator CHRIS EVANS—Had you used them before?

Mr Cornall—Yes. They are very well known recruitment agents in Canberra.

Senator CHRIS EVANS—And they went out and did a recruitment service. How did you handle what came back?

Mr Cornall—They received eight expressions of interest and, after we discussed them, we agreed to short-list five candidates from that process.

Senator CHRIS EVANS—Were any of them candidates from your earlier process?

Mr Cornall—No.

Senator CHRIS EVANS—When you say ‘expressions of interest’, these are people they had identified who have said that they were willing to have their name go forward?

Mr Cornall—Yes, that is right.

Senator CHRIS EVANS—You short-listed five; did the same selection committee interview them?

Mr Cornall—Yes, the same selection committee.

Senator CHRIS EVANS—Did you interview them, get referees and that sort of process?

Mr Cornall—Yes, we did.

Senator CHRIS EVANS—Did you come down to one recommended candidate?

Mr Cornall—In the end we felt one candidate stood out, but we told the Attorney of the three candidates from both processes that we felt were worthy of consideration.

Senator CHRIS EVANS—So there was still somebody from the original list?

Mr Cornall—We made a report to the Attorney that covered the whole process.

Senator CHRIS EVANS—Was there one preferred candidate and the two from the original process?

Mr Cornall—The candidate in the final process that we felt most closely met all of the criteria, but the two earlier candidates we thought had come pretty close.

Senator CHRIS EVANS—Is it fair to say that the candidate from the second process was the preferred nomination?

Mr Cornall—That was our recommendation. All we can do in these circumstances is make a recommendation to the Attorney that ‘we feel this person meets the criteria that you are looking for’.

Senator CHRIS EVANS—I am just trying to ascertain whether the three went forward with equal weight.

Mr Cornall—No, one stood out.

Senator CHRIS EVANS—One went forward as the recommendation and you also forwarded the other two names as being qualified but not recommended?

Mr Cornall—No, we said that they were certainly worthy of consideration for appointment if he did not want to appoint the person whom we felt most closely met all of the criteria.

Senator CHRIS EVANS—What happened after that?

Mr Cornall—Then the matter was in the hands of the Attorney.

Senator CHRIS EVANS—When were you advised that he was not going to select the recommended candidate?

Mr Cornall—I am not sure that I know the exact date. It was not long before the meeting of the Standing Committee of Attorneys-General. If you want the exact date I will have to find it for you. I do not know that I have it.

Senator CHRIS EVANS—Were you told first that the applicant that you had recommended would not be appointed and did you subsequently hear that cabinet had made a decision to appoint Mr McDonald or was it one process?

Mr Cornall—I had a telephone call that said that the Attorney was considering making Mr McDonald as an appointment, because with the process that we had to go through—and I just cannot remember the timing of all of this and who did what—we have to do papers for the matter to go to cabinet. Once it has gone to cabinet, because this was a process that involved a position that had to be consulted with the states, we had to also do letters for the Attorney to send to his state colleagues on the censorship ministers committee before the appointment could be formally made. We had to do all of those things as well, so we were involved in those processes.

Senator CHRIS EVANS—Just so that I am clear, that means you must have been asked to provide paperwork for the cabinet that nominated Mr McDonald and not the other applicant?

Mr Cornall—Yes, that is right.

Senator CHRIS EVANS—The minister had advised you that he was not taking forward the applicant you had recommended or either of the other two but he was taking forward Mr McDonald’s name?

Mr Cornall—That is right.

Senator CHRIS EVANS—And the recommendation was just for one candidate?

Mr Cornall—That is right.

Senator CHRIS EVANS—So you prepared the paperwork for the Attorney-General to take to cabinet?

Mr Cornall—Yes, we did.

Senator CHRIS EVANS—Do you have the date of the cabinet meeting? Was it some time in April?

Mr Cornall—It was between 23 March and 11 April, but I am not sure of the date. I do not have it here in front of me.

Senator CHRIS EVANS—Does anyone have the date?

Mr Cornall—Mr Anderson says that it was on 11 April.

Senator CHRIS EVANS—I have a media report here which was the 14th so I figured it was soon after that. Can you explain to me the process by which you have to consult with the states on this appointment?

Mr Cornall—Yes. There was a letter drafted for all of the states. It was faxed to the offices of the various ministers, and that was two days before the SCAG meeting, or the censorship ministers meeting. Then there was discussion about it at the meeting of the ministers.

Senator CHRIS EVANS—Is this all subsequent to the cabinet decision?

Mr Cornall—Yes, it is.

Senator CHRIS EVANS—SCAG is an unfortunate sounding acronym.

Mr Cornall—It is actually the censorship ministers. They are virtually all the same and they meet at the same time.

Senator CHRIS EVANS—So this was not the SCAG?

Mr Cornall—It was a meeting of the censorship ministers.

CHAIR—Ministers for censorship.

Senator CHRIS EVANS—I am just trying to understand what the powers are. The cabinet had already made the decision and this was more of a courtesy than a—

Mr Cornall—No. It is difficult where you have to consult on appointments, which are normally kept very confidential, to go to eight jurisdictions and put the name of a person into that environment if in fact you have not got a clear indication from cabinet that that person is acceptable to the Australian government. It is a question of which you do first, and the policy is to take any nominee to cabinet first to make sure that at least you have cabinet endorsement before you then go to the states, because then it will become a very public nomination. Under the legislation the Attorney-General has the power to make the appointment, but there is an obligation to consult.

Senator CHRIS EVANS—It is a consult and not a vote?

Mr Cornall—That is right.

Senator CHRIS EVANS—The Attorney-General says: ‘This is our nominee. We can have a chat about it,’ but at the end of the day unless he is convinced otherwise, he makes the nomination?

Mr Cornall—That is right.

Senator CHRIS EVANS—It is not one of those deals where they get the deputy censor or something like that?

Mr Cornall—No.

Senator CHRIS EVANS—A couple of them are those sorts of things.

Mr Cornall—No.

Senator CHRIS EVANS—So it is an appointment by the Attorney-General?

Mr Cornall—It is an appointment by the Australian government.

Senator CHRIS EVANS—I know it is a cabinet decision but formally it is the A-G; is that right?

Mr Cornall—It goes to the governor-in-council and it is a formal appointment by the governor-in-council after it has been recommended to the cabinet by the Attorney and the cabinet has endorsed it.

Senator CHRIS EVANS—I think we are clear on that. PM&C told me the Prime Minister left the room for the decision. Was he the only person to absent himself from the cabinet meeting?

Mr Cornall—I do not know.

Senator CHRIS EVANS—But Mr Ruddock did not absent himself?

Mr Cornall—I do not know.

CHAIR—It is hard for Mr Cornall to respond on what happened in cabinet proceedings.

Senator CHRIS EVANS—I just wanted him to tell me who came out the door. PM&C gave evidence which confirmed the press reports that Mr Howard, the Prime Minister, absented himself from the room for the discussion. That was their evidence earlier in the week. When was Mr McDonald appointed?

Mr Anderson—He was appointed on 26 April effective from 1 May.

Senator CHRIS EVANS—How long is the appointment for?

Mr Anderson—Four years.

Senator CHRIS EVANS—Is this a full-time position?

Mr Anderson—That is correct.

Senator CHRIS EVANS—Thank you.

Senator LUDWIG—In response to Senator Stott Despoja’s question on notice No. 2903 of 7 February 2007, the minister indicated the reason for the amalgamation of the OFLC into the department was:

It is Government policy in the context of the Uhrig report to review all Australian Government agencies and identify ... functions that should be brought back within a Department.

In respect of the OFLC, what was the review that identified that the OFLC's policymaking function should be brought back within the department?

Mr Cornall—It was a ministerial decision.

Senator LUDWIG—There was no review?

Mr Cornall—Yes, but not a review like the Uhrig review.

Senator LUDWIG—There were no terms of reference?

Mr Cornall—No, not a formal external review.

Senator LUDWIG—And no-one conducted a review? There was no public consultation?

Mr Cornall—No.

Senator LUDWIG—Were stakeholders, industry representatives or community groups consulted?

Mr Cornall—No.

Senator LUDWIG—There was no ultimate report, either?

Mr Cornall—No.

Senator LUDWIG—So how do we understand the process of public interest or policy advice? Was that all simply by the minister making a decision to role the OFLC into the Attorney-General's Department?

Mr Cornall—Yes, I think that is right.

Senator LUDWIG—How was that communicated to the department? Was that decision communicated to you?

Mr Cornall—There was a submission to the Attorney recommending that course of action that the Attorney endorsed.

Mr Anderson—There had been some interaction with the department of finance as well in the context of the Uhrig process that also fell into that advice to the Attorney.

Senator LUDWIG—Are you able to say what that submission entailed and when it was made?

Mr Anderson—I would have to take the date on notice.

Senator LUDWIG—Was it close to the decision making or was it some time ago? Do you have a rough date?

Mr Anderson—I will have to take that on notice.

Senator LUDWIG—In the last 10 years? I am not asking for a specific date. I accept that you will take it on notice.

Mr Anderson—I can say it was early in 2006.

Senator LUDWIG—Who started the discussion with the department of finance? Was that the Attorney-General's Department or the department of finance?

Mr Anderson—We were already in discussion with the department of finance in the context of the ongoing Uhrig process.

Senator LUDWIG—How did the OFLC get put on that list?

Mr Anderson—We were already having discussions with the department of finance about OFLC in the context of applying the Uhrig review to the OFLC.

Senator LUDWIG—When did that discussion commence? Was that from the Attorney-General's Department?

Mr Anderson—I would have to take that on notice.

Senator LUDWIG—Was that before the Uhrig review?

Mr Anderson—I would have to take that on notice in respect to OFLC. It is an ongoing process of discussion in relation to a range of bodies.

Senator LUDWIG—Are you able to say what other bodies were also discussed?

Mr Anderson—My understanding is that we were required to apply the Uhrig formula or methodology to all portfolio bodies.

Senator LUDWIG—Was a submission then produced as a consequence of that report? What I am trying to understand is, given that we all know that there was a Uhrig report, what happened after that? You read it presumably?

Mr Anderson—Yes.

Senator LUDWIG—You then decided to independently say, 'We will review all of the agencies'?

Mr Anderson—We were required to do that.

Senator LUDWIG—Was that a direction from the department of finance that caused that to occur? The report would not generally generate—

Mr Cornall—It was a decision of government that all departments had to do it in respect of all agencies.

Senator LUDWIG—As a consequence of the report, not because of the report?

Mr Cornall—Following on from the report, which made the recommendation that the government should where possible reduce the number of agencies.

Senator LUDWIG—I can accept that language. The government does not always implement all the recommendations of reports. It has to at some point say, 'We will pick this one up and run with it.'

Mr Cornall—That is true, and we were directed to do that.

Senator LUDWIG—You can then find me that date. In being directed to do that, was there a document produced—in other words, a submission? Is it back to government? I am just trying to understand the process.

Mr Cornall—The difficulty is that I just do not have the detail at my fingertips, but the gist of it was that we looked at all of the agencies. Many of them by definition could not be a division of a department.

Senator LUDWIG—Yes. We could use the Australian Federal Police as an example.

Mr Cornall—You could not have the police, the courts, the tribunals, the Privacy Commissioner, HREOC and so on. Really when we went through it there were very few portfolio agencies that actually fell within the principles such that you could bring them into the department. OFLC was one of the few that could be looked at in that regard.

Senator LUDWIG—What others?

Mr Cornall—We looked at the AIC. There was a review of the Institute of Criminology at some point. The Institute of Criminology was looked at in this context.

Senator LUDWIG—Any of the tribunals?

Mr Cornall—No.

Senator LUDWIG—Certainly not the Office of the Director of Public Prosecutions?

Mr Cornall—No.

Senator LUDWIG—The Australian Law Reform Commission?

Mr Cornall—That was looked at, but it was determined not to go ahead. I am sure we looked at all of them against the principles and we came to conclusions about all of them as to which ones could or could not be moved or whether there was any rationale for doing so under the principles.

Senator LUDWIG—What I was trying to establish is which ones ended up in the basket to be looked at in more detail or examined?

Mr Cornall—They were all examined. Basically, the OFLC was the most significant outcome of that.

Proceedings suspended from 6.30 pm to 7.29 pm

CHAIR—I call the committee to order. Did you want to make a statement, Mr Cornall?

Mr Cornall—Yesterday I gave a schedule of advertising expenditures. I have a couple of very minor corrections to the figures. One figure has come down from \$0.6 million to \$0.3 million, and one has come down from \$5.3 million to \$5.2 million, so they are a bit less than the figures I gave you. I will table this slightly corrected version for the sake of accuracy. The net result is that the advertising expenditure is less than was shown yesterday by a small amount.

CHAIR—Thank you. We will continue with the questions. Senator Ludwig, I have some questions too if you need some relief at any stage.

Senator LUDWIG—I will tie this up as quickly as I can. I have questions with respect to the incorporation of OFLC in the department. We have heard how there was a decision by the Attorney-General to bring it forward and we have seen how we arrived at the OFLC-in-the-basket post the report. Did the department provide a submission to the Attorney-General's Department based on the government direction and was there then the development, in light of the report, of a final snapshot to the Attorney-General that said, 'This is what our recommendation is'? There seems to be a bit of difference on this point.

Mr Cornall—I do not have these details fixed in my mind, that is all.

Mr Anderson—Effectively, that is correct.

Senator LUDWIG—In dealing with that was any consideration given to the issue of assessing the value of having a stream of policy advice on censorship which is not only independent of government but also perceived to be independent of government?

Mr Anderson—The model that has been adapted is the model that is applied in all Australian jurisdictions where policy is given from the department of the state.

Senator LUDWIG—In terms of the Attorney-General making the decision, how long was it until the announcement was made for the OFLC to be rolled into the department?

Mr Anderson—I would have to take that question on notice.

Senator LUDWIG—What date was the OFLC rolled into the department?

Mr Anderson—It has not happened yet. The policy function, human resources and some other ancillary functions were incorporated into the department from 1 July 2006. The full integration is scheduled to occur on 1 July 2007. The OFLC still exists.

Senator LUDWIG—I thought that. I knew that since the last time we spoke you had rolled in the corporate functions. The remaining functions will be rolled in on 1 July 2007?

Mr Anderson—That is right.

Senator LUDWIG—What will that entail? Will it entail the commercial premises being sublet?

Mr Anderson—No. The people will stay in the same place. They have some purpose-built facilities for viewing different types of product. The classification board members who are full time will continue doing that work. It is just that the people who currently support them as part of OFLC will instead be officers of the department, but they will still be providing support to that board and also to the Classification Review Board from the same premises and with the same arrangements for industry in terms of delivery of product, et cetera.

Senator LUDWIG—On what date did the minister take responsibility for policy development?

Mr Anderson—On 1 July 2006. That was sole responsibility for the policy. Prior to that it had been shared policy responsibility.

Mr Govey—Senator, just so that we are clear, you asked, ‘On what date did the minister take responsibility?’ The minister, of course, always had responsibility. There was a joint responsibility prior to that.

Senator LUDWIG—Yes, we understood one another in that sense. I should have said ‘sole responsibility’.

Mr Govey—He always had sole responsibility. I guess that was my point. Previously what happened was that the responsibility for giving him advice was shared between the department and the OFLC. Nothing changed in terms of ministerial responsibility. All that changed from 1 July 2006 was that the department became responsible for giving the advice.

Senator LUDWIG—Was the opportunity given to the OFLC to provide a submission—do we want to call it an internal submission or a review; I am open on that—on their view about whether they should be rolled into the department?

Mr Anderson—No.

Senator LUDWIG—How was that communicated to them?

Mr Anderson—My understanding is that the Attorney rang the director.

Senator LUDWIG—How many full-time equivalent positions were attached to the policy development unit? That might come back you, Mr McDonald, unless Mr Anderson can help. I do not mind who in that sense. I am trying to understand which of those has been brought forward.

Mr Anderson—Five positions were attached to the policy function.

Senator LUDWIG—That was prior to the amalgamation. Are they still there, or will they change from 1 July?

Mr Anderson—Those positions all transferred to Canberra from 1 July 2006.

Senator LUDWIG—There are two stages to the amalgamation. Prior to 1 July 2006 there were five and post 1 July 2006 there were still five. Is that right?

Mr Anderson—Those five positions transferred to Canberra.

Senator LUDWIG—Post 1 July 2007 will it still be five?

Mr Anderson—We have increased the number of positions. The branch that has the policy function has more than five positions, but it has other functions beyond classification policy. So there are still five positions doing classification policy work.

Senator LUDWIG—Is there a new policy unit with a new name?

Mr Anderson—There is a branch called the Classification Policy Branch, which is in Canberra.

Senator LUDWIG—So those five positions then get rolled into that?

Mr Anderson—Yes, that is correct.

Senator LUDWIG—What other responsibilities does it have?

Mr Anderson—It has responsibility for supporting the Attorney's participation in SCAG.

Senator LUDWIG—How many positions in total?

Mr Anderson—There are eight people currently in that branch.

Senator LUDWIG—That is in total. How many were there before 1 July 2006?

Mr Anderson—The branch itself was set up when it was identified that the policy function would transfer.

Senator LUDWIG—On what date was the branch set up?

Mr Anderson—I would have to take that on notice.

