



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

ESTIMATES

(Supplementary Budget Estimates)

MONDAY, 20 OCTOBER 2008

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS
Monday, 20 October 2008**

Members: Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), and Senators Farrell, Feeney, Fisher, Hanson-Young, Marshall and Trood

Participating members: Senators Abetz, Adams, Arbib, Bernardi, Birmingham, Bilyk, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Macdonald, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

Senators in attendance: Abetz, Barnett, Mark Bishop, Bob Brown, Brandis, Crossin, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Hanson-Young, Heffernan, Humphries, Joyce, Ludlam, Marshall, McGauran, Payne, Siewert and Trood

Committee met at 9.02 am

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Attorney-General's Department

Management and Accountability

Mr Roger Wilkins AO, Secretary

Mr Miles Jordana, Deputy Secretary, National Security and Criminal Justice

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

Ms Sue Chapman, General Manager, Corporate Services Group

Mr David Finlayson, Assistant Secretary, Public Affairs Branch, Corporate Services Group

Ms Jan Blomfield, Assistant Secretary, Human Resources, Corporate Services Group

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

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch, Financial Services Group

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

Output 1.1

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Ms Alison Playford, Assistant Secretary, Civil Justice Division

Ms Toni Pirani, Assistant Secretary, Family Pathways Branch

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch

Mr Kym Duggan, Assistant Secretary, Family Law Branch

Ms Sandra Power, Assistant Secretary, Federal Courts Branch

Ms Catherine Fitch, Assistant Secretary, Administrative Law and Civil Procedure Branch

Ms Kathleen Falko, Assistant Secretary, Intercountry Adoption Branch

Output 1.2

Dr James Pople, First Assistant Secretary, Legal Services and Personal Property Securities Division

Mr James Faulkner, Assistant Secretary, Constitutional Policy Unit

Ms Janette Davis, Assistant Secretary, Office of Legal Services Coordination

Ms Janet Power, Special Adviser, Office of Legal Services Coordination

Mr Iain Anderson, First Assistant Secretary, Territories and Native Title Division

Output 1.3

Ms Philippa Lynch, First Assistant Secretary, Classification, Human Rights and Copyright Division

Mr Peter Arnaudo, Assistant Secretary, Human Rights Branch

Ms Helen Daniels, Assistant Secretary, Copyright Law Branch

Ms Kelly Williams, Assistant Secretary, Classification Operations Branch

Ms Amanda Davies, Assistant Secretary, Classification Policy Branch

Output 1.4

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

Mr Geoff Skillen, Acting Assistant Secretary, International Security and Human Rights Branch

Output 1.5

Mr James Graham, First Assistant Secretary, Office of Legislative Drafting and Publishing

Output 1.6

Mr Iain Anderson, First Assistant Secretary, Territories and Native Title Division

Mr Matthew Dines, Acting Assistant Secretary, Future Acts and System Coordination Branch, Native

Title Unit

Output 1.7

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

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

Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch

Output 1.8

Dr James Pople, First Assistant Secretary, Legal Services and Personal Property Securities Division

Mr Richard Glenn, Assistant Secretary, Personal Property Securities Division

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, Strategic Policy Coordination Branch

Dr Susan Cochrane, Acting Assistant Secretary, Criminal Law Branch

Ms Sheridan Evans, Assistant Secretary, Identity Security Branch

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

Mr Anthony Coles, Director, Strategic Policy Coordination Branch

Ms Elsa Sengstock, Director, Criminal Law Branch

Mr Paul Stoddart, Director, Identity Security Branch

Mr Andrew Walter, Principal Legal Officer, National Law Enforcement Policy Branch

Output 2.2

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

Ms Anna Harmer, Assistant Secretary, Mutual Assistance and Extradition Branch

Output 2.3

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

Mr Lionel Markey, Acting Assistant Secretary, Telecommunications and Surveillance Law Branch

Mr Mike Rothery, Assistant Secretary, E-Security Policy and Coordination Branch

Ms Belinda Moss, Assistant Secretary, National Security Policy Branch

Ms Annette Willing, Acting Assistant Secretary, Security Law Branch

Mr Michael Jerks, Assistant Secretary, Critical Infrastructure Protection Branch

Output 2.4

Mr Tony Pearce, Director General, Emergency Management Australia

Mr Peter Koob, Acting Assistant Secretary, Emergency Management Policy and Liaison Branch

Mr Karl Kent, Assistant Secretary, Capability and Operational Coordination Branch

Mr Peter Channells, Assistant Secretary, Community and Sector Development Branch

Output 2.5

Mr Martin Studdert, Executive Director, Protective Security Coordination Centre

Mr Jim Dance, Acting Assistant Secretary, Information Coordination Branch

Ms Leonie Horrocks, Assistant Secretary, Policy and Services Branch

Mr Mike Norris, Assistant Secretary, Counter-Terrorism Branch

Ms Diana Williams, Acting Assistant Secretary, Security Coordination Branch

Output 2.6

Ms Catherine Smith, Acting Executive Director

Ms Frances Brown, Assistant Secretary, Business Development and Governance

Ms Kimberley Rowlands, Finance Manager

Outcome 3 – Assisting regions to manage their own futures**Output 3.1**

Mr Iain Anderson, First Assistant Secretary, Territories and Native Title Division

Mr Andrew Henderson, Assistant Secretary, Territories East Branch

Mr Julian Yates, Assistant Secretary, Territories West Branch

Output 3.2

Mr Tony Pearce, Director General, Emergency Management Australia

Mr Peter Channells, Assistant Secretary, Community and Sector Development Branch

Mr Kevin Rheese, Director, Natural Disaster Mitigation Relief

Administrative Appeals Tribunal

Mr Doug Humphreys, Registrar

Ms Megan Cassidy, Assistant Registrar

Mr Steve Wise, Chief Financial Officer

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner

Mr Peter Bache, Acting Executive Director
Mr Nicholas Sellars, Manager, Policy and Research

Australian Crime Commission

Mr Alastair Milroy, Chief Executive Officer
Ms Jane Bailey, Executive Director, Organisational Services
Mr Kevin Kitson, Executive Director, Strategy Outlook and Policy
Mr Michael Outram, Executive Director, Organisational Services
Mr Peter Brady, Senior Legal Adviser

Australian Customs Service

Mr Michael Carmody, Chief Executive Officer
Ms Marion Grant, Deputy Chief Executive Officer, Border Enforcement
Ms Linda Smith, Deputy Chief Executive Officer, Corporate Operations
Mr Neil Mann, Deputy Chief Executive Officer, Future Strategies
Ms Sue Pitman, Acting Deputy Chief Executive Officer, Passenger and Trade Facilitation
Ms Maree Bridger, National Director, People and Place
Ms Jaclyne Fisher, National Director, Cargo
Ms Jan Dorrington, National Director, Passengers
Rear Admiral Allan Du Toit, Commander, Border Protection Command
Ms Roxanne Kelley, National Director, Enforcement and Investigations
Mr Nigel Perry, Acting National Director, Maritime Operations Support
Mr Jeff Buckpitt, National Director, Intelligence and Targeting
Ms Michelle Kinnane, National Manager, Strategic Development
Mr Steven Groves, Chief Financial Officer
Mr Geoff Johannes, Acting National Director, Trade
Ms Sharon Nyakuengama, Acting National Director, Compliance

Australian Federal Police

Mr Mick Keelty APM, Commissioner
Mr John Lawler APM, Deputy Commissioner National Security
Mr Tony Negus APM, Deputy Commissioner Operations
Mr Jon Brocklehurst, Chief Financial Officer

Australian Government Solicitor

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

Australian Human Rights Commission

Mr Graeme Innes AM, Human Rights Commissioner and Disability Discrimination Commissioner
Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Race Discrimination Commissioner
Ms Elizabeth Broderick, Sex Discrimination Commissioner and Commissioner Responsible for Age Discrimination.
Ms Karen Toohey, Acting Executive Director

Australian Law Reform Commission

Emeritus Professor David Weisbrot AM, President
Ms Sabina Wynn, Executive Director

Australian Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General of Security

Classification Board

Ms Olya Booyar, Acting Director

Classification Review Board

The Hon. Trevor Griffin, Acting Convenor

CrimTrac

Mr Ben McDevitt AM APM, Chief Executive Officer

Ms Nicole McLay, Chief Finance Officer

Family Court of Australia

Mr Richard Foster PSM, Chief Executive Officer

Mr Grahame Harriott, Executive Director Corporate Services

Ms Angela Filippello, Principal Registrar

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive

Mr Philip Kellow, Deputy Registrar

Mr Peter Bowen, Chief Finance Officer

Federal Magistrates Court of Australia

Mr Glenn Smith, Acting Chief Executive Officer

Mr Steve Agnew, Acting Deputy Chief Executive Officer

Ms Anne Hicking, Executive Director Corporate Services

High Court of Australia

Mr Andrew Phelan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Jeff Smart, Manager Corporate Services

National Native Title Tribunal

Ms Stephanie Fryer-Smith, Registrar

Mr Franklin Gaffney, Deputy Registrar

Mr Hardip Bhabra, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Christopher Craigie SC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Ms Stela Walker, Deputy Director, Corporate Management

Office of Parliamentary Counsel

Mr Peter Quiggin PSM, First Parliamentary Counsel

Ms Susan McNeilly, General Manager and Chief Financial Officer

ACTING CHAIR (Senator Marshall)—I declare open this public meeting of the Senate Standing Committee on Legal and Constitutional Affairs. The Senate has referred to the committee the particulars of proposed expenditure for 2008-09 and related documents for the Attorney-General's portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee's proceedings today will begin with the examination of the Attorney-General's Department.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that in giving evidence to the

committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings.

I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its committees, unless the parliament has expressly provided for otherwise. The Senate has also resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. Any claim that it would be contrary to the public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis for a claim.

I welcome Senator the Hon. Penny Wong, representing the Attorney-General and the Minister for Home Affairs. I also welcome Mr Roger Wilkins, Secretary of the Attorney-General's Department. Senator Wong or Mr Wilkins, do you wish to make an opening statement?

Senator Wong—No, thank you chair.

Mr Wilkins—No, thank you Mr Chairman.

CHAIR—I am the chair of the committee. Thank you, Senator Marshall, for starting those proceedings for me. Welcome to estimates. I think it is your first appearance in your new role. On behalf of the Legal and Constitution Committee we welcome you here today.

Mr Wilkins—Thank you, Madam Chair. I look forward to cooperating with the committee into the future, too.

CHAIR—Thank you very much. We will go to general questions for the Attorney-General's Department on outcome 1, An equitable and accessible system of federal civil justice.

Senator TROOD—I have general financial questions that are not necessarily related to outcome 1.

CHAIR—We will deal with those first.

Senator TROOD—Mr Wilkins, I also welcome you to the committee. I hope your tenure here is fruitful and enjoyable, as many secretaries find it, I am sure. I will begin by looking at some general financial issues in relation to the Attorney-General's Department. In particular, how many of your programs were underspent for the financial year 2007-08?

Mr Wilkins—Just bear with us for a moment; we are organising ourselves here so that we can respond to your question.

Ms Bickford—I refer you to the annual report. We have the variances for each output. I refer you, first of all, to page 24 for outcome 1, page 104 for outcome 2 and page 168 for outcome three.

Senator TROOD—Which figure are you referring me to?

Ms Bickford—If you look at page 24, for example, you have outcome 1. That details the budgets, actuals and variances for each program within outcome 1.

Senator TROOD—Have you made requests to roll over the funds that might be left in the department as a result of these decisions?

Ms Bickford—There will be some movements of funds in relation to some of our administered programs. Departmental funds do not effectively operate as a roll-over per se. Under the finance rules, you can apply to budget for a loss for the department, but in administered programs, you can apply for movements of funds, and those will be determined as part of the additional estimates process later in the year.

Senator TROOD—So you have not made any requests about those yet?

Ms Bickford—That is a work in progress at this stage.

Senator TROOD—You will be doing that in time for the February estimates. Is that right?

Ms Bickford—Yes. So any movements of funds will be published in our additional estimates statements.

Senator TROOD—You expect to be making requests.

Ms Bickford—There would be some, yes.

Senator TROOD—Good. I do not want to spend too much time on the detail but I do want to ask you about staff. Ms Bickford, are you able to answer that for me?

Ms Bickford—I may be. It depends. Otherwise we may have to ask the head of corporate.

Senator TROOD—Can you tell me how many permanent staff have been recruited by the department since budget estimates in May?

Ms Bickford—No, I cannot. I will call on Ms Chapman.

Ms Chapman—Is the question about the specific numbers of staff that have been recruited?

Senator TROOD—Yes.

Ms Chapman—I do not have those details with me, but I can certainly get them for you in the next couple of hours if you would like them.

Senator TROOD—I would like them, please, if you could round them up for me and perhaps let me know later in the morning. Could you also let me know the level at which the staff were recruited, please. Could you tell me how many temporary positions you have. You may have some of these available now. If you do, please interrupt. Could you tell me how many temporary positions exist or have been created since budget estimates and how many

employees have been employed on contract since the estimates period. In relation to those contracts, can you give me the length of time—perhaps an average or something of that kind. If there are only a few of them, perhaps you can give me the details of each of them, please.

Ms Chapman—Sure.

Senator TROOD—Can you tell me now—or perhaps you need to take this on notice for later in the morning as well—whether or not you have been required to reduce any staffing numbers as result of the efficiency dividend that the department was required to take earlier in the year.

Ms Chapman—I would like to take that on notice as well because the savings that we were required to make this year are still being worked through in the budget process. One of the things that I can say, although do not have the details of exactly what happened in every single division, is that there were a number of positions that we looked at closely and we are making decisions now about whether to fill them on an ongoing basis or not.

Senator TROOD—So have some positions been removed as a consequence of the efficiency dividend?

Ms Chapman—I cannot say that at this point.

Senator TROOD—So you think there may be but you are uncertain about it at the moment. Is that right?

Ms Chapman—I would like to take it on notice and give you the exact decision when I can.

Senator TROOD—We like precision, Ms Chapman. That is a good idea. Could you also let me know, please, when you are doing that, in which divisions those positions have been removed and the level at which they have been removed.

Ms Chapman—Yes.

Senator TROOD—If there are any further considerations being given to the refiguring of staff, perhaps you could advise me about that as well, in light of the decisions that have been taken and the ones that are in prospect. That would be helpful.

Ms Chapman—Yes.

Senator TROOD—Thank you. I will move on to a somewhat different area—that is to say, ministerial travel. Can somebody give me some information about the travel of the minister since we last met? I think we asked these questions in May.

Ms Chapman—I believe I can, Senator, but perhaps not in the detail you require.

Senator TROOD—If you are in control of the travel—at least, if you have that information, Ms Chapman—perhaps you can also provide me with the destination and the times that the Attorney-General was travelling.

Ms Chapman—I cannot give you that detail. I do not have that in my briefing notes. But I can certainly look for that. What I do have are just broad costs, expenditure for the Attorney's office for the last financial year—so, not since Senate estimates.

Senator TROOD—So you have it up to—

Ms Chapman—To the end of June. But it is not broken down by month.

Senator TROOD—So you do not have any figures since June?

Ms Chapman—Not in these briefs, no.

Senator TROOD—But that information is available?

Ms Chapman—Yes, it should be available.

Senator TROOD—Perhaps you could provide me with the material up to June—if you have that available—and perhaps you would take on notice the expenditure since June.

Ms Chapman—I am looking at my notes, and the expenditure for the Attorney-General and the office, as at the end of the financial year, was \$425,423. The main components of that expenditure were car hire, press clips, transcripts, and telephone and communication charges. I do not have anything specifically highlighting travel.

Senator TROOD—I see, but presumably some component of that related to travel?

Ms Chapman—I would say so.

Senator TROOD—Can you get that information for me?

Ms Chapman—I should be able to.

Senator TROOD—And the destinations, please. Perhaps you would break down that whole component of the \$425,000. In relation to travel, in particular, can you provide me with information as to the ministerial staff that might have accompanied the Attorney—any family? In relation to staff or family, can you provide me with the costs that relate specifically to those individuals? Can you also provide me with information about any departmental officers that may have accompanied the Attorney, and the travel and accommodation—and any other expenses—that might relate to it?

Senator Wong—Senator Trood, if I could just clarify—I assume that, when you are asking about family members, you are not including family members who travel on the entitlement such as that which your family is entitled to as a member of parliament? This is only ministerial travel?

Senator TROOD—Yes. I would also like such information as might be available in relation to other portfolio ministers.

Senator Wong—You would have to ask those in the relevant portfolio estimates.

Senator BRANDIS—This is the relevant estimates.

Senator TROOD—I think this is the relevant estimates for Mr Debus, isn't it?

Senator Wong—I am sorry—within this portfolio, yes.

Senator TROOD—As able as the officers are, Senator Wong, I do not expect them to provide me with information about all the ministers—just in relation to the ministers from this portfolio. So in addition to all those questions I have asked in relation to the Attorney, perhaps you would provide some more information in relation to Mr Debus as well.

Senator Wong—We will do.

Senator TROOD—Since we are on costs and ministerial movement, do you have any information, Ms Chapman, in relation to the cost of ministerial travel in regard to the community cabinets around the country?

Ms Chapman—I do not have a brief on that, no.

Senator TROOD—Does anybody have that available?

Senator Wong—From memory, community cabinets are handled through the Department of the Prime Minister and Cabinet—the organisation of them, that is.

Senator TROOD—But what about the costs of them?

Senator Wong—I do not think anyone at the table can assist you with that. We can take it on notice and find out who is responsible for that, but my recollection is that the Department of the Prime Minister and Cabinet handles the community cabinets.

Senator TROOD—That is not just in relation to organisation; it is in relation to cost as well, is it?

Senator Wong—Why don't we take that on notice and, if we are able to assist you, we will.

Senator TROOD—If, indeed, it is the Prime Minister's department that assumes the responsibility in both the organisation and the cost of it, then that is fine. If, in fact, there are departmental expenses in relation to community cabinets then I would be grateful if you would provide me with information pm the occasions and the cost to the department of each of the portfolio ministers with regard to those activities.

I turn to a somewhat different area in relation to departmental liaison officers—I do not know whether this is your department, Ms Chapman; it could be—I just want to know how many DLOs are allocated to each of the two ministers in the portfolio.

Ms Chapman—If you could just bear with me, I think I have that information. I do not have that information, but I could certainly take that on notice. It is easily gettable.

Senator TROOD—Can you tell me whether or not all the DLO positions have been filled? If you have not got the first of the information, you may not have the other.

Ms Chapman—I will take that on notice as well.

Senator TROOD—Perhaps you also should take on notice, Ms Chapman—you are going to have a lot of work to do this morning aren't you?

Ms Chapman—I am. Senator Trood, I have just been advised that there are two DLOs in the Attorney-General's office and one in the minister's office, and all of the positions are filled.

Senator TROOD—Have they all completed their security clearance?

Ms Chapman—We believe so, but I can certainly check that.

Senator TROOD—Would you do that?

Senator Wong—Senator Trood, just for your information, I understand that is a similar level of entitlement to that which existed under your government.

Ms Chapman—Senator Trood, just a matter of clarification, the two and one DLOs whom I have named are actually our departmental liaison officers. I cannot speak for the other agencies within the portfolio.

Senator TROOD—I do not expect you to speak for other agencies. I just would like responses from this portfolio area. If I could move on to yet another area, that of freedom of information requests; is that you as well, Ms Chapman? What a talent you are!

Ms Chapman—Yes, indeed, Senator.

Senator TROOD—How many FOI requests has the department received? You are probably going to say, ‘Well, I can give you the June 2008 number,’ are you?

Ms Chapman—That is exactly what I was going to say. Yes, it is in the annual report.

Senator TROOD—Do you have any statistics from June to October?

Ms Chapman—Not with me, but I certainly can get them.

Senator TROOD—Where is the figure in the annual report?

Ms Chapman—No. 321 does not have the numbers in, but they are in here and I am just trying to find the page number for you. We will keep looking and get back to you on that.

Senator TROOD—Can you also tell me how many of those requests were granted or denied? I want the number of requests that the department has received, how many were granted, how many were denied, how many conclusive certificates have been issued and the information for the period since the end of June up until now.

Ms Chapman—Yes, I certainly will get that for you.

Senator TROOD—Madam Chair, I am happy to continue, but if other people have questions—

CHAIR—Are you going to outcome 1—

Senator TROOD—I was just going to do the general—

CHAIR—Keep going with general questions—I do not get an indication that other people have general questions—then when you have finished we will go to outcome 1.

CHAIR—Do you have general questions, Senator Brandis?

Senator BRANDIS—I have all sorts of questions, Madam Chair—I suppose, whether you classify them as general or under outcome 1, they could be classified as either. But I am happy for Senator Trood to continue with his line of question. That suits me.

CHAIR—We will continue with Senator Trood, then we will go to you.

Ms Chapman—Senator Trood, if I could go back to the expenditure on community cabinets, we do have that information here. The Attorney-General has attended six of the seven; \$10,500 has been spent to date for flights, accommodation and other costs for one senior official to accompany the Attorney-General.

Senator TROOD—So the \$10,500 is for—

Ms Chapman—It is for the senior staff member from the department.

Senator TROOD—Of course, Mr Debus, presumably did not go to those? Were they ministerial or cabinet meetings?

Ms Chapman—Cabinet.

Senator TROOD—Is that since June?

Ms Chapman—That is in total. I do not know how many have been held since June.

Senator TROOD—You seem to have been on the road quite a lot.

Ms Chapman—Since the change of government.

Senator TROOD—Six of the seven have been during the period of the Rudd government?

Ms Chapman—Yes.

Senator Wong—Senator, your government did not have community cabinets.

Senator TROOD—I understand that, Senator Wong, but I am trying to clarify whether this relates to the period to 30 June, or whether it relates to the period from the commencement of the government up until today.

Ms Chapman—Yes.

Senator Wong—There have not been six community cabinets since June, Senator.

Senator TROOD—I am pleased to hear that. I want to ask questions about government advertising and any communications programs that the department might have undertaken or might be planning to undertake.

Ms Chapman—I will introduce my colleague.

Senator TROOD—Mr Finlayson, did you hear my question about departmental communications programs and expenditure on them?

Mr Finlayson—Are you referring to any specific—

Senator TROOD—I am referring to any programs that the department might have which involve the expenditure of public moneys in relation to communications activities in the public domain. Try to answer the question; if you are off course, Mr Finlayson, I will draw you back.

Mr Finlayson—Certainly. Are you interested in the financial year—

Senator TROOD—I am interested in everything up until 20 October, but if you have got it broken down into the financial year and periods subsequently that is fine.