Mr Govey—It would have been around that date.

Senator LUDWIG—There were then three people. Where did the other three people come from?

Mr Anderson—There is a branch head, a personal assistant who supports the branch head in the branch, and the SCAG officer. The policy function was previously dealt with from within the Office of Legal Services Coordination, which was another part of the division. We moved it out of that and created a separate branch called the Classification Policy Branch.

Senator LUDWIG—Excellent. So three people in the Office of Legal Services Coordination who were doing the work of supporting SCAG?

Mr Anderson—The branch head actually came from a separate area.

Senator LUDWIG—Could we just look at the positions? I worry about the people but we are talking about positions. I think that might be easier.

Mr Anderson—The branch head position was a new position created because there was a new branch with a new function. Similarly, the personal assistant position was a new position to support that new branch head position. There was one person, a SCAG officer, in the Office of Legal Services Coordination.

Senator LUDWIG—So we now have eight in total?

Mr Anderson—Yes.

Senator LUDWIG—We have had an increase from five to eight, less one, which was an existing position. We have two new positions created?

Mr Govey—There was already some work being done on policy within the Office of Legal Services Coordination. I think it is worth making the general point that it is very hard to add up all the little bits that were working on this and then come up with where we are now. Effectively, we sat down again and looked at what structure we were going to need, taking into account the available resources. The branch has been set up in light of current needs, which are not necessarily the same as when you had policy being done from an office in Sydney and an office in Canberra.

Senator LUDWIG—Yes, Mr Govey. Sometimes it is very hard from this side of the table. If you are telling me that it is hard from your side, I will certainly accept that. Mr McDonald, I know that you are new but this was a process of policy development which might be called, if I use the general term, the hate books—that is, books promoting suicide bombing and atrocities against the West. As I understand the situation, we have a fourfold system dealing with this type of material. I am happy to be assisted here. First, there are criminal offences under section 102.1A of the Criminal Code, which proscribes counselling, praising or instruction in a terrorist act. Second, there are sedition offences under section 80.2 of the Criminal Code. Third, there is the censorship regime. You have a role—this is already within the capacity of the Classification Review Board to take into account—to refuse classification on the basis of depictions that condone or incite violence. The fourth area involves Customs, if there is an importation. There are regulations that then deal with the importation of refused classification material or the like. Have I missed any? They are the four main ways in which we generally deal with this type of material.

Ms Davies—Yes, those are the four main ones, although I note that the sedition offences et cetera that you are talking about are not directed at the material itself.

Senator LUDWIG—That is right. Under the categories and symbols page on your website there is the classification ‘PG’ for films and computer games that contain material that need to be explained to children and, therefore, parental guidance is recommended. The PG content is mild. I refer to the specific example of the Sheik Feiz terror DVD, which was given a PG rating. As I understood it, that matter was raised in the *Sydney Morning Herald* on 15 April 2005. The question that I have is: how is a film that calls for Muslims to murder non-Islamic people considered mild by the board?

Mr McDonald—The board considered that material on a referral that was submitted by the Australian Federal Police. It was a clear majority decision to classify the material on that basis.

Senator LUDWIG—I do not understand one issue. Perhaps you can help me with this. How can a film that calls for suicide attacks or so-called martyrdom be considered mild by the board? How on earth can the board come to the conclusion that a DVD that displays racial hatred by calling Jewish people an army of pigs is mild? I would like to know specifically why the board—which, as I understand the brief, is to be reflective of Australian community standards—considered this material appropriate for young Australian Muslim children aged, say, 10 years, to view.

Mr McDonald—I am just referring to the actual report. As you clearly understand, this decision was reached before I was appointed to the board, which is not meant to be misunderstood as any repudiation of the decision; it is just that I was not there and familiar with it. It was the board’s view that the classifiable element of the themes—which are the religious themes—was mild in its viewing impact. I am now reading from the report, which states:

The film contains religious themes that have a low sense of threat and/or menace and that are justified by context. The context is a lecture about tenets of the Islamic faith, ostensibly from a fundamentalist perspective.

Senator LUDWIG—Was the content of the DVD produced in Australia or overseas?

Mr McDonald—Yes, it was produced in Australia. It is astonishingly undramatic, Senator. A camera is simply trained on somebody who is standing there, speaking.

Senator LUDWIG—Are you able to provide to the committee the statement of reasons by the board?

Mr McDonald—I believe I have provided them in full. The report refers to various points—at minute 14 et cetera—

Senator LUDWIG—I understand the report.

Mr McDonald—The concluding remark is:

In the Board’s view, the use of the consumer advice “Religious themes” most accurately reflects the content of the classifiable element in the film.

In a minority view of the board, it was stated:

The classifiable elements contained in the film do not exceed “very mild” in impact. The themes are delivered in the manner of a modern-day sermon, and contain references and imagery generally tolerated within the wider Australian religious community.

That was the minority view, but I believe it was a minority of three.

Senator LUDWIG—It just does not seem sensible to me. How can it be justifiable when it has material or content that allows someone to murder non-believers? If you could provide that report, it would be helpful. I understand, and I am sure Mr Cornall can confirm this, that in the past those reports have been provided to the committee upon request.

Mr McDonald—Yes. We have the report, Senator. I would be happy to have it provided.

Senator LUDWIG—Could it be tabled?

CHAIR—Is it the wish of the committee that the report be tabled? There being no objection, it is so ordered.

Senator LUDWIG—Are you able to say when the decision was made? Is that demonstrated in the report?

Mr McDonald—Sorry, your question was the date—

Senator LUDWIG—The date the decision was made. I am not sure how it works. Do you review the material?

Mr McDonald—On 9 February 2007.

Senator LUDWIG—When was it referred to the OFLC by the Australian Federal Police?

Mr McDonald—I am hazarding a guess that it would have been 20 days prior to that. I will ask Mr Fenton to provide that information. He is a member of the board and a senior classifier.

Mr Fenton—We would have to take that on notice. We are not sure exactly when the material would have been received, but the director is correct in saying that it would not have been more than 20 days before the decision was made, I believe.

Senator LUDWIG—Is there a legislative requirement for the decision to be made within 20 days of receiving it?

Mr Fenton—A statutory requirement, yes.

Senator LUDWIG—I have not yet seen the decision, but does that provide the names of members who made the decision? We have heard that it was a majority decision but there was also a dissenter. Does it provide the names of the people who were in the majority and the name of the dissenter?

Mr McDonald—It provides their initials. The names could be provided to you. As you would appreciate from the legislation, the board acts as a group and it is ultimately a board decision.

Senator LUDWIG—Yes, I accept that. But it is always worth while clarifying that for the purposes of the record. Are those individuals appointed for a period of time?

Mr McDonald—Yes. They are appointed for either three years or four years.

Senator LUDWIG—How many classifiers are there at present?

Mr McDonald—The board consists of 17 members in its current establishment—that is, the director, the deputy director, two senior classifiers, of whom Mr Fenton is one, and the remaining 13 board members.

Senator LUDWIG—What is their usual term of appointment?

Mr McDonald—Three or four years.

Mr Anderson—To add to that: there is a statutory maximum of seven years for the term. It is common for the initial appointment to be for, say, three years.

Senator LUDWIG—Thank you. Who appointed the decision makers who made the decision in respect of the DVD to which we are referring? Were those appointments made under the current Attorney?

Mr Anderson—I believe that some of them would have been initially appointed under the previous Attorney, but I will just check that. Yes, a number of them were actually appointed under the previous Attorney. The current deputy director, a senior classifier and two members were appointed under the previous Attorney. The remainder have been appointed by the current—sorry, under the current Attorney; it is still an appointment by the Governor-General on advice of Executive Council.

Senator LUDWIG—Were the people who made the decision in respect of the DVD all appointed by the Attorney?

Mr McDonald—It is the mix as described by Mr Anderson.

Senator LUDWIG—I did not have the decision with me. How many people on the board made the decision? Was it the whole 17?

Mr McDonald—There were 13 who participated in that voting.

Senator LUDWIG—Hence my question. Were any of the 13 not appointed by the Attorney-General? Not all of the 17 were.

Mr McDonald—I am trying to analyse the initials. I think that we had better provide that to you on notice.

Senator LUDWIG—Thank you.

CHAIR—Will you take that on notice?

Mr McDonald—Yes. Chairman, could I correct the date that I gave earlier. I said that the classification decision was made on 9 February. That was the day of the viewing. I am sorry, I misread the report. The board classified them on 1 March 2007.

Senator LUDWIG—Thank you. I think my next question, on the proposed change, should be directed to you, Mr Cornall, or even to you, Mr Anderson. When was the proposed change to the law to address this area first mooted?

Mr Anderson—Before the videos in question, some previous publications were described in the media as books of hate. The Classification Board, and then the Classification Review

Board considered eight publications. On 10 July 2006 the Classification Review Board refused a classification to two of those hate publications. At the SCAG (Censorship) meeting in July 2006, the Attorney first proposed amendments to the classification act to deal with material advocating terrorist acts.

Senator LUDWIG—So it was proposed at that meeting on 10 July 2006?

Mr Anderson—10 July was when the Classification Review Board made a decision about publications.

Senator LUDWIG—And at the next SCAG following that?

Mr Anderson—There was a SCAG meeting shortly after that.

Senator LUDWIG—Would that have been about mid-July?

Mr Anderson—Late July.

Senator LUDWIG—How time flies! So it was raised at that time. Was that when it was first proposed?

Mr Anderson—That is correct.

Senator LUDWIG—It is interesting that you say that. It seems that in 2005 it was first mentioned by Mr Philip Ruddock in a radio interview with Ray Hadley. I might have to ask the minister to check on this, but was it a matter that popped into the head of the Attorney-General back in 2005 and he did nothing with it? It was a matter that was raised in that interview but it seems to have been sitting there waiting from there on. I could provide the transcript if you want to have a look.

Mr Anderson—July 2006 was when the Classification Review Board made a decision on these eight publications. They had previously been to the Classification Board. So the issue itself had been known to the Attorney prior to proposing to state and territory ministers at SCAG (Censorship) in July 2006. It was only once the decision of the review board was known that the extent to which there was a problem became clear, as to how the terrorist material and the classification code, act and guidelines interact.

Senator LUDWIG—So the explanation is that it was a matter that Mr Ruddock first raised in July 2005 in the radio interview. The next time we hear of it is roughly in July 2006 when we learn from a media release from the Attorney that he has written to the states about the issue. I think that was sent on 9 June 2006 and it was entitled 'Classification review to consider hate material'. So 10 July is probably a little out.

Mr Anderson—My recollection is that the Attorney referred the matter to the Classification Review Board. I cannot be sure of the exact timeframe leading up to that, in terms of the Classification Board itself considering it.

Senator LUDWIG—The media release dated 9 June 2006 goes on to state:

The Australian Government will push for censorship laws to be reviewed to assess whether they deal adequately with material which urges or advocates terrorist acts ...

... ..

Mr Ruddock also has referred eight publications and one film to the Classification Review Board in response to community concerns ...

It got to the Classification Review Board by July and soon after to SCAG?

Mr Anderson—No. He referred the matter to the review board. I cannot recall the precise dates, but if the press release is dated 9 June then I am assuming that that would be when the Attorney referred the matter to the review board. However, the decision of the review board was on 10 July 2006. That was followed relatively soon after by the SCAG (Censorship) meeting at which the Attorney formally urged state and territory ministers to agree to amend the legislation and the code.

Senator LUDWIG—We still had a period from July 2005 to write the letter—about a year later. It is almost a year from the time the thought popped into the Attorney-General's head—at the time of the radio interview—to the time when he took the action of writing a letter.

Senator Johnston—That is not necessarily surprising, given that I think the AFP had to review the evidence to see whether there was an existing offence. That does take some time. The document that you have given us indicates that there is an element of that. The brief was being reviewed, it came back and then I think the Attorney has looked at what involvement he needed from the states. The problem we have is that if you unilaterally make legislation in the Crimes Act you need to make sure it is not incompatible with existing state legislation. So there is an element of everybody being on the same page, and that does take some time, I must say.

Senator LUDWIG—He did not give the SCAG ministers that much time to get into the vote. He went to the press and announced it and then ended up in SCAG saying, 'This is what I want you to do,' whereas he had already considered it and thought about it 12 months earlier. He had plenty of opportunity a lot earlier to take it to SCAG and say, 'This is my thinking on the matter.'

Senator Johnston—It is much better to compare apples with apples.

Senator LUDWIG—I am happy to hear that you have compared them. What we had in 2005 was Mr Ruddock's thoughts on radio. It appears to me that it disappeared at that point. In 2007 we learn that a hate-filled jihad DVD was given a PG rating. The Classification Review Board then provides a PG rating, and the Attorney then writes to the states to ask them to come up with a policy in the area within two weeks.

Senator Johnston—I will take this question on notice and get a chronology of what has occurred. I am sure there is a lot more to it than simply looking at the radio interview and at the end outcome. A lot of consultation has to go on. I will get a chronology for you.

Senator LUDWIG—We also have the press release entitled 'States should agree to new test for terrorism material', dated 15 April 2007. The real crux of the matter is that, when you are doing your chronology, you should also plug in what consultation went to the states at that point; otherwise you have 2005 where the original thinking starts. It concertinaed right at the end where you end up with a press release on 15 April 2007 stating that the states have to agree, and they are given about two weeks to come up with a considered response about all this. If you then say that it has been developed over 2005, obviously from that point the Attorney-General, if he has also consulted with the Australian Federal Police, has had a

significantly longer time to consider it, look at the issue and decide on the best course of action.

Senator Johnston—I do not think that that depiction is accurate, but I will come back to you with a formal response on the chronology.

Senator LUDWIG—All right.

Mr Anderson—I have one other thing, Senator. While the chronology will detail in particular what happened from 2005 to 2006, I can say that between the July 2006 SCAG censorship meeting and the 13 April 2007 press release a great deal of work was done by a working party of officials from the states, territories and the Commonwealth seeking to progress the case for the amendment. It was the Commonwealth's experience that we were meeting resistance from the states and territories at every turn along the way, despite doing a great deal of work seeking to persuade them of the need for the amendments. But the chronology will make clear all of the steps.

Senator LUDWIG—That will be helpful. Mr McDonald, this is a matter that I suspect you will have to grapple with. Clearly, you were not there, but prior to its absorption into the department—and you are now here almost at the end point of the second wave of absorption, if we can call it that—did the OFLC make public submissions to public inquiries?

Mr McDonald—Does it make submissions?

Senator LUDWIG—It did. I am not sure whether it has had an opportunity in the short while, but when it was more independent of the Attorney-General's Department, did it make public submissions to public inquiries?

Mr McDonald—I would need to ask about that.

Senator LUDWIG—I know that you would have to seek advice.

Ms Williams—I would need to take that on notice.

Senator LUDWIG—So you cannot recollect whether you have ever made a public submission to an inquiry?

Ms Williams—I have only recently commenced in the position.

Senator LUDWIG—We are challenged, aren't we? All right.

CHAIR—Senator, do you want to be more specific about the type of inquiry?

Senator LUDWIG—A Senate committee?

Senator PAYNE—Clearly the answer to that is yes. I think you have been round the table.

Senator LUDWIG—Yes, I know. I am just surprised that they did not know, that is all.

Senator PAYNE—I am happy to help.

Senator LUDWIG—Thank you, Senator Payne, but I am not sure whether your evidence is that helpful.

Senator PAYNE—I am not sure that I like that, Senator.

Senator LUDWIG—In the context that it is not from the OFLC.

Senator PAYNE—I am sorry.

Senator LUDWIG—I am not arguing the veracity of it.

Senator PAYNE—I can assure the office that they have, if that is of any assistance to anyone.

Senator LUDWIG—I was nearly going to do that too.

Senator PAYNE—In fact, it is on the website.

CHAIR—I think Senator Payne and Senator Ludwig are in agreement that you seem to appear in a number of inquiries, so we will take that as fact.

Senator LUDWIG—It was really a preparatory question to my next one. From 1 July 2007 you will form part of the Attorney-General's Department. Issues like the work done in sedition—

Mr Cornall—I think we should correct this. The Classification Board and the Classification Review Board will all be comprised of independently appointed officers. It is the administrative side of the activity which is now part of the department. They are all statutory appointees by the Executive Council—the governor and the Executive Council.

Senator LUDWIG—I am sorry; I tend to talk in a generic sense, but I am always happy to receive some clarity.

Senator Johnston—We are happy to correct you when you do.

Senator LUDWIG—As I said, I am always happy to receive some clarity.

Mr Cornall—It is a significant point that all members of the board are completely independent of the department.

Senator LUDWIG—Yes. Could you have a look at submissions outside your own bills. I know that you have made submissions to this committee, but it is also about whether you have made submissions to other inquiries in your capacity as the OFLC, whether it be a Privacy Commission inquiry, an ALRC inquiry, or some other type of inquiry. Mr Cornall, is it correct that the policy unit that produces the work will be absorbed?

Mr Cornall—That is true.

Senator LUDWIG—So the people who do the policy development and who might write the ultimate submissions are to be absorbed?

Mr Cornall—To the Attorney, that is correct.

Senator LUDWIG—In that sense, the policy unit, which makes submissions to public inquiries and the like, has now been absorbed. Those matters that would have gone towards developing that are now part of the Attorney-General's Department. How will the Classification Board and the Classification Review Board deal with directing the policy unit to make submissions and do all those things in an independent way? How will that interaction occur?