Mr Finlayson—Senator, the National Security Public Information Campaign is an ongoing campaign. There has been expenditure on that over a period of years. There is currently underway preparatory work for the next phase of that campaign. The last burst of that advertising occurred in June of this calendar year. We have the figures—

Senator TROOD—Is the cost of that in the annual report?

Mr Finlayson—Yes, Senator. There is also some activity that involves information about family relationship services. That is not—

Senator TROOD—When you say ‘activity’, what do you mean by that?

Mr Finlayson—There are various definitions for what a campaign might be. The family relationship campaign, if you want to call it that, does not involve television. It is not as high profile as, for example, the national security campaign. It is more about information within regions about specific services.

Senator TROOD—But it is preparation of publicity or informational material from hard copies—

Mr Finlayson—In this case it is information to communities about relevant services.

Senator TROOD—I see. What about the costs of that?

Mr Finlayson—Again, those figures are available in the annual report.

Senator TROOD—Is the family relationships campaign continuing?

Mr Finlayson—Yes, in various forms.

Senator TROOD—I need the information for that as well. I need work you are doing on that up until today's date.

Mr Finlayson—It may be best if we take that on notice, Senator.

Senator TROOD—Fine. The national security campaign is a continuing campaign as well—is that correct?

Mr Finlayson—It has been.

Senator TROOD—That is the most expensive of the campaigns that your department is running?

Mr Finlayson—That would be the case currently, yes. That campaign has been running in various forms since 2002.

Senator TROOD—Has the form of it changed since the Rudd government came to office?

Mr Finlayson—No. The advertisements that are currently there were developed under the previous government.

Senator TROOD—I see. So you have continued with that campaign as it was prepared?

Mr Finlayson—Correct.

Senator TROOD—Are you proposing to make any changes to the nature of that campaign in the foreseeable future?

Mr Finlayson—That is under consideration. With any campaign there is a need to refresh advertising approaches to continue to have the impact that you would desire, and consideration is being given to whether we need to look at refreshing.

Senator TROOD—Does 'refreshing' mean changing the structure of the campaign, the outlets where you advertise?

Mr Finlayson—No, sorry. By 'refreshing' I meant looking at the actual advertisements and possibly developing new creative to portray similar messages.

Senator TROOD—I see. Nevertheless, you are expecting the campaign to continue?

Mr Finlayson—There is currently funding for this financial year.

Senator TROOD—How much is the funding for the financial year?

Mr Finlayson—There was funding of \$20 million all-up for the previous financial year and this financial year, and there is approximately \$10 million in this current financial year. That includes departmental costs, staffing and also the cost of placement of the advertisements. Where necessary, the development of new advertisements will come out of that figure as well.

Senator TROOD—I see. Besides the national security campaign and the family relationships campaign, are there any other campaigns that the department is responsible for?

Mr Finlayson—There is no current campaign, or nothing else that I would put in the campaign category is currently running.

Senator TROOD—Are you developing any other campaigns? Apart from what you have told me in relation to national security, are you doing any work in relation to any other campaigns?

Mr Finlayson—There are some departmental initiatives that may, in future, require information or communications to the community of one sort or another, but the planning for those is not developed to a stage that, I would say, it is something that we could quantify.

Senator TROOD—That covers pretty well everything, Mr Finlayson. Is there anything specifically that you had in mind?

Mr Finlayson—It is likely that personal properties securities is an area about which there may need to be some information given to the community and to specific stakeholders, but again there has not been work done to the stage that I would say that there is anything concrete that we can give you.

Senator TROOD—So you are working on the possibility that there might be a campaign in relation to that area.

Mr Finlayson—We are examining the possibility and what the needs might be, but we are a long way from that being necessary. There are also the anti-money-laundering and counterterrorism funding initiatives. There has been some activity on that. Some information products have been produced and circulated to specific stakeholders and sections of the community. That has been a relatively low-cost initiative to date.

Senator TROOD—And that is out of the overall budget that you administer?

Mr Finlayson—There is a specific allocation of funding for that particular initiative and communication is part of that.

Senator TROOD—What sort of material have you developed so far?

Mr Finlayson—There have been brochures and some information cards. There has also been the availability of a hotline for people who have queries about those initiatives. It has been a relatively low-key communications initiative.

Senator TROOD—I am struggling with the idea that we have a communications program that is low key. It seems to me that the nature of a communications campaign is that perhaps it ought not to be low key, that it is an opportunity to provide information to the community or to whomever the target group might be.

Mr Finlayson—Perhaps if I can explain. With the introduction of these initiatives, we wanted to ensure that there was enough information there for those who needed further information to be able to obtain it, but we were not going out there in the sense of mainstream advertising about it.

Senator TROOD—I see.

Senator BRANDIS—It does not sound to me as if this is undertaken with any great sense of urgency. Is it regarded by the government as an urgent priority?

Mr Finlayson—I believe so.

Senator BRANDIS—Is it handled by the department as an urgent matter?

Mr Finlayson—The information that has been issued to date was begun under the previous government. There was a period where we had to reassess our approach during the caretaker period and so forth.

Senator BRANDIS—Were there policy changes after the change of government in relation to the emphases in this information and the manner in which it was communicated to various stakeholder groups of the public.

Mr Finlayson—Re policy changes: I would need to defer to my colleagues.

Senator BRANDIS—Mr Jordana?

Mr Jordana—The questions of the policy changes could best be addressed I think by the officers who are responsible for that. They are not here at the moment; they were expecting to be questioned under output 2.

Senator BRANDIS—I will come back to that.

Mr Jordana—If you could come back to that, it would be appreciated.

Senator BRANDIS—Perhaps if those officers are listening to the broadcast, which I am sure they are, they might put themselves in a position to respond to this question rather than take it on notice.

Senator TROOD—Mr Jordana, as you are at the table, do you have anything further to add on the matter of the national security campaign that Mr Finlayson was good enough to answer my questions about?

Mr Jordana—As far as I am aware, that was a completely accurate depiction of our answers to your questions.

Senator TROOD—I would be rather distressed if it weren't, Mr Jordana. The question was whether there or not there was anything to add to his information. He was pointing out that the security campaign was continuing, that there was some consideration being given, as I recall—please correct me, Mr Finlayson, if I am misrepresenting your evidence—that some consideration was being given to perhaps refreshing, I think the term was, and whether or not your section of the department has been involved in that process at all.

Mr Jordana—We do not tend to become heavily involved in that. Clearly, the campaign itself is directed towards a number of objectives. One of those objectives, for example, is to remind people of the threats that are in the community and of their responsibilities as

individuals to keep an eye out and to perhaps report activity that they see. One way of reporting suspicious activity is through the department's hotline, which resides in the PSCC. Clearly, there are other objectives which are enunciated through what the Federal Police are seeking, what our intelligence communities are seeking, and in developing a campaign the views of those types of agencies are also sought. So the aim is to identify exactly what kind of information you are requiring and how you should therefore design your advertisements to meet those particular objectives. But that tends to be a practice of art of our media people, rather than something which is something policy people feel quite comfortable with.

Senator TROOD—I understand, Mr Jordana, your expertise is perhaps not in the arts of communication, at least to the same extent as Mr Finlayson's might be.

Mr Jordana—That is correct.

Senator BRANDIS—Mr Jordana, since we are on this topic, what is the national threat level at the moment?

Mr Jordana—The national alert level is medium.

Senator BRANDIS—When was the last time the national alert level was varied?

Mr Jordana—I would have to take that on notice.

Senator BRANDIS—You do not know?

Mr Jordana—If my memory serves me right, it may not have been varied, but I think I will have to take that on notice.

Senator BRANDIS—It must have been varied at some stage.

Mr Jordana—The advice is that it has never been varied.

Senator BRANDIS—From the time it was established, it has never been varied?

Mr Jordana—That is correct.

Senator BRANDIS—It was established when? It was during the previous government, of course.

Mr Jordana—It was developed after and obviously in the wake of the September 11 attacks. I do not have a specific date that I can point to.

Senator BRANDIS—So there has been no movement in the years since, up or down?

Mr Jordana—That is correct.

Senator BRANDIS—How frequently is the alert level reassessed?

Mr Studdert—The alert level is reassessed on a monthly basis. It is done under the auspices of a committee called the Australian government counter-terrorism committee, which I chair. That committee comes up with a recommendation for any change to the national counter-terrorism alert level. That recommendation is sent to the Attorney-General and he notes it.

Senator BRANDIS—Without disclosing anything that you should not disclose in a public forum, who are the contributing agencies to that assessment?

Mr Studdert—All of the agencies of relevance to the national security environment—

Senator BRANDIS—Who are they?

Mr Studdert—The Attorney-General's Department, Department of Foreign Affairs and Trade, the Australian Secret Intelligence Organisation, Department of Defence, Department of Infrastructure, Department of Families, Housing, Community Services and Indigenous Affairs, Prime Minister and Cabinet, Department of Immigration, Customs agency, Australian Federal Police, Australian Federal Police ACT and Parliament House. That is the vast majority of them.

Senator BRANDIS—Does ASIS not contribute?

Mr Studdert—The Department of Foreign Affairs and Trade is a member of the committee as well.

Senator BRANDIS—That committee meets monthly and reassesses the threat level with fresh eyes on the basis of material placed before it?

Mr Studdert—That is correct.

Senator BRANDIS—So it is not as if there is a presumption of continuity at the given level—

Mr Studdert—Absolutely not.

Senator BRANDIS—there is a fresh reassessment made each month.

Mr Studdert—That is correct.

CHAIR—Senator Trood, do you have further general questions?

Senator TROOD—I have a question that has arisen for the counter-terrorism group. There was a review being undertaken of the counter-terrorism strategy. Is that not correct?

Mr Studdert—The Department of Prime Minister and Cabinet have engaged Mr Smith to conduct a national security border protection review.

Senator TROOD—Is that part of the whole counter-terrorism strategy review? Does that inquiry or that review encompass counter-terrorism review?

Mr Jordana—That is a review that was meant to encompass national security. It was a review into both national security issues and border security issues as well.

Senator TROOD—This is the homeland security one as well, Mr Jordana? Is that right?

Mr Jordana—That is correct.

Senator TROOD—So the homeland security, border security and counter-terrorism security review were all part of the one?

Mr Jordana—Arguably, you could say that counter-terrorism is but one component of what could be described as homeland and border security—it is one thing within that framework.

Senator TROOD—So there was no intention to be a separate and distinctive counter-terrorism review as part of that broader review that Mr Smith was undertaking.

Mr Jordana—That is right.

Senator TROOD—My understanding is that has been completed. Is that correct?

Mr Jordana—The report has been delivered to the government.

Senator TROOD—When is the government intending to release that report?

Mr Jordana—That is in the hands of the government. The responsible coordinating department for that is the Department of Prime Minister and Cabinet.

Senator TROOD—Has any action been taken in relation to the report yet?

Senator Wong—I think the answer was that the relevant agency or portfolio to address those questions to is the Department of Prime Minister and Cabinet.

Senator TROOD—I can certainly do that, Senator Wong, but Mr Jordana would seem to be in a position to be able to answer my questions: whether the report has been completed, whether it has been delivered to the government and whether any steps been taken in relation to this portfolio with regard to the implementation of any of the recommendations or findings of the report.

Mr Jordana—Components of the report have been considered by government and the reporting of those into the wider domain is still in the hands of the government.

Senator TROOD—Are you saying to me that so far as the Attorney-General's Department is concerned, there has not been any response or activity in response to the report?

Mr Wilkins—We are waiting for the government to make a decision on the report and then we will take action.

Senator TROOD—I see. So, Mr Wilkins, you are waiting for the Prime Minister's department to deliberate on the report and then decide which of its recommendations, if indeed it has recommendations, will be acted upon. Is that the story?

Mr Wilkins—No, no. I am waiting for cabinet.

Senator TROOD—So the National Security Committee of cabinet has yet to consider the matter. Is that right?

Mr Wilkins—It is yet to make a decision on the recommendations of the report and to announce them, yes.

Senator TROOD—Do you have any indication of when that might be?

Mr Wilkins—The Prime Minister has indicated that he is going to be making a statement later in the year.

Senator BRANDIS—When did he say that, Mr Wilkins?

Mr Wilkins—I do not have the exact date, but I will try and find out for you.

Senator BRANDIS—On what date was the report delivered to government?

Mr Jordana—I do not have that detail with me.

Mr Studdert—It was 30 June.

Senator BRANDIS—Now it is 20 October and we are still waiting for the government to make some decisions in relation to the national counterterrorism strategy. Is that what you are telling us?

Mr Studdert—I have no comment to make on that. You asked me a date. I gave you a date.

Senator BRANDIS—Yes, thank you. I am grateful for your candour.

Mr Jordana—Clearly the mandate of the Smith report was to look at a whole range of facets. I think it would be fair to say that there already is a counterterrorism strategy in place, so he was looking to see whether or not changes were required to various parts of it, whether they be structural changes or certain policy changes, but of course there—

Senator BRANDIS—I do not think we should ask you, Mr Jordana—and I am sure that none of the coalition senators, at least, will ask you—what the recommendations are. But may we take it that, because recommendations have been made, it is plainly the view of that committee that improvements to the national security arrangements, including the counterterrorism strategy, are warranted?

Senator MARSHALL—I do not think you should speak for other people, Senator. You should speak for yourself.

Senator BRANDIS—I am speaking for myself. May I take it that because, as you have told us, recommendations have been made by that committee in relation to national security arrangements, including the national counterterrorism strategy, it is the view of the Smith committee that such changes are warranted?

Senator Wong—Through you, Madam Chair, I am not sure it is appropriate to ask Mr Jordana or in fact any other officer at the table to give an opinion about how to characterise the Smith review's recommendations. Senator Brandis has been advised as to the status of that report, which is currently before government. I am not sure we can take the matter any further by asking Mr Jordana to characterise recommendations. It is simply asking a question Senator Brandis said he was not going to ask in a different way.

Senator BRANDIS—I did not ask what the particular recommendations were. I do not think that would be appropriate. Perhaps, Minister, the point of my question is to tease out the proposition—and may I invite you to comment—that we have been told three facts. We have been told that recommendations by the national security and border protection review—which includes recommendations in relation to the national counterterrorism strategy—were given to government on 30 June. That is the first fact that is uncontroversial. The second fact we have been told is that the matter has not yet been considered by cabinet. It is now 20 October. Thirdly, we have been told by Mr Wilkins that he understands that the Prime Minister is going to make some announcements on an unspecified date later in the year. Those three matters have emerged from the answer. Perhaps I should direct this question to you, Minister: why has there been this dithering and delay in relation to consideration of a matter as acute as national security and counterterrorism?

Senator Wong—Just to make a point, Senator Brandis, I think your second point was that it has not been considered. From memory, Mr Wilkins's evidence was that there had not been a decision made.

Senator BRANDIS—So it has been considered but no decision has been made. Is that what you are saying, Senator Wong?

Senator Wong—No. I am not going to, because it is not appropriate for ministers to be talking to you about what may or may not have been on the cabinet agenda.

Senator BRANDIS—You are talking to the parliament, Senator Wong, I remind you. I am merely asking a question as a member of the parliament.

Senator Wong—You understand, Senator Brandis, what is appropriate and not appropriate for me to respond to—

Senator BRANDIS—I do. That is why have I have not asked about the particular recommendations.

CHAIR—Senator Brandis, it would be useful if you could wait till the minister has finished speaking.

Senator Wong—Thank you, Madam Chair. I am simply making the point as to how I understood Mr Wilkins's answer to have been framed.

Senator BRANDIS—I accept your correction, Senator Wong. Do I understand you, then, to be telling me that the report has been considered but no decisions have been made? Is that the position?

Senator Wong—I understand from the evidence that has been given that the Australian government is currently considering the recommendations in the review, and I have nothing further to add to what has been put by officers.

Senator BRANDIS—I think you said in our last exchange that no decision had been made. You are a member of the cabinet, Senator Wong. You are in a better position than anyone here to tell us whether or not a decision has been made. I am not asking you the details of the decision, of course. Has a decision been made in relation to the recommendations?

Senator Wong—I think Mr Wilkins has already indicated that.

Senator BRANDIS—That no decision has been made?

Senator Wong—That is what I understood Mr Wilkins's answer to be.

Senator BRANDIS—All right, thank you.

Senator TROOD—I understood Mr Wilkins to say that the cabinet, or the National Security Committee of Cabinet, had considered the matter but that no decisions had been taken. Was that your evidence, Mr Wilkins?

Mr Wilkins—No, I said that the cabinet had considered the matter but had not come to some final decisions on some parts of it, that is all.

Senator TROOD—So some decisions have been made in relation to some parts of the report?

Mr Wilkins—I do not think that I am able—at least I was not in the state jurisdictions—to canvass the deliberations of cabinet. Is that the same with this committee?

Senator BRANDIS—It is.

Senator TROOD—It is, and I did not think I was asking you, Mr Wilkins, to do that. I was trying to clarify the position that exists in relation—

CHAIR—I think it is a very fine line, though, Senator Trood.

Senator TROOD—It is a fine line, but I think—

Senator BRANDIS—You can rely on our skill to keep on the right side of it, Senator Crossin.

CHAIR—I am not holding my breath hoping that will happen!

Senator TROOD—You should be more optimistic, Madam Chair. But I think we were close to an answer, Mr Wilkins, which was, as I understood it, that the National Security Committee of Cabinet had considered the matter, that some matters had been resolved and that other matters remained to be settled in relation to the recommendations. That is not canvassing the detail or the recommendations; it is merely you providing evidence to the committee as to the state of policy development.

Mr Wilkins—I do not have any further points to make on that. I have said what I think is the position.

Senator BRANDIS—Can I ask a clarifying question just to make sure I understand this properly? First of all, some of these questions have been about cabinet and some of them have been about the National Security Committee of Cabinet. Has the report been to the full cabinet, or merely to the National Security Committee of Cabinet, or to both?

Mr Wilkins—I do not think it is appropriate to disclose that information. I think that is actually going into some of the areas canvassing the cabinet deliberations, and I do not think it is appropriate.

Senator BRANDIS—With respect, Mr Wilkins, it has always been the custom of this committee that procedural steps in policy making and deliberation have been allowed, but the substance and detail of deliberation has not been allowed. What I am asking you is whether a particular procedural step has occurred. I am not asking you about the substance of it. I am asking you whether this report—which you have volunteered—has been before the National Security Committee of Cabinet, or the full cabinet. I think there was some confusion—perhaps arising on this side of the table—as to which of the two it is, or whether it is both. You can answer that.

Mr Wilkins—I think I have given sufficient answer to the question. I have indicated there being cabinet processes around this document and that is as far, I think, as I am prepared to go.

Senator BRANDIS—Mr Wilkins, you did say that it has been to cabinet, and some questions were put to you on the premise that it went to the National Security Committee of Cabinet, so I am really offering you the opportunity to explain any confusion in the questions.

But if you do not have anything to add, we will take it that your answer is that the matter has been to cabinet. All right?

Senator Wong, can you do any better than Mr Wilkins—and this is not, of course, a criticism of Mr Wilkins—who told us that he understood the Prime Minister was going to make a statement later in the year? Are you able to give us any more particular information as to when, later in the year, the Prime Minister is going to make a statement in relation to these matters?

Senator Wong—I do not have that information—

Senator BRANDIS—Can you take that on notice, Senator Wong.

Senator Wong—If I could finish, I was about to say that I do not have that information but that I will make inquiries. If I can assist you, we will respond.

Senator BRANDIS—Thank you.

CHAIR—Senator Trood, do you have any further questions?

Senator TROOD—We got into this area as I was questioning Mr Finlayson about communications, and I just want to clarify. Mr Finlayson, you gave me information about four programs. Just to finish this off, are there any others that you want to advise the committee about?

Mr Finlayson—There are no other campaigns, as I would call them, currently underway.

Senator TROOD—Thank you, Mr Finlayson.

Senator Wong—Madam Chair, I think Ms Chapman has some information that she was asked for earlier.

Ms Chapman—I will inform Senator Trood of a couple of things that we have been able to find out since we have been here. You asked a question about the DLOs having gone through the security clearance process. The answer is yes, they have, and they have all got top-secret clearance. And in terms of the number of FOI requests, we had 83 requests in 2007-08 and we have had 33 requests in this financial year since 1 July. We are still working on getting the information that you requested in terms of what action has been taken on them.

Senator TROOD—Thank you, Ms Chapman.

CHAIR—These are general questions now and not under 1.1.

Senator BARNETT—Mr Wilkins, welcome to the job. We have not met personally before; congratulations on your appointment.

Mr Wilkins—Thank you, Senator.

Senator BARNETT—There has been some discussion about one or two of the reviews. I will ask a general question about how many reviews are currently being undertaken by your department. Can you identify them for the committee? When will they be concluded?

Mr Wilkins—I think I will have to take that on notice, Senator. Can you just explain to me what you mean by a review?

Senator BARNETT—I am using it in the general sense. It is a review in the normal understanding of the word—

Mr Wilkins—You mean an external review?

Senator BARNETT—A government review that has been requested either by the minister, by the Prime Minister or indeed by a department secretary or someone senior within the department. I am asking you to identify the review to advise the committee as to when the review will report—that is, identify the review, the topic of the review, the date of report for the review and any other relevant particulars. And, if possible, if the review has reported, when will the government respond to the review?

Mr Wilkins—So these are reviews which have been initiated by the department or the minister?

Senator BARNETT—Yes.

Mr Wilkins—And they are external reviews?

Senator BARNETT—No. They could be internal or external.

Mr Wilkins—We will do our best, Senator.

Senator BARNETT—Mr Finlayson appears to have departed. This may be relevant for him. I will ask the question as he is walking forward. In terms of communications, could Mr Finlayson or the department advise the cost of media monitoring and the entity used to perform media monitoring, firstly by the department and secondly by the minister's office?

Mr Finlayson—Yes, Senator. We use Media Monitors. That company was appointed after a public tender process.

Senator BARNETT—When were they appointed?

Mr Finlayson—They were appointed in August last year. The cost of the service they provide varies, depending on the volume of clips or information that we seek from them at any particular time. In the last financial year, as an indication, the department spent approximately \$22,000 per month on average.

Senator BARNETT—And what about in this financial year? What is the average per month?

Mr Finlayson—It would be similar. I do not have the figure with me, Senator.

Senator BARNETT—Can you take that on notice?

Mr Finlayson—I can take that on notice, yes.

Senator BARNETT—Does that include the minister's office? Can you give us a breakdown of the media monitoring for the minister's office and for the junior minister as well.

Mr Finlayson—We could take that on notice. I do not have that detail with me.

Senator BARNETT—If you could. Mr Finlayson, earlier you referred to the anti-money laundering campaign. Is that work you are undertaking in association with AUSTRAC?

Mr Finlayson—Yes, that is correct.