Mr Cornall—Well—

Senator LUDWIG—My question was directed to Mr McDonald—

Mr Cornall—Good. That is fine.

Senator LUDWIG—in the sense that he now has to grapple with this, if I can use that expression, and provide an answer as to what you will do to ensure that you will have an independent ability to make submissions and use the policy unit to do that.

Mr McDonald—If there were a circumstance in which we needed to do so, then we would expect to have the services of the policy unit to assist us.

Senator LUDWIG—What if it said no, that it was not going to be available to make that inquiry?

Mr McDonald—The memorandum of understanding will ensure that they will do that.

Senator LUDWIG—Do you have that memorandum of understanding? Is that available?

Mr McDonald—It is nearly finalised.

Senator LUDWIG—What does it provide for in this instance?

Mr McDonald—In that instance we are not at a final point, but policy support is one of the things that are to be provided under that memorandum.

Senator LUDWIG—Yes, it is not the board but the OFLC policy unit that makes submissions to inquiries.

Mr Cornall—We will make submissions to the Attorney.

Mr Anderson—If there is a question where the director or the board wishes to make a submission to a parliamentary inquiry, for example, they would call upon support from departmental staff in the support area in Sydney, and those departmental staff might discuss matters with the policy people in Canberra. But that is not to say that the only support that can be given is by the policy people in Canberra. It is the departmental people in Sydney who are tasked with supporting the two boards and who would be providing it. They would be the first people to call upon if the director needed assistance to formulate a submission.

Senator LUDWIG—How do you guarantee that the OFLC will then be able to provide independent work on commissions, inquiries and public submissions if it sits within the Attorney-General's Department as a policy unit?

Mr Govey—It will not be the OFLC that is doing it; it will be one of the two boards—either the Classification Board, headed by the director, or the Classification Review Board, headed by the convener of that board. So the OFLC, as such, will not be in existence, but you will have the two independent statutory boards.

Mr Anderson—I think that is a distinction that is worth drawing: while submissions have previously been made, they have been made by the director in his capacity as the head of the OFLC rather than in his capacity as the head of the Classification Board.

Senator LUDWIG—Yes. I know that that has been a confusing point. It is not the board that makes the submissions; it is the OFLC, prior to 1 July.

Mr Anderson—The body that had primary responsibility for classification policy was making the submission, whereas after 1 July the body with responsibility for making submissions on classification policy is the department. So if the director, in his capacity as

director of the Classification Board, wished to make an inquiry, the thing that will guarantee the independence of that submission is that it is the director who is making that submission and putting his name and the name of the Classification Board to it. But they would have assistance in preparing that—for example, in carrying out research et cetera—from the departmental staff and they would task those staff with doing research for them. That is a matter that is encompassed by the MOU. The manner in which staff in Sydney provide support to the board can be tasked by the director.

Senator LUDWIG—Yes, but up to the point where the OFLC, as the independent body, made the submissions, that function will now cease. The policy unit will not do that work any longer. The board has not made those submissions in the past; the OFLC has made the submissions.

Mr Anderson—The OFLC is the body that had primary responsibility for classification policy. Since the body with primary responsibility for classification policy will be the department, it is more likely that, if there is a question of making a submission on classification policy, it will be made by the department.

Senator LUDWIG—That is right. How will you guarantee the independence of that?

Mr Anderson—If the department makes a submission?

Senator LUDWIG—You have now lost the independence of that. That is right, isn't it?

Mr Anderson—I am not sure I understand.

Senator LUDWIG—The OFLC, as a body, could make independent submissions. It did not have to—

Mr Anderson—It was still part of government.

Senator LUDWIG—I am sure it was still part of government.

Mr Anderson—And answerable to the Attorney.

Senator LUDWIG—Yes, but it could make submissions. Did they always have to run every submission past the Attorney-General before they tendered it?

Mr Anderson—That is a question that I would have to direct to the OFLC, as to whether they did on every occasion.

Senator LUDWIG—I could not discover whether they had ever made one, so we will be challenged to sort that out tonight.

Mr Anderson—My understanding is that they corresponded closely on such matters with the Attorney and his office. I cannot confirm that myself; that is my understanding.

Mr Cornall—Senator, another way to look at it is that Des Clark was the senior person in the organisation, representing the organisation in the media and so on. From time to time you would see Mr Clark on television talking about classification issues. If that were to occur it may well be that Mr McDonald fulfils that role as the director of the Classification Board.

Senator LUDWIG—Thank you. I have no further questions.

CHAIR—Thank you. Firstly, as chairman, I congratulate you, Mr McDonald, on your appointment, effective, I understand, from 1 May this year. It is a great honour to have you in that position with a very distinguished and comprehensive career. Congratulations.

Mr McDonald—Thank you.

CHAIR—I would like to follow up one line of questioning and then make a couple of other points about the Attorney-General's request of the states to fulfil the commitments that he deemed they had to him and to ensure that they were supporting the new test for terrorism material. I refer to a media release of 15 April by the Attorney-General. The third paragraph states:

He said he was pleased the States had finally agreed the laws for material that praised terrorism should be toughened, but wanted no further delays.

The fifth paragraph states:

If the States and Territories continue to resist, as they have done for more than a year, then I may be forced to go it alone and make this change to the Commonwealth's Classification Act.

I assume the Attorney would not have said that for no reason or out of his hat. You have taken on notice to come back with the chronology. You can either answer now or take it on notice why some of the states, according to the Attorney or according to my interpretation of his comments, have been dilatory or perceived to have been dilatory in their performance. Could you name the states and advise the committee accordingly?

Mr Govey—I think we might need to take that question on notice.

CHAIR—Thank you, Mr Govey.

CHAIR—I want to ask about the guidelines for the classifications of films and computer games. I understand that a review is taking place or is soon to take place. Can you advise whether that the case. If so, what is the process for the review?

Mr Anderson—No review is currently envisaged for those guidelines.

CHAIR—I want to ask about Dr Nitschke's *The Peaceful Pill Handbook*, which I understand has recently been refused classification. Can you advise the reasons for that refusal?

Mr McDonald—I will go to the report of the board.

CHAIR—Is that a report like the other reports that you are able to table?

Mr McDonald—It is. The Classification Review Board made a decision on 24 February to refuse classification.

CHAIR—I am interested in the reasons and whether you are able to table that decision.

Mr McDonald—I certainly can. It is a very long report but I am happy to table it.

CHAIR—Thank you. I understand one of the key reasons was that the document instructed in matters of crime, ancillary to committing suicide, and specifically the importation or manufacturing of a prohibited substance. That was one of the specific reasons for its refusal.

Mr McDonald—The manufacture of barbiturates—that is correct.

CHAIR—What steps are being taken to ensure that material which promotes or instructs suicide specifically is refused classification?

Mr McDonald—It would not be our responsibility to take steps generally. We respond to specific publications when they come before us.

CHAIR—If there was a specific publication which instructed or promoted suicide, what category would that fall into?

Mr McDonald—I will ask Mr Fenton to provide the answer.

Mr Fenton—The board's understanding is that suicide is not a crime in Australia in any of the jurisdictions; therefore, it would be looked at in the context of any material the board received under the act, the code and the classification guidelines.

CHAIR—I will just seek clarity from the department as to whether that is the case.

Mr Anderson—Yes, Senator.

CHAIR—There is no reason to refuse classification of a publication which promotes or supports suicide?

Mr Anderson—Senator, under the National Classification Code, publications must be refused classification if they 'promote, incite or instruct in matters of crime or violence', which is where you need the link back to crime.

CHAIR—Crime or violence?

Mr Anderson—Crime or violence, or if they 'describe or otherwise deal with matters of ... crime, cruelty, violence or revolting, or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults'. That is the test the board has to apply.

CHAIR—Are we saying that suicide does not fall within that test? Is that what we are saying? Is that your response?

Mr Anderson—Senator, the application of guidelines is a matter for the board. It is a judgement that the board itself has to make.

CHAIR—Thank you very much for that. Mr McDonald, thank you again, and congratulations on your appointment.

Mr McDonald—Thank you, Senator.

CHAIR—We will move on.

Mr Anderson—Senator, just before you move on, there was one question I took on notice earlier about the period between the decision of the government on the integration of OFLC and the actual announcement. Could I just address that. There was a period of two days between the decision and the public announcement.

CHAIR—Thank you, Mr Anderson.

Senator LUDWIG—The only other question I have is about the original process that went through for the appointment. What was the cost for the preparation of applications, the advertisement and the position?

Mr Cornall—In the first instance there would have been advertising costs and some other attendant costs associated with the process. In respect of the second part of the process, I think there were advertising costs but certainly, obviously, the costs to the executive search agency. I do not have those details with me, but we can provide them on notice.

Senator LUDWIG—Thank you. That would be helpful.

[8.24 pm]

Australian Law Reform Commission

CHAIR—I welcome Professor Weisbrot. Thank you for coming. Are there any questions for the Australian Law Reform Commission?

Senator LUDWIG—I have questions on the commission's relationship with AustLII. Do you use AustLII at all?

Professor Weisbrot—Yes, we do.

Senator LUDWIG—Is that with links or do you put your publications through AustLII as well?

Professor Weisbrot—We conduct a lot of research using AustLII, but AustLII supports the back end of our website.

Senator LUDWIG—Do you make a payment to AustLII for that service?

Mr Kirkland—Yes, we do. We currently pay \$12,000 a year.

Senator LUDWIG—Are those all of the publishing requirements other than the bound volumes—in other words, do you publish all of them? I have seen them, I think—the discussion papers right through to the reports. They all appear on AustLII, as I understand it.

Mr Kirkland—That is correct.

Senator LUDWIG—Do you use any other service or is that the predominant service that you use?

Mr Kirkland—No, AustLII provides all of our web hosting. We post some minor publications ourselves to the front end of our website and AustLII hosts all the back end of our website, which is where all of our consultation papers and reports are published.

Senator LUDWIG—How do you arrive at that contribution?

Mr Kirkland—It has been the contribution that we have made over a long period of time by agreement with AustLII, as part of a grant agreement that is related to an ARC grant.

Senator LUDWIG—If the commission no longer had AustLII available or had to rely on its own resources, have you done any work as to how much that would cost?

Mr Kirkland—Not in recent years, no.

Senator LUDWIG—Do you have a view about whether it would cost more than \$15,000 to host?

Mr Kirkland—I suspect that it might, but we have not examined that issue in detail in recent years.

Senator LUDWIG—What is the size of the holding in megabytes? Do they let you know what in total is on the server? Some of them are very weighty tomes.

Mr Kirkland—I would suspect that we could find that out, but I would have to take that on notice.

Senator LUDWIG—That would be helpful. Do you provide the ongoing or maintenance costs associated with keeping that up to date? Perhaps you can even tell me how the process works. You obviously publish bound volumes. Is that done through the Australian Government Solicitor or CanPrint? Who does that?

Mr Kirkland—For our print publications we seek at least three quotes. We go to the market and use a range of printers depending on who gives us the most competitive quote. We also seek quotes from a range of printers. That changes over time. In relation to online publishing, we typeset reports and consultation documents internally. We provide them to AustLII in rich text and portable document formats and AustLII converts those documents to HTML for publishing on the web. Most of our documents are published in all three formats.

Senator LUDWIG—I suspect that those costs are not great and that they are dealt with in-house?

Mr Kirkland—That is correct. We typeset documents and prepare them in-house.

Senator LUDWIG—Do you have your own back-up house computer IT system?

Mr Kirkland—Yes, we do.

Senator LUDWIG—What is the nature of it? What does it do?

Mr Kirkland—We have a number of servers. They provide basic file server functions where we store electronic versions of documents. We also have communication servers that run services such as email.

Senator LUDWIG—When was the last major upgrade to your website? Do you negotiate with the hosts of the website or do you go out to the market and get a website published separately?

Mr Kirkland—We take responsibility for the design of the website ourselves, with the exception of the html versions of reports that are established by AustLII, and we have had some external support around designing the basic structure of that website. As to when the last major upgrade was, I would have to take that on notice.

Senator LUDWIG—Fine. In terms of your more general workload, what current projects are underway?

Prof. Weisbrot—We have two underway. The larger of the two is a review of Australian privacy laws and practices and the other is a review of the law relating to client legal privilege in relation to federal investigatory agencies.

Senator LUDWIG—In terms of the workload, are you able to outline whether the discussion papers, issue papers, background papers, the draft recommendations and introductory pamphlets are all still in place, in the sense that you will still go through those processes, depending on the circumstances or the reference, and whether the type of work that

is associated with each of them is a significant review. What I am trying to gauge is the amount of work that surrounds each of those publications that you put out.

Prof. Weisbrot—The process is pretty standard. The nature of public consultation and so on may vary from time to time. But it is the normal practice for any new inquiry for us to do an issues paper after some months—say, four, five or six months—when we have a bit of a handle on it ourselves and we can relate the terms of reference, plus some research, and ask questions of the community about priorities and solicit information. About two-thirds of the way through any inquiry we produce a discussion paper, which is more or less a draft report, and it reflects the research that we have done up to that point and the extent of the public consultation that we have done, including written submissions and meetings. We also provide proposals, which are in effect draft recommendations. Then we go and take that out again on another round of consultations and later produce the final report, ideally by the due date. That process is pretty much standard.

What may vary from reference to reference, depending on its nature, is the extent and the nature of the community consultation effort. For example, client legal privilege, not exclusively but largely, is a lawyer's law area. The people who have engaged with us, the organisations, are primarily legal ones. There are some media organisations as well but primarily it has been lawyers, judges, the Australian Corporate Lawyers Association and the Law Council. For something like privacy, it is a much larger and broader consultation effort because we have general members of the community—a much wider range of stakeholders. Although the process is the same, IP-DP reports, the nature of that engagement is substantially different. For example, in privacy to date, we are still nearly a year from reporting but we have had about 200 meetings and received over 300 written submissions.

Senator LUDWIG—In terms of looking into various issues, do you do own-motion referrals, or do all of the referrals come only from the Attorney-General?

Prof. Weisbrot—Under our act, for inquiry work, we work only on written terms of reference from the Attorney. In terms of the community education effort, which is maybe 10 per cent of the sum of our work—the publication of reform, the holding of occasional meetings and conferences—that can be done more or less on our own judgement. But inquiry work is only with written terms of reference from the Attorney.

Senator LUDWIG—Then do you enter negotiation with the Attorney, or do you wait for a reference?

Prof. Weisbrot—No, it is an active and back-and-forth process. Pretty much every year I prepare a wish list of eight, 10 or 12 areas with maybe a half-page to a page briefing note on each and talk to the Attorney about those. The department has its own views. When draft terms of reference are circulated around members of the cabinet, many ministers also come back with ideas for other projects. They comment on those specific terms of reference but they may come back with prospective projects as well, and then sometimes they just emerge very quickly. I think the one on human genetic information was on no-one's list until it appeared as a major story in several newspapers. The then Attorney and I had a look at it and thought that that would be fertile ground for an inquiry. It can happen in any of those ways.

Senator LUDWIG—Are you able to say what your wish list has been in the last 12 months?

Prof. Weisbrot—We are pretty strongly engaged at the moment with the privacy inquiry. We have been talking about legal professional privilege for a while now. It came up in our evidence inquiry and it came up again in civil and administrative penalties. In that report we made a recommendation that somebody needed to have a closer look at legal professional privilege in the context of federal investigations and royal commissions. Although I do not think we were necessarily saying we would be the body to do it, it has turned out that way.

Senator LUDWIG—The states have been looking at double jeopardy. I think Queensland is now moving towards double jeopardy and I think other states are looking at it as well. Is that a matter that you have had a look at?

Prof. Weisbrot—I am sorry? I did not catch that.

Senator LUDWIG—Double jeopardy: is that a matter that you have had a look at?

Prof. Weisbrot—No. It is not something that we have been asked to look at.

Senator LUDWIG—It is not on your wish list either?

Prof. Weisbrot—Not particularly.

Senator LUDWIG—I wanted to ask a couple of questions about the ARC as well, but that would be better served by being addressed to the department. I know you are on the ARC.

Mr Cornall—It would be better dealt with as part of the department, Senator.

Senator LUDWIG—In terms of the budget for this year and your staffing, have you lost any staff or gained any staff? What I want to do is just have a look at either the full-time equivalents or numbers for the next four years, or for the three out years, I should say.

Mr Kirkland—I will just refer to our annual report. I believe our average staffing for the last financial year was 19 FTE and that is what we expect it to be in 2007-08. But we have not projected beyond that at this stage.

Senator LUDWIG—Is that meeting your requirements, Professor?

Prof. Weisbrot—Yes. In addition to that we have three full-time commissioners and three part time, and that is projected to continue over into the next financial year as well.

Senator LUDWIG—The privacy report: is that on time?

Prof. Weisbrot—Yes. The issues paper was released on time. The discussion paper is under preparation at the moment. We are still intending to put that out in July-August, which puts us on track for the final report at the end of March next year. Legal professional privilege is due at the end of this year and we are also on target to complete that on time.

Senator LUDWIG—Thank you.

CHAIR—There being no further questions, thank you very much, Professor Weisbrot and Mr Kirkland, for being here.