Senator BARNETT—Has the department responded to the AUSTRAC annual report, which provides a jump of nearly 20 per cent in the past year for suspected illegal transactions?

Mr Jordana—I think that again goes to issues to do with policy, and those questions are probably best handled by our representatives from the criminal justice division. We could take that under the appropriate output section, if that is suitable to you.

Senator BARNETT—Is that output 2.1?

Mr Jordana—I think it is, yes.

Senator BARNETT—I am happy to hold that over until then. In terms of the human rights campaign, where would you like me to ask that question? It is \$2.8 million government program from 2007-08.

Mr Govey—I think that would also be better dealt with under the particular output, which is output 1.3.

Senator BARNETT—Okay. We will hold onto that. I have a couple of other general questions in terms of board appointments. Can you advise the committee, or take on notice, any board appointments made since the last estimates hearing? Can you advise that now or do you want to take that on notice?

Mr Govey—Are you referring to any statutory appointments?

Senator BARNETT—Yes.

Mr Govey—I think we would need to take that on notice.

Senator BARNETT—If you could, and advise the identity and background of those who have been appointed, the date of the appointment and any other relevant particulars.

Senator Wong—When you say ‘board members’, does that include tribunals, statutory appointments—

Senator BARNETT—Yes.

Senator Wong—judges?

Senator BARNETT—I will be coming to judges in terms of questions and appointment processes.

Senator Wong—What do you mean by ‘board’? I think it is good if officers can be clear about what the committee is seeking.

Senator BARNETT—I am looking at boards, committees, reviews, statutory bodies that have been established or ongoing. I think it is a broad based question and I hope for a broad based response.

We will move on to the department’s hospitality spend for the year to date. Have you got a figure on that?

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

Senator BARNETT—When you do take it on notice, can you advise the committee of the date, the location, the purpose and the total cost of the relevant event?

Mr Jordana—This for the department?

Senator BARNETT—Yes. I am looking for the funds that you expend on hospitality.

Mr Wilkins—Would some sort of aggregate number be sufficient? It would be a fairly painstaking task to look at petty cash disposals.

Senator BARNETT—The hospitality spend for special events that you have from time to time.

Mr Wilkins—More significant expenditure and an aggregate of some sort?

Senator BARNETT—That would be fine and, if you could identify the special events that they relate to, that would be appreciated. Secondly, with respect to the ministers, junior ministers and parliamentary secretaries, if you could do the same—

CHAIR—Senator Barnett, could I interrupt you there. Do you need a bit more clarification about what a special event might be?

Mr Wilkins—I think we would like a bit of clarification. This is going to be a fairly onerous task. It is going to tie up quite a few people for quite a long time, so I would like to get some clarity to try to determine exactly the task that you are after.

Senator TROOD—Mr Wilkins, it is a fairly standard question for Senate estimates to try and determine the departmental expenditure on hospitality.

Mr Wilkins—I understand that.

Senator TROOD—As you rightly point out, we are not really interested in whether or not someone has bought a cake for someone's birthday or anything like that, we are interested in particular events that might have been hosted by the department or some division of it and the expenditure perhaps in relation to some of the—

Senator FEENEY—With the greatest of respect, that is as clear as mud. You have asked for every hospitality event, its date, its location, its purpose and its cost, and now you are saying it is a generic question. It cannot be both.

Senator TROOD—It is a standard question in relation to significant expenditures of departmental moneys on hospitality. I think your officers will be familiar with the kinds of questions that we are asking here, Mr Wilkins.

Mr Wilkins—It is a new question I am advised, Senator, so it would be about getting some clarity around it. But we will make some attempt to interpret the question and get some information back to you, and you might then let us know if that is not what you were after or if it is inadequate. But we will attempt it.

Senator BARNETT—This will assist you, I think, in determining the first questions. I will ask this second question about if you could advise the total hospitality spend for you ministers, your junior minister and your parliamentary secretary, if relevant. This in terms of the total hospitality expenditure—again, the location, purpose and cost of the event.

Mr Wilkins—Hospitality—how do you interpret that?

Senator BARNETT—In the normal course of—

Mr Wilkins—So basically paying for someone else, not themselves, for example?

Senator BARNETT—No, it is the definition of hospitality. I could look up the Oxford English Dictionary or the Macquarie Dictionary and each would have a definition. I would be happy if you were to use either the Oxford English Dictionary or the Macquarie Dictionary interpretation.

Mr Wilkins—All right.

Senator BARNETT—Let us move to the ministerial travel question.

Senator Wong—That has been asked. That part of your brief I think has been dealt with, Senator.

Senator TROOD—We are waiting for some responses, I think, to those questions as to the grants.

Senator BARNETT—Another general question relates to consultancies this financial year, so if you could advise the committee of what consultancies have been commenced and identify the purpose of each consultancy, the timing of it—when the consultancy will start and when it will conclude—and the cost of the consultancy.

Mr Wilkins—This is since June, is that right?

Senator BARNETT—For this financial year.

Ms Bickford—Yes, we can provide that information.

Senator BARNETT—In terms of grants, I understand the department has previously published a list of discretionary grants that it has within its portfolio. We would like to have identified the list of discretionary grants, the purpose of the grants, the cost of the grants and, again, the timing of the grants and any other relevant particulars.

Ms Bickford—I will take that on notice.

Senator TROOD—Ms Bickford, did I understand you to say that you had the information about consultancies?

Ms Bickford—Not with me.

Senator TROOD—You have it in aggregate. So in the affairs of the department it is available, is that what you are saying?

Ms Bickford—It is.

Senator TROOD—But you do not have it available at the moment?

Ms Bickford—That is right.

Senator TROOD—Do you have it available for the year to date?

Ms Bickford—Yes.

Senator BARNETT—I understand Senator Trood asked earlier about community cabinet meetings. In terms of the minister's appearance at those, can you identify which ones he has attended—and where—to date?

Mr Wilkins—He has been to six out of the seven. Which one did he not go to?

Mr Govey—I think it was the one in the Northern Territory that the Attorney-General was unable to make.

Senator BARNETT—He has done six out of seven. Do you know how many he is expected to attend in this financial year? Does Senator Wong know? You are in cabinet, Senator Wong.

Senator Wong—Yes, I am in the cabinet. That is right.

Senator BARNETT—How many are we expecting this financial year?

Senator Wong—I think those are questions for the Prime Minister and Cabinet's portfolio because this portfolio does not set cabinet meetings—obviously that is the Prime Minister's—and I am not sure to what extent those have been announced.

Senator BARNETT—You are not working to an agenda? You have had seven to date, I understand over a 10-month period.

Senator Wong—Yes, that is right, and I think the Prime Minister's indication was for a certain number a year, from memory. What I am saying is that you will need to address questions about community cabinet arrangements and forward programming to Prime Minister and Cabinet.

Senator BARNETT—All right. Is there a cost to the department?

Senator Wong—That has already been covered by Senator Trood.

Senator BARNETT—And you are taking that on notice?

Mr Wilkins—Yes. Well, in fact, we answered that.

Senator Wong—I think the questions have been answered in terms of the costs of the Attorney-General's travel.

Senator BARNETT—And the staffing?

Senator Wong—Yes.

Senator BARNETT—Okay, thank you. We just want to move on to the issue of the efficiency dividend. We have asked about this at previous estimates. We would like you to provide a status report in terms of the efficiency dividend and its impact on the department, and specifically, staffing impact and any other relevant impact. Perhaps you could start with the response to your status report on the impact of the efficiency dividend.

Ms Bickford—I think some of these questions have been asked already, but in relation to the efficiency dividend, it equates to about \$4.65 million for the department for the year. We have managed that through our internal budget processing. As you can imagine, for our department, we have many changes in measures from one year to the next, so there will be new measures coming on and measures that are ceasing. Each division within the department is responsible for managing their changes in budget, including that efficiency dividend, and that has been done for the current year in the same way as previous years. Our staff numbers are very similar from last year to this year.

Senator BARNETT—Have they gone up or down?

Ms Bickford—They are relatively static in terms of the average for this year.

Senator BARNETT—Can you give us a number?

Ms Bickford—We have 1,440 ASLs in the 2008-09 portfolio budget statements.

Senator FEENEY—There would be no direct nexus between changes in staffing levels and the efficiency dividend, as I understand it.

Ms Bickford—No. That is the point I am making; thank you Senator. Yes; those changes are due to measures changes within the department. Obviously the efficiency dividend is taken into account as well. Divisions reset their budgets for the current year and reset their priorities within their budget allocations. That is how we manage it within the department.

Senator BARNETT—Have they gone up or down? Have you taken the staffing numbers on notice?

Ms Bickford—We have taken the exact staffing numbers on notice. I gave you the 2008-09 average staffing level that is published in our portfolio budget statements of 1,440. We can give you the detail of our exact staff numbers.

Senator BARNETT—You said in your statement that a number of measures are commencing and a number of measures are ceasing. Can you identify for us the measures that have ceased?

Ms Bickford—We had funding for APEC in the prior year, which has obviously ceased. AusCheck moved to full cost recovery, so in a measures sense, the funding that we had for the implementation of AusCheck has ceased.

Senator BARNETT—How much was that?

Ms Bickford—Roughly, half a million dollars. The departmental funding for the National Community Crime Prevention Program ceased. Some grants are still remaining on that program, but the funding in relation to that was \$1.9 million and that ceased.

Senator BARNETT—Why has that ceased?

Ms Bickford—Because the program had finished.

Senator BARNETT—Is that expected to be taken up by the states and territories?

Ms Bickford—That is a policy question.

Senator TROOD—Was that program due to cease, or was it terminated as a result of deficiency dividends?

Ms Bickford—It was due to cease. I was giving examples of measures that have ceased between one year and the next.

Senator TROOD—I understand that. When did that cease?

Ms Bickford—At the end of 2008.

Senator BARNETT—Go on. How much was the APEC funding?

Ms Bickford—It was \$5.8 million.

Senator BARNETT—You have three initiatives there. Are there any other initiatives that have ceased?

Ms Bickford—I do not have any more detail on that. Those are the major ones.

Senator BARNETT—Do you want to take that on notice and advise the committee of the initiatives that have ceased?

Ms Bickford—I can do that.

Senator FEENEY—I just fear that Senator Barnett's question is operating under the misapprehension that the department will have identified programs that have ceased or transformed as a result of the efficiency dividend. I do not in fact understand that to be the case.

Ms Bickford—These are measures that have ceased because they were on a finite time frame.

Senator BARNETT—There may or may not be a link between this and the efficiency dividend. What is important is that certain initiatives have ceased. As a committee, and on behalf of the committee, I am asking you to identify the initiatives and measures that have ceased.

Ms Bickford—Since when?

Senator BARNETT—This financial year.

Senator Wong—This is the same set of questions, Madam Chair, that Senator Trood essentially asked at the outset.

Senator BARNETT—No, it is not the same.

Senator Wong—You were not here, Senator, so I do not know how you can pass judgement on that.

Senator BARNETT—In fact, I have been advised, Minister, so please do not—

Senator Wong—I had not finished, Senator. Can I ask if it could be clarified? Senator Trood asked a range of questions in relation to the efficiency dividend and also the financial situation in respect to a number of programs within the portfolio. I think it ought to be clarified. Are these additional questions or questions simply clarifying those questions? I do not know whether you need to spend some time—

Senator BARNETT—That is something for the department.

Senator Wong—With respect, Senator, it might be useful if you and Senator Trood could actually have a discussion—

Senator BARNETT—We have conversed, Minister.

Senator Wong—If I could finish—it might have been useful if you and Senator Trood had had a discussion about what had actually been asked before you came into the room.

Senator TROOD—I do not believe I asked questions specifically about these matters Minister. I asked questions about any particular programs where there might have been underspending in particular, but I fully endorse my colleague's request for information about programs that have been terminated. I am sure he is going to ask questions about programs—not only those which were due to terminate but any that might now be in jeopardy as a

consequence of the need to find efficiency dividends, which presumably was the thrust of Senator Feeney's intervention.

CHAIR—As Chair, before we continue, I am going to insist that public servants, and in particular the Minister, be given an opportunity to at least finish their answers before further questions or comments are made from senators in this committee. Minister, you were going to clarify something.

Senator Wong—Perhaps if we can be clear what Senator Barnett is seeking and then we can respond to that. Perhaps he could rephrase.

Senator BARNETT—I am happy to repeat for the purposes of the department, but I think I have asked reasonably specifically, using the words of Ms Bickford, what initiatives and what measures the department has ceased this financial year. You have named three initiatives: APEC, AusCheck and the National Community Crime. You then indicated that you do not have a list of the others and you said you would take them on notice, and I said thank you.

Ms Bickford—Can I clarify that I have said that these are measures, so they are measures that we had specific funding for. They are not measures that we have decided will cease; they are measures that have ceased because their funding has ceased.

CHAIR—Ms Bickford, you are saying, regardless of the two per cent efficiency cut, those programs would have come to conclusion anyway?

Ms Bickford—That is correct; there is no correlation between the two. In the years when those measures were put in for a finite period, they would have shown in the budget papers at that time, but they were ceasing then, so this is not a new decision.

Senator BARNETT—I am not asking you, Ms Bickford, and I do not believe there is a misunderstanding between us, notwithstanding the conversations around us. Thank you. You will take on notice—

Ms Bickford—I will take on notice if there are any others.

Senator BARNETT—Thank you very much. Can we just attend to this issue of the efficiency dividend. This was addressed in May, and we are now back here again and would like to know how the department has responded to the efficiency dividend and what impact it has had on any or various measures undertaken by the department.

Ms Bickford—I think I can make two points: firstly, that I have already provided some answer in relation to that; and, secondly, that we have taken on notice some further questions in relation to that.

Senator BRANDIS—Mr Wilkins, we were talking before about recommendations of the Smith review and, without once again trespassing on what particular recommendations may have been made by that review, may I take it that those recommendations do not include the change to the national counterterrorism arrangements, which came into operation on 1 October this year and which have already been announced by the Attorney-General?

Mr Jordana—Senator, I will take that question. I do not think it is appropriate for us to say what is in and what is out of the deliberations of Smith. It stands in its own right, and those are currently before the government.

Senator BRANDIS—I understand that, Mr Jordana, but I do not think, if I may say so, it is trespassing over the fine line, and I only ask this purely for the sake of clarification, because I am sure the opposition will want to say some things about the answers that were given a little earlier on in the morning, and we do not want to get this wrong. We have been told that no decisions have been made. We know because it is uncontroversial. I have a copy of a letter to me from the Attorney-General, which I assume went to all members of parliament, announcing the new national counterterrorism arrangements to operate from 1 October this year. So really for the sake of tidiness, I just want to be satisfied that the arrangements announced by the Attorney-General, and the subject of very colourful fact sheets issued by the government, to commence from 1 October are not the matters concerning which the Smith report made recommendations, the topics of which I am not going to ask you about.

Mr Wilkins—Sorry, Senator: are you talking about the changes to the alert level?

Senator BRANDIS—Yes. Am I right in making that assumption?

Mr Studdert—The changes on 1 October related to the national counterterrorism alert level. The development of those changes had been in train for about 12 months under the auspices of the national counterterrorism committee, so they were quite independent things.

Senator BRANDIS—So they are quite separate from the Smith review?

Mr Studdert—That is correct.

Senator BRANDIS—Thank you. That is all I wanted to clarify.

Proceedings suspended from 10.30 am to 10.46 am

CHAIR—Senator Barnett, do you have more general questions or are you ready to move to outcome 1, output 1.1?

Senator BARNETT—The latter.

Mr Govey—Madam Chair, before you do that, I could respond to one of the questions that was asked earlier about appointments. It so happens that there was some information provided recently on appointments. It goes slightly beyond what was asked. It covers a couple of non-statutory appointments and judicial appointments. I can table the list of appointments that have been made from 24 June to 29 September.

CHAIR—Thank you, Mr Govey.

Senator BARNETT—Is that appointments as in board appointments and related appointments within the department?

Mr Govey—All statutory appointments and in fact a couple of appointments to the National Alternative Dispute Resolution Advisory Council, which is not a statutory body. As I said, it includes judicial appointments as well.

Senator BARNETT—Excellent! I knew you could do it. You are so efficient. Well done.

Mr Govey—Thank you.

Ms Bickford—Madam Chair, I also have some information regarding discretionary grants that we can table. It was also tabled on 14 October. I can provide that to the committee.

CHAIR—Thank you very much.

Senator BARNETT—I knew you could do it. This is really good news. Well done.

[10.47 am]

CHAIR—So we are moving to outcome 1 and output 1.1.

Senator BARNETT—There are a few topics in output 1.1, but can we focus initially on the Attorney-General's push for restraint in judges' pay. I know that the submission by the Attorney-General called for judges not to be given hefty pay increases this year because of ongoing concerns about inflation. There was some discussion about the need for restraint and for any wage hikes to be linked to productivity. I was wondering if you could provide a status report on that initiative by the Attorney-General.

Ms Leigh—The Remuneration Tribunal made a determination on 5 June which was tabled in both houses on 19 June and was subject to the usual disallowance provisions. The disallowance period finished on 18 September and that determination was not disallowed. The determination increased remuneration for judicial officers by 4.3 per cent.

Senator BARNETT—How does that differ from the Attorney-General's submission?

Ms Leigh—The Remuneration Tribunal is an independent body, of course, and it takes into account all of the information that is provided before it. The government did not make any statement of disquiet with the Remuneration Tribunal's determination.

Senator BARNETT—Did either the minister or the government make any statement at the time?

Ms Leigh—I would like to check that if I could.

Senator BARNETT—That is all right.

Mr Wilkins—Do you mean a statement to the tribunal or about the tribunal?

Senator BARNETT—I mean a statement about the decision by the tribunal. Can you table the Attorney-General's submission to the tribunal?

Ms Leigh—I would need to get Attorney-General's approval for that.

Senator BARNETT—Could you take that on notice?

Ms Leigh—Yes, Senator.

Senator BARNETT—Can you advise the committee what productivity gains were requested by the minister and/or the department in its submission.

Ms Leigh—Submissions would not normally request productivity gains, they would indicate that the remuneration accorded by the tribunal should take productivity into account, which would be based on productivity.

Senator BARNETT—So they were not specific.

Ms Leigh—No, it would have been a point of principle that would have been made.

Senator BARNETT—So there were no specific measures in terms of productivity in certain areas. Was it more generic?

Ms Leigh—That would not be normal, senator.

Senator BARNETT—Can you flesh out the requests that were made?

Ms Leigh—As I have indicated, I would need to get the Attorney-General's approval to provide that submission. The comments I have made so far are the general comments that we have made over the years in relation to this issue.

Senator BARNETT—So that is 4.3 per cent across the board?

Ms Leigh—For judicial and related officers.

Senator BARNETT—Does 'related' cover the tribunal, AAT—

Ms Leigh—It covers the CEOs of the courts and a number of tribunals.

Senator BARNETT—What was the date of commencement?

Ms Leigh—It was effective from 1 July 2008.

Senator BARNETT—In terms of productivity, this can be assessed in different ways when we are talking about the courts, but certainly clearance rates, decisions and backlogs are ways to assess it. Has the department made any assessment of the clearance rates or backlogs, or have you reviewed that area where productivity can be gained?

Ms Leigh—In relation to remuneration it is the role of the Remuneration Tribunal to make inquiries of that sort.

Senator BARNETT—So the department has not made its own assessment of the backlogs within each judicial jurisdiction.

Ms Leigh—If you are asking me as general issue, outside of judges' remuneration, then the court is self-administering. In the first instance it would be appropriate to discuss that with the courts. I am happy to be present again when the courts are present.

Senator BARNETT—Are there any particular jurisdictions that the Attorney-General's department, or indeed the minister's office, is watching carefully in terms of backlog, pressure or workload?

Ms Leigh—The Attorney-General is concerned to ensure that all federal courts operate efficiently.

Senator BARNETT—We will deal with those when the courts come to us this afternoon, because there is clearly a lot of stress and strain in certain jurisdictions in a number of the courts, so we will have a look at that in the afternoon. Perhaps we could now look at the national system of regulating lawyers. I understand this has been worked through SCAG. Could you provide an update of where things are at?

Mr Govey—That is dealt with under Output 1.2.

Senator BARNETT—Okay, we will defer that for the moment.

Senator BARNETT—Let us move on to this area that I touched on last time in terms of complaints. I know that different courts will be coming before us this afternoon, but could the

department advise any initiatives or action being considered with respect to dealing with complaints against judges?

Ms Leigh—Yes. At the Attorney's request, this issue was considered by ministers at the most recent SCAG meeting, which was held on 24 and 25 July. The SCAG meeting agreed that it would establish a working group to examine the feasibility of establishing a national judicial complaints-handling mechanism.

Senator BARNETT—Can you provide further particulars? That is a very generic response.

Ms Leigh—The working group has been established, and that working group has now met twice. I can give you the dates: 11 and 26 September.

Senator BARNETT—So they have had two meetings. Who is in the working group?

Ms Leigh—It is chaired by the Commonwealth, and I am chairing it on behalf of the Commonwealth. All of the states and territories except for New South Wales are members of the working group.

Senator BARNETT—Except for New South Wales?

Ms Leigh—New South Wales already has a statutory judiciary complaints body.

Senator BARNETT—They are not involved in any way, shape or form?

Ms Leigh—I am sure they have been helpful to us in terms of providing information at officer level, because they do have a scheme that obviously we would be looking at, but they are not a member of the working group.

Senator BARNETT—All right. And you have got a representative from each state and territory at those working groups?

Ms Leigh—That is correct.

Senator BARNETT—Can you identify them now or advise us on notice?

Ms Leigh—I would need to do that on notice. But they are the relevant policy officers from each government department.

Senator BARNETT—Good. Can you advise what proposals you are considering in terms of a judicial complaints process?

Ms Leigh—I could not go into the content because as yet we have not advised ministers on that. But we have established a project plan which we will take to the next SCAG meeting in November and we have commenced our consideration of the substantive issue, and the report on that will go to the following SCAG meeting in February.

Senator BARNETT—Do you have the dates for November and February meetings of SCAG?

Ms Leigh—The November meeting is 6 and 7 November, and I do not think that the precise date in February has been set yet.

Senator BARNETT—All right. What do you call this document that you are taking to the November meeting?

Ms Leigh—I said that we will take a project plan.

Senator BARNETT—A project plan?

Ms Leigh—Yes. It is a progress report to ministers on how we propose that they handle this issue.

Senator BARNETT—What options are you looking at? Are you looking at the New South Wales option—with the New South Wales judicial commission?

Ms Leigh—As I indicated, because we have not reported to ministers, I do not think it is appropriate for me to discuss the content of the matters we are looking at.

Senator BARNETT—How significant is it that we have a complaints mechanism? What is the view of the department and/or the minister?