[9.39 pm]

Office of the Privacy Commissioner

CHAIR—Welcome, Ms Curtis and colleagues.

Ms Curtis—Thank you, Chair.

CHAIR—Are there any questions?

Senator LUDWIG—I want to ask you about an issue which we get a lot of responses on, which is where you interpose yourself between ministers and legislation that they might see as good work. This happens in a range of circumstances. Occasionally, people end up in my office complaining—I am not sure that they are complaining about you in that sense; a better target might be the way the privacy legislation works—about the sharing of data and information. Recently, we saw a bill, which became an act, introduced to amend legislation. Its purpose was to enable the immigration department to share personal information with the Australian Federal Police or with various state police departments if they found a person whom they could not identify. I think they wanted to share that data with the Australian Federal Police. Ultimately, they had to look at the privacy implications of that, and they determined that they could not do it without a change to the legislation. You would have probably been involved in the discussions around that issue as well. In terms of a range of issues that arise, this is one that always comes up.

This evening, I want to look briefly at whether the current inquiry into the Privacy Act will explore matters about how the government can use information appropriately, store it appropriately and, if it is no longer required for the purpose for which it was intended, determine when it should be archived or, as the case may be, destroyed. More broadly in relation to the government, there seems to be an ad hoc approach at the moment. Would you like to comment on that?

Ms Curtis—Senator, you have raised a lot of issues in that statement-question. The first point I would like to make is that, under the Privacy Act, there are 11 information privacy principles that government departments and agencies must adhere to. They cover in general terms the way information is collected, used, disclosed and stored. Underpinning those principles is the notion that information should be collected only for a particular purpose and used for that purpose and that they advise people why they are collecting it. Those broad principles apply to all government departments and agencies, unless other specific laws override them. That is why in some instances we get into situations where a policy decision is made that the specific provisions of the Privacy Act are not applicable.

As you know, the principles were introduced in 1988 and they have served our country well; but, as different laws are developed and as issues evolve, we need to constantly look at those principles and examine them. The current review of the Privacy Act is looking very carefully at the way those principles have served us. Some of the issues that you have raised are in the issues paper that the ALRC put out. It will be interesting to see what the ALRC says in its draft report or discussion paper when it comes out in the middle of this year.

Senator LUDWIG—What did your submission say to the review about some of those issues?

Ms Curtis—The first thing we said about the principles is that we should have one set of principles that cover both the private sector and the public sector. At the moment, we have 10 national privacy principles that cover the private sector, and they are a little bit different. We have problems with consistency because some organisations have to comply with both the NPPs and the IPPs. We have suggested one set of principles but that they should still be kept as broad based principles, that we should not go into prescription law and that we should allow flexibility for there to be certain circumstances. So the basic principle still remains the same: information is collected, disclosed and used in accordance with what was said in the original collection notice, and it is within the reasonable expectations of people.

Senator LUDWIG—How do the privacy principles interact in a situation where information is sent to a government department—Centrelink is a good example—and they say, ‘We want to hold this data about you but we might also want to share it with a range of, or even all, government agencies’? At the moment, it seems that some data-matching is going on with the Australian Taxation Office and they end up with an agreement, but it is no broader than that.

Ms Curtis—There is the data-matching act that specifically allows Centrelink and the Department of Veterans’ Affairs and the tax office to match information.

Senator LUDWIG—Yes. And that overrides the principles in that sense.

Ms Curtis—That is correct, yes.

Mr Cornall—In our discussions within the Public Service, people have said to me on occasions that the privacy laws were stopping them from doing certain things. When we investigated this, we found that it was not the privacy laws at all; it was the secrecy provisions in their own legislation. It is worth flagging that, sometimes when people complain about what they see as a privacy issue, it is not a privacy issue at all; it is a statutory secrecy provision that is causing them a particular problem.

Senator LUDWIG—For example, legislation might say that this material must be kept confidential within the department.

Mr Cornall—Yes, or in the statute under which it is collected. So you do not look to the privacy principles to determine how you use it; you look at the prohibition in the act itself.

Senator LUDWIG—Commissioner, the other area I want to discuss is where ministers claim privacy as a reason for not answering a question on notice. They might say that it is confidential to the parties and therefore a privacy matter. Sometimes it is a little difficult when they use that blanket expression. I am not accusing the Attorney-General’s Department directly of this, but you get an answer back six weeks after you have asked the question with a claim that there is a privacy issue and ‘Therefore we cannot release the information,’ or ‘we cannot advise the committee’. At that point you are prevented from pursuing it until the next estimates, which would be some time in the future when the utility of that information would probably have been degraded or you have moved on to other issues. Sometimes this prevents or retards the ability of the opposition to hold the government to account, because I think they use the term more broadly. At the estimates process, the committee is covered by the exemption in 7C, as I understand it. Do you have a view about what the response should be from government rather than its blanket one of ‘It is a privacy issue’?

Ms Curtis—It would be fair to say that all privacy commissioners or data protection commissioners around the world use the phrase BOTPA—because of the Privacy Act. Often the Privacy Act is blamed as the reason that information is not shared, used or disclosed. One of the chief responsibilities we have as the Office of the Privacy Commissioner is to try to ensure that the law is understood more easily. To that end, we are trying to increase our education and awareness program to ensure that the provisions of the act are more clearly understood.

Senator LUDWIG—What advice should I give them before they invoke privacy as a reason for not providing the information?

Ms Curtis—The principles apply. If the information has been collected and the person from whom the information has been collected would understand or would reasonably expect that the information would be disclosed, you probably would not be breaching their privacy.

Mr Pilgrim—There would be a provision within the information privacy principles for an organisation to get the consent for the individual to pass on information as well. So there would be another mechanism through the consent of the individual.

Mr Cornall—Could I add something else to this because we have quite a lot of discussions about privacy in our policy role as well. Our view is that a number of agencies misunderstand their privacy obligations and overstate them. I recently wrote to all departmental secretaries to remind them about what the limits of privacy are and how they might better understand the privacy principles and apply them accurately within their own organisation. I also want to add that we have introduced some regulations that permit the Centrelink client or customer reference number to be used to assist that person to get other concessions from other agencies where the fact that they are a Centrelink customer qualifies them for other concessions. So it is to their advantage to be able to use the number for that purpose, and that has been authorised by regulations.

Senator LUDWIG—Yes. Up until now, that was a confidential number.

Mr Cornall—Yes, you could not use it. But you can now if it is authorised by regulation, and we have done that.

Senator LUDWIG—No. Have you advised the various parliamentary officers? It is one of those matters that are raised in various offices. We know how confidential that number is, but it is very difficult to talk to Centrelink without it, quite frankly. Have we included it in that regulation?

Mr Cornall—No. It is named agencies. It has to be named agencies.

Senator LUDWIG—This is more of a general question, but how is resourcing for the Privacy Commission going? I have been asking a lot of questions of the Privacy Commissioner for some years now, I must say. The questions started out with a lot more detail about the types of matters and the cases you have been doing and the matters that were on hand. We might just start with a little bit of that detail, but more in the broad first about whether or not you are able to meet the objectives under the legislation within the budget you have.

Ms Curtis—Senator, in the last budget, 2006-07, my office was given a substantial increase in funding, approximately a 40 per cent increase. That was to try to assist us with our complaint handling process, to provide better advice to business and to improve the information on our website and the way we communicate with people. We have grown in staff numbers over the last year: we are now about 58 people. Our major three areas are compliance, education and awareness, and policy. My policy area comprises 16 people. Our policy advising function to government has improved both in numbers and, I believe, in quality of the advice we provide. For instance, in 2003 we made five submissions, in 2006 we made 25 and to date so far in 2007 we have made 19 submissions, including some major submissions—a 474-page submission to the ALRC on issues paper No. 31 on the review of the Privacy Act and also a 100-page submission on the credit paper. Obviously we are also very heavily involved in the development of access card legislation and the project, the AML legislation, the Do Not Call Register and other matters in the communications area that have been a focus in our policy area.

Senator LUDWIG—And the AML/CTF legislation as well?

Ms Curtis—We now have 30 people working in compliance. We have appointed an assistant commissioner, Mark Hummerston, to head our area. I have restructured and had more executive level officers brought in. We are working very hard on our compliance and complaint handling strategy in particular. We hope to focus next financial year more on systemic issues, implement more audits in the public sector and focus also on tax file numbers and the credit area. The focus in our education and awareness area, our corporate and public affairs, has been very much trying to improve the way in which we communicate with the public. Our website is our major mechanism for that. We are undertaking a website upgrade. We are reviewing our existing publications. We have implemented a private sector corporate network. We have introduced a quarterly newsletter. So there has been a lot of activity, with, I think, some increased outputs. For instance, the number of times our website has been viewed has grown substantially as well. The office is tracking quite well at the moment.

Senator LUDWIG—The compliance and complaints handling area is an area that I think I have asked about previously with regard to the time it takes for a complaint to be lodged and finalised. At one stage it was developing quite a long tail. What are the figures like now in terms of responsiveness for complaint handling?

Ms Curtis—We have our queue management process in place as a result of an internal complaint handling review that we undertook. It takes a little bit over six months to close a complaint and our queue has dropped significantly. There was a queue of some hundreds and now it is down to a much smaller number, so we have complaints queued to 2006.

Senator LUDWIG—Are you still doing both public and private compliance activity?

Ms Curtis—Most of our complaints—usually about two-thirds of them—apply to the private sector, the application of the national privacy principles. Roughly 15 per cent relate to the public sector, 12 and 13 per cent each to credit and other, which includes tax file numbers and spend convictions.

Senator LUDWIG—And your compliance work?

Ms Curtis—We undertake audits of public sector agencies that we have been specifically funded to do. This financial year we should undertake five—three with the ACT government and two related to border control. I forget the other one.

Senator LUDWIG—Are they public audits or private audits?

Ms Curtis—Usually we try to publish the results of our audit on our website. That is our standard practice.

Senator LUDWIG—Have you started the border compliance ones yet?

Ms Curtis—I might ask Mr Hummerston to answer that question.

Mr Hummerston—We have done some preliminary work and we have audits planned for 2007-08.

Senator LUDWIG—What type of audit are they?

Mr Cornall—I have got the heading of border control, but that is pretty broad.

Mr Hummerston—Senator, those audits have been specifically looking at the systems in place that store the information and how it is used.

Senator LUDWIG—Are you able to say who?

Mr Hummerston—I am sorry?

Senator LUDWIG—Are you able to say who in terms of border compliance—the agency, the department? You do not have to, if you cannot.

Mr Pilgrim—We will be auditing Customs and looking at their SmartGate system in particular. We will probably be doing an audit of the DIAC detention centre biometrics capture area.

Senator LUDWIG—All right. When are they due to be completed?

Mr Hummerston—We have not set specific dates. They are being negotiated with the agencies because they need to complete a certain amount of work before we are in a position to audit.

Senator LUDWIG—Thank you very much. That is helpful.

CHAIR—I thank the witnesses very much. I have a couple of questions of Ms Curtis regarding the annual report and specifically the funding boost. You indicated there were three initiatives in particular that you are following through. I am just wondering if you could outline whether those objectives are being met. You have \$8.1 million in additional funding over the next four years. Are you meeting the objectives that have been set? I think you said there are three main ones: first, the complaint handling processes; second, calls from business; and, third, high level policy advice to government.

Ms Curtis—It is probably fair to say in this financial year, for various reasons including obtaining appropriately qualified staff, we have not completed all of those activities that I would have expected we would have done in year one of the increased budget funding. But by year two, we will be back on track. For instance, we have had to have three recruitment rounds advertised in the last year to fill our investigation officer positions. We find we bring

on people, they are all well-qualified lawyers and then they move on to other jobs after a while—but we are a good place to have been in.

On the education awareness side, the upgrade on the website will occur very shortly and that will be a substantial sum of money. Also we are rolling out the privacy connections network with the private sector. That will be continuous and that will probably ramp up more as we go further into the four-year period. On the complaint handling side, the first issue was to try to remove a queue of complaints and that will be completed by the end of this year, which will then mean on the compliance side we can work more constructively with business to address systemic issues.

CHAIR—Thank you very much for that and thanks for being with us.

Ms Curtis—Thank you.

CHAIR—We will move to the Insolvency and Trustee Service Australia.

[9.00 pm]

Insolvency and Trustee Service Australia

CHAIR—Welcome, Mr Gallagher and your colleagues. Thank you for being with us tonight. Are there any questions?

Senator LUDWIG—I have questions, thank you. I appreciated the opportunity to visit one of your regional offices, Mr Gallagher. Thank you.

Mr Gallagher—Thank you.

Senator LUDWIG—I see you here so often, I sometimes forget that you have regional offices. I appreciated being able to see how they work. In terms of the Insolvency and Trustee Service maintaining service standards worth \$5.6 million over two years, which is on page 428 of the PBS, could you elaborate on exactly what that means?

Mr Gallagher—Yes.

Senator LUDWIG—I will take you to that:

The ‘Insolvency and Trustee Service Australia – maintaining service standards’ measure provides an increase in resources to ITSA in recognition of long-term increases in externally driven workload under the *Bankruptcy Act 1966*. The additional funding is for two years, given that assessments of on-going changes in workloads can be difficult to predict.

I am wondering if I could put in a bid for myself under that heading too, Mr Cornall. What does that mean?

Mr Gallagher—There has been a reasonably sustained increase in bankruptcy activity over a long period of time. It fluctuates year on year. If you go back over a 20-year period or so, there has been an annualised average seven per cent increase in bankruptcy activity. Our capacity to maintain services to our clients is affected by that gradually. The additional resources enable us to continue to meet our clients’ needs in the face of that growth in workload.

Senator LUDWIG—We are focusing on the externally driven workloads though.

Mr Gallagher—Indeed.

Senator LUDWIG—What is that?

Mr Gallagher—Well, it is growth in bankruptcy numbers, essentially.

Senator LUDWIG—Is that the prime matter?

Mr Gallagher—It is the prime thing. It drives a range of our functions. We have a suite of functions involved in the administration of personal insolvency. They go to regulation and registry services, administering estates themselves and fraud investigation. All of those activities that we undertake flow from the growth in bankruptcy activity.

Senator LUDWIG—What data or trends did you draw that from? It says ‘in recognition of long-term increases in externally driven workload under the Bankruptcy Act’. What data or trends did you draw that from to come to that conclusion?

Mr Gallagher—It was a recognition of a long-term trend that exists, but as I mentioned it fluctuates year on year. In some years there is a bigger increase than in others. That long-term trend, which as I said averages about seven per cent, is reflected in figures over the last year or so. Indeed, in the current year it is slightly more than that. There is a recognition that that growth in activity impacts on our workload and that it is occurring at the moment.

Senator LUDWIG—Effectively that activity is people going bankrupt?

Mr Gallagher—People going bankrupt or entering into other arrangements under the Bankruptcy Act—for example, debt agreements.

Senator LUDWIG—It reflects financial insecurity in the community when there is a rise in bankrupts or people entering into debt agreements because they have debt that they cannot pay.

Mr Gallagher—Yes. That is what insolvency is about.

Senator LUDWIG—It has been long term, but is there a point where you can say that this is where it started to grow and that is when you started to take cognisance of it? You obviously went into bat for ITSA and have spoken to the Attorney-General’s Department about more funding to recognise that growth. Is there a date upon which that started to become clearly recognisable to you?

Mr Gallagher—Not particularly. If you look at the long-term trend—and there has been vast growth and evening out—there was quite heavy growth during the 1990s. In the early part of the 2000s it flattened off a bit, and in the recent couple of years it has increased. We have seen another slighter, smaller increase than occurred in the nineties but nevertheless an increase occurring.

Senator LUDWIG—The main driver now is this increase that has come in the last couple of years, post-2000?

Mr Gallagher—I guess that has been a driver behind the decision this time. As all agencies are, I am sure, we have been concerned about the pressure on our workload over a period of time. You could go back 10 or 15 years, when insolvency numbers were 13,000 a year, and now they are 30,000 a year. We have much the same number of staff as we had then. It has been a gradual eroding of our resources in real terms, which we have been able to manage with better practices and other things over the years, but we put forward a proposal

this year which was recognised as justification to make an adjustment to our workload. As you pointed out, it is a two-year adjustment, to be reviewed at the end of two years to see whether that increased workload is sustained.

Senator LUDWIG—We might talk about the figures as well. You publish quarterly figures of bankruptcy statistics?

Mr Gallagher—We do, yes.

Senator LUDWIG—Do you aggregate that in the annual report?

Mr Gallagher—Yes.

Senator LUDWIG—Do you have figures from the annual report to now?

Mr Gallagher—Yes, we do. We have the quarterly figures from last year's annual report and the year-to-date figures to the March quarter. They have been published, yes.

Senator LUDWIG—I want to have a look at that trend that you are showing and whether or not the figures you have show that. You already may have done this as part of your submission to the Attorney-General to convince him about the trend data. Even the gross numbers or debt agreements started to trend up. Now there are roughly 30,000.

Mr Gallagher—We do not make projections as to where that might go.

Senator LUDWIG—No, I am not asking you for a projection.

Mr Gallagher—We reflect. We report on the numbers that come in.

Senator LUDWIG—I am not asking for a projection. I am asking for the numbers as they are and then going back to 2004 or 2005 to demonstrate what your argument is. What I am trying to do is understand your argument. You have put the argument that there have been externally driven increases in bankruptcies and increases in debt agreements. What I am saying is: do you have the figures to demonstrate that?