Ms Leigh—The Attorney has indicated that, of course, complaints against judges have the potential to impact on public confidence in courts and the judiciary. It is for that reason that he took to SCAG the proposal that SCAG look at the feasibility of establishing a national judicial complaints-handling mechanism.

Senator BARNETT—When did he make that statement, and can you table it?

Ms Leigh—That was a speech that the Attorney gave to the Judicial Conference of Australia on 11 October.

Senator BARNETT—You can table that for us?

Ms Leigh—Yes. May I get a copy made and table it?

Senator BARNETT—Of course. He indicated that in October. What about prior to October? This SCAG meeting was held in July 2008. I have got a copy of the SCAG minutes in front of me where it talks about the importance of a judicial complaints-handling mechanism. That is July.

Ms Leigh—That is right.

Senator BARNETT—So did the Attorney make any decision prior to July? I assumed he had in his mind that the arrangements regarding judicial complaints in this country are inadequate and the processes are inadequate, otherwise it would not have been on the agenda at the July meeting. Do you have a copy of any speeches or statements that he made prior to July?

Ms Leigh—I am not aware of any formal public statements prior to July. As I said, it was on the Attorney's initiative that he took this matter to SCAG in July, so clearly he had turned his mind to this issue before then.

Senator BARNETT—Do you have a copy of the statements of the various state and territory Attorneys around Australia and their views on an appropriate complaints-handling mechanism?

Ms Leigh—No, Senator. I believe that some of them may have made some limited comments, but the ministers agreed to examine the issue, so we have not reached the point of a decision about the content of an appropriate mechanism. They have agreed to examine the

feasibility of such a mechanism. They are now waiting on officers to provide them with that content so that they can move on to the next step.

Senator BARNETT—Are there any documents or papers within the department summarising your concerns regarding the judicial complaints mechanism process?

Ms Leigh—We have of course prepared material to advise the Attorney in the normal way.

Senator BARNETT—Can we have that information?

Ms Leigh—That would not be usual, Senator, and certainly I would have to consult the Attorney.

Senator BARNETT—What material have you prepared for the minister? Can you identify the material?

Ms Leigh—We prepared briefs to the Attorney on the issue.

Senator BARNETT—When was your first major brief on this issue?

Ms Leigh—I would need to consult the files on that. I do not have the details of that.

Senator BARNETT—We are interested to know when this became an issue for the government. It was clearly raised at SCAG in July. You have now had two working group meetings, on 11 September and 26 September, and you are preparing a project plan for the November meeting. It is not too much to ask, I hope, for further and better particulars of the minister's views with respect to the judicial complaints-handling process in this country. I have been asking questions at estimates about this for a long period of time, and it seems that there is very little available from the Attorney-General apart from the speech of 11 October—which was just a couple of weeks ago, if that. So you cannot provide any further information, Ms Leigh, in terms of the views of either the minister or the department?

Ms Leigh—I do not think I can take it any further, Senator.

Senator BARNETT—Do you have any information about the number of complaints regarding the various courts?

Ms Leigh—Because there is no one mechanism, complaints are sent to chief justices, registries of courts, directly to departments, directly to the Attorney, sometimes to members of parliament, and so it is not possible for us to have a collated number of complaints.

Senator BARNETT—We can come back to that when we deal with the different courts this afternoon. They know how many complaints are made, and some of that information is included in their annual reports. But you do not seem to be across that information.

Ms Leigh—As I indicated, the issue is that, because there is no one mechanism for receiving complaints, complaints are sent by people to a wide range of people—a wide range of bodies.

Senator BARNETT—Sure, but you are the Attorney-General's Department. Rather than us asking questions of every court that is going to come before us within the federal jurisdiction, you do not have a summary document of the complaints mechanisms of the different courts and the different tribunals and which ones, the views, the merits or otherwise of each one? You would have considered this, I am sure, in any briefing paper presented at

SCAG—certainly in advance of your November meeting. Perhaps it will all be in your project plan that you will put to the November meeting of SCAG, I do not know, but you are not providing the information.

Ms Leigh—The courts are self-administering and, at this stage, those complaints mechanisms are complaints mechanisms that they have developed and that they administer. Therefore, it would be more appropriate to direct those questions to the courts.

Senator BARNETT—In terms of the SCAG July meeting, do you have the document that was presented to the SCAG July meeting alerting the attorneys of the importance of having a review, a working group, look at the complaints handling system?

Ms Leigh—Those papers have not been made public and, in addition to the usual issue about the attorneys' permission, because they are SCAG papers there are additional protocols about the public release of SCAG papers.

Senator BARNETT—I have a number of other questions, but I know Senator Brandis is keen to pursue other matters, so I will pass back to the chair.

Senator BRANDIS—Mr Wilkins, there were six questions taken on notice at the last estimates which, as at Friday, I am advised by the secretary, have not been answered. The date for answers to questions taken on notice was 10 July. Can you or your officers explain why those answers have not yet been furnished to the committee?

Mr Wilkins—I was just advised that all questions on notice have been answered.

Senator BRANDIS—Perhaps some answers came in this morning. This is not, of course, Mr Wilkins, a criticism of you. Of all people, you are new in this job, but I assume that you will assure the committee that you will use your best endeavours to ensure that these deadlines for the receipt of answers to questions taken on notice are respected by your department in future.

CHAIR—Senator Brandis, if you could perhaps give us the number of the questions, we could find the response for you. I think the officers are indicating that all answers have been provided. Do you have specific numbered questions there?

Senator BRANDIS—I have the numbers of the opposition's questions—numbers 88, 67 and 73. I do not want to delay on this, because it is a small point, but nevertheless I think it is a point that should always be made when deadlines are breached.

Senator Wong—If you wish to make that point, Senator Brandis, you may, and I am sure that Mr Wilkins and the department are well aware of the requirements in terms of questions on notice. I would note that the figures I saw across Senate estimates were that this government is actually responding in a far more timely manner to questions on notice than your government did.

Senator BRANDIS—That may be so, Senator Wong, in relation to some departments, but it is certainly not the case—

Senator Wong—I trust that we will at least be even handed.

Senator BRANDIS—It is certainly not the case in relation to all departments. When I was a minister, Senator Wong, all questions taken on notice that were directed to me were answered within the deadline.

CHAIR—Senator Brandis, if we could just clarify—

Senator Wong—You showed up your colleagues then, Senator Brandis, if I may say.

CHAIR—Thank you, Minister. Mr Wilkins—

Senator BRANDIS—I will not dwell on that.

CHAIR—Senator Brandis, I am just—

Senator BRANDIS—Madam Chairman, you do not need to say a word, I am moving on to my next point.

CHAIR—Senator Brandis, I just think for the benefit of the department: Mr Wilkins, no answers to questions were provided this morning, is that correct?

Mr Wilkins—I am advised that is correct, and I might just go through the advice that I do have on this. The Attorney-General's portfolio took 134 questions on notice at the budget estimates, 26 and 27 May. All questions on notice have been answered. Eight-nine questions on notice—66 per cent—were submitted to the Senate Standing Committee on Legal and Constitutional Affairs on or before the deadline of 9 July 2008. Forty-two further questions on notice were submitted one week past by the deadline, by 16 July 2008, bringing the total to 98 per cent submitted to the committee.

One further question on notice was submitted to the committee two weeks past the deadline, by 23 July 2008. The remaining two questions on notice were submitted to the committee three or more weeks past the deadline, totalling 134. We do our best to comply with the deadlines and I will be ensuring that. The last question was tabled on 30 July.

Senator BRANDIS—I am happy to give you a copy of this document—and I do not want to delay this—which is, I think, prepared by the Senate. It indicates that, as at close of business on 15 October 2008, six questions out of 237 questions taken on notice had answers outstanding, and three of those were opposition questions.

Mr Wilkins—Is this for the entire portfolio, or just for the department?

Senator BRANDIS—All six were Attorney-General's questions.

Mr Wilkins—I will look into that.

Senator BRANDIS—And I will furnish you with a copy of this document. As I said, I do not want to dwell on this, but I think it is a point that should be made when these deadlines are breached, and I am sure you will use your best endeavours to ensure that does not happen on your watch.

There were a number of policy recommendations relevant to the Attorney-General's portfolio emerging from the 2020 Summit, in particular from the governance stream. Can you or the relevant officer tell me what, if anything, has happened in relation to the consideration by government of those recommendations?

Mr Wilkins—Do you have any particular one in mind?

Senator BRANDIS—I do not have any particular ones in mind, as a matter of fact. I participated in the 2020 Summit as a member of the governance stream, and I well remember a raft of aspirational recommendations in the areas of freedom of information—for example, in the area of the Constitution and so on. I assume—correct me if I am wrong—that the recommendations of the 2020 Summit were circulated to the departments of the government, including yours, to which they were relevant.

Mr Wilkins—That is correct, Senator—

Senator BRANDIS—Just tell me what the process is, please.

Mr Wilkins—The areas out of the recommendations that were relevant for the Attorney-General's Department were the recommendations relating to a bill or charter of rights and responsibilities—the area reflecting Australia's commitment to gender equality in domestic and foreign policy, and also the area of journalist shield laws. You are probably aware that, on the bill or charter of rights and responsibilities, the government has already indicated that it is going to undertake a national consultation on how best to recognise and protect human rights in Australia.

Senator BRANDIS—I might ask you to pause there, because I have some specific questions for you on that in a moment. So perhaps you might address the other 2020 Summit recommendations.

Mr Wilkins—On the question of gender equality in domestic and foreign policy, I can say that the government has started the process for Australia to exceed the optional protocol to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. On journalist shield laws, the government is considering a range of options to provide better protection to journalists and their sources in presenting the news. This has been taken up at SCAG by the Attorney-General and a discussion is occurring in the context of the uniform evidence legislation and how that might be reconfigured to give effect to more robust protection along those lines for journalists. You wanted to ask further on the charter of rights?

Senator BRANDIS—Before we get to the details of any particular area of policy, what I want to nail down is really a process issue. What happened to the 2020 summit recommendations? Was there in your department, for example, a working party, or any other defined officer or group of officers, given responsibility for dealing with the 2020 summit recommendations? What is the process whereby they were to be translated by government into specific policy proposals, or, in the event that they were not to be adopted, by what process was the decision not to adopt them made?

Mr Wilkins—I am not entirely familiar with the processes. I think I will ask Ms Philippa Lynch to comment on this.

Ms Lynch—The Department of the Prime Minister and Cabinet is the coordinating department on 2020 summit outcomes. Certainly I have been involved in meetings of IDCs, held by PM&C, and ideas from the summit have been referred to various departments to consider further. I think the secretary has indicated the ones that are of particular relevance to our department, on which work is currently progressing.

Senator BRANDIS—These recommendations emerge in a very vaporous and loosely articulated way. What was the process of analysis to which those that were germane to your department were subjected?

Ms Lynch—The recommendations of the summit were collected together into an outcomes document that was published through PM&C, and various of those recommendations have been considered by this department in the context of providing advice back to PM&C.

Senator BRANDIS—I am going to ask you to take the next question on notice because I do not expect you to be able to tell me straightaway. Could you give me a list of all of the recommendations arising from the 2020 summit which were circulated to your department either as the sole relevant department or as a constituent with other departments in considering the recommendation?

Ms Lynch—Yes.

Senator BRANDIS—There were several, weren't there?

Ms Lynch—Yes.

Senator BRANDIS—What is the process of analysis? Does a group of public servants sit around and say, 'That's a silly idea so we won't take that one any further, but this is a good idea so we'll give this one a run?' All of these 1,000 worthy citizens having gathered under the full glare of an adoring media for a full weekend, were their recommendations then subject to veto at the officials level? Or were they all sent on to a relevant cabinet committee or some other decision-making organ at the political level of government? How did it feed into government, in other words?

Ms Lynch—I suspect that those questions might best be answered by the Department of the Prime Minister and Cabinet.

Senator BRANDIS—Just confine yourself to those that were germane to the Attorney-General's Department. We will use you as a case study, Ms Lynch.

Ms Lynch—There was certainly some recommendations, such as the one in relation to a bill or charter of rights and responsibilities. Work on that one was already being progressed in the department.

Senator BRANDIS—Let us confine ourselves to those that were not already part of the pre-existing agenda or announced policies of the new government.

Mr Wilkins—I think that really is a matter for the Department of the Prime Minister and Cabinet, and the processes internal to the government for trying to figure out whether they want to take these forward is a matter for government. The Attorney-General's Department are part of that process, but I think it is better to ask the Department of the Prime Minister and Cabinet what the procedures are.

Senator BRANDIS—I am sure that we could ask the Department of the Prime Minister and Cabinet, but I take the view that the right person to answer a question is the person who knows the answer. I am confining my questions to those 2020 summit proposals which were referred to the Attorney-General's Department—as I said, we will use this as a case study—so those questions are surely relevant if they were considered by your department.

Mr Wilkins—I think the appropriate person to answer the question is the person who is entitled to answer the question. It would probably be better to ask PM&C. The issues that we have set out are ones that were being progressed in parallel with recommendations coming from the summit. There is no problem in talking about the policy processes around that, but I think—

Senator BRANDIS—Mr Wilkins, I am sorry we seem to have a sort of a philosophical difference here. I am rather moved by the assertion of my friend Senator John Faulkner that when in doubt the attitude of the Rudd government would be to favour disclosure over nondisclosure. So if this is a grey area, and I do not think it is, then the government which you serve demands that any issue of ambiguity be resolved in favour of disclosure, rather than taking, if I may say so, fine or pernicky points. I am going to ask Ms Lynch again: in relation only to the 2020 Summit recommendations that related to the Attorney-General's Department, can you please explain to me the process by which they were considered by your department?

Ms Lynch—I think there were about 1,000 recommendations coming out of the summit.

Senator BRANDIS—That would be right.

Ms Lynch—Some were given priority over others for consideration by government, and the department—the relevant policy areas in the department—have been looking at those and providing advice both back to the Attorney and back to the Department of the Prime Minister and Cabinet.

Senator BRANDIS—That is where I wanted to get to, and I think that was not all that hard.

Ms Lynch—I should also probably note, however, that the Prime Minister has said there would be a response towards the end of the year.

Senator BRANDIS—Yes, I am aware of that.

Ms Lynch—As to the exact form of that response, I am not in a position to tell you what it will be; I don't know.

Senator BRANDIS—I am not asking you about that, but let us go back to your last answer which was very helpful, thank you, Ms Lynch. You say that people within the department have been looking at these recommendations. So there have been meetings in which the agenda of these meetings have been consideration of 2020 Summit recommendations arising within the Attorney-General's portfolio?

Ms Lynch—Yes, issues arising from the 2020 outcomes have been considered by relevant areas in the department.

Senator BRANDIS—Has that process of consideration now finished or is it ongoing?

Ms Lynch—That would be ongoing.

Senator BRANDIS—Is there an anticipated date by which that process will have come to an end and, if so, when is it?

Ms Lynch—As I said, the Prime Minister has indicated there will be a response to the 2020 outcomes by the end of the year.

Senator BRANDIS—Presumably before the Prime Minister announces the response?

Ms Lynch—Yes, and there will be some issues that came out of the 2020 Summit and were already on the government's list and for which actions are proceeding in parallel, if you like, like the human rights consultations.

Senator BRANDIS—I understand that. What I am interested in is the process by which these recommendations—that is, those that are germane to the Attorney-General's area—are filtered. May I take it that not all of the recommendations that emerged from the 2020 Summit and have been considered in these meetings you have described will get the tick?

Ms Lynch—It would be a matter for government as to which of the ideas are proceeded with or how those ideas are responded to.

Senator BRANDIS—Hence I come back to my first question. By what process of analysis are these recommendations considered? Are they considered at the officials level on a merits basis or are they considered purely in a kind of a flow-through process way, so the officials merely pass them on to PM&C without comment? Do the officials offer comments on the merits of the proposals? What is the process involved?

Ms Lynch—Certainly for the ones that I and other people in the department have been involved in, we commented on the benefits or otherwise of the proposals, or on the merits of the proposals, and those comments were provided back through to the Department of the Prime Minister and Cabinet.

Senator BRANDIS—Are there any recommendations of which you are aware which did not get passed on to the next stage? In other words, they came to one of these meetings you have described and everybody sat around and said, 'Well, for various reasons, that is a bad idea and we are going to give that one the thumbs down.'

Ms Lynch—It was not within our remit to be making decisions about what went on, so what went further in the process, and what did not.

Senator BRANDIS—So you offer comment to the central coordinating agency but it is not a filtering process in the sense that you do not cull any of the recommendations. Is that right?

Ms Lynch—No, Senator. At this stage the advice we provided was on a number of identified ones to start with. Yes, we gave the pros and cons of them but I do not believe that we filtered any out of that process.

Senator BRANDIS—That is what I wanted to know; thank you. One of the issues that a lot of people seem to be very excited about—and, Mr Wilkins, you have already mentioned this—is the bill or charter of rights. We know that \$2.8 million was allocated, for public discussion of these matters, in the budget. Unless I have missed it, there has been no further announcement about that process of public consultation although I noticed that Mr Eyers of the *Financial Review* wrote last Friday that it is understood that Mr McClelland wants to make an announcement regarding public consultation on 10 December, to coincide with the 60th anniversary of the Universal Declaration of Human Rights. Is that right? Is the announcement going to be on 10 December?

Ms Lynch—The government has not yet made a decision as to when the announcement will be.

Senator BRANDIS—Has it considered the matter?

Ms Lynch—The issue of national consultation has been considered by government and—

Senator BRANDIS—I can understand that, because they have allocated money. Perhaps my question was not precise enough. Has there been consideration given to the date on which the consultation process will be announced?

Ms Lynch—I think the Attorney has considered possible dates but has not yet made the announcement.

Senator BRANDIS—So we have not got a decision yet?

Ms Lynch—No. The Attorney-General has not made an announcement yet.

Senator BRANDIS—All right. What about the shape of the national consultation process? Has there been a working group or a group of officials within the department to develop a model for the consultation process?

Ms Lynch—There have been staff within this division providing advice to the Attorney on possible models and processes for the consultation but the Attorney has not yet made an announcement about the form of that consultation.

Senator BRANDIS—Has a preferred model been chosen?

Ms Lynch—These are issues still before the government so I do not think it would be appropriate for me to comment.

Senator BRANDIS—This might perhaps be a question to Senator Wong. Assuming, as I think we may, that the budget allocation will be spent and that there will be a national process of consultation announced at some stage in the next little while, are you in a position to assure us, Senator Wong, that that process of consultation, whatever form it may take, will give even-handed treatment to the case for and the case against a charter of rights?

Senator Wong—I do not think I have anything to add to the department's answer on this—

Senator BRANDIS—Well, I have not asked the question of the department.

Senator Wong—but, in relation to the process by which this issue will be dealt with, obviously the view we would take in government is that we should always seek to be even handed in relation to such matters.

Mr Govey—Senator Brandis, I can add one point to that. I think the position is that the government has indicated that, while it would not support the inclusion of a bill of rights in the Constitution—this is what has been said—the consultation will consider a range of options for recognising and protecting human rights in Australia and, most importantly, it will not presuppose any outcome.

Senator BRANDIS—I think it is not controversial to say that everyone in the parliament strongly believes in protecting human rights. The issue in controversy here is whether a bill of rights is a useful or efficient way of doing so. May we take it that this process of consultation will be a process of consultation directed to the question of how best we may protect human rights rather than to the narrow question of if we should have a bill of rights, Senator Wong?

Senator Wong—I understand the government has indicated that the consultation will consider a range of options for recognising and protecting human rights in Australia and will not presuppose any outcome.

Senator BRANDIS—Senator Wong, that seems to have been a standard answer. Let me ask you a question which I am sure admits of a yes or no answer. Are you in a position to assure us that in this process of consultation there will be equal treatment given to the case for and to the case against a bill of rights?

Senator Wong—I think that flows quite clearly from the commitment that has been indicated that it will not presuppose any outcome. The Attorney, or the government, as I understand it, has been clear that we are committed to consulting with the community. We have also indicated that any approach will flow from the views expressed by the Australian community and that we are not presupposing any outcome.

Senator BRANDIS—Do I take that to be a yes?

Senator Wong—I have already indicated that equal treatment is an approach that in general the government would support. I have given you a very clear indication that there is no presupposition about the form in which human rights would be protected. This is a consultation process about that issue.

Senator BRANDIS—Given that, inevitably, having regard to the way in which this debate has developed, most, if not all, of the discussion will be about whether or not we should have a bill of rights, has the government considered and, if so, are you in a position to tell us what its views are, whether the process of consultation will include facilitating advocacy pro and con the idea of a bill of rights at these public forums? I am assuming there will be public forums, if there is to be public consultation.

Ms Lynch—The format of the consultation is still under consideration and has not been announced by government.

Senator BRANDIS—So am I assuming too much in thinking that it may be taken for granted that there will be public forums?

Ms Lynch—The Attorney has made it clear on a number of occasions that there will be extensive public consultations and yes, I would envisage that there would be public consultations.

Senator Wong—Senator Brandis, you are asking the department, though, to give you an indication about a process where its evidence is that that decision has not yet been announced by government.

Senator BRANDIS—I understand that.

Senator Wong—So you can ask the question in so many ways, but I am not sure whether Ms Lynch can take the matter much further.

Senator BRANDIS—I am not asking Ms Lynch to announce what the process will be, because she has very candidly told us that no decision has yet been made. I thought I was not being too adventurous in exploring whether public forums would, in any event, be part of that

process of consultation. But if the level of secretiveness of the government is such that we may not even be told whether there will be public consultation—

Senator Wong—That is really beneath you, Senator Brandis, and a very cheap political point.

Senator BRANDIS—Senator Wong, believe me, it is not. It is a fair observation.

Senator Wong—Hang on. You are making a political point, so I will respond.

Senator BRANDIS—You also are making a political point.

Senator Wong—You are making a political point and a very cheap one, if I may say so. The department has been very clear about the fact that this process has not yet been announced and what the government has committed to is a consultation process. We have also indicated that that will not presuppose any outcome. It is hardly secretive to say we have not yet determined and not yet announced this process.

Senator BRANDIS—I do not want to dwell too much on this, but it seems to me that for you to be reluctant—and, after all, this is about human rights and it operates in the context of a government which has committed itself, at least at the rhetorical level, to transparency—to even tell us whether public consultations will include public forums is the very essence of being secretive. What is the big secret? Can we not know whether there will be public forums?

Senator Wong—Just a couple of points. I understand Ms Lynch has responded directly on the issue of public forums.

Senator BRANDIS—No, she has not. She has been circumspect, as she should have been under guidance from you.

Senator Wong—Can I just be clear. I think the officers have indicated that a decision has not yet been made.