Mr Gallagher—We have bankruptcy numbers going back for a long period of time. Quite a number of those numbers are in the annual report each year, but I can just quote some figures that I have on the table in front of me. If you go back to 1989-1990, there were 9,288 insolvencies. Five years later in the mid-nineties there were 14,000. By the end of the nineties, there were 27,000. As I said, at the end of the nineties there was a flattening out. In fact, in that five- or six-year period in the first part of the 2000s, the numbers fluctuated around the 25,000 to 27,000 mark. In the last couple of years that has shown an increase, essentially I should say through an increase in debt agreement numbers. I think it is worth making the point that debt agreements are a new product and involve debtors paying back a considerable part of their debt. That is a reasonably new product and another component of bankruptcy activity that has emerged in the last few years.

Senator LUDWIG—If you are able to provide a draft to the committee, even for the last couple of years, that might be helpful.

Mr Gallagher—Yes. There is information in the annual report. We are able to produce that.

Senator LUDWIG—From the annual report up until now would be helpful too, if you have that available.

Mr Gallagher—Yes; I have figures here, if you like, for the nine months to March this year. There are three forms of insolvency: bankruptcies, debt agreements and part 10s, or personal insolvency agreements. In the nine months to March 2007 bankruptcies grew 12.5 per cent. In the nine months to March, debt agreements have grown 32 per cent, and personal insolvency agreements have fallen 20 per cent. The total activity has increased 15.7 per cent. All that information is on the web site.

Senator LUDWIG—Yes. Those dates go back to the 1980s?

Mr Gallagher—Yes, the data goes right back.

Senator LUDWIG—It is all there if I click on it, search through it and find it?

Mr Gallagher—Hopefully, it is easy enough to negotiate. It is there, yes, but certainly we would be happy to provide any additional information or whatever.

Senator LUDWIG—I only really wanted it if you had an easy-to-read single document that showed your three main products on a graph.

Mr Gallagher—We would be very happy to provide a graph which shows where it levels off and goes up. It is quite a good picture of it.

Senator LUDWIG—That would be helpful, thanks. I am sure you have got it and you can just print one out when you get back to your office.

Mr Gallagher—There is one published in the annual report.

Senator LUDWIG—Yes, but I would like the figures up to today.

Mr Gallagher—Yes. We can add this year in, for sure.

Senator LUDWIG—Thank you.

Mr Gallagher—Indeed, I should say I am making a presentation to a conference next week and I have done it for that purpose.

Senator LUDWIG—I thought you would have one floating around somewhere, if I could just work out how to ask you for it. How did you tie in the extra funding? Was it with anticipated increase or recognition of existing work, and what was it based around? Were there any numbers that you crunched to say ‘This is what we need because of the increased workload that we have had in the last couple of years’?

Mr Gallagher—Perhaps I could explain that in this year’s budget there are additional resources for three different things. One was for the one that you mentioned, which is workload adjustment. There is additional funding this year that was approved in the additional estimates, but that related to the implementation of the debt agreement reforms which will come into place on 1 July—quite significant changes of the administration or to the operation of debt agreements. We have additional resources for those.

There is a small adjustment to our resources for proceeds of crime activity which increased following the 2002 civil forfeiture regime that came in. It has a flow-on effect, ultimately, with ITSA as well, as we administer the proceeds of crime property that is the

subject of orders. As far as the debt agreements are concerned, we have two principal activities involved in debt agreement administration. There is a compliance function, where the official receiver accepts and processes these proposals. We are substantially now able to enhance our capacity to ensure that the debtors who are entering into these arrangements are properly informed. There are additional resources for that.

We are also now licensing practitioners who are administering debt agreements. That is being introduced from 1 July. Our regulation staff will be doing that work. We have additional resources for our regulation people to both licence them and monitor their activities through our inspection program. As I mentioned, there is a small adjustment to our proceeds of crime workload. As far as the general workload goes, it will be distributed among our other activities. In relation to the administration of bankrupt estates, when a private trustee is not appointed, the official trustee administers the estates. We have estimated at this stage about six or seven extra people will be able to be allocated to that function.

In our registry function, where debtors petitions are filed and we maintain records and operate the bankruptcy registry in each of our offices, we provide an information service where all the debtors make inquiries. We expect an increase of about six or seven staff in that area as well. Finally, our fraud investigation activity is where we investigate allegations of fraud under the Bankruptcy Act. We have nominally allocated an additional three staff to do that work as well.

Senator LUDWIG—The funding is for two years only. Is it predicted that your workload will drop at that point?

Mr Gallagher—As I said, we are not in the business of predicting workload in the future, although if you look at current trends, it does not look like it will drop.

Senator LUDWIG—No.

Mr Gallagher—It might level out, but the funding will be reviewed at that point in time. If the numbers drop of course our workload drops, and we will not need the extra resources. But if it does not, it will be at least a case to have that additional funding maintained, and that will be addressed at the time.

Senator LUDWIG—What happens at that point if there is no additional funding? Do you then cut staff or cut activities?

Mr Gallagher—When you say that there is no additional funding, if that additional funding lapses and we lose that additional funding, presumably it will be because the workload has dropped and we will not need the resources to do the work.

Senator LUDWIG—There is always an alternative view that they just do not provide you with the additional funding, even though the workload has not fallen. I do not know whether I share your confidence that they would then continue the funding, quite frankly; but it is a matter for you. Mr Govey, do you share that confidence?

Mr Govey—I am sure Mr Gallagher will put a very persuasive case when the time comes.

Senator LUDWIG—Yes. I would like to come back to the new product, which is the debt agreement, and the existing products, which are of course bankruptcy and the third one, part 10s. Are part 10s still low on the utilisation rate?

Mr Gallagher—Very low, yes. We are trending toward fewer than 200 new part 10s this year.

Senator LUDWIG—What segment is using part 10s? Are you able to identify that? I was going to claim a group, but I thought I had better not.

Mr Gallagher—They are essentially business-oriented debtors who want to avoid bankruptcy and who enter into an arrangement with their creditors. The act has criteria for people to qualify for a debt agreement. You have to earn below a certain income and have assets below a certain level to enter into a debt agreement, which is a slightly less formal arrangement. Essentially, the difference is around those qualification criteria now.

Senator LUDWIG—Is the use of debt agreements rising?

Mr Gallagher—It has increased, yes.

Senator LUDWIG—Now, the question is: has it been rising at the expense of bankruptcies, or have they both been rising in the same proportion?

Mr Gallagher—I think it is difficult to draw that actual conclusion. We have not polled debtors to ask, ‘If you did not enter into this debt agreement, would you have gone bankrupt?’ but I think we can draw some conclusions from the statistics. Debt agreements were introduced in 1996 but they did not really take off until the early 2000s. As I mentioned before, bankruptcy activity levelled off in the early part of the 2000s. That was really characterised by a fall in bankruptcy numbers offset by an increase in debt agreements.

If you simply take the statistics you could say it appeared that debt agreements sort of substituted for bankruptcies, although we are always cautious in drawing that conclusion because we have no real research to say whether that is the case. But statistically, you can see the total activity being pretty constant during that period, characterised by a growth in debt agreements and a reduction in bankruptcy.

Senator LUDWIG—From 2000 onwards, you have seen a rise?

Mr Gallagher—No, no, from about 2005-06 onwards. In the last couple of years there has been an increase, yes. As I said, a 15 per cent increase this year, and last year across the board it was about a 7 per cent increase.

Senator LUDWIG—You see, I would not say that that is small, quite frankly. It seems that it is growing on more than a steady rise, if you have seven and then you have 15.

Mr Gallagher—Sure.

Senator LUDWIG—That is caused by what—families hitting the wall in terms of debt?

Mr Gallagher—We are talking about long-term trends and year on year. There have been those sorts of levels of increase in previous years and it tends to fluctuate, so I think it is a bit premature to draw any conclusions about it. But, yes, we are seeing a 15 per cent increase this year.

Senator LUDWIG—And they are all individuals?

Mr Gallagher—Yes. Here we are talking about personal bankruptcy. It is not corporate insolvency.

Senator LUDWIG—I also noticed in the budget papers, in the figures for the current financial year, 2006-07, that ITSA was expected to go from 260 staff in 2005-06 to 265 in 2006-07. Budget Paper No. 1 for 2007-08 estimates your average staffing level to be 255. Is there an explanation for the shortfall of 10 full-time staff?

Mr Gallagher—No. I do not have one off-hand, Senator. Our staffing level has been around that 250-260 mark for the last number of years. As you can see from this year's budget paper, that extra 35 is projected for next year, and that will be because we have the extra resources.

Senator LUDWIG—I was trying to understand why you grew by five and then shrank by that amount instead. I do not know whether these are five people, but they are either there one year and gone the next.

Mr Gallagher—Of course, you have people coming and going, but your staff numbers do fluctuate.

Senator LUDWIG—But you will have to find 35 this year.

Mr Gallagher—I beg your pardon?

Senator LUDWIG—Are you confident you will achieve the expected growth of 35? You are down to 65 in 2006-07 and you now are at 255, so you have a few to catch up to meet your expected growth.

Mr Gallagher—Indeed. We now have the financial capacity to recruit additional staff to do the work that we have identified. I summarised before the areas we have targeted to resource in order to meet those requirements.

Senator LUDWIG—Are you recruiting at the moment?

Mr Gallagher—We have commenced our recruiting, yes, for the commencement of the year.

Senator LUDWIG—What percentage of the agency do you have in terms of a discretionary base, if that funding were withdrawn?

Mr Gallagher—We have some staff employed with us on a non-ongoing basis. We leave it to the branches to try to have a mix of staffing numbers so that they can cater for adjustments in resources. But, as all agencies do, we also have a level of attrition. So for those two factors, those staff who are employed on a non-ongoing basis, I do not have the figure. Around 20 of our staff now are employed as contractors or non-ongoing.

Senator LUDWIG—Oh, I see.

Mr Gallagher—We have that capacity. As I said, in any period you have staff leaving anyway, so that provides a capacity to adjust to resources as they are provided.

Senator LUDWIG—I read in the *Daily Telegraph* on 26 February:

For the first time, the Insolvency and Trustee Service Australia has mapped bankruptcies into regions.

Is that something that you have been doing for a while and it has just been made public, or is it that you have just started to use geospatial data? I picked up that term from the National Native Title Tribunal.

Mr Gallagher—It is a relatively new capability. Our system now enables us to capture the person's postcode among all their personal details. I think it is within the last six or 12 months or so that our systems have been developed to provide us with the capacity to run reports on that postcode data, which enables us to produce the sort of information that you mention.

Senator LUDWIG—What datasets can it run through on postcodes? Is it only postcodes?

Mr Gallagher—We have always produced information on bankruptcy activity by state, for example. This enables us to do it by postcodes or groups of postcodes as we want or as is required.

Senator LUDWIG—What are the other datasets contained within that?

Mr Gallagher—We obtain information—and this is self-provided—where the debtors are invited to explain their causes of bankruptcy and their occupation group. In our annual report, for example, we report on bankruptcies by occupation group, being the industry group, and by age profile et cetera cetera. Approximately every two years we also do a profile of debtors and we publish a document, which you will find on our website as well, and that is a profile of debtors where we do a bit more research into the characteristics of bankrupts. That information is available and, for example, it goes into income levels, levels of debt, what proportion of bankrupts are in different income groups and the levels of debt, who they owe their money to and that kind of thing.

Senator LUDWIG—When is the next profile due?

Mr Gallagher—We generally produce them every two years to coincide with our biennial bankruptcy congress. The last one was last year. I expect we will do one next year.

Senator LUDWIG—You can produce or potentially provide information about bankruptcies by postcode, by state and by income?

Mr Gallagher—Income categories, age profiles, industry profiles.

Senator LUDWIG—Is that service public?

Mr Gallagher—Yes. That is all published information, either in the annual report or in the more detailed stuff when we do it—when we do a profile, for example.

Senator LUDWIG—If someone wanted that dataset run, you can run it?

Mr Gallagher—We can provide information, yes. We can.

Senator LUDWIG—Thank you. I have no further questions. This session is concluded. I call the Australian Government Solicitor.

[9.28 pm]

Australian Government Solicitor

CHAIR—Good evening, Ms de Gruchy and Mr Riggs, and welcome. Are there any questions?

Senator LUDWIG—Thank you very much. I am sorry about the lateness of the hour. Sometimes it works against us all. I want to go through the position of the Australian Government Solicitor as it currently provides services. You now have both government clients and non-government clients; is that right?

Ms de Gruchy—We have. The vast majority of the work we do is for Commonwealth government clients. There are a small proportion of clients that we have that are not classed as being within that broad term of ‘the Commonwealth’.

Senator LUDWIG—What is the nature of those? Are they corporate, ex-corporate parts of government or, in the sense that you and I would understand, private as in a private business client?

Ms de Gruchy—There are a small number of clients that vary from state government entities where, under the Judiciary Act, AGS has the power to act for a state government entity at the request of the executive government of the state. There are also powers that relate to the broad functions of the powers of the Commonwealth. In relation to those, there are some possibilities for us to act for entities that are neither Commonwealth nor state government entities. Those could include, for example, a former Commonwealth entity that provides services within the broad area of power of the Commonwealth.

Senator LUDWIG—Are you able to identify the proportion? You say it is a small part. Is there a proportion of your overall business that you can say is five per cent, three per cent or one per cent? I am not after a particularly specific number, but just an idea.

Ms de Gruchy—It would certainly be less than five per cent of our overall revenue.

Senator LUDWIG—In terms of the agreements that you enter into for work with Commonwealth departments, what I am trying to understand are the charging arrangements. Some of that would be confidential, I understand. Is that right?

Ms de Gruchy—Yes, that is right.

Senator LUDWIG—We will not talk about a specific government department. I am trying to understand the general rates that you might charge. Do you charge an hourly rate or by each six minutes, which some solicitors use, or do you charge by the time taken for a job? Do you use a combination of those or do you outsource a solicitor, for instance, and say it is a daily rate? I would like the indicative amounts that might surround those various charging positions.

Ms de Gruchy—We have a very broad range of arrangements in relation to pricing. Much of the market is driven by what clients are looking for. They may be looking for a general panel and, if so, they may go to the market seeking bids from law firms. In that event, they will specify in their request for tender how they want to receive pricing. It could be based on

different levels of experience of lawyers. They will put those into various categories and we will respond in relation to the categories for that particular bid.

In relation to other work it could be a proposal for a particular project. It may be that the client is looking for a composite price in relation to the particular project. In relation to some other types of work it could be related to stages of a transaction or a legal process especially where you might get a repeated process. It could be that applications are of a particular type and the client might be seeking a price that is averaged across many of those more common types of transactions. For example, where we have a lawyer outplaced to a client, again that will vary in terms of price depending on whether it might be for a period of a couple of weeks or for a much longer period or whether we are bidding for a group of people to go to a client. So the pricing arrangements are very responsive to client need and what clients are looking for and they vary enormously across the piece. We record time so we have a sense of how much time is put into particular matters, but that is not necessarily how we automatically price.

Senator LUDWIG—When you compete for work through a panel, broadly speaking it is a competitive market price that you will charge. It is a commercial rate that you will submit to obtain the contract. Is that a reasonable proposition?

Ms de Gruchy—That is correct.

Senator LUDWIG—So it is commensurate with commercial rates in that instance. In the instance where you will provide direct work to a department your rates will be commercially viable rates.

Ms de Gruchy—Yes.

Senator LUDWIG—I will put this scenario and we will see how we work around it. Suppose you obtain work through a panel or an agency, which we will call department A, and you also work with department B. Perhaps you have obtained that work directly where they have asked for advice on whether they can litigate against the other department. So you have people working on department A and people working on department B. How do you deal with conflicts that might arise?

Ms de Gruchy—Conflicts do not arise a great deal in that kind of situation because departments are all part of the Commonwealth. It is very rare for conflict between departments to arise that cannot be resolved in ways other than in an adversarial manner. Also under the legal services directions there are particular requirements around ensuring, in a sense, that the Commonwealth speaks with one voice. Generally speaking, within the umbrella of the Commonwealth there would not be a conflict situation arising. There is potential for conflict from time to time where there is a separate legal entity—

Senator LUDWIG—I was going to go to an agency next.

Ms de Gruchy—where the Commonwealth might be one legal entity and an agency might be separate from the Commonwealth. We take a very strict approach to conflict of interest. We do conflict of interest searches when we receive instructions in matters to ensure that we follow all of the professional requirements around conflict of interest. As I say, we do not

come across actual conflict of interest situations very often, but they have occurred. In some cases, if there is a conflict it may be that we have to refuse instructions for one of the clients.

Senator LUDWIG—Has that happened in the last 12 months, where you have refused instructions for a client?

Ms de Gruchy—I would say it is possible, but off the top of my head I could not particularly recall a situation.

Senator LUDWIG—It would be quite rare. It is not significant enough to stick in your mind in the last 12 months?

Ms de Gruchy—No.

Senator LUDWIG—In terms of some of the work that you do, do you undertake smaller prosecutions—if I could use that phrase—on behalf of other agencies?

Ms de Gruchy—Undertake prosecution work?

Senator LUDWIG—Yes.