Senator BRANDIS—They have.

Senator Wong—So it is more a matter of wanting to ensure that the information provided to the committee is in fact the decision that is made by government. What you are asking people to do is essentially hypothesise about what decision may or may not be made. I am sure that, when you were a minister, you did not preannounce things before you made a decision.

Senator BRANDIS—I am not asking what the detail is. Let me make that clear; I think I have made it clear. All I want to know is whether public consultation includes public forums. What is so hard about that? Does it or does it not?

Senator Wong—Ms Lynch has stated and I can, again, indicate that the consultation will provide an opportunity for Australians to have their say about how rights and responsibilities should be promoted.

Senator BRANDIS—So you are not even in a position to tell us—

Senator Wong—Because the decision has not yet been made.

Senator BRANDIS—So it may be that the outcome of this decision is that there will not even be public forums? All right.

Senator BARNETT—I have some follow-up questions.

CHAIR—Senator Barnett, I have not given you the call, I understand that Senator Hanson-Young has questions on this matter, so we will go to Senator Hanson-Young.

Senator HANSON-YOUNG—Out of the \$2.8 million that has been put aside—

Senator Wong—Chair, could I interrupt you for a moment. Some public comments made by the Attorney have just been referred to me and they may be what Ms Lynch was referring to. In the *Sydney Morning Herald* of December last year, the Attorney-General stated:

“We are only one of the only modern democracies without a charter of rights,” ... the debate should visit not only a charter of rights but a charter of responsibilities ... we are committed to a series of public discussions as to whether the public are interested in it and, if they are, what its contents would be.”

I refer you to the public indication from the Attorney. I apologise, Senator Hanson-Young, for interrupting.

Senator HANSON-YOUNG—That is fine. Has any of the \$2.8 million yet been spent?

Ms Lynch—Some staff have been assigned to work on the project within the department. From May 2008 to the end of August 2008 there were two staff in the Human Rights Branch working on it and, since August 2008, we have had a total of four staff working on it within the department. So some money has been spent on staffing, but I do not think any of the other funding has yet been spent. Some of the money that was provided in 2007-08 has been rephased into 2008-09.

Senator BARNETT—Can we get more details? When you say ‘some funds’—

Ms Lynch—In 2007-08 we received \$955,000 in administered funds and, in 2007-08, we received \$203,000 in departmental funds. The sum of \$915,000 of the administered funding has been rephased and \$103,000 of the departmental funding has been rephased.

Senator HANSON-YOUNG—Could we get a copy of the breakdown of where the money is currently being spent and what has been rephased?

Ms Lynch—I can take that on notice.

Senator BARNETT—That is one of the questions I had. Can I get a bit more clarity on it. Where do the administered funds come from? You had it in two brackets: administered and departmental funds. What is the difference?

Mr Arnaudo—The administered funding is often used for things like travelling or engaging consultants. Departmental funding is very much used for the department’s own expenditure, often wages and salaries for employees of the Attorney-General’s Department. That is basically the rule of thumb for how the split up between the two funds works.

Senator BARNETT—Do you want to keep going and then I will come back to that? I need a breakdown of those figures, but I will let Senator Hanson-Young continue.

Senator HANSON-YOUNG—We are still waiting on any type of announcement from the Attorney-General. When do you think we are likely to see the actual public engagement, public consultations start?

Mr Arnaudo—As was indicated earlier, the government is still considering the final formal nature of the consultation and we expect an announcement will be made in due course.

Senator HANSON-YOUNG—We have staff on board, they are putting together a program, but we still have no idea as to how far down the track we are?

Mr Arnaudo—We are providing advice to government in terms of how to finalise the approach to the consultation. I think the Attorney has indicated in a range of public statements that the government is committed to undertaking this public consultation on how to best protect human rights and responsibilities. The process will not presuppose any outcome and it will also engage with the community in a broad sense.

Senator HANSON-YOUNG—Has an official terms of reference been drafted yet for the consultation?

Mr Arnaudo—The terms of the form and nature of the consultation is still being considered by government.

Senator HANSON-YOUNG—Do we have any idea of when we will have a draft terms of reference?

Mr Arnaudo—That, again, is a matter for government in terms of announcing when and how it will conduct its—

Senator HANSON-YOUNG—Do we have any idea how long this process will take?

Mr Arnaudo—That, again, is part of the process in providing advice to government as to the nature and form of that consultation.

Senator HANSON-YOUNG—We have put aside money, some people have started but we still have no idea where we are going?

Mr Arnaudo—I think the Attorney has made it clear in a range of public statements that the government is working through the arrangements for the consultation, and the government and the Attorney expect to say more about it at a future time. The Attorney has said on a number of occasions that the consultation will seek the community's views on how to best protect and promote human rights and responsibilities and will also not presuppose any outcome and will, in particular, encourage broad community debate on a range of human rights issues, not just on a bill of rights or a charter of rights. And so, within those parameters, that is the sort of work that we are doing to provide advice to government as to how best to implement that commitment.

Senator HANSON-YOUNG—Has there been any thought given to looking at the way some of the states have done this and the consultations that they have had?

Mr Arnaudo—Clearly, the consultations that were undertaken by the state and territory governments are different in one sense. The governments in those jurisdictions had particular views about the approach to protect human rights. For example, in Victoria I think the government placed a statement on record as to its approach. There was a consultation in WA

that was very much focused on a draft bill of rights process. I expect this process might be different and again it is a matter the government is looking at. The Attorney has commented that the approach that other states and territories have taken in terms of the consultation approach is something that he has had regard to in terms of how to frame the approach at a Commonwealth level. They are different in nature because one is very specific about a particular model of approach to protection of bill of rights. This is likely to be a broader based approach to debating the concept of how to best protect human rights.

Senator HANSON-YOUNG—Has there been any thought as to which particular experts, or people with backgrounds in human rights in particular, should be engaged in this process and running the consultation—taking it out of the hands of the politicians, so to speak?

Mr Arnaudo—That is really a matter that is part of the process in finalising our advice to government as to how best to frame the consultation. It is something that the government will have regard to.

Senator HANSON-YOUNG—Have you been consulting human rights experts in the Australian context to do that, to put together the draft program and terms of reference?

Mr Arnaudo—No, at this stage we are still providing advice to government as to best approach it. The community in general will be able to have an opportunity to contribute to the process as well.

Senator HANSON-YOUNG—Sure, but we have some of the world's leading human rights advocates in Australia. Surely, in putting together a process, terms of reference, the department would want to engage those people.

Senator BRANDIS—Senator Marise Payne is one of the world's leading human rights advocates, we know that.

Senator Wong—We think so.

Senator HANSON-YOUNG—We have people in the Australian context who have done a lot of work in this area. We have universities that have departments and units specifically focused on these areas. Surely good advice to the minister and the Attorney-General is not going to be based just on the internal workings from the department.

Ms Lynch—I think it would be fair to say that, from time to time, officers in the human rights branch and I have had discussions with experts or academics with a background in human rights at a number of functions along the way. In terms of what the government proposes to do as part of the consultation, those are still matters for government. Certainly I have had conversations, and the Attorney has spoken with the Australian Human Rights Commission in relation to the—

Senator BRANDIS—I assume these academics include sceptics like Professor Jim Allan of the University of Queensland.

Ms Lynch—I do not think I have ever spoken to Professor Allan.

Senator BRANDIS—I know that 'scepticism' is an evil word these days.

Senator HANSON-YOUNG—This question may be to Senator Wong. Can you clarify the government's current stance on whether we should be including a human rights act in the Constitution?

Senator Wong—As I understand it, and I think the officers have clarified this as well—we have indicated that we do not support inclusion of a bill of rights in the Constitution.

Senator BRANDIS—In fairness to Senator Hanson-Young's question, if this is going to be a neutral process in which everything is on the table—and this is not a view that I would advocate, but perhaps Senator Hanson-Young would—to consider how human rights are best protected, whether by the status quo or variations to the status quo without a bill of rights, or a constitutional bill of rights, why shouldn't a constitutional bill of rights be on the table as well? You seem to be contradicting your earlier answer that you are not going to pre-ordain an outcome, Senator Wong.

Senator Wong—I think officers made it clear what the government's position is in relation to constitutional recognition.

Ms Lynch—Senator, as I understand it the Attorney has said on occasions that the government would not support a constitutional—

Senator BRANDIS—I know that, Ms Lynch.

CHAIR—Ms Lynch, perhaps you might like to provide your comment again without interruption.

Ms Lynch—Senator, I am simply noting that the Attorney said on some occasions that the government would not support a constitutional bill of rights but that there is no presupposed outcome from the consultation process.

CHAIR—Thank you.

Senator BRANDIS—So, I ask you or Senator Wong—whoever is the appropriate respondent: does that mean that the process of consultation will consider as an option a constitutional bill of rights or not?

Senator Wong—The government has made it clear that we are not proposing to support an inclusion of a bill of rights into the Constitution.

Senator BRANDIS—I understand that, Senator Wong.

Senator Wong—That is the government's position. I appreciate, Senator Hanson-Young, you may disagree with it. Senator Brandis, given that you do not, as I understand it, agree with the charter of rights, I am surprised that you would be suggesting that we should canvass the option of a constitutional bill of rights—but that is a matter for you. Senator Hanson-Young, I appreciate that is your position; this is the government's position.

Senator BRANDIS—Senator Wong, you really do not understand the notion of pluralism, do you? The fact is that both Senator Hanson-Young and I have been asking you about a process. Senator Hanson-Young and I, I would make bold to imagine, would have very different views as to what the right answer emerging from that process should be. But that is not what we are asking about. We are asking about the process, and you have told this committee that the process will not presuppose one outcome over another. That is fine, but

now you are saying, 'Well, it will presuppose one outcome, because the government, the Labor Party, is against a constitutional bill of rights, so we're not going to be talking about that.' Is that the case?

Senator Wong—Senator Brandis, we can go backwards and forwards on this if you would like. I was responding directly in relation to your suggestion that there would not be even-handedness between a charter or not having a charter. Correct? You did not raise—let me finish, Senator Brandis.

Senator BRANDIS—I have not said a word!

Senator Wong—I could see that you were bursting to say something. I do not recall the exchange to which you—

Senator BRANDIS—I always find you a very exciting interlocutor, Senator Wong, that is all.

CHAIR—If she gets a chance to finish what she is saying.

Senator Wong—You find me an exciting interlocutor? I must be doing something wrong if I am exciting in a Senate estimates process. I responded by providing you the advice on that issue. I can confirm quite clearly this: the government has indicated that while it would not support inclusion of a bill of rights into the Constitution, the consultation will consider a range of options for recognising and protecting human rights in Australia and will not presuppose any outcome. That is obviously in the context that we have previously made it quite clear that constitutional inclusion of a bill of rights was not something the government regarded as being an option. I appreciate that Senator Hanson-Young's party has a different view on that, and she is entitled to put that view. That is not the government's position and that is not going to be the way in which the government proceeds down this path.

Senator BRANDIS—I am sorry, Senator Wong. Perhaps I am just a bit slow, but it is still not perfectly clear to me from the answer you have just given whether a constitutional bill of rights will be part of the consultation process.

Senator Wong—The government has indicated it will not support the inclusion of a bill of rights in the Constitution. I do not think I can be any clearer than that.

Senator BRANDIS—You have made that perfectly clear, but that is not an answer to the question I just asked you. Will the government extend the public consultation process to allow public canvassing or discussion of that option?

Senator Wong—Senator Brandis, you are now coming back to the issue that has been asked at length by officers at the other end of the table in relation to the content of the process, and the answer to that has been: a decision on that has not been made. So I cannot assist you any further. I have told you what the government's position is in respect of the constitutional bill of rights issue, and officers have explained to you where the process is at in terms of decision making.

Senator BRANDIS—Senator Wong, with all due respect, you have told us many times that the government is not presupposing an outcome, and yet in response to a question about one possible option your answer now is not that the government is not presupposing an outcome but rather that no decision will be made. So perhaps those listening can understand

why those of us asking the questions are becoming more and more frustrated by the ducking and weaving on this issue.

Senator Wong—Senator Brandis, I had assumed that as you are a hard-working opposition spokesperson you would have been aware of the previous comments by the Attorney-General since we have been elected to government that a constitutional bill of rights was not on the agenda for the Rudd government.

Senator BRANDIS—So if it is not—

Senator Wong—If I could finish. I had assumed you were asking those questions with that knowledge, Senator.

Senator BRANDIS—I am perfectly aware that Mr McClelland and the Labor Party have made it unambiguously clear that they do not support a constitutional bill of rights. There is no confusion about that. But you, Senator Wong, know that these questions are not about that. They are about whether that option is an option which the government will allow to be canvassed in the process of public consultation. Might I point out to you, Senator Wong, that neither the opposition nor, to the best of my knowledge, Senator Hanson-Young's party, have criticised the idea of having a process of public consultation. But if there is going to be one, it has to be a fair dinkum one in which all the options are on the table, not just those favoured by the Labor Party. Will they be?

Mr Arnaudo—Senator—

Senator BRANDIS—Senator Wong, would you answer that question? Will they be—all the options, not just those favoured by the Labor Party?

Senator Wong—As I said to you, I cannot assist you any further than I have.

Senator BRANDIS—It seems to me that you are wilfully refusing to respond to the question—which you are entitled to do, of course.

Senator Wong—I understand that you want to have a bit of a rhetorical flourish in here, Senator, but let us get to the facts. I have been very clear—and so have the officers at this table—about two things. First, we have reiterated the government's long-standing public position that it does not support the inclusion of a bill of rights in the Constitution. Second, we have said that the consultation that has been discussed will consider a range of options for recognising and protecting human rights in Australia and will not presuppose any outcome. Clearly, in the context of the government's commitments—or non-commitments, I suppose—in relation to constitutional inclusion, so—

Senator HANSON-YOUNG—So as long as the consultation follows the Labor Party line, then it is okay.

CHAIR—Order! Senator Hanson-Young, let the minister finish.

Senator Wong—We have also indicated that we are committed to a series of public discussions. I do not think we can assist you any further.

Senator BRANDIS—You could assist me by saying whether the public discussions are going to be allowed to include a constitutional bill of rights—

CHAIR—Order! Senator Brandis!

Senator Wong—People will discuss—

CHAIR—Sorry, Minister. I would ask senators attending this estimates committee to please allow the minister to finish what she is saying without interruption.

Senator Wong—I think the suggestion seems to go to the content of the consultation, and we have made clear that that decision has not yet been made nor has it been announced, so what both Senators Hanson-Young and Brandis are doing is seeking to discern the content of a process where the advice to the committee from the officers has, very clearly, not been made.

Senator BRANDIS—With due respect, Senator Wong, what I am sure Senator Hanson-Young was trying to do, and certainly what I am trying to do, is pin you down on what seems to me to necessarily follow from the statement you have made of the government's policy—that is, that the consultation process will not presuppose any particular outcome. Those are your words. They are obviously considered words. If the consultation process will not presuppose any outcome then that necessarily must mean it will not presuppose the outcome favoured by the current federal Labor government. Therefore, it seems to me to follow as a matter of logic that it must admit of other possible outcomes—whether status quo or constitutional bill of rights—which are not the current policy of the Rudd government. That follows, does it not, Senator Wong?

Senator Wong—I am not going to continue to hypothesise about a process—

Senator BRANDIS—It is not a hypothesis. I am just putting to you something which necessarily follows from what you told us.

Senator Wong—Senator Brandis, I had not finished.

Senator BRANDIS—I know.

Senator Wong—I am not going to continue to hypothesise about a process where the evidence from the department is very clearly that the decision has not yet been made. If you wish to extemporise on that feel free to do so, but I think we have canvassed this area in quite a level of detail.

CHAIR—Senator Hanson-Young, do you have—

Senator BRANDIS—I think your secretiveness on the process of public consultation about human rights is remarkable.

CHAIR—As chair of the committee, Senator Brandis, I am speaking. I would ask you to respect that. Senator Hanson-Young, do you have further questions in this area?

Senator HANSON-YOUNG—I am confused now, because we have been told that we are not going to be pre-determining what the terms of reference will be, yet something has already been ruled out of it.

Senator BRANDIS—Quite right.

Senator HANSON-YOUNG—Do we have any idea as to what the process will be: what the terms of reference may be and what scope the consultation will take? Unless we are going to be looking at all of the options on the table, you either (a) have made up your mind, to

some extent, regarding the terms of reference or (b) you are not committing to an actual proper process of community consultation.

Mr Arnaudo—As we have outlined before, the process of the consultation is still a matter before government and it is a matter that is being considered. As we have said before, the Attorney has indicated that the process will be a broad based community consultation; it will not presuppose any outcome. I cannot add anything further to that.

Senator BRANDIS—Senator Wong, are you familiar with Operation Sunshine?

Senator Wong—Yes. I obviously do not have portfolio responsibility for that, Senator.

Senator BRANDIS—Operation Sunshine, as I understand it, was a set of policy criteria and governance attitudes initially foreshadowed by, I think, Mr Lindsay Tanner a couple of years ago, whereby he committed a future Labor government to allow maximum public information in relation to its activities and the minimum of secretiveness. I know it sounds vaguely North Korean but, nevertheless, are we still operating under Operation Sunshine or has the sun set on Operation Sunshine within the first year of the Rudd government?

Senator Wong—Senator, if you have questions regarding issues, for example, of FOI legislation and whistleblowers—is that where you are going on this?

Senator BRANDIS—I just want to know whether Operation Sunshine is still the policy of the Rudd government.

Senator Wong—If you have questions in relation to Minister Tanner's portfolio, I suggest you ask them in the relevant portfolio. There are also aspects of disclosure, which are dealt with in Minister Faulkner's portfolio, and I am sure he would be happy to take questions on those matters.

Senator BRANDIS—So we are not entitled to ask questions seeking information about government secretiveness in any estimates other than the estimates to which Senator Faulkner responds. Is that what you are telling us, Senator Wong? That is a remarkable statement.

Senator Wong—Senator Brandis, I would appreciate it if you would desist from verballing. That is not what I said and you know it—

Senator BRANDIS—Can I ask you questions about Operation Sunshine?

Senator Wong—I had not finished, actually. If your question is suggesting that it is inappropriate for officers at the table to tell you that a decision is still before government and has not yet been made and announced, I would have thought that that is a perfectly reasonable position and one, if I may say, Senator, your government adopted on many occasions when we were asking questions from that side of the table. That is not a position of secretiveness; it is simply a process of decision making in government. You, as a former minister, would be aware of that. Perhaps you could desist from verballing.

Senator BRANDIS—That is not what I asked, though. Of course, you are right, and I have no criticism to make of the statement that a question cannot be answered if a decision is yet to be made. The question I asked is: is Operation Sunshine still the policy of the Rudd government?

Senator Wong—I am not the minister to whom that question should be addressed.

Senator BRANDIS—But you are member of the cabinet, Senator Wong.

Senator Wong—Yes, and I am not the minister to whom questions about those issues should be addressed. I suggest you ascertain in which estimates committee those questions ought to be canvassed. In terms of your question, to my recollection, Operation Sunshine referred to Minister Tanner's announcement pre-election. Is that correct? I do not represent Minister Tanner and if you have questions in relation to Minister Tanner's portfolio—

Senator BRANDIS—Operation Sunshine, as announced by Mr Tanner, and as reiterated by your cabinet colleague Senator Faulkner, as recently as in his speech to the 2020 Summit earlier this year, was—whatever else it was—a whole-of-government approach. I am asking you, in relation to that part of the whole of the government represented at this estimates, whether Operation Sunshine is still the policy of the Rudd government?

Senator Wong—I am advised it is actually Operation Sunlight and—

Senator BRANDIS—Pardon me; perhaps that is the source of the confusion. Is Operation Sunlight—even more North Korean—the policy of the Rudd government?

Senator Wong—If I could finish. I have never actually been to North Korea, Senator Brandis. Have you?

Senator BRANDIS—No. Is Operation Sunlight, as I am corrected, the policy of the Rudd government?

Senator Wong—I am advised that responsibility for that policy area lies in Mr Tanner's portfolio, so you should refer those questions to Minister Tanner.

Senator BRANDIS—I will not go on. It has gone beyond satire, Senator Wong.

CHAIR—Senator Brandis, Senate proceedings ask, and standing orders suggest, that you might want to recognise when the chair takes the call.

Senator BARNETT—I want to follow up on questions from Senator Hanson-Young and Senator Brandis with two questions regarding the consultation process. Firstly, have any consultants been contracted?

Mr Arnaudo—No.

Senator BARNETT—Ms Lynch said earlier that you would take it on notice to get the costs. In terms of the budgeted \$2.8 million, I would like to know how much has been expended to date. You said two staff earlier in the year and then four staff currently. Could you please provide details of their identity and their position within the department, and the plans for the future in terms of staffing within the department under this consultation process. Also, will consultants be appointed and have you considered appointing consultants? If so, can you nominate the areas in which they will be working and the purpose of their consultation

Ms Lynch—I will take that on notice. While we are on the subject of money, could I just clarify some terminology I used earlier. I think I mentioned that departmental funding of \$103,000 from 2007-08 had been rephased into 2008-09. That, in fact, was not rephasing; technically, it was internal budgeting within the department. The administered funds were not rephased; it was an internal adjustment to funding that had been carried out.

Senator BARNETT—All right. When you take that on notice, can you please assist us in understanding these two different areas—administered and departmental.

Senator Wong—Senator Barnett, administered and departmental funding is a fairly common concept across portfolios.

Senator BARNETT—Very good. I am after the detail for this financial year and next financial year. I understand it is \$2.8 million over two years from 2007-08. Is that correct?

Ms Lynch—Yes, that is correct.

Senator BARNETT—My final question relates to the process of protecting human rights. I presume we are talking about the human rights of Australians. Is that correct?

Ms Lynch—Human rights in Australia.

Senator BARNETT—Will the process automatically cover the rights of unborn Australians?

Mr Arnaudo—That matter is part of the consultation process that we are finalising.

Senator BARNETT—So the government does not have a view at this stage as to whether this is only for Australians who are living above the ground, as it were? You are not sure whether this process will cover unborn Australians?

Mr Arnaudo—As the Attorney has indicated previously, it will be a broad based debate about the broad based consultation process on human rights in Australia and how they can be best protected. People will have a range of views, and that can be fed into the consultation process.

Senator BARNETT—Do you think—and the minister or Mr Wilkins can answer—unborn Australians are worthy of protection and care?

CHAIR—My opening statement clearly said that public servants are not to be asked for their opinion.

Senator BARNETT—I did say that the minister or Mr Wilkins could respond—whoever would like to respond.

CHAIR—I just want to remind you that public servants—and Mr Wilkins is a public servant—are not to be asked for their opinion on matters of policy.