Ms de Gruchy—We carry out some prosecution work for an agency such as Customs, but we do not do work of the kind that would be prosecution work undertaken by the DPP.

Senator LUDWIG—So it is—

Ms de Gruchy—More in the civil area.

Senator LUDWIG—More in the civil or quasi-criminal area, which could be a breach of a regulation.

Ms de Gruchy—Yes.

Senator LUDWIG—You would also provide legal advice to those agencies as well, if you were contracted to do so?

Ms de Gruchy—Yes.

Senator LUDWIG—In terms of working through those issues, if you have a prosecution brief and you have advice to the department, can they be the same people or do you split them up into different groups? How do you manage these areas where you have multiple roles—you have a prosecutorial role or you might be receiving advice from the department about the prosecution or you might be receiving advice from another agency about the prosecution, if it is the agency prosecuting a Commonwealth department, for argument sake? It might be a rare occasion.

Ms de Gruchy—Yes. It is a little hard to answer the question, Senator. If it were a situation where there would be a conflict or even a perception of conflict, we would probably decline to be involved in one or other aspect of those relationships. There are times when there could be a situation where it is in the interests of the Commonwealth that AGS continue to act despite a perception of conflict or even an actual conflict. That is allowed for under the Judiciary Act where it is possible for the Attorney to approve AGS acting for more than one party, if it is perceived that it is in the best interests of the Commonwealth.

Senator LUDWIG—Is the Australian Government Solicitor the only agency which will provide prosecutorial work for Commonwealth departments or agencies outside the Commonwealth Director of Public Prosecutions?

Ms de Gruchy—I believe that we would be. I am not aware of any situation where anyone else would be.

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

Senator LUDWIG—You might be able to help me with this one—whether the Attorney-General's Department would use anyone else other than the Australian Government Solicitor for civil prosecutorial work or quasi-criminal prosecutorial work outside the Commonwealth Director of Public Prosecutions. We are talking about small regulatory breaches and the like.

Mr Anderson—The Australian Government Solicitor is the only firm that we know of who is doing that type of work.

Senator LUDWIG—Yes. I was not sure if it was a question for the Office of Legal Services.

Mr Cornall—The only thing I am questioning is whether ASIC might do some low-level civil fine types of prosecutions of its own. I am not sure, Senator.

Senator LUDWIG—I was looking at Senator Payne. I think we have been on committees where ASIC might undertake some of their own prosecutorial work.

Mr Cornall—They would be doing it for themselves, not engaging someone else.

Senator LUDWIG—Yes, they would be doing it for themselves. I am not sure I have heard of them engaging someone else. It might be a question more usefully directed to the Office of Legal Services directions about whether or not it is permissible in that area—and that is why I was looking Mr Anderson—for a Commonwealth agency or department to engage a private firm to do regulatory or minor regulatory prosecutorial work.

Mr Anderson—There is no reason why they could not, Senator. For example, Customs or AQIS or someone like that who has worked in that quasi-criminal area could engage a different firm to do it.

Senator LUDWIG—They seem always to use the Australian Government Solicitor, but there does not seem to be a debar from that. I was trying to think of an example but I have not found one yet.

Mr Anderson—Obviously AGS has considerable experience in that work.

Senator LUDWIG—Yes. We are not cavilling at that. On page 11 of the 2005-06 annual report you have provided legal advice to Commissioner Cole during the Cole inquiry. I note you also appeared for the Commonwealth in proceedings before the commissioner to represent the interests of the Australian intelligence community. In those two instances, are you able to indicate in what capacity you appeared before the commissioner in that regard? In terms of appearing on behalf of the intelligence community in different roles, are they different contracts out of the AGS?

Ms de Gruchy—There we would be acting on the instructions of the Commonwealth, as represented by the intelligence community. To that extent we would have declared to the commissioner in what capacity the lawyers appearing before him were appearing.

Senator LUDWIG—You are not able to say what the matter was, are you, because that would be confidential. The two main areas I wish to explore concern the objectives of the AGS, which are, firstly, to support the first law officer of the Commonwealth and, secondly, to undertake efficient operations as a government business enterprise. They are the two main areas. Could you provide a rough split between the two demands as to the nature of the work and the nature of the demand that that puts on the AGS as a percentage of your overall business?

Ms de Gruchy—We see those two limbs of what we do as fairly integral. We do not see them as separate requirements. Part of supporting the Attorney-General as first law officer is to ensure that we provide high quality and effective legal services to the Commonwealth government, which includes all of its departments and agencies. As part of providing a high-quality service, we try to do that at a value-for-money price. What the Commonwealth receives is high-quality services at a good price. We believe that that meets both parts of that requirement: the need to support the Attorney as well as to operate efficiently and effectively as a government business enterprise.

Senator LUDWIG—In terms of those two, you say they are all part of the one, but are you able to say, in terms of support for the first law officer of the Commonwealth and as an efficient operation as a government business, you will provide work through a tender process to Commonwealth agencies for legal work and you will be competing with other private firms? That is right, isn't it?

Ms de Gruchy—Yes.

Senator LUDWIG—That cannot be described as support for the first law officer of the Commonwealth.

Ms de Gruchy—Senator, we see it as a range of work that we do. If you take, for example, the most highly specialised work that we do for the Commonwealth, that might be in the area of tied work which relates to constitutional, national security, cabinet and public international law, those areas are tied and therefore we do not compete with the private sector in relation to that kind of work. From there we have a range of work that is highly specialised. While it would be potentially available to the private sector to do that work, we are differentiated in the market in relation to that kind of work.

Apart from that, we do a very broad range of work and we do it very effectively in competition with the private sector. In terms of supporting the Attorney-General as first law officer, we are not only supporting the Attorney and the Commonwealth in relation to areas of work that are very important to the workings of government, but we are also able to be a real leader and competitor in the market to ensure that all of the services that the private sector provides in the market in a sense meet a standard that we are providing in the market, or at least meet that standard that we are providing into the market. In itself, it gives a great benefit, I think, to all departments and agencies.

Senator LUDWIG—How many panels are there across departments?

Ms de Gruchy—A considerable number.

Senator LUDWIG—How many times would you appear on those panels?

Ms de Gruchy—We would appear on the vast majority of departmental and major agency panels. Not all smaller agencies have panels but quite a number of them do. We would be on the majority of those that do have panels, but there may be some smaller agencies on whose panels we do not appear.

Senator LUDWIG—Of each of those panels, what percentage of the work in total would you obtain?

Ms de Gruchy—It would vary considerably, depending on the number of law firms on an agency's panel and the type of work that was available. It does vary enormously. You can imagine the difference between a panel that might have two law firms on it and a panel that could have five or more law firms on it.

Senator LUDWIG—Perhaps as a rule of thumb in terms of Commonwealth departments, could you say what would be the percentage of work that you would obtain vis-à-vis commercial practices, commercial solicitors or commercial entities?

Ms de Gruchy—We would still say that we would clearly be a market leader in relation to the work that we provide to Commonwealth clients. It is a little difficult to be precise about exactly how much AGS would receive from panels broadly. We believe that the market is now substantially allocating work pursuant to panels, and that we would receive a sizeable share of work that is generally available to the external market.

Senator LUDWIG—Do you have a rough percentage of what that would be? You say you are a market leader; are you getting 50 per cent of the work?

Ms de Gruchy—Based on the figures, for example, that were disclosed in the ANAO report which was published a couple of years ago and covered about 80 per cent of the market, we would estimate we are getting probably somewhere in the order of that figure.

Senator LUDWIG—Around 50 per cent of the work?

Ms de Gruchy—Yes, of the work available in the external market.

Senator LUDWIG—Yes. In terms of the dividends and profits, could you tell me how the dividend formula operates?

Ms de Gruchy—I am sorry?

Senator LUDWIG—How the dividend formula operates.

Mr Riggs—After tax is provided for, the normal formula is that we provide a dividend equal to 60 per cent of net after-tax profits. The balance is retained by the business for investment in our future.

Senator LUDWIG—What was the purpose behind the additional dividend payment of \$15 million made in 2005 and 2006?

Mr Riggs—Over the years since AGS has been in existence, a level of equity and a level of cash built up that was beyond our foreseeable requirements. So we were in position to declare a special dividend and a special equity repayment at that particular point.

Senator LUDWIG—Is that the first that has been done for the last 10 years, or does that occur occasionally?

Mr Riggs—There has been one previous occasion on which that was done.

Senator LUDWIG—When was that?

Mr Riggs—That was 2002 or 2001, and the amount was \$10 million at that point.

Senator LUDWIG—I am sorry, that was—

Mr Riggs—The amount was \$10 million at that point.

Senator LUDWIG—Do you have any forward estimates of revenue, profits and dividends and how far out that would stretch? Do you forecast what your business will be like in four or five years time?

Mr Riggs—We do that, yes.

Senator LUDWIG—Is that available to the committee?

Ms de Gruchy—No. We have an obligation as a GBE to provide to our shareholder ministers by the end of May each year a rolling three-year corporate plan. In that plan we provide projections. Our planning goes out for a three or four year period. We provide those confidential projections to our shareholder ministers.

Senator LUDWIG—That is confidential to the ministers and is not generally made public. Is that right?

Ms de Gruchy—That is correct.

Senator LUDWIG—In terms of the tendering process or the types of tender processes that you operate in, could you say whether they have been consistent across the various government departments? What I am trying to understand is this: of the panels that you operate on, you tender for the work and you say that, as a rule of thumb, you obtain roughly 50 per cent of the work and it is a competitive tender process that is under way. What I am trying to understand is whether that encapsulates most of the government departments—so they all have boards, they all have panels and the process is always that open competitive tender process. Is that what you experience? Predominantly, when you go on panels, is that the type of process that you meet?

Ms de Gruchy—The vast majority of departments now have panels of law firms. Some vary slightly, depending on whether they have a general panel or specific panels that relate to particular types of work. But the process of putting RFTs out into the market and having competitive bids coming in to departments for their legal work is now the general way in which legal services are procured in the Commonwealth.

So our experience is that we will bid for a position on a panel. The length of time that the panel operates can vary—for example, it could be a three-year panel with a one-year or two-year extension built into the original RFT. These panels come up from time to time for re-tendering. That means that in some years we do more tendering than others, depending on the cycle of the tenders.

Senator LUDWIG—In terms of the work involved in preparing a tender and determining the amount of resources you will expend on a tender to achieve a return, it may be commercial-in-confidence, but is there a rule of thumb you use in terms of either a percentage or an amount as to whether or not you will go on a tender process, or whether you will entertain a tender process, depending on the cost?

Ms de Gruchy—Generally speaking, in terms of the Commonwealth, for us this is core business. It would be rare for us to consider not tendering for work for a Commonwealth client. We have an efficient tendering process. We do this all the time. It is part of the way we have operated for 10 years. And we put in the effort that is required in order to put our best foot forward, as it were, to secure a position on the panel.

Senator LUDWIG—Are you able to say what percentage of tenders you are successful in?

Ms de Gruchy—Again, it might depend on if you were looking at departmental tenders as opposed to general agency tenders, but we are very successful in our tendering.

Senator LUDWIG—Fifty per cent, 60 per cent?

Ms de Gruchy—My colleague reminds me that there is a difference between panels and projects. The panel arrangements will either be for general panel positions, or for specific panels for a particular type of work, or for a project that could be a specific one-off project. Overall in terms of how successful one is in terms of bidding, it can be a question of whether you would take all of those bids, because you would not ever expect to win every project bid. You know your strike rate in relation to project bids might be one in four, whereas if you were going for a position on a departmental panel, you would be hoping to have a much higher success rate than perhaps one in four.

Senator LUDWIG—How consistent do you find the tendering process across departments?

Ms de Gruchy—That has varied considerably over the years with a number of departments and agencies trying to gain the benefit of the processes that others have gone through. We have had different forms of RFTs being put into the market and in some cases we have seen some consistency in RFTs in the market. I am aware that the Attorney-General's Department, through the Office of Legal Services Coordination, has been keen to develop advice and to assist agencies in how they might go about their developing RFT and seeking bids.

Senator LUDWIG—You do not find it particularly standardised across departments?

Ms de Gruchy—I would not say it is particularly standardised. After all, the whole purpose of a department or agency seeking a panel is to take a risk assessment in the first place of what it is that they are looking for in terms of legal services providers and why, and what particular arrangement might suit their particular needs. That can vary enormously, depending on the type of legal work that any particular department or agency has. So the RFT may take quite a different form, given those different needs. So we do not necessarily expect that we will see an identical RFT coming out in relation to a panel for very different agencies. We do expect to see those RFTs reflecting particular needs.

Senator LUDWIG—That also has cost implications for you if they vary or they significantly differ between departments as well?

Ms de Gruchy—Yes.

Senator LUDWIG—I think you also said you help departments prepare their RFTs. Is that right?

Ms de Gruchy—We do not help departments prepare RFTs for legal services simply because, generally speaking, we would be bidding for the work.

Senator LUDWIG—You would be wanting to tender for it. What about guidance? That might be a better word.

Ms de Gruchy—It would be the Office of Legal Services Coordination that would provide any of that kind of general advice. Apart from that, generally speaking, a department or agency would seek legal advice in relation to the preparation of its RFT, but that would be from a law firm that was not going to be bidding on the RFT.

Senator LUDWIG—In terms of the work that you do directly for the Attorney-General, is that a separate contract that you have? If it is internal, I am trying to think of the type of work it would be. If the Attorney-General wants an opinion, if the Attorney-General wants advice or to work up a brief on an issue, is that separately contracted? How does that come about?

Ms de Gruchy—Generally speaking, the Attorney would seek advice through his own department. Our relationship from a lawyer-client perspective would be with the Attorney-General's Department.

Senator LUDWIG—If the Attorney-General's Department requests advice or support from you, is it panel work, or is it just a project, or is it a separate ongoing contract or advice?

Ms de Gruchy—We have a client relationship with the department. The department might care to answer the senator's question.

Mr Anderson—The department has a panel and AGS is one of the two firms on that panel. We allocate work to AGS or to the other firm, depending upon the nature of the work and our particular needs. The panel and the contracts with AGS and that firm are to cover broadly the majority of our needs, except we have reserved the ability to go elsewhere in particular situations, if necessary.

Senator LUDWIG—That is for your general legal requirements?

Mr Anderson—Yes.

Senator LUDWIG—What about advice to the second law officer?

Mr Anderson—That generally will be encompassed. It is the sort of work that we would go to AGS for an advice on, and the terms on which we seek the advice will be governed by the contract, the general legal contract.

Senator LUDWIG—You have a panel?

Mr Anderson—We have a panel.

Senator LUDWIG—And, of that panel, what percentage of the work would go to the AGS or to other law firms?

Mr Anderson—The vast majority of the work goes to AGS.

Senator LUDWIG—How many law firms are on the panel?

Mr Anderson—There is one other law firm.

Senator LUDWIG—There is a panel of two.

Mr Anderson—Yes.

Senator LUDWIG—Are you able to say what the other law firm is?

Mr Anderson—Certainly. It is public. It is Blake Dawson Waldron.

Senator LUDWIG—I think that probably covers it. Where does the role of the Solicitor General interface?

Mr Anderson—The Solicitor General provides advice. He acts for the Commonwealth in a range of matters. He provides advice and it is free of charge. He does not actually charge for his advice.

Senator LUDWIG—It is a statutory position.

Mr Anderson—Yes. I am sorry, I am not quite sure what you are asking.

Senator LUDWIG—I am just trying to work it out. The AGS provides work. You have a private firm and you have the Solicitor General. How do you determine where you go for advice?

Mr Anderson—It will depend on the nature of the issue.

Senator LUDWIG—Are there certain issues that are reserved only for the Solicitor General?

Mr Anderson—If it is a matter of major significance or it is a particular constitutional issue in the High Court, for example, they are the sorts of things that we or another agency might want to get the Solicitor General's advice on as opposed to lower court matters or matters of less significance. There are no rules forbidding a private firm from being the firm that instructs the Solicitor General in a particular Commonwealth matter, but the department has rules governing how approaches are made so that the Solicitor General does not have his time taken away on the lesser matters.

Senator LUDWIG—Broadly you have really got a choice as to whether you go to the Solicitor General or not, unless there is a rule that says that if it is a High Court matter or a constitutional matter, you will go there, or would you still make a choice about where you went in any event for legal advice?

Mr Anderson—There is still a choice, but for a major matter or a constitutional matter in the High Court we will start with the Solicitor General, subject to his availability, for example.

Senator LUDWIG—The Solicitor General would not do prosecutions, though, would they?

Mr Anderson—No.

Senator LUDWIG—No. It is clearly a role within senior counsel and then usually junior counsel. Does that junior counsel come from within the Solicitor General's office?

Mr Cornall—The Solicitor General is just one person.

Senator LUDWIG—Yes. I am sure he has a secretary, though.

Mr Cornall—He has a research assistant and an executive assistant.

Senator LUDWIG—How is that provided then, if there is a junior?

Mr Anderson—The junior might be a private barrister or it might be, for example, someone from AGS. AGS have supplied people or staff to operate as junior counsel in some matters. Sometimes it is a mixed team.

CHAIR—I want to congratulate you and your representatives on the Australia Day awards. I noticed from your annual report that some 13 AGS people received the AGS Australia Day award, and that is very encouraging. I congratulate you also on your Work Choices legislation effort and the recent success in the High Court. That was no doubt a big effort. Is that correct?

Ms de Gruchy—That is right—a combined effort of the department and AGS, the Solicitor General.

CHAIR—I know there were a lot of people involved. Congratulations on your efforts.

Ms de Gruchy—Thank you.

[10.08 pm]

Attorney-General's Department

CHAIR—We have now concluded the agencies. We will head back to the Attorney-General's Department outcome 1. We will be on output 1.1 to start with.

Senator LUDWIG—Where do the community legal service programs come in?

Mr Cornall—Community legal services is under Legal Aid, which is under output 1.7.

Senator LUDWIG—And the family relationship centres?

Mr Cornall—Here—output 1.1.

CHAIR—We will deal with the family relationship centres—output 1.1.

Senator LUDWIG—How much has Interrelate been granted to run the FRC service at Lismore?

Ms Pidgeon—Their ongoing funding for this current year is \$983,000. Next year they will have \$977,000, subject to any adjustments to indexation that might be involved, and the following year it will be a similar amount—\$977,000—but indexed. That is the unindexed amount.

Senator LUDWIG—Is there one contract or two?

Ms Pidgeon—There is one funding agreement for the Lismore family relationship centre.

Senator LUDWIG—How long will the contract run for?

Ms Pidgeon—Three years. We are almost to the end of the first year.

Senator LUDWIG—That is why the two yearly amounts are paid annually?

Ms Pidgeon—No, six monthly. I should say that it is paid by FaCSIA but the funding comes from our department.

Senator LUDWIG—I know. I think we have experienced this before, have we not?

Ms Pidgeon—Yes.

CHAIR—How does that work? Can you explain it?

Senator LUDWIG—Do not ask!

CHAIR—It is a silly question, but I would like to know anyway. Give me the short version.

Ms Pidgeon—The family relationship service program is a shared program between us and FaCSIA, with us being responsible for the funding and policy of some parts of it and FaCSIA being responsible for other parts. Because they are similar sorts of services, we have one administration of that program by FaCSIA and so they look after the funding agreements on behalf of both departments.

CHAIR—And who funds it?

Ms Pidgeon—The funding agreement payments are made by FaCSIA, but we pay our share to FaCSIA twice a year.

CHAIR—What is your share?

Ms Pidgeon—Our share of the program? I would have to check.

CHAIR—But in a broad sense—percentage-wise?

Ms Pidgeon—About two-thirds of the program would be ours at this stage.

CHAIR—Fine. Thank you.

Senator LUDWIG—When was the contract awarded for the family relationship centre?

Ms Pidgeon—It would have been one of the ones announced in April last year and the funding agreement would have been signed between then and July.

Senator LUDWIG—What is the nature of the FRC at Lismore?

Ms Pidgeon—The dates?

Senator LUDWIG—No, the nature of it. It is an FRC. It is run by Interrelate. Does it have a particular disposition about the type of service provider it is?

Ms Pidgeon—All of the family relationship centres have the same scope. They provide a combination of information and referral for all families, whether intact or separated, plus individual help and dispute resolution for separated families.

Senator LUDWIG—So it is open for all families—all work?

Ms Pidgeon—Yes.

Senator LUDWIG—I think the minister opened that one—do you recall?

Ms Pidgeon—He did launch it, yes.

Senator LUDWIG—In terms of the overall FRCs themselves, do the complaint handling, problems and all of those issues come back to you or do they go to FaCSIA?

Ms Pidgeon—The complaints process is for FaCSIA to deal with—those that are not dealt with by the centres themselves.

Senator LUDWIG—Yes. There would be an internal procedure.

Ms Pidgeon—Yes.

Senator LUDWIG—Depending on the nature of the complaint.

Ms Pidgeon—Yes.

Senator LUDWIG—It could be a process complaint where someone claims that they have not got the service that they wanted. It could be a management complaint or an administrative complaint—I use that term generically. There could be a whole raft of complaints of different types. Depending on the nature of those complaints, save for the internal management, is there a complaint handling process in train?

Ms Pidgeon—Yes. If it is not dealt with by the centre itself or resolved then first of all the FaCSIA state office would be responsible for trying to resolve any complaint and it would be escalated to its national office and further, to us, if it is not resolved.

Senator LUDWIG—It does get to you, then?

Ms Pidgeon—Eventually, if it is not resolved.

Senator LUDWIG—All right. We can start with you. I thought I had to go to FaCSIA. Have you received any complaints from any of the FRCs at this point?

Ms Pidgeon—We have not had any escalated to us from FaCSIA through the complaints process. We have had some comments from people about the services at times through the Attorney's office which we then facilitate by getting the centres to deal with them. But we have not had any escalated complaints.

Senator LUDWIG—Have you had any in respect of the Lismore FRC?

Ms Pidgeon—We have not had any escalated complaints at all from anyone about any of them.

Senator LUDWIG—What about the other type you were talking about—where you might have been facilitating passage of information?

Ms Pidgeon—We have had some contact about aspects of Lismore and, as I said, obviously we are happy that Interrelate has been dealing with them.

Senator LUDWIG—What is the nature of that?

Ms Pidgeon—I have to think for a moment. I am not sure that I can remember details of any particular ones. There have been very few, if any. I think there have been one or two. I cannot remember any particular ones.

Senator LUDWIG—Is the next round of the FRCs on track to be rolled out?

Ms Pidgeon—Yes, it is. We are satisfied they are all on track.

Senator LUDWIG—When is that date due?

Ms Pidgeon—It is 2 July this year.

Senator LUDWIG—What stage are they up to, given that we are rapidly approaching 2 July? I think it is almost like *deja vu*, Ms Pidgeon, is it not?

Ms Pidgeon—They all have premises. They are recruiting staff. They are signing up for their training. They are all at full speed ahead.

Senator LUDWIG—Will all have premises? There will not be any temporary premises?

Ms Pidgeon—There will be some temporary premises. Three definitely will have temporary premises because there are building works that need to be done and there is a possibility that there will be one or more that might end up having to be temporary, but at this stage, three or possibly four we expect to be temporary.

Senator LUDWIG—Do you know which they are? I suppose you do. Will you tell me which ones they are?

Ms Pidgeon—Yes. I will just have to make sure of my memory. I will not rely on my memory.

Senator LUDWIG—No, please do not. Mine is fading pretty fast at this time of the night.

Ms Pidgeon—The ones that are definitely going to be temporary because of building works or building approvals that they are waiting for are Cairns, Maroochydore and Ballarat. Ipswich is a bit line ball. They are fairly confident they will be there on time but we are just keeping a watching brief. They might need temporary premises if their building works are not done in time.

Senator LUDWIG—Are all of the contracts and funding arrangements for these centres now in place?

Ms Pidgeon—All the funding agreements have been signed with the exception of Ipswich. We think it will be very quick. The signing is very close.

Senator LUDWIG—How far away is it?

Ms Pidgeon—It is up to the organisation. They need to provide us with some information that has not been provided yet.

Senator LUDWIG—So no contracts or funding arrangements are yet to be finalised except the Ipswich one?

Ms Pidgeon—That is correct.

Senator LUDWIG—When was that due to be finalised? Was there a cut-off date?

Ms Pidgeon—No, there is not a cut-off date for the funding agreements.

Senator LUDWIG—Are they all open? Have any indicated that they might have difficulty about opening at the relevant time?

Ms Pidgeon—No. At this stage they are all telling us that they are on track.

Senator LUDWIG—Have they all indicated that they will be able to provide a full range of activities when the FRC opens?

Ms Pidgeon—Yes.

Senator LUDWIG—Then another 25 will be rolled out. Is that correct?

Ms Pidgeon—That is correct.

Senator LUDWIG—When are they due to be rolled out, if I can use that expression?

Ms Pidgeon—They will open next July. I have not checked whether it is 1 July or another date, but it is the first day of July.

Senator LUDWIG—The Monday—

Ms Pidgeon—The first Monday in July.

Senator LUDWIG—The first Monday in July.

Ms Pidgeon—I should correct that. It may be that 1 July is during the week. It would not be, would it? I am a bit challenged when it comes to calendars going year to year. It will probably be 1 July, which I think is a Monday.

Senator LUDWIG—I am not going to look at a calendar. We will just assume that it is a Monday pretty early in July. Has the government looked at whether or not there are any issues regarding lack of accommodation for family relationship centres that are proposed to be located in remote Australia?

Ms Pidgeon—Indeed. Recently we looked at what we need to do in the Kimberley and the Pilbara because of accommodation issues up there. We recently visited those regions and met with service providers. In fact, we had public meetings in Broome and Karratha and another meeting in Port Hedland to discuss those very issues.

CHAIR—Senator Ludwig, just to let you know: 1 July is a Sunday and 2 July is a Monday.

Ms Pidgeon—So it is 2 July next year.

CHAIR—Is this 2007 or are you looking at 2008?

Senator LUDWIG—No, 2008. It is not a leap; it is a subtle move forward.

CHAIR—In 2008 1 July is a Tuesday.

Ms Pidgeon—So that will be the question: do we open on Monday, even though it is not July? I think we open on 1 July, which is a Tuesday, because that is when the money will start. That is why I hesitated.

Senator LUDWIG—I am sure they will not open without being paid. Are you aware of whether there are any staffing shortfalls for family relationship centres that are proposed to be located outside metropolitan areas? Have these issues been raised?

Ms Pidgeon—I think the recruiting staff has always been one of the biggest challenges. That is the reason we are taking three years to roll out these services. We knew that if we tried to do it all in one year there would be even bigger challenges. All the existing services have been able to find staff. There is obviously a turnover where somebody leaves and they have to recruit somebody new. So it has not been a problem, ultimately, for the first ones. The second ones are currently recruiting and, obviously, there is next year to go. So we will have to wait and see whether there are problems then.

Senator LUDWIG—In terms of the other staffing and funding arrangements within the FRCs, are you able to provide staffing figures for each FRC? Is that provided to you?

Ms Pidgeon—We do not keep running numbers for staffing because it is entirely up to organisations how they staff. We fund them to provide outcomes; we do not monitor their staff. When they put in their applications they put in a budget and indicate what their proposed staffing is. That helps us assess whether they have a realistic plan for their staffing to undertake the function. But it really is up to the services themselves to then allocate their funding to staffing as they see fit. That way they can be quite innovative in how they use their staffing money.

Senator LUDWIG—Who follows up to check whether they are not being too innovative?

Ms Pidgeon—We are looking at outcomes; we are not looking at how they do their day-to-day business. That is not how the family relationship services program operates.

Senator LUDWIG—If they drive everybody down on an AWA on low rates, that is no concern of yours?

Ms Pidgeon—Most services work off a state based award. Some of them pay above award rates. I am not aware of anyone using any other approach. It seems to be fairly normal in this industry to use the state based awards.

Senator LUDWIG—Is there a plan to review the operation of the FRCs?

Ms Pidgeon—Yes. We have an extensive evaluation plan. The Australian Institute of Family Studies has been commissioned to undertake an evaluation of the whole of the family law reform package, including the family relationship centres and the expansion of services generally. That will be over the next few years. We have a three-year framework at the moment but the intention is that we would follow up beyond that as well.

Senator LUDWIG—Has it started the review process yet or is it that you are just considering how you then conduct a review?

Ms Pidgeon—Baseline data was collected last year, before the centres and other services started and before the changes to the law.

Senator LUDWIG—Is that available to the committee?

Ms Pidgeon—I can give you a copy of the evaluation framework that has been developed.

Senator LUDWIG—That would be helpful. Does that include the baseline data?

Ms Pidgeon—It outlines what the baseline data comprises. It does not have the actual content of the data but it certainly has the—

Senator LUDWIG—Can I get the content of the data?

Ms Pidgeon—At this stage we do not even have the content of the data. It is something that will be used for the baseline, for the evaluation. On its own it does not mean very much.

Senator LUDWIG—In terms of the funding arrangements for the FRC, do you do a snapshot to establish whether all the money has been expended in the six-month, 12-month and three-year period?

Ms Pidgeon—That question is probably better directed at FaCSIA, which manages the funding agreements and the payments. But my understanding is that it is over three years. I am pretty confident that there is not a six-month or annual tallying of what is spent.

Senator LUDWIG—If there is money unspent, let us say over three years, is that of interest to you or of interest to FaCSIA?

Ms Pidgeon—FaCSIA would be the ones that would be looking at that acquittal. I understand that there would be an acquittal at the end of a funding agreement.

Senator LUDWIG—That the money would be returned if it was not spent?

Ms Pidgeon—That depends. If a new funding agreement is entered into for that service with that service provider, there may be an agreement to—

Senator LUDWIG—Carry the money over.

Ms Pidgeon—carry the money over for a particular purpose, if that were agreed. But our department is not the one that manages that, and we are not as familiar with that part of the funding agreement as is FaCSIA.

Senator LUDWIG—Do you get reported to you what happens?

Ms Pidgeon—If there were an issue at the end of a funding agreement about carrying over money when it was one of our funded services, we would be involved in that decision.

Senator LUDWIG—And we are not up to that point at this time?

Ms Pidgeon—That is correct.

Senator LUDWIG—So it is not your role at this point to identify any underspends or overspends in the allocated moneys to FRCs? That would be a role for FaCSIA to undertake.

Ms Pidgeon—And it would not be something that would come up until the end of the funding agreements, which is another two years for the first ones.

Senator LUDWIG—If there is an overspend and additional money is required by an FRC to meet its service obligations, is that a matter that comes up to you or is that a matter that goes to FaCSIA?

Ms Pidgeon—It would be very unusual for a service provider to be provided with any supplementary funding. It has been known—it can happen—but it would be very unusual circumstances. It would not normally be in a situation, as in this case, where we have three-year funding and where people have already been running for some time, and they should be adjusting their operations to meet their funding. Very occasionally we will look at a request for additional funding, but obviously we have to think very seriously before we considered such a request because there is not a big bucket of other money from which to provide that funding.

Senator LUDWIG—Are you aware whether there been any request to date from any FRC about additional funding?

Ms Pidgeon—I can say that there has not been any from any FRC.

Senator LUDWIG—Is a performance review planned in December this year?

Ms Pidgeon—Yes, we will be commencing a performance review from December which will look at the last 18 months of operation.

Senator LUDWIG—And that is for all FRCs that have been established, or will it include those—

Ms Pidgeon—No, that will be for the first 15. That will then become annual for those 15. For the 25 opening this year, their first one will be from December next year, so they get time to set up.

Senator LUDWIG—Do you oversight the monitoring and compliance arrangements in place or is it FaCSIA?

Ms Pidgeon—The immediate responsibility is FaCSIA, but of course we have a strong interest and we do receive reports. We see status reports and so on.

Senator LUDWIG—How often are the status reports raised by the family relationship centres, or are they done by FaCSIA?

Ms Pidgeon—FaCSIA looks after all the reporting. You would be better asking FaCSIA about reporting.

Senator LUDWIG—All right. But you have indicated that you see the status reports?

Ms Pidgeon—They get passed on to us, but I am not aware of the timing of that. FaCSIA does the routine collecting of reports.

Senator LUDWIG—Have they already been passed on to you? Have you collected them already?

Ms Pidgeon—We would have seen the first reports of the centres; they would have reported by now. I have in mind that they are six-monthly, but, as I said, I think that is something FaCSIA can confirm. So we would have seen those first ones.

Senator LUDWIG—What is the nature of the report? What is included in the status report?

Ms Pidgeon—I really think that is a better question to ask FaCSIA. They look after the reporting.

Senator LUDWIG—Just going back to the Lismore one, it just struck me that I had asked you whether you had seen anything, but has the Attorney-General's Department seen any allegations of corrupt conduct in any of the FRCs?

Ms Pidgeon—I am sorry, you asked me whether there were any allegations of corrupt conduct?

Senator LUDWIG—Yes.

Ms Pidgeon—You did not ask me that before. I certainly have not.

Senator LUDWIG—I am asking it now then.

Ms Pidgeon—I certainly have not heard anything about corrupt conduct. As I said, we had some contact about issues, but I think that would be something that we would remember.

Senator LUDWIG—What about the Attorney-General's Department? I am just trying to understand this. It might be a matter that I have to ask FaCSIA, or do I ask you that? Would it come to you, Ms Pidgeon?

Ms Pidgeon—It certainly would.

Senator LUDWIG—All right. That is all I have in the family relationships area.

CHAIR—I had a question on 1.1 which is related to that—unless you want to go on?

Senator LUDWIG—No. Go ahead, by all means.

CHAIR—I want to ask about a document I have got called *Keys to living together—taking the First step* produced by the Australian government. It is quite an extensive colour brochure.

Ms Pidgeon—That is right. That is a FaCSIA document—under the same program, though—that we have been talking about.

CHAIR—Yes, I thought it was in this area. Do you have any similar or related material relating specifically to promoting marriage?

Ms Pidgeon—No. The way we share the program is that the marriage education part of it is FaCSIA's responsibility. Most of the Attorney-General's responsibility is about services for separated families. FaCSIA's main responsibility is, for want of a better word, intact families. So the premarriage education and relationship strengthening programs for intact families is FaCSIA.

CHAIR—So they would have those programs and initiatives in FaCSIA?

Ms Pidgeon—That is right, yes.

CHAIR—Thank you.