Senator BARNETT—I gave them the option, chair. Perhaps Senator Wong can answer the question. Are unborn Australians worthy of protection and care?

Senator Wong—First, in relation to the process and scope of the consultation on human rights, I think we have answered that—that is, those decisions are for government. Second, on the issue you have raised, that is obviously a deeply personal issue—an issue where different members of parliament, from both sides of the political equation, have very deeply held personal views. I do not feel it is appropriate for me, on behalf of the government, to give a view on those issues. They are issues of conscience—certainly within our party, as a general proposition, and I believe also in your party. I certainly do not propose to make a political point around it.

Senator BARNETT—People could interpret that in different ways. But I will move on to another area if I can, Madam Chair.

CHAIR—Senator Trood, do you have any questions at this stage?

Senator TROOD—I have one in relation to output 1.4.

CHAIR—I think we have moved around outcome 1 fairly freely.

Senator BRANDIS—I have some questions on 1.1.

CHAIR—Senator Brandis, we will go to your questions then.

Senator BRANDIS—Thank you. Mr Wilkins, I want to ask some questions about the Semple review. You must be aware, Mr Wilkins, that there has been a great deal of anxiety among members of, in particular, the Family Court and the Federal Magistrates Court in relation to the delay in the production of the Semple report. Where are we at with it?

Mr Wilkins—I am going to ask Mr Ian Govey to deal with that question, Senator.

Mr Govey—The report is with government and government is considering it. We are not in a position to indicate what the government decision will be, of course, at this point.

Senator BRANDIS—Okay. I will pause there, Mr Govey. When you say the report is ‘with government’ do you mean that the report has been finalised and handed to the cabinet secretariat or the relevant recipient at the political level of the government?

Mr Govey—That is right. The report was finalised and given to the Attorney-General.

Senator BRANDIS—On what date?

Mr Govey—I think I will have to take the exact date on notice, Senator.

Senator BRANDIS—Why?

Mr Govey—Because I do not have it in my notes.

Senator BRANDIS—I am sure there must be officers in the room who can assist you in relation to that. You know that the delay in the Semple report has been a matter of considerable public discussion. It is a matter I have raised in question time in the Senate, and it is unsatisfactory that any officer would not be briefed on such a simple request as the date on which a much delayed report was handed to government.

Mr Govey—We will certainly endeavour to get that information for you quickly.

Senator BRANDIS—We are rising at 12.30 pm. Could you please arrange for one of your assistants to make a telephone call to the department so that I can have the answer by 12.30 pm. Will you do that for me, please, Mr Govey?

Mr Govey—I think by 12.30 pm might be a bit difficult, Senator, but we will certainly do what we can to—

Senator BRANDIS—Somebody must know. We are just after a date.

Senator Wong—Let the witness finish his answer, Senator Brandis.

Mr Govey—We will certainly do what we can to get you the answer as soon as we can, Senator.

Senator BRANDIS—I want the date, all right? Mr Govey, are you aware that there are extensive reports and there is a widely held belief among members of the judiciary and members of the administrative staff of the courts that Mr Semple's report was rewritten within the department and that the document in its ultimate form does not reflect his views? Have you heard those suggestions?

Mr Govey—Not put quite like that, Senator. But I certainly can say from both my own direct involvement in it and from discussions I have had with Mr Semple that that view is not correct. In fact, it is incorrect for two reasons. Firstly, the report was never envisaged to be a report that Mr Semple would do on his own; it was always a report that was to be done by the department in consultation with Mr Semple. So for that reason the report was written genuinely by Mr Semple in significant parts and by the department in other parts. But what I can also say is that both the department and Mr Semple signed off on the final report.

Senator BRANDIS—In order to properly understand what the task given to Mr Semple was and the manner in which that task was to be carried out, I imagine one would look to the instructions given to Mr Semple in the first instance. Was there a letter written to Mr Semple, or any other document, which contained a description of his terms of reference, for want of a better expression, and a description of the process by which the report was to be prepared?

Mr Govey—Yes, there was.

Senator BRANDIS—On what date was that letter written?

Mr Govey—It would have been in March. I am not sure of the precise date.

Senator BRANDIS—So Mr Semple was commissioned in March 2008. Is that right?

Mr Govey—That is right.

Senator BRANDIS—Were there subsequent iterations of that letter or variations to Mr Semple's instructions at any stage? May we take it that the March 2008 letter is the definitive and final statement of what his task was to be?

Mr Govey—I do not think that there were any further changes from that point.

Senator BRANDIS—Then we may take it that the March 2008 letter was definitive. Do you have information there about that date that I was asking about a moment ago?

Mr Govey—No. There was a press release put out. I think the press release might have attached terms of reference, but certainly we have terms of reference that were provided to Mr Semple, if that would help you.

Senator BRANDIS—I misunderstood. I thought your assistant was conveying to you the result of the inquiry I asked you to make about the date the Semple report was given to the government. So Mr Semple begins his work in March 2008. Was a draft of Mr Semple's report delivered to the department on a subsequent date? If so, what was that date?

Mr Govey—There were parts of the report delivered but, as I indicated a moment ago, it was always envisaged that some parts of the report were going to be prepared by Mr Semple and some parts were going to be prepared by the department. We worked very closely with Mr Semple in assembling the various parts and in passing drafts backwards and forwards between us in order to get to the final document.

Senator BRANDIS—I understand that this is not a public document yet, but which parts of the report—denominated by topic—was it envisaged would be prepared by Mr Semple and what parts of the report, by topic, was it envisaged would be prepared by the department?

Mr Govey—It is somewhat difficult to be precise about that, but Mr Semple was—

Senator BRANDIS—Be as precise as you can. I understand it is not a perfect science, it is not going to be black and white, but, in terms of the allocation of the work—as well as you can, Mr Govey—how was it to be allocated?

Mr Govey—Mr Semple engaged in considerable discussions and work with the courts, particularly on the financial elements of the proposals—the financial implications—so he focused very much on that and also on the views of the courts and individual judicial officers.

Senator BRANDIS—What was the department's contribution?

Mr Govey—The department, on the other hand, looked at some of the issues arising from structures of the courts and some of the issues to do with legal and constitutional aspects of that.

Senator BRANDIS—Was that allocation of function discussed with Mr Semple before he began his task? If so, was it agreed to by him?

Mr Govey—I certainly had most of those discussions myself. I could not tell you for sure whether the discussions were completely concluded at the time the letter was signed to him, Senator. The fact of the matter was that it was an iterative process. We started talking to him about it to see whether he would be interested in it and we continued those discussions. There was never an issue between us as to how that was going to be handled.

Senator BRANDIS—Mr Govey, what I am doing is exploring this proposition. I do not assert it to be true, but I know that there are many stakeholders who are of the belief that Mr Semple's inquiry was—to use a plain expression—overtaken by the department, so that the report that was handed to government did not, in important respects, reflect his views. In order to test the accuracy of that assertion I am asking you these questions about the process by which the final report was put together.

I asked you a little while ago when the draft of Mr Semple's report was given to the department, and you told me that some parts of the report were given to the department at different times. What I would like you to do—and I assume you will have to take this on notice—is provide the dates on which each iteration of Mr Semple's drafts of the various sections of his report were provided to the department, to whom in the department they were provided, and what process of consultation between Mr Semple and officers of the department followed each iteration.

Mr Govey—I can answer the last part of the question now. The process was to exchange comments by way of email or by telephone and, I think, perhaps one or two meetings as well. So it was a combination of all three.

Senator BRANDIS—There would have been emails, there would have been telephone conversations and there would have been meetings involving officers and Mr Semple, correct?

Mr Govey—That is correct.

Senator BRANDIS—A file exists of all of the exchanges of emails, does it?

Mr Govey—I imagine so.

Senator BRANDIS—In relation to telephone conversations, a minute would have been recorded of each of those conversations and placed on the file, would it not?

Mr Govey—I cannot be sure about that.

Senator BRANDIS—Would you expect that to be the case in the ordinary course of procedure?

Mr Govey—Not necessarily. The outcome of a discussion might have been recorded in different ways—for example, by a rewriting of part of the report.

Senator BRANDIS—So not all of these telephone conversations were minuted or otherwise documented?

Mr Govey—They were otherwise documented is what I am saying in some instances.

Senator BRANDIS—By changes to the report?

Mr Govey—That is correct.

Senator BRANDIS—We do not have any other document which would tell us what changes to the report had their source in any particular telephone meeting between an officer and Mr Semple, right?

Mr Govey—There might have been. All I am saying is that I am not sure that in every case a formal minute was prepared.

Senator BRANDIS—I assume, Mr Govey—correct me if I am wrong—that, in relation to the more substantive discussions, they would have been minuted and the minute placed on the file?

Mr Govey—I would have to go back and have a look at it. The fact of the matter was that this was a highly collaborative and consultative process and we worked together very closely with Mr Semple; and Mr Semple has assured me on at least a couple of occasions that reports to the effect that his review or his report did not reflect his view were incorrect.

Senator BRANDIS—As to the third type of communication between officers and Mr Semple, you said there were a couple of meetings. Were those meetings minuted and was a record of the transaction of those meetings retained on the file?

Mr Govey—I will have to check that.

Senator BRANDIS—I would like the file to be produced, please. I assume you will have to take that on notice.

Mr Govey—Certainly.

Senator BRANDIS—By the file, let us define what we mean: all email exchanges, all minutes of relevant telephone conversations and all minutes of any meetings between officers and Mr Semple. I would also like produced—and again I assume you will have to take this on notice—copies of each iteration, of each draft, of each section of the report.

I think Senator Abetz has some questions. Do you, Senator Abetz?

Senator ABETZ—Yes, I do.

Senator BRANDIS—Let me yield to Senator Abetz, Madam Chair, because time is on the wing.

CHAIR—Sorry, Senator Brandis. Seeing that I am chairing this meeting we might ask other senators if they have questions as well.

Senator TROOD—Chair, I have some questions but I am very happy to yield my opportunity to Senator Abetz.

Senator BARNETT—I have a bracket of questions relating to 1.4—International law.

CHAIR—Before we do that, I will just clarify that we have no questions for 1.2 or 1.3?

Senator BARNETT—I have still got some questions on 1.1.

CHAIR—We need to finish 1.1 before we go to 1.4.

Senator BARNETT—I do not mind swapping to 1.4. The officers are here.

CHAIR—So you have no questions for 1.2 or 1.3?

Senator BARNETT—We do, but Senator Abetz said—

Senator BRANDIS—I have some questions on 1.2 as well.

CHAIR—It is usual for us to work down the program.

Senator BRANDIS—It is usual to run the thing in a way that is most convenient to senators and to witnesses.

CHAIR—The committee has determined that this is the program, and we are still dealing with questions in output 1.1.

Senator ABETZ—In that case, I do not have any questions.

Senator BARNETT—I have questions on output 1.1 with regard to the appointment process for judicial appointments. Could you please advise the status report with respect to the vacancies, the numbers of nominations received and the appointments made for the judicial appointments? Secondly, I refer to the Attorney-General's speech of 11 October where he said:

We have taken steps to broaden consultation and introduce greater transparency in the selection process.

Could you please, if it is possible, outline what process we are now following in terms of judicial appointments? We have seen a major shift in the appointment process of judges in Australia. What process are we pursuing under this government?

Ms Leigh—The Attorney made a statement in the House on 19 February saying that in accordance with the government's commitment to open government, a new, more transparent, process would be put in place for making judicial appointments, and he outlined those processes in that statement. He also discussed the new approach in a speech that he gave on 17 February, and I am able to provide a copy of that. Subsequently, on 12 September, he gave

another speech where he reiterated the government's commitment to transparency and consultation, and updated progress on these objectives.

Senator BARNETT—When was that?

Ms Leigh—That was on 12 September.

Senator BARNETT—Have we got a copy of that? Could you table that?

Ms Leigh—I can table a copy of that.

Senator BARNETT—Thank you. Please go on, if you could.

Senator Wong—This was in the House, was it?

Ms Leigh—No, this was a speech. We are providing a copy now, Senator Barnett.

Senator BARNETT—I do not want to delay the time of the committee. I am happy for you to take those questions on notice with regard to vacancies, nominations and appointments, and the number and identity of each, and then I would ask you to address the issue of interviews and the criteria for the appointing of judges. I know the Attorney has established panels, and I am interested to know what written criteria you have for the appointment of judges. Can you answer that question, if you do have written criteria for the appointment of judges?

Ms Leigh—Yes. In those speeches the Attorney referred to putting forward public requisites for appointment for the judiciary, and, in relation to the positions that this process has now been applied to, those requisite criteria have been published on the department's website for each of those—and we can table those criteria.

Senator BARNETT—All right; thank you for that. Could you specifically address the High Court? I understand there were 23 nominations for Chief Justice and 29 for the justice. How was the short list created? Who was on the short list and what criteria applied to that, and how was the decision made?

Ms Leigh—There was no list of specified criteria, as there have been with the other courts, in relation to the High Court. Of course, the High Court occupies a very special place in the judicial hierarchy, and different considerations apply to selection in those cases. Yes, Senator, you are correct in referring to the appointment of the Chief Justice of the High Court that there were 23 nominations as Chief Justice. As to who was nominated, there has been no public announcement of that, and it would not be appropriate for me to announce those names.

Senator BARNETT—Can you advise who was on the short list?

Ms Leigh—Do you mean who did the short listing or which people were short listed?

Senator BARNETT—I would like to know who was on the short list, how they were assessed and put on the short list, what criteria applied for both the Chief Justice position and the Justice of the High Court position.

Ms Leigh—As I indicated, there has been no public statement as to who was on that short list and it would be inappropriate for me to make a public announcement as to that.

Senator BARNETT—But surely if the Attorney-General has indicated a more transparent process we would want to know how he came to the decision that he has on behalf of the government.

Ms Leigh—The Attorney made that decision after extensive consultation. Not only did he consult with the state and territory attorneys-general, as he is required to under the High Court Act, but he also invited suggestions from all of the justices of the High Court, the chief justices of the Federal Court and the Family Court, the Chief Federal Magistrate, the state and territory chief justices, the heads of the Law Council of Australia and the Australian Bar Association, the heads of each state and territory bar association and law society, the head of Australian Women Lawyers, the heads of the National Association of Community Legal Centres, head of National Legal Aid and the deans of each of the law schools.

Senator BRANDIS—Of every law school?

Ms Leigh—Yes, all 28.

Senator BRANDIS—Every law school in Australia?

Ms Leigh—All 28 law schools.

Senator BARNETT—So were those nominations made? Was there an assessment of their CV or biography? If so, who made that assessment?

Ms Leigh—Responses were provided by all of the people to whom the Attorney wrote. Not all took the opportunity to put forward names. All of those responses were then considered by the department in the normal process and provided to the Attorney.

Senator BRANDIS—Can I just jump in, Senator Barnett. This is a very extensive process of consultation. Given that there was no political controversy about the appointment of the new Chief Justice, why was the opposition not consulted? That used to be the constitutional convention.

Mr Wilkins—You would probably have to ask that question of the Attorney-General.

Senator BRANDIS—The Attorney-General is represented here by the minister who represents him, so I will ask her. Why was the opposition not consulted? I can understand, Senator Wong, if the process of consultation was limited to the statutory requirements under the Judiciary Act or to a very narrow range of persons that the government may have taken the view, as have previous governments, that the opposition would not be consulted, but you would be aware that in times past it was constitutional convention that the opposition was consulted on appointments of this character. When the government makes a decision to expand very, very significantly the range of those whom it consulted, why was no thought given to consulting the opposition?

Senator Wong—I am not aware of what the previous practices were, nor have I been advised what in fact occurred. Officers at the table cannot assist on this matter.

Senator BRANDIS—Perhaps you might take that on notice.

Senator Wong—I was just about to say that I will take it on notice. Can I just invite you, as the opposition spokesperson on these issues, to perhaps consult with Senator Barnett on whether he presses the question of the short list. It would be most unusual, I think you would

be aware, Senator Brandis, for the names of candidates for judicial office at the highest level who were not selected to be made public by government.

Senator BRANDIS—I hear what you say, Senator Wong, and I will consider what you say. Mr Wilkins, remind me when you began your appointment as secretary to the department.

Mr Wilkins—On 1 September, Senator.

Senator BRANDIS—And when was Justice French appointed? When was his appointment announced?

Mr Wilkins—He was appointed on 1 September.

Senator BRANDIS—So that decision was made prior to your occupying your office?

Mr Wilkins—Yes.

Senator BRANDIS—Was the former Secretary of the Attorney-General's Department, Mr Cornall, consulted?

Mr Wilkins—I actually do not know the answer to that question. I will have to ask Mr Cornall.

Senator BRANDIS—Would you take that on notice, please. Would you also take on notice this question: was the then Commonwealth Solicitor-General consulted?

Mr Wilkins—I will take that on notice too.

CHAIR—It being 12.30 pm we will suspend for lunch and resume at 1.30 pm.

Senator BRANDIS—Madam Chair, before we suspend for lunch can I raise a matter of convenience with you?

CHAIR—Yes, Senator.

Senator BRANDIS—You have indicated that we are going to start the agencies at 1.30pm, although it says here it will be at 2 pm, as a matter of fact—

CHAIR—No. The committee has met and the committee has endorsed the program.

Senator BRANDIS—May I finish please?

CHAIR—No. I need to clarify your statement. The committee has met and the committee has endorsed the program, which has the agencies commencing at 2 pm.

Senator BRANDIS—Now, Madam Chair, if I may continue, please: you have indicated that we will be commencing the agencies at 2 pm and you have indicated, as we know, that a program has been agreed to. But the program that has been agreed, as was circulated by the secretary this morning, also contains these words at the foot of today's program:

On conclusion of agencies, the Attorney-General's Department in continuation (if necessary)

I can indicate to you that I have many more questions for the Attorney-General's Department and I know that other coalition senators have too. The custom of this committee and the practice of every other estimates committee that I have ever been involved in is to deal with these matters with a little bit of flexibility and common sense. I would not like to have to say that every officer of the Attorney-General's Department has to come back at 10 pm or be on standby to come back when the agencies are finished. But that is what will be necessary if the

program is followed with foolish rigidity. It seems to me, applying common sense, that what we could do is continue with the Attorney-General's officers after the lunch break and then go to the agencies. Then all these dozens and dozens of public servants will be able to be excused in the early part of the afternoon, rather than having to wait around for the rest of the day and well into the evening.

CHAIR—Firstly, Senator Brandis, the committee has discussed this matter. These agencies are from interstate, hence they are on at two o'clock and not later in the day. If in fact you can deal with all of these agencies between two o'clock and before 11 pm—that is, if you finish earlier—then there is an expectation that the officers will be back at whatever time we finish the interstate agencies.

Senator BRANDIS—Don't you think it might be a bit more respectful to these people, Madam Chair, to let us have the next hour or so after lunch so that they can then be excused and we do not waste tens of thousands of dollars of the taxpayer's money by tying them up until late tonight? We would start the interstate agencies a little bit later in the afternoon.

CHAIR—The intent was to start the interstate agencies at two o'clock—

Senator BRANDIS—Well, let's start them when we finish the Attorney-General's Department.

CHAIR—and to save some taxpayer dollars by—if in fact you have finished with them at a reasonable hour—their flying home tonight. They will not be expected to stay the night in Canberra. So that is the way we have set the program with a view to the interstate agencies, who have flown here to attend, being in mind as a priority.

Senator BRANDIS—Well, Madam Chair, as a result of that then you will be unable to excuse any officers of the Attorney-General's Department, which seems to me to be a very foolish way to proceed with the program. Anyway so be it.

CHAIR—Your three members of the committee have been given this draft program for many days and last week endorsed this draft program, which is now the program, and that is the way we are proceeding.

Senator BARNETT—Madam Chair, in response on behalf of coalition senators: this has always been a draft program. At every estimates we do demonstrate discretion and when I was the chair that was exactly what I did. This draft program does include the words:

On conclusion of agencies, the Attorney-General's Department in continuation ...

It makes it very clear that they will have to come back late at night, at great expense to the taxpayer—

Senator BRANDIS—and at great personal inconvenience to themselves and their families—

Senator BARNETT—and at personal inconvenience to everybody here, who have families and other matters to attend to. So I would ask you to reconsider that over the lunch break so that we can proceed in a very orderly and thoughtful manner.

Senator Wong—Senator, as I understood it and as you would be aware, it is quite common for Senate estimates committees to try to facilitate some certainty around timing for interstate

agencies, for the very purpose of—as you indicated, Madam Chair—minimising the taxpayer’s expense of having to have interstate agencies present overnight in Canberra because they come on too late. I appreciate that obviously the opposition have not got through all that they wanted to get through, because they have asked more questions in various areas than perhaps they had previously anticipated. But I just make the point that interstate agencies were told, as I understand it from the program, when they would be required and there is a very logical reason for that. So it should not be put, as it seems to be suggested by some opposition senators, that it is somehow easier and more efficient just to keep going. In fact, that would inconvenience a number of officers who have come from interstate to be available this afternoon.

CHAIR—Thanks, Minister.

Senator BRANDIS—I might point out, Madam Chair—

CHAIR—Senator Brandis, I am the chair and I am speaking.

Senator BRANDIS—A point of order, Madam Chair—

CHAIR—Minister, it would seem that—

Senator BRANDIS—A point of order, Madam Chair—

CHAIR—Senator Brandis, you can have your point of order when I have finished speaking.

Senator BRANDIS—No, I am taking a point of order.

CHAIR—You interrupted me, so you can wait.

Senator BRANDIS—No, you must take a point of order immediately.

Senator BARNETT—Madam Chair, when you have a point of order you have to take the point of order.

Senator BRANDIS—Madam Chair, my point of order is this. The document that has been circulated says 2 pm but elsewhere it says we resume at 1.30 pm. Which is it?

CHAIR—We resume at 1.30 pm. We will be continuing with outcome 1 at 1.30 pm. Then, as the committee agreed at a meeting—a private meeting of the committee—last Thursday, we will be going to interstate agencies at 2 pm. The committee will suspend until 1.30 pm, after lunch.

Senator Wong—Madam Chair, if I could clarify something: we are 10 minutes late so can we—

CHAIR—Minister, we are coming back at 1.30 pm; thank you.

Proceedings suspended from 12.37 pm to 1.30 pm

CHAIR—We are still dealing with outcome 1. Are there further questions on this outcome?

Mr Wilkins—Chair, there was a mistake made in the information that was handed up on freedom of information. Sue Chapman would just like to give accurate figures for that, if that is all right with the committee.

CHAIR—We will do that.