Senator LUDWIG—I am not sure which output this relates to, but I understand there was some correspondence this year between the Commonwealth Attorney-General and the Western Australian Attorney-General regarding the replacement of a Western Australian Family Court judge who is due to retire. Is it correct that it was initially proposed to replace the Family Court judge with a magistrate, which would effectively reduce the number of judges from five to four?

Ms Power—I am afraid that I am not in a position to comment on correspondence between the Attorney-General and Attorney-General McGinty.

Senator LUDWIG—Did you read his speech to the Western Australia family law conference?

Ms Power—I am aware of it, yes.

Senator LUDWIG—Have you read it?

Ms Power—No, I have not read it.

Senator LUDWIG—Why would you not have read it? Are you interested in the Western Australian Family Court and the issues associated with it over there?

Ms Power—Yes, the department has an interest in it as it is funding the Family Court of Western Australia.

Senator LUDWIG—More broadly, then, are you intending to proceed with the replacement of a retiring Family Court judge with a Federal Court magistrate?

Ms Power—There is certainly no intention that I am aware of to appoint further federal magistrates in Western Australia. There is only one magistrate there handling general federal law work because the Family Court of Australia and the federal magistrates doing family law work are not operating in Western Australia. The matter of an appointment or the Commonwealth's view about an appointment to the Family Court of Western Australia is for the Attorney-General to consider. I think the Western Australian state government appoints judges to the Family Court of Western Australia, of course, but the practice is for those judges to also receive dual commissions as judges of the Family Court of Australia. That is where the Commonwealth Attorney-General's involvement comes in.

Senator LUDWIG—Could you perhaps explain the practice to me? Normally, would the Western Australian Attorney-General then say: 'I will appoint a Family Court judge. They require dual appointment. Will you then do that?' Has that happened?

Ms Power—I think the practice is that the Western Australian government or the Attorney of Western Australia indicates to the Commonwealth Attorney that he would like to proceed with an appointment to the Family Court of Western Australia, but as it is, in effect, a dual commission—the Commonwealth pays, for example, for the pensions of judges in the Family Court of Western Australia—Western Australia does approach the Commonwealth about it. So the Commonwealth is really in a position to express a view about whether that appointment should go ahead.

Senator LUDWIG—Has the Western Australian Attorney-General approached the Commonwealth for the appointment of a Family Court judge?

Ms Power—Yes.

Senator LUDWIG—Where is that up to now?

Ms Power—The Attorney-General is considering it.

Senator LUDWIG—Has any response been provided to the Western Australian Attorney-General as to whether or not he intends to appoint the Family Court judge or dual appoint?

Ms Power—It is really in the consideration of the Attorney at the moment.

Senator LUDWIG—There has been no negative response to date?

Mr Cornall—Senator, I think Ms Power is saying that she cannot really take this matter any further. It is an appointment matter. You obviously know that there is some difference of views between Mr McGinty and the Attorney-General about how these things should go forward. It is a matter for the Attorney-General to determine what he wants to do.

CHAIR—Thank you, Mr Cornall.

Senator LUDWIG—I encourage you to read the Western Australian speech.

Mr Cornall—Yes, I have not read the speech. I will do that.

Senator LUDWIG—I encourage you to do that. For how long has that been going on now? When was the first approach by the Western Australian Attorney-General to appoint a Family Court judge in Western Australia?

Ms Power—I am not aware of when the first approach was made. There are sometimes, of course, conversations between the Commonwealth Attorney and the Western Australian Attorney of which I would not be aware.

Senator LUDWIG—No, I accept that. When would it formally have been raised? Is there a process where the department is formally made aware that the issue has been raised?

Ms Power—There does become—

Senator LUDWIG—You know about it, so there is a point in time when you must have found out about it from a departmental point of view.

Ms Power—Yes, we would see the letter. Also, because the Commonwealth would have in contemplation an appointment to the Family Court of Australia, the Attorney has to assure himself that this person would be a suitable appointment to make to the Family Court of Australia as well, so we would become aware of it at that stage.

Senator LUDWIG—All right. Are you able to say when that was?

Ms Power—No, I am not in a position, I am sorry, to say when—

Senator LUDWIG—Is that because you do not know or you do not want to tell me?

Ms Power—I do not know when the first approaches were made.

Senator LUDWIG—Could you take that question on notice?

Ms Power—Yes, we could take it on notice.

Mr Cornall—We could take it on notice and answer as best we can.

Senator LUDWIG—Thank you. I also understand that the WA Attorney-General made an application to the Commonwealth Attorney-General regarding additional funding for family law services in the south-west region of the state. Is the department aware of that?

Mr Cornall—What sorts of services are you speaking of?

Senator LUDWIG—Additional funding for family law services.

Mr Cornall—Court services?

Ms Power—Approaches by Western Australia for additional funding for the court would be considered as part of the budget process.

Senator LUDWIG—What about non-court services? So the only time Western Australia would make an application to the Commonwealth for additional funding is for court based services?

Ms Power—In relation to the Family Court of Western Australia, yes. I am sure Western Australia would make approaches in other areas for assistance of some kind, but it would be in terms of the agreement that Western Australia would make an approach in relation to the Family Court of Western Australia.

Senator LUDWIG—And that is part of the budget cycle?

Ms Power—Yes.

Senator LUDWIG—We have just passed a budget cycle. Was there any provision of additional funding for that application? In other words, have funds been made available to the WA Attorney-General for funding for family law services in the south-west region?

Ms Power—An additional \$0.7 million has been provided to fund two Indigenous family liaison officers to assist the Family Court of Western Australia as part of the budget process.

Senator LUDWIG—Where is that in the PBS?

Mr Cornall—Page 30 of the PBS, Senator.

Senator LUDWIG—I understand that an application was made about a year ago. You are not aware of that?

Mr Cornall—There is some additional funding in the budget, on page 30. It is the last item. Is that what you are talking about?

Senator LUDWIG—A Better Future for Indigenous Australians, a pilot program for the Family Court of Western Australia.

Mr Cornall—That is the Indigenous liaison officers that were referred to.

Senator LUDWIG—I will have to take that on notice! The only information I have is it was for the south-west region of the state. I have a couple of days, so I can put it on notice if that is not it. My information was that there was an application made some time ago, 12 months ago, for it. I was trying to follow up where that application was, whether it has been considered, whether it has been rejected, and what the basis of the decision to reject it was. That gives you the broad area. If we can just establish it is not that and if we find that the application is a separate matter we can follow it up at that point. Thank you.

CHAIR—Thank you, Senator. That is appreciated.

Senator LUDWIG—I think we established that the community legal services program was \$1.7 million. The merger of the NTRBs is \$1.6 million, I think.

Mr Cornall—Native title is \$1.6 million.

Senator LUDWIG—We might skip to that, if that is all right.

Senator LUDWIG—Could you indicate whether or not the department has guaranteed funding beyond the 2007-08 financial year for the Queensland South Native Title Services, the Gurang Land Council, the Carpentaria Land Council and the Central Queensland Land Council?

Mr Anderson—Senator, the funding of the representative bodies is actually a matter administered by FaCSIA.

Senator LUDWIG—Caught again!

Mr Anderson—Don't worry; they are coming on for estimates in a few days.

Senator LUDWIG—I will be back. At least they will not send me back here. I am sorry: sometimes it does sound a bit tedious, but I have found that if I do not ask it here I get sent

back here, but it is too late for me. At least I have ruled you out. So my answer to them is that you have said, 'No, it is FaCSIA.'

Mr Anderson—Yes.

Senator LUDWIG—It carries more weight than if I were to say it. So you are not able to say whether the department has provided funding to some or all of these organisations on the condition they enter merger negotiations with each other? You would not oversee that particular issue?

Mr Anderson—No, that is entirely a matter for FaCSIA.

Senator LUDWIG—Does this fall within your area, though, if the continuity of service to native title claims fits within the geographic boundaries of those areas if they were not to merge and if they were not to be funded? In other words, if FaCSIA were to say that funding will not be provided unless they merge, and they do not merge and then there is no funding, is it of interest to the Attorney-General's Department in this area if there is not continuity of service to native title claimants within those geographic areas? When does it become of interest to the Attorney-General's Department?

Mr Anderson—The representation of claimants is a matter for FaCSIA and Minister Brough. If, however, the manner in which claimants are being delivered services or not being delivered services was to have a significant effect on the overall performance of the native title system, that would be a matter that the Attorney would have concerns about.

Senator LUDWIG—Is the funding for Aboriginal legal services determined every year?

Mr Anderson—We have an amount of \$1.7 million.

Senator LUDWIG—It is about \$1.7 million, is it?

Mr Boersig—Funding for Aboriginal legal services is now done on a triennial basis. Previously it was annual.

Senator LUDWIG—Is that indexed?

Mr Boersig—It is.

Senator LUDWIG—By what amount—or does it vary? I am happy for you to take that on notice if you are not sure.

Mr Boersig—I will take it on notice.

Senator LUDWIG—Is Aboriginal legal service funding linked to any assessment of the need for or data on levels of client demand? How do you determine the requirement?

Mr Boersig—The funding is based on a funding formula. That formula is being considered at the moment. It is a formula that has a number of drivers. Demography, population, prisons and removal from family are the key drivers in that, and then there are those weightings.

Senator LUDWIG—Does that differ from mainstream legal aid funding in this area—for community legal centres and the like?

Mr Boersig—As I understand it, it is a different formula to the one that is used for them.

Senator LUDWIG—Why is that?

Mr Boersig—The formula was originally developed through ATSIC and ATSSIS.

Senator LUDWIG—They do not exist anymore.

Mr Boersig—No, they do not. The process was developed in relation to this particular program.

Senator LUDWIG—So has any consideration been given to review that funding formula?

Mr Boersig—Yes, it is currently under review, and we are dealing with the providers in relation to that as well.

Senator LUDWIG—What is the proposal to move towards? What are you going to do? I presume that you are going to review it. Is there a model that you might move towards? Is it the same as the community legal services funding?

Mr Boersig—The model is developed so that it has a number of weightings. What we are looking at is how you would adjust the weightings. Is enough emphasis given to rural and remote? Does it take into account the growth in prisons or the costs in providing services? A whole range of matters have been considered. So it is the veracity of the model, essentially.

Senator LUDWIG—What are the differences between the way in which the funding amounts are determined between what I would call community legal service funding and the Indigenous legal service funding?

Ms Jones—Senator, perhaps I can answer in relation to the Community Legal Services Program. The funding model used in relation to that program is historically based. The program began by people putting in applications for funding. That developed over time until people were then regularly funded on an annual basis. You are aware that the Attorney has directed the department to undertake a review of the Community Legal Services Program. One of the things we are looking at is the funding model and whether a more consistent approach can be applied in relation to funding for community legal centres.

Senator LUDWIG—Yes, I might put some questions on notice about that.

Mr Cornall—Senator, I think we are getting a bit off track here because the community legal centres are the community legal centres. If you wanted a direct comparison to the Indigenous legal aid services, it is more the legal aid commissions.

Senator LUDWIG—All right. I am happy to talk about the legal aid commissions then. What are the main differences between the way the legal aid is funded and the Indigenous legal services?

Ms Jones—The legal aid funding model was developed at the beginning of the current agreement cycle, and it takes into account a range of factors such as population within each of the different states and territories and different drivers like the number of people on welfare and benefits. There is a range of factors. I can provide more detail on notice if you require.

Senator LUDWIG—If you would not mind. Thank you. More broadly, how much Commonwealth funding was committed to legal aid in 2007-08? Are you able to say that?

Ms Jones—We have that figure for you.

Mr Cornall—In answering this: are you talking about legal aid commissions, community legal services or Indigenous—

Senator LUDWIG—I changed my language to legal aid.

Mr Cornall—Legal aid commissions. Okay.

Ms Jones—The total funding for legal aid for 2007-08 is \$163,800,000.

Senator LUDWIG—How much Commonwealth funding was committed to Aboriginal legal services—that is not including family violence prevention, legal services or the test case funding?

Mr Boersig—For 2006 it was \$48 million; in 2006-07 it is just over \$49 million; and for next year it is about \$50 million, without the test case. I will get the exact figure in a moment.

Senator LUDWIG—Are they growing at about the same rate—in other words, the index that is used to move them forward between both the Legal Aid Commission and the Aboriginal legal services?

Mr Boersig—That relates to the other question. I think I will have to take on notice the actual index.

Senator LUDWIG—If you say that they are the best comparison to use, what I am trying to establish or ask is whether they grew at the same rate or at a different rate.

Ms Jones—I think it is accurate to say that they would have the same indexation applied to them in relation to the increase in funding from the previous year. But obviously the types of services that are being funded in relation to mainstream legal aid and Indigenous legal aid are slightly different as well.

Senator LUDWIG—Does the funding for Aboriginal legal services specify salaries and classification levels of solicitors and other staff?

Mr Boersig—No, it does not.

Senator LUDWIG—Does it specify how many staff it intends to fund?

Mr Boersig—No, it does not.

Senator LUDWIG—Does your funding for mainstream legal aid contain specifications on salaries and classification levels of solicitors and other staff?

Ms Jones—No, it does not.

Senator LUDWIG—Does it specify how many staff it intends to fund?

Ms Jones—No, it does not.

Senator LUDWIG—There have been a range of reports you have seen over the years—in particular, the challenges the Indigenous community faces. What I am trying to understand is: does the funding attempt to reflect the reality that Indigenous Australians are imprisoned at about 12 times the rate of non-Indigenous Australians and therefore have a high demand for the representation services as a consequence of those incarceration rates?

Mr Boersig—The funding figures are a budgetary consideration. The figure that we are using to distribute according to the formula is based around that. The figure for 2007-08 is just over \$50 million.

Senator LUDWIG—At present the Commonwealth has full responsibility for funding Aboriginal legal services. Has there been any consideration to alter that? Is that under review?

Mr Boersig—Not currently.

CHAIR—While we are on community legal centres, can I ask a quick question?

Senator LUDWIG—We were not really. I think I should have been talking about legal aid. I think we established that very quickly. Community legal services as in what?

CHAIR—As in the funding that we provide in Australia. Can you take on notice the funding that we provide for those community legal services and the funding that the states and territories provide, or do not provide, in quantum?

Mr Cornall—I think we will have those global figures very quickly.

CHAIR—That is fine. Thank you.

Senator LUDWIG—You probably have them in front of you.

Ms Jones—I do. The Community Legal Services Program appropriation for 2007-08 is \$24.856 million. I have the figure for the states contribution.

CHAIR—I am actually after a state-by-state breakdown, including Tasmania. If you can just table that, it would be fine. I do not want to take up Senator Ludwig's time. Can you table that?

Ms Jones—I have that information and I can table it.

Senator LUDWIG—I can always make a couple of points in two minutes, Minister.

Senator Johnston—They would be good points too.

Senator LUDWIG—I refer to the Community Legal Services Program grants. In 2006-07 Queensland was granted 469.344 of this program. If I want to be parochial, in comparison Victoria received a sum of 1207.151, but Victoria's population is not three times the size of Queensland's, and Queensland is significantly more geographically dispersed and is regional in nature. If you look at Queensland's percentage of the funding you find that it is only 15.82 per cent, yet our share of the population is about 19.8, and growing as New South Welshmen, Canberrans and Victorians leave to go to Queensland—especially after the State of Origin! Victoria's share of the funding is 40.7 per cent, yet Victoria makes up only 24.6 per cent of the population. Obviously, I am not trying to cavil with the services in Victoria, but why is Queensland not resourced at the same level or an equivalent level?

Mr Cornall—This is the community legal centre program?

Senator LUDWIG—Yes.

Mr Cornall—And this is the Commonwealth funding alone that you are speaking about?

Senator LUDWIG—Yes.

Mr Cornall—There is a lot of historical accident in all this. It depended on where the centres were established, when they applied for funding, what funding arrangements were put in place, and how much the states contributed as well. So it is not a program that was rolled out like we are rolling out the family relationship centres; it is a historical accident as to how some of this happened.

Senator LUDWIG—I did not want to get into a conspiracy against league-playing states, but New South Wales has almost two million more people than Victoria but gets less than half the funding and, of course, it is significantly bigger. New South Wales has 33 per cent of the population but 18.8 per cent of funding.

Mr Cornall—What if we seek to put an explanation of that on notice for you?

Senator Johnston—That is a good idea.

Senator LUDWIG—And we will not talk about South Australia.

Senator Johnston—We never talk about them!

CHAIR—Thank you, Senator Ludwig, for those questions.

Mr Cornall—I have just one matter before we close. We were asked to produce a document that set out information about underspends. We have done that and I can table it.

Senator LUDWIG—Thank you very much. I appreciate that.

Mr Cornall—It is a total of \$13 million on a whole budget of \$229 million, so it is 5.7 per cent. Of that, \$6 million is already committed, but it will not fall due for payment until next year. In real terms we are talking about an underspend of \$7 million on \$229,000, which is about 3½ per cent.

Senator LUDWIG—I appreciate that.

CHAIR—Thank you, Mr Cornall. I thank you and your officers most profusely for your perseverance and your patience over the last many days. I thank the minister, the secretariat and the team that have been here for their tremendous effort. I thank Hansard and all the other support teams that have helped us get through these budget estimates.

Mr Cornall—Thank you, Chair.

Committee adjourned at 11.01 pm