Ms Chapman—A question was asked regarding the number of FOI requests, and I gave a figure of 33 for 2008-09. Unfortunately, there was some double counting because they took into account FOI requests that came in after the May estimates in the month of June. So the actual figure for 2007-08 is 83 and, for 2008-09, 21. Of that total of 104, 54 were granted; 29 were refused in full, including occasions where there were no documents held; 14 transferred were to another agency or were withdrawn by the applicant; and seven are still being processed.

Senator BRANDIS—Madam Chair, before we begin, and we are dealing with housekeeping matters, I wonder whether Mr Govey has an answer to the question I asked him to inquire about in the last session—that is, when the Semple report was handed to the government?

Mr Govey—I signed the submission to the Attorney-General with the report and, from memory, it was signed on the last working day of August. I am told—and indeed it is reflected in the *Hansard* of 16 September—that the Attorney-General was given the report on 4 September. That is referred to in *Hansard*.

Senator BRANDIS—Thank you.

Senator BARNETT—To conclude the questioning about judicial appointments that we were pursuing before lunch, I think there was agreement to take on notice the questions regarding the appointment of the Chief Justice and the High Court judge. Firstly, if you are not able to provide a short list, could you please advise the committee how many were on the short list for both of those appointments and, secondly, is it normal practice with the appointment of judges throughout Australia that their CV is obtained and reviewed prior to appointment?:

Ms Leigh—In relation to that last question, yes, that would be normal practice.

Senator BARNETT—Would it be unprecedented for an appointment to be made where the Attorney-General was not involved?

Ms Leigh—A judicial appointment?

Senator BARNETT—Yes.

Ms Leigh—I am not aware of any occasion where that has occurred.

Senator BARNETT—To the best of your knowledge, it would be unprecedented for a judge to have been appointed without the involvement or knowledge of the Attorney-General?

Ms Leigh—You mean appointed to a judicial position?

Senator BARNETT—Yes.

Ms Leigh—You do not mean an existing judge appointed to something else?

Senator BARNETT—No.

Ms Leigh—I am not aware of that having occurred.

Senator BARNETT—Could I table, for the committee and for your purposes, the *Examiner* newspaper, dated Friday, 17 October, where the Director of Public Prosecutions, Mr

Ellis, is reported as saying at an inquiry in Tasmania: ‘After the government decided to appoint a magistrate, which resulted in the ‘shreddergate’ affair, the Attorney-General had little involvement in the process.’ It goes on to say: ‘Mr Ellis said selection criteria were not addressed and a short list of candidates was prepared without the Attorney-General’s input. “Still it seems that the Attorney-General never sees the CVs”, he said.’ Would that be some surprise to you?

Senator Wong—As I understand the question, the officer is being invited to offer an opinion on a comment ostensibly attributed to a state attorney-general in relation to a state appointment. I would respectfully suggest it is not really something that the officer can offer an opinion on.

Senator BARNETT—I am asking if she was aware of that, and I have tabled the *Examiner* newspaper which relates to that. In this area, could I ask the minister: does the minister support the Marriage Act and specifically the definition of ‘marriage’ as it is currently framed in the Marriage Act 1961?

Senator Wong—Are you asking that in terms of my representation of the Attorney-General?

Senator BARNETT—Yes, that is correct.

Senator Wong—The government’s position in relation to the Marriage Act is clear.

Senator BARNETT—Can you restate it?

Senator Wong—The government believe that marriage is an institution between a man and a woman, and that is the position which was clearly articulated before the election.

Senator BARNETT—Thank you. Minister, are you aware of the speech by the Hon. Justice Michael Kirby at the inaugural John Marsden lecture on Wednesday, 15 October—just last week—when he said that denying homosexuals the civil status of marriage was discriminatory?

Senator Wong—I am not aware of the speech.

Senator BARNETT—I have got the speech in front of me, and that is—

Senator Wong—What is the question, Senator? Do you have a question for the Attorney-General’s portfolio?

Senator BARNETT—I have a question for you, Minister.

Senator Wong—For the Attorney-General’s portfolio?

Senator BARNETT—Yes. This is regarding a statement by a High Court judge, just last Wednesday, when he said that denying homosexuals the civil status of marriage is discriminatory. You have answered the first question. It is clearly contrary to the government’s policy position. What is the position of the government with respect to a statement like that?

Senator Wong—I have outlined to you what the government’s position is in relation to marriage. The government, prior to the election, made very clear our view as to the status of marriage. We also made very clear that we would proceed with legislation to end

discrimination in relation to other matters for same-sex couples. Those were matters clearly canvassed by the Labor Party prior to the last election.

Senator BARNETT—Do you agree that the judge's role is to interpret the law?

Senator Wong—Senator, I am not going to get into a discussion about what a particular High Court judge said or did not say in a public lecture, which I have not read. I can only tell you what the government's policy position is, and that has been made abundantly clear.

Senator BARNETT—So you cannot confirm that a judge's role is to interpret the law.

Senator Wong—I think I have responded to that issue. I know where you are going with this, and we have made very clear what our policy position is on this. It was made clear prior to the election, and we retain those views.

Senator BARNETT—Is it a concern for the government that judges, whether they be High Court judges or other judges, express public policy positions contrary to the current law?

Senator Wong—As Senator Brandis pointed out in the context of the human rights consultation discussion, there are differences of views in this country about a whole range of matters associated with rights. I can only speak for what the government's position is. If you want a commentary on what a justice may or may not have said, that is not really a matter on which I am going to assist you.

Senator BARNETT—It is a tradition in this country that the parliament makes the law and the judges interpret the law. If judges are making public policy positions on any matters, whether they be marriage or otherwise, that would not be unprecedented—it is obviously not—but it would be irregular.

Let us move on. Could you please provide a status report with respect to the establishment of the National Judicial College of Australia, which was referred to earlier by Ms Leigh.

Ms Leigh—I am not sure that I did. Are you saying I referred to it earlier today?

Senator BARNETT—I thought you did in the context of the SCAG—

Ms Leigh—No, I believe I referred to a national mechanism. I am happy to provide information on the National Judicial College but I did not refer to it in that context.

Senator BARNETT—I have the SCAG summary of decisions from July 2008. It refers to the National Judicial College.

Ms Leigh—Yes, there was a separate decision in relation to the National Judicial College. That is correct.

Senator BARNETT—Yes, and there was an agreement to fund it for a further three years?

Ms Leigh—That is correct.

Senator BARNETT—I also have in hand an *Australian* article from Friday, 17 October: 'State rejects a weak way to judge judges', and it quotes the Attorney-General, who wanted to give the National Judicial College the power to investigate complaints against all state and federal judges. It said that his position on dealing with complaints about judges is a setback. Can you provide a status report on the establishment of this college?

Ms Leigh—The National Judicial College was—

CHAIR—Senator Barnett, can you reference that quote and the date for us?

Senator BARNETT—I am happy to refer to it again. As I said earlier, it was the *Australian* newspaper of Friday, 17 October 2008 and the headline was ‘State rejects a weak way to judge judges’. The first paragraph says, ‘The federal government’s plan for a national system of dealing with complaints against judges is in danger of collapse.’ I have quoted the third last paragraph of the first column of that article.

CHAIR—Thank you.

Ms Leigh—The National Judicial College was established in May 2002. Since that time it has continuously been funded by the Commonwealth and participating states and territories. At the recent SCAG meeting, ministers agreed that the Commonwealth and those participating states and territories would continue that funding for a further three years. Indeed, they increased the funding.

Senator BARNETT—Is New South Wales involved in that process?

Ms Leigh—Yes, it is.

Senator BARNETT—That is different from the judicial commission in that they are not involved in the judicial complaints handling process but they are involved in the National Judicial College?

Ms Leigh—That is correct.

Senator BARNETT—What are the costs of legal services to government for this financial year? The figure I have for last financial year is \$388 million. Can you provide the latest costs of legal services to government?

Mr Govey—That is output 1.2, so somebody different will have to come to answer that question.

Senator BARNETT—All right. We will hold that over and maybe you can have the answer ready when we get to 1.2.

CHAIR—We will now move to output 1.2 and questions.

Senator BARNETT—I have just asked a question, as you know.

Senator BRANDIS—Chair, I know Senator Abetz has some questions on 1.4 and he is very busy in other estimates committees. Can we deal with Senator Abetz’s questions even though they might be slightly out of sequence?

Senator ABETZ—I would be obliged if this could occur without too much other inconvenience, but if officials are waiting there would be—

Senator BRANDIS—There will be no inconvenience, Senator Abetz, because all these officials will have to come back tonight, unfortunately.

CHAIR—If we are going to move to output 1.4, which we shouldn’t because the committee has resolved that we will proceed down this program in order, there may well be other senators from other parties who are listening who might be expecting to also ask questions in output 1.4.

Senator ABETZ—And the chances are that they, like me, were told to be ready before lunch.

Senator BARNETT—They were previously advised to be here at 2 pm, so we have 15 minutes left, Senator Abetz is here on output 1.4. Surely, Chair, you would want to use some discretion to allow the convenience of not only senators but public servants; otherwise we will all be back here again tonight, and it looks as though that is what will happen.

CHAIR—We would need to have a private meeting, if you want to break this—

Senator BRANDIS—Chair, for goodness sake, all the coalition senators are yielding to Senator Abetz and neither of the government senators have indicated that there are any questions—

CHAIR—There are other senators in this building who may well be waiting to ask questions in output 1.2 and 1.3. I draw your attention to standing order 26(4), which states:

(4) When a committee hears evidence on the estimates, the chair shall, without motion, call on items of expenditure in the order decided upon ...

We as a committee met last Thursday and we decided upon this program.

Senator ABETZ—But, Chair, the order can be changed from time to time. It had been hinted to me that output 1.4 might come on before lunch. It did not; that is fine. Unless the secretariat of the committee is aware of other senators who want to ask brackets of questions that might cause inconvenience if we were to make this change, I wonder what the difficulty is.

Senator BRANDIS—There is no difficulty, Senator Abetz.

CHAIR—We would need to ask the eighth member of this committee, who is not presently here. We would need to check to ensure that—

Senator BRANDIS—Madam Chair, would you show a bit of common sense. Every senator here is happy for Senator Abetz to ask his questions. They can be asked in 15 minutes. Let's get on with it.

CHAIR—I am reading to you standing order 26(4). If we are moving to output 1.4 then I assume we do not need the officers anymore in outputs 1.1, 1.2 and 1.3?

Senator BRANDIS—Not for the moment. They will be coming back for Senator Abetz.

CHAIR—If you want to vary this order then we will have a private meeting, but the standing orders clearly say—

Senator ABETZ—Why can't it be resolved?

CHAIR—The standing orders clearly say that we will call on items of expenditure in the order decided upon, and that is my ruling according to the standing orders.

Senator TROOD—Madam Chair, the committee frequently exercises discretion in the application of that particular order in relation to estimates. There is no reason why that discretion ought not be exercised on this particular occasion. As Senator Brandis has said, every member of this committee who is interested in this particular subject is more than

happy to yield to Senator Abetz. I suggest we do that and I will ask some follow-up questions on international law then we can return, if we have any time, to outputs 1.2 and 1.3.

CHAIR—If we are going to proceed that way, I will ask the secretariat to ensure that there are no other senators who want to ask questions in those areas.

Senator ABETZ—Wait a moment. If they are interested in outputs 1.2 and 1.3, one would imagine they would be here right now for the commencement of output 1.2.

CHAIR—You want to move to output 1.4, as I understand it?

Senator ABETZ—That is right.

Senator BRANDIS—Why doesn't Senator Abetz just ask his questions? For goodness sake, let's get on with it.

CHAIR—If that is the case, we will need to have a private meeting and vary the order of this program; otherwise, we will proceed.

Senator ABETZ—On output 1.4. Thank you. I just hope the build-up has been worth it.

CHAIR—We will proceed. We were at output 1.1; we are now at output 1.2. Senator Barnett, you had questions of output 1.2, as I understand it.

Senator ABETZ—This is just outrageous. Chair, not even the minister is objecting.

Senator BRANDIS—Madam Chair, it also shows little respect for the fact that Senator Abetz is the senior senator on the committee.

CHAIR—We are moving to output 1.2.

Senator BARNETT—Chair, I would suggest we suspend the committee and have a private meeting and, hopefully, it will take no more than 60 seconds.

CHAIR—If that is what you would like to do, the committee is suspended while we have that private meeting.

Proceedings suspended from 1.49 pm to 1.59 pm

CHAIR—We have a slight change to the program, which I ask the department to take note of. We are going to move to output 1.4 now and we will continue with outcomes 1, 2 or 3 until 2.30. At 2.30 we will move to the interstate agencies. We will deal with the National Native Title Tribunal first and then move to the other eight interstate agencies, as listed on the program. Those with asterisks beside them are the agencies who have travelled from interstate. At the conclusion of evidence from those nine agencies we will go back and deal with the rest of the A-G's portfolio—outcomes 1, 2 or 3, dependent on where we were at—and at the conclusion of that we will deal with the remaining agencies, which I understand are locally based. So we are now moving to output 1.4. Senator Abetz, I understand you have questions in that area?

Senator ABETZ—Thank you, Chair. I just hope the questions are now worthy of the climatic aura that has been created around them, but I thank the committee. On 21 April this year Minister Ferguson issued a press release about the UN's recognition of a vast extra area of Australia's exclusive economic zone. I understand that the Attorney-General's Department

was actively involved in providing legal advice in this area both to Minister Ferguson, as Minister for Energy and Resources, and to Foreign Affairs; is that correct?

Mr Campbell—It is true that the three portfolios with main involvement in it were the Attorney-General's portfolio, the Foreign Affairs portfolio and the Energy and Resources portfolio. Yes, we provided advice on it. In fact, we led the delegation to the Commission on the Limits of the Continental Shelf, which considered it in New York.

Senator ABETZ—Excellent. So we have some relevance. I must say I had some trepidation as to whether you would tell me some other agency was the lead agency in this area and all the foregoing discussion would be for naught. Thank you for confirming that.

Mr Campbell—For the sake of my own preservation, I did not say that we were the lead agency; I said we led the delegation to New York. But I am happy to answer questions on it.

Senator ABETZ—All right. As long as we are in agreement on that. Can you advise me whether the United Nations has confirmed Australia's rights over the whole of an extra 2.5 million square kilometres of seabed?

Mr Campbell—Yes, they have.

Senator ABETZ—They have actually confirmed that?

Mr Campbell—They have. In April this year.

Senator ABETZ—The minister made a statement on 21 April. So that total area has now been—

Mr Campbell—The Commission on the Limits of the Continental Shelf confirmed 2.56 million square kilometres as being Australian continental shelf—that is, the area beyond 200 nautical miles.

Senator ABETZ—I understand there has been no proclamation, as yet, by the Governor-General; is that correct?

Mr Campbell—There has been no proclamation as yet.

Senator ABETZ—There is a legal requirement, is there not, for such a proclamation to be made at some stage?

Mr Campbell—The proclamation is made under the Seas and Submerged Lands Act, which is administered by the Attorney-General's Department. There is no absolute requirement to make a proclamation of the outer limits, but it is the government's intention to make a proclamation, and one is being drafted at the moment.

Senator ABETZ—Right. So we anticipate that that might be coming shortly.

Mr Campbell—Yes.

Senator ABETZ—Has Australia had any representations made to it or had any arguments put forward in relation to the Elizabeth Reef and the Middleton Reef not necessarily being suitable for human habitation or economic life?

Mr Campbell—Not that I can recall, in the context of the Commission on the Limits of the Continental Shelf. I do recall one question on that area from the commission but it related more to where a particular base point was located. In fact my understanding is that none of

those points on Elizabeth and Middleton islands is relevant to where the outer limit of the continental shelf is.

Senator ABETZ—As I understand it—and correct me if I am wrong; I am just a has-been suburban lawyer—under the United Nations Convention on the Law of the Sea, in determining the points from which measurements are made, the term ‘human habitation or economic life’ is one of the definitions that is taken into account in relation to land masses from which boundaries will be taken?

Mr Campbell—Senator, I think you are probably referring to article 121 of the Law of the Sea convention, which deals with islands.

Senator ABETZ—I was exactly going to say that.

Mr Campbell—It defines ‘islands’ and it says where rocks are incapable of human habitation or an economic life of their own they are not capable of generating a maritime zone other than a 12-nautical mile territorial sea.

Senator ABETZ—And you are saying to this committee that those two reefs that I just mentioned—Elizabeth and Middleton—are not of that description?

Mr Campbell—No, I am not saying that.

Senator ABETZ—They are of that description?

Mr Campbell—On that particular issue there is a good deal of discretion within the coastal state, and it has been shown by state practice about what actually amounts to an island and what actually amounts to human habitation and an economic life of their own.

Senator ABETZ—I am just waiting for a Labor Party branch to be established on one of these reefs, you see.

Mr Campbell—As a matter of history, there was an intention to place a resort on those islands at one point.

Senator ABETZ—Really?

Mr Campbell—Yes. But I think it ended up off Queensland.

Senator ABETZ—As far as the Attorney-General’s Department is concerned, we have sufficient evidence to prove that the reefs qualify as islands, or are you saying that the reefs do not come into consideration because we are taking our measurements from other land formations?

Mr Campbell—In relation to the outer limit of the continental shelf in that area, which is beyond 200 nautical miles, the answer is that those points on Elizabeth and Middleton are not critical to establishing that outer limit.

Senator ABETZ—All right. Thank you very much.

CHAIR—Other questions on 1.4?

Senator TROOD—I have further questions. Since you are here, Mr Campbell, I wonder if you could tell the committee whether or not the department has prepared any advice pursuant to the Rudd government’s election promise to take Iran to the International Court of Justice with regard to genocide and its threats to Israel.

Mr Campbell—The answer to that question is yes.

Senator TROOD—You have prepared some advice?

Mr Campbell—Yes, we have.

Senator TROOD—Could you tell me whether or not that advice has been prepared wholly within the department or whether any part of it has been outsourced?

Mr Campbell—I can say the advice was signed by an officer at the Attorney-General's Department, and I agreed with the advice that was done and settled that advice. It may well be that we showed a draft of that advice—as we may well do so in the ordinary course—to our colleagues in the legal office in the Department of Foreign Affairs and Trade but it was not prepared by outside counsel. It was prepared within the Attorney-General's Department.

Senator TROOD—I was thinking of outside counsel. I was going to ask you a question about other agencies' involvement but I was primarily anxious to know whether this was the Attorney-General's advice rather than advice sought from outside the department or, indeed, outside government.

Mr Campbell—It was advice from the Attorney-General's department and specifically the Office of International Law.

Senator TROOD—I see. And with some participation of the department of foreign affairs. Is that right?

Mr Campbell—I would have to check on that, but, in the ordinary course I would have thought that, with that sort of advice, we should show the Department of Foreign Affairs and Trade's legal office a draft of the advice. I cannot quite recollect whether we did, but it would be unusual if we did not.

Senator TROOD—Perhaps you could check that for me, Mr Campbell.

Mr Campbell—I will.

Senator TROOD—Can you tell me when you began work on the advice?

Mr Campbell—I would have to take that on notice. I should say that the advice took some little time. I do recall that. But as to when it was precisely started, I do not know.

Senator TROOD—Mr Campbell, are we talking weeks or are you suggesting that the advice began earlier in the year?

Mr Campbell—Earlier in the year.

Senator TROOD—I would be grateful if you would check the date, if you have that.

Mr Campbell—I am not quite sure that I have it.

Senator TROOD—Insofar as you can identify a date for the commencement of the work on the advice, I would be grateful if you could provide that information.

Mr Campbell—Can I say this: there are some things that one notices in government policy where you think, 'We'd better start considering that now because it may well come up.' I think this falls into one of those categories. As to the precise date, it will not necessarily be a specific request to start working on the advice, but it was earlier this year.

Senator TROOD—Working on the principle of a prescient public servant, Mr Campbell, if you are one and your department can identify when you exercised your prescience then perhaps that would be helpful.

Mr Campbell—We will try to do that.

Senator TROOD—In any event, when you can. Is it proper to say that whenever you began to work on this advice you continued to work on it on a regular basis until it was finished, or was it a kind of intermittent activity?

Mr Campbell—I would say it was on a regular basis.

Senator TROOD—In what form was the advice given? Were you asked to provide a memorandum?

Mr Campbell—It was done in the form of a memorandum of advice.

Senator TROOD—Can you tell me when it was completed.

Mr Campbell—On 14 May 2008.

Senator TROOD—Can you tell me, it having been completed on 14 May, when the advice was sent to government?

Mr Campbell—I can say when it was forwarded to the Attorney's office.

Senator TROOD—Perhaps you could tell me that.

Mr Campbell—On 14 May.

Senator TROOD—So it was completed on 14 May and it was sent to the Attorney's office on 14 May. Do you have the date when you may have shared your advice with the Department of Foreign Affairs and Trade?

Mr Campbell—I do not have that here.

Senator TROOD—But, as you said earlier, you thought that a draft—

Mr Campbell—I said I would have to check on that.

Senator TROOD—Would the advice that was completed on 14 May have been a draft advice or a finalised advice?

Mr Campbell—It was a finalised advice.

Senator TROOD—So if the draft advice had been shared with the Department of Foreign Affairs and Trade, that would have been done prior to the final advice being completed on 14 May. Is that right?

Mr Campbell—If it was.

Senator TROOD—So was sent to the Attorney's office. Do you have any advice for the committee as to when it left the Attorney's office?

Mr Campbell—No, I do not.

Senator TROOD—Can you tell us what happened to it after it went to the Attorney's office?

Mr Campbell—I assume it was looked at by the Attorney's office.

Senator TROOD—So it did not come back to your division.

Mr Campbell—I would have to check that.

Senator TROOD—I would be grateful if you would take that on notice. You have no recollection as to whether or not you saw the advice after 14 May?

Mr Campbell—I looked at the advice myself again occasionally, but I do not have a recollection of it coming back. It is not unusual for some submissions to be retained by the Attorney in the Attorney's office.

Senator TROOD—But you cannot remember any occasion when you were required to look at the advice again to review it or reconsider it or anything of that kind? You may have looked at it as a matter of interest—bedtime reading perhaps.

Mr Campbell—No.

Senator TROOD—So it was completed in May, some months ago now. My understanding is that the Prime Minister recently made it clear that the government was not going to proceed with this election promise. Is that your understanding of the matter?

Mr Campbell—My understanding is that the Minister for Foreign Affairs made a statement in the House on 15 October in which he made some announcements concerning further sanctions against Iran and also announced that the government would not be taking legal proceedings against Iran in respect of the statements made by President Ahmadinejad.

Senator TROOD—Mr Campbell, can you tell us what happened in the five months between May and October, when this advice was completed, as to why it took such a long time for the government to make an announcement about the advice, whatever the content of the advice? And of course I am not asking you to disclose that.

Mr Campbell—Senator, I cannot answer that question—but I can say that there are other issues concerning Iran, such as those relating to sanctions, that were being considered by the government at the same time.

Senator TROOD—Were they being considered in conjunction with this advice with regard to the International Court Of Justice?

Mr Campbell—I could not answer that. I just do not know the answer to that question.

Senator TROOD—But it would seem to be a reasonable assessment, on the evidence you have provided, that the advice was completed in May and then it took five months before there was any announcement on the nature of that advice, whatever that advice might have been.

Mr Campbell—I personally do not think it is unusual for a delay between the giving of a legal advice on a matter and for the government, any government, to make a decision—but it takes some time to come to that decision. I do not think it could be expected that because an advice is given on 15 May that there would necessarily be a government decision, any government decision, on the matter within the next while. I am not just talking about this government; I am talking about any government in my experience.

Senator TROOD—I have some familiarity with the way in which lawyers and attorneys behave, and perhaps that—

Senator Brandis interjecting—

Senator TROOD—Some passing familiarity, Senator Brandis.

Senator Brandis interjecting—

Senator TROOD—That may or may not be correct. But this was an election promise, as I understand it, Mr Campbell, so one would think there might have been some urgency in relation to it.

Mr Campbell—I cannot say that I can characterise it as an election promise.

Senator TROOD—Perhaps you should take it on trust that it was in fact an election promise, and perhaps part of the reason why the department was asked to investigate it was that it was pursuant to an election promise. Given that it was an election promise, one would have thought that the government might have been keen to honour its election promise and provide advice as soon as possible as to its intentions. Five months seems to me to be a very long period of time from the completion of the advice to any further announcement being made about it.

Senator BRANDIS—That is pretty fast for the Rudd government, Senator Trood!

Senator TROOD—One would hope they might be even more expeditious, Senator Brandis.

Senator BRANDIS—We are talking about a policy paralysis government here.

Senator TROOD—Yes. Mr Campbell, is it possible that there might have been some delay as a result of these other matters in relation to Iran?

Mr Campbell—I do not know the answer to that question. I would not characterise it as a delay.

Senator TROOD—I see. And those other matters related to sanctions in relation to the International Atomic Energy Agency and its nuclear program. Is that right?

Mr Campbell—The other point made in the announcement last week by the Minister for Foreign Affairs related to additional sanctions that would be imposed against Iran.

Senator TROOD—But they were not matters that you were asked to make any assessment about or judgements on? Is that right?

Mr Campbell—Not that I am aware of; not me personally.

Senator TROOD—You are part of the department. The international law branch was not asked to provide any advice about those matters?

Mr Campbell—We would normally be asked for advice on those matters if they involved the question of whether we would be giving effect to our international obligations or not in imposing sanctions, but there was no international law question at issue here. It was in relation to the imposition of sanctions.

Senator TROOD—I see. So that was not a matter that, in your view, needed to detain the officers of your department?

Mr Campbell—They may have seen it; they may have seen some issues relating to sanctions before the announcement was made.

Senator TROOD—But you were not asked to make any assessment of them or provide any advice in relation to those sanctions?

Mr Campbell—Not that I am aware of.

Senator TROOD—So the work that you were doing was primarily related to the possibility of taking Iran to the International Court of Justice with regard to the matter of genocide and threatening Israel? Is that right?

Mr Campbell—That is the matter we provided advice on.

Senator TROOD—I see. Thank you.

Senator BARNETT—Just regarding CEDAW and the government's plans to add confirmation that it will sign the optional protocol, can you advise the Senate committee the identity of those who are on the relevant UN committee?

Mr Campbell—I personally do not have that information on me. I am not sure whether my colleague—

Mr Skillen—Your question, Senator, was in relation to the membership of the CEDAW committee?

Senator BARNETT—The membership of the relevant UN committee to which Australian women or entities would appeal or make claims?

Mr Skillen—Yes, we can certainly provide that to the committee in written form.

Senator BARNETT—Can you share it with us now? Who are the members of that committee? You do not have a list with you?

Mr Campbell—I do not think we have the list with us.

Senator BARNETT—This is something the government wants to implement as soon as possible, as a priority.

Mr Campbell—We can get you the list quickly.

Senator Wong—Just remind me, Senator, what is the opposition's position on CEDAW?

Senator BARNETT—We do not support the signing of the optional protocol.

Mr Skillen—The list of the members of the committee was provided to the Joint Standing Committee on Treaties when it was conducting its assessment of the optional protocol but, as has been indicated, we are certainly able to provide this committee with another copy of that list in very short order.

Senator BARNETT—Thank you.

Senator SIEWERT—I want to ask about whales and about where we are up to with any international action that Australia may or may not be considering. Could we have an update of where we are up to, please?

Mr Campbell—The government is still considering whether to commence legal proceedings.

Senator SIEWERT—It seems to have been considering it for quite a period of time. Is there a time frame for when you will finalise that?

Mr Campbell—I cannot give you a time frame for finalising it. But what I can say is that there has been a good deal of diplomatic activity in relation to the government's efforts to try to stop Japanese whaling in the Southern Ocean. Of course, we are not the primary department dealing with those diplomatic efforts, but they have been going on.

Senator SIEWERT—Do you anticipate making a decision before whaling starts again next summer?

Mr Campbell—I am not in the position of being able to answer that question. The question of when the decision will be made will be up to the government to decide.

Senator SIEWERT—Who is actually providing that advice to the minister?

Mr Campbell—Which advice? Is that legal advice?

Senator SIEWERT—Legal advice, yes.

Mr Campbell—I think it is a matter of record already that we have obtained advice from Professor James Crawford, an Australian who is Professor of International Law at the University of Cambridge, on the issue of taking Japan to an international court or tribunal on that matter.

Senator SIEWERT—I appreciate that you have just answered my previous question, but in terms of government agencies is it solely your agency that is responsible for providing that advice?

Mr Campbell—We provide advice on international law issues, including on issues relating to whaling, but we do this in conjunction with colleagues in the legal office of the Department of Foreign Affairs and Trade.

Senator SIEWERT—Are you also associated with or are you providing any advice on any surveillance that will be undertaken this summer?

Mr Campbell—If a decision is taken to undertake surveillance this summer and if it is like last year, we will be providing advice in relation to that.

Senator SIEWERT—Has any advice been sought by the minister as to the possibility of undertaking any surveillance this summer?

Mr Campbell—It is not a legal question, Senator.

Senator SIEWERT—But you have just said that you will be providing advice. Your department would be the department that provided the advice.

Mr Campbell—I think what I said was that if the government decided to do further surveillance this summer, then I would expect that we would provide international legal advice in relation to that surveillance.

Senator SIEWERT—Thank you. Point taken. Do you provide any advice to government about the *Sea Shepherd* in particular, or any actions of the *Sea Shepherd*?

Mr Campbell—We have provided advice in relation to the actions of the *Sea Shepherd* during the course of the last period when it was down in the Southern Ocean.

Senator SIEWERT—Did you provide the government, or did you look at, the issues around the supposed shot that was fired at the captain of the *Sea Shepherd*?

Mr Campbell—We did not give legal advice on that issue. Issues like that would be dealt with by law enforcement authorities, not the Office of International Law.

Senator SIEWERT—Yes. I will be trying to follow it up later with the law enforcement authorities—

Mr Campbell—Except to the extent that, if there was an international law issue or an international convention that related to those matters, then we might provide advice on that—such as an IMO convention that deals with terrorism at sea and things like that.

Senator SIEWERT—But in this instance you did not provide any advice?

Mr Campbell—I think we might have provided a small amount of advice about the application of that convention.

Senator SIEWERT—Are you able to inform the committee of the advice that you provided?

Mr Campbell—No, I am not.

Senator SIEWERT—There is no harm in trying my luck.

Mr Campbell—That is what is normally said, Senator.

Senator SIEWERT—In terms of the *Sea Shepherd*, do you provide advice as to the fees that they are charged in Australian waters or in Australian ports?

Mr Campbell—No, we don't. I am speaking for the Office of International Law, but I do not think any part of the Attorney-General's Department would be providing advice on that.

Senator SIEWERT—I am just covering all my basis, because I find that when I go to different estimates committees to ask questions I am frequently told, 'You should have asked that in the previous one.' So I cover all my bases now. In terms of activities of foreign vessels in Australian waters, as I understand it—I would appreciate any assistance you could provide me—when foreign vessels are illegally fishing, Australian authorities can board those vessels. Is that correct?

Mr Campbell—If they are within our jurisdiction, yes.

Senator SIEWERT—Exactly. But that is not done when there are foreign vessels whaling in Australian waters.

Mr Campbell—If what you are suggesting is that Australian vessels that normally enforce fisheries laws do not enforce those laws in our proclaimed exclusive economic zone off the Australian Antarctic Territory, the answer is: yes, they do not board the vessels.

Senator SIEWERT—That is because those waters are not recognised internationally?

Mr Campbell—It is partly because relatively few countries recognise our sovereignty over the Australian Antarctic Territory and hence our sovereign rights over the adjacent waters, but also because of sensitivities within the Antarctic Treaty system.

Senator SIEWERT—What happens where those waters are near our bases? Are those waters recognised as our waters near our bases?

Mr Campbell—I think it comes back to the basic point that it is a question of recognition of our sovereignty over the Australian Antarctic Territory. Whilst Australia firmly believes that it has sovereignty over it, that is a view that is not shared by a lot of other countries.

Senator SIEWERT—Have any illegal, unregulated fishers—other than whaling—been boarded in those waters?

Mr Campbell—I think the answer to that is yes, because it is done under a different convention, which is the Antarctic Marine Living Resources Convention, which is done by agreement between the parties to that convention and the parties to that convention agree that their vessels can be boarded.

Senator SIEWERT—So you are using different conventions for whaling and for fishes under those circumstances?

Mr Campbell—We are not using any convention in relation to not taking action against whaling vessels down there.

Senator SIEWERT—You are not applying that particular convention to whaling?

Mr Campbell—All I can say is that I do not think whaling vessels are being boarded under that convention.

Senator SIEWERT—No, I know they have not been—

Mr Campbell—It is not something that is in our hands necessarily. We are talking about a multilateral convention here.

Senator SIEWERT—Your interpretation of the multilateral convention. It is accepted internationally that you can board for fishes but not for whaling. That is the point, isn't it?

Mr Campbell—If one is talking about the international whaling convention which regulates whaling. There are other conventions that regulate whaling as well, but that is the primary convention that regulates whaling.

Senator SIEWERT—Okay, thank you.

CHAIR—It now being 2.30 p.m. we are going to the interstate agencies. I would ask officers from the National Native Title Tribunal to come forward.

Mr Wilkins—Does that mean that Mr Campbell can leave?

CHAIR—Do you have any other questions in 1.4?

Senator BARNETT—I am not sure where this question fits so why don't I ask—it may be 1.4 or it might be another area. I am interested in the department's response to the AUSTRAC report which identified three million transactions involving \$10,000 or more were reported in the last 12 months. There has been a 54 per cent jump in the reported number of people carrying, mailing or shipping more than \$10,000 in or out of Australia up to 36,131.

Mr Campbell—That is not 1.4.

Senator BARNETT—Where would that fit?

Mr Campbell—In 2.1.

CHAIR—Any other questions for 1.4? Will we send these officers home or do you need them later?

Senator BRANDIS—I do not think I have any further questions on 1.4.

Senator BARNETT—When might I be expected to receive that response in regard to the UN committee?

Mr Campbell—We can get it for you within the next half an hour.

Senator BARNETT—Thank you. There may be some questions following through once I get that information, but I do not want to hold you up and delay you until late in the evening, which will obviously be the case for some other public servants. So I will leave it at that for now.

CHAIR—Thank you, Mr Campbell. I think that would mean that officers related to or associated with 1.4 are free to go.

[2.33 pm]

National Native Title Tribunal

CHAIR—I now welcome representatives from the National Native Title Tribunal and I particularly welcome Ms Fryer-Smith to estimates. Questions of the tribunal?

Senator BARNETT—I have a few brief questions. Ms Fryer-Smith, thanks for being here. You might recall we had some discussion at the last estimates hearings in May in regard to the backlog. I am wondering if you could provide a status report on the backlog as it was at the time and what backlog we have now in terms of applications currently before the tribunal. Specifically you advised the date of the oldest native title application was 24 March 1994, so some 14 years old. You have provided in answers to questions on notice the details regarding the claim, and I am interested to know how that has progressed.

Ms Fryer-Smith—In terms of the matters about which we advised you last time, there are still 497 claimant applications in the system. In addition, there are 31 non-claimant applications and 10 compensation applications in the system.

Senator BARNETT—When you answer that, are you able to advise us what it was last time at estimates in May?

Ms Fryer-Smith—Yes, it was 557.

Senator BARNETT—So we have come down to 497.

Ms Fryer-Smith—Sorry, that may not be quite correct. I beg your pardon, I am transposing figures here. It is now 497; it was 513. I was adding in the non-claimant and compensation applications then.

Senator BARNETT—So 513 down to 497 for the claimants.

Ms Fryer-Smith—The reduction in numbers is attributable to a number of factors: additional determinations being made, applications being dismissed and withdrawn. In relation to the backlog I recall there was a discussion about whether, indeed, there was a 30-

year backlog—I think that was in relation to a projection that it may well be 30 years before all the native title applications currently in the system are finalised.

Senator BARNETT—I think it was a prognosis into the future. You were looking into the future. Mr Gaffney was answering the question at the time and was making an expert opinion or providing an opinion with respect to the prognosis for the future, and I think it was some 30 years.

Ms Fryer-Smith—Yes, that was based on some modelling based on the current rate of disposition of the matters.

Senator BARNETT—And?

Ms Fryer-Smith—Looking narrowly at the matter of claimant applications, the disposition rate is somewhat steady. In the year 2007-08 there were nine determinations of claimant applications, which was similar to the year before. There are still some 497 applications in the system, and I do not know that at this point the prognosis in terms of the 30-year period has changed markedly.

Senator BARNETT—I was of the view when we were talking in May that there was a determination, as it were, to try to clear the backlog and to try to get that prognosis down. Thirty years is a long time for these matters to be addressed and completed in anybody's book, not just the concerns of current senators.

Ms Fryer-Smith—Of course. All the parties and all the stakeholders are keen to see that figure become much reduced. But it is worth reiterating the fact that settling these matters is a task of some complexity. Native title determinations and mediations in particular are not like other mediations. They are extremely complex. They have vast numbers of parties. Unlike other forms of alternative dispute resolution there isn't any pre-existing relationship that can be easily tapped into and managed. A determination of native title is a determination that pre-existing rights do exist which do affect the interests of a lot of other stakeholders and in addition the parties to a mediation bring culturally diverse views and attitudes to it. So those factors combined with resource implications, with the fact that there are many very difficult intra-Indigenous disputes that are almost intractable and with the fact that not all parties are represented and so on—it is an extremely difficult type of litigation to dispense with quickly.

Senator BARNETT—I fully understand the complexity and the sensitivities and the reasons that you have outlined. But you have referred to at least in one instance the resource implications. Can you advise the committee what extra resources you would need to dent that 30-year future prognosis in terms of resolving these applications?

Ms Fryer-Smith—At this stage I do not know that I would speculate about a particular amount of money insofar as the National Native Title Tribunal is concerned. I know that the representative bodies are very keen to obtain additional funding because that is a major issue for a lot of claimant groups. But what the tribunal is putting a lot of effort into at the moment is the National Case Flow Management Scheme, whereby the native title matters across Australia are being grouped or looked at on a regional basis, which may be a state or part of a state. The matters are being prioritised according to whether they are substantive—whether they are on what is called a substantive list—whether they are on a regional list or whether they are on a registrar's list. The matters on the substantive list are those which, in the view of

the members of the tribunal have a chance of being disposed of within the next two years. There are some 53 matters on the substantive list. So what the tribunal is engaged in doing is providing that information to the courts, providing it to all the other parties and stakeholders, with a view to marshalling resources into particular key areas where perhaps the disposition of one claim may lead to the speedy disposition of other claims in the area or those with very similar background facts.

Senator BARNETT—This sort of initiative has merit in terms of dealing with the 30-year prognosis of these matters into the future. So, apart from the Case Flow Management Scheme, are there other initiatives or proposals that you have either implemented or perhaps put to the government to say: ‘Look, this is unsatisfactory. It is unmeritorious. It is unfair on the applicants. It is unfair all round. It is embarrassing that we have this huge list. We need to deal with it.’ Have you put those proposals to the government? If so, can you identify them for us and tell us about them?

Ms Fryer-Smith—In terms of putting in place procedural directions and so on to expedite the mediation of claims, in 2007 the president promulgated nine procedural directions which guide the members and employees of the tribunal in dealing with the matters and providing directions.

Senator BARNETT—Can you table those for us?

Ms Fryer-Smith—Yes, of course. We have copies here, I think.

Senator BARNETT—Or take it on notice.

Ms Fryer-Smith—I will take it on notice. Also, the President is very much on the record about this, having spoken in a number of forums to advocate that parties take a much more flexible approach to mediation and that generally people take a much wider view of agreement making. Rather than perhaps looking only to native title outcomes, they need to have broader agreements. That is a view that is pretty much echoed by all the stakeholder bodies and the government.

Senator BARNETT—Has the tribunal put any initiatives or recommendations to the government to deal with the backlog?

Ms Fryer-Smith—I will just confer with Deputy Registrar Gaffney. I have been advised that, in the recent four-year funding review process which took place, not only was the tribunal involved in the discussions relating to the review but it also contributed to the production of a number of policy papers which were directed to faster resolution of the outstanding matters. Those policy papers are with the government now for consideration, I understand.

Senator BARNETT—Can you identify the names of the policy papers for us?

Ms Fryer-Smith—Not at the moment, but I can produce them.

Senator BARNETT—Can you produce the policy papers?

Mr Govey—Perhaps I should make the point that that review is all budget-in-confidence because it is leading up to consideration of funding issues that are considered in a budget context.

Senator BARNETT—Thanks, Mr Govey, but you can identify the number of policy papers and hopefully identify the names of the policy papers, if that is possible?

Ms Fryer-Smith—I understand that that may not be possible for the reasons just outlined by Mr Govey.

Senator BARNETT—You said that there were several policy papers.

Ms Fryer-Smith—I understand so, yes.

Senator BARNETT—But you cannot identify how many there were?

Ms Fryer-Smith—I would need to take advice on that but I have been advised that the matter is with the government.

Senator BARNETT—All right. Perhaps you could take it on notice: the number, the identity as in the name of the policy proposal and if we could possibly have a copy. If that is not possible, just advise on notice.

Ms Fryer-Smith—Thank you, Senator; certainly.

Senator BARNETT—The terms of reference for the working group for native title had not been published at the last estimates. What is the status of that?

Ms Fryer-Smith—I am afraid that I cannot enlighten you at all about that. I do not know. Apparently we are not involved in that.

Senator BARNETT—Can Mr Gaffney answer that?

Mr Govey—That would be a matter for the department. I think that is part of the Attorney-General's list of topics.

Senator BARNETT—Can you advise the status of the terms of reference for the working group?

Mr Anderson—Which working group do you mean?

Senator BARNETT—This is a question asked on notice—number 94. When will the terms of reference for the Working Group on Native title be published. The answer was, 'No decision has been made on their release.'

Mr Anderson—The reason I asked is that sometimes there can be more than one working group. Do you mean the joint working group set up by the Attorney-General and Minister Macklin?

Senator BARNETT—Let us go down that track first. What is the answer to that question? Let us say 'yes' to that. What is the answer?

Mr Anderson—In relation to that, there is a paper that is to be released in the near future. I cannot say when. It is a report by that working group and it will include the terms of reference.

Senator BARNETT—For the Working Group on Native Title.

Mr Anderson—It is really a working group on native title payments.

Senator BARNETT—Native title payments.

Mr Anderson—Yes. It is on the uses made of payments received through native title agreement making.

Senator BARNETT—All right. So it is not addressing the backlog issue that we have been discussing.

Mr Anderson—No, it is not about that.

Senator BARNETT—Can you advise the committee of the details of that terms of reference, or do you want to take that on notice?

Mr Anderson—I will take that on notice because the Attorney-General and Minister Macklin have decided that it will be released when the report of that working group is released.

Senator BARNETT—Do you know when that will be?

Mr Anderson—I cannot give a precise date.

Senator BARNETT—Can you give an estimate of a date?

Mr Anderson—That would simply be speculation.

Senator BARNETT—But is it in the near future or next year?

Mr Anderson—It is certainly in the near future. There will be a discussion paper released at the same time.

Senator BARNETT—Going back to the backlog, the Wik application—Wik and Wik Way Peoples—was lodged on 24 March 1994. I understand that is the oldest application before the tribunal. Is that correct?

Ms Fryer-Smith—I understand so, yes.

Senator BARNETT—I have an answer to my question number 66 on notice. Is there anything further that you can provide in terms of dealing with that or resolving that particular matter?

Ms Fryer-Smith—We do not have any information to hand, but if we could take that on notice we could discuss it with the case manager and the member.

Senator BARNETT—So in summary, as I understand it, we still have an application that has been there for 14 years and we still have a prognosis of some 30 years to deal with the applications before the tribunal.

Ms Fryer-Smith—That particular application, do you mean?

Senator BARNETT—No.

Ms Fryer-Smith—Just broadly.

Senator BARNETT—Broadly.

Ms Fryer-Smith—I really cannot comment on the current status of the particular Wik matter because I simply need to get advice on that.

Senator BARNETT—I am happy for you to take that on notice. We know that the application was dated 24 March 1994. We know that, so that is over 14½ years ago. But what

I am seeking your confirmation on is that we still have a 30-year prognosis to deal with the applications before the tribunal.

Ms Fryer-Smith—To the best of my knowledge, that time period has not changed, but certainly that is just an estimate that was made some time ago. It has of course created a lot of discussion among all the stakeholders. I am sure that all the stakeholders, including the tribunal, will make every effort to make sure that that time period is not met—in a positive way.

Senator BARNETT—Indeed. That is what we hope. But this issue came up in May and now we have progressed through to October. My point is: what progress has been made to reduce the 30 years? You have outlined some of the procedural directions indicated by the president and some of the policy papers you have put to the government. We have not heard the government's response to those policy papers to address the backlog, and so time is going on and we are concerned that these matters are still in limbo, as it were. You can see where we are coming from.

Ms Fryer-Smith—Of course, but there really is quite a lot happening on the ground and I think that applies across the board with all the stakeholders.

Senator BARNETT—There may be a lot of stuff happening on the ground, but we are not seeing results as yet in terms of the numbers. You have said, based on the modelling that you used in May to determine the 30 years, to the best of your knowledge the 30 years is still the prognosis. Is that correct?

Ms Fryer-Smith—I have not seen any alteration to that prognosis, but that discussion was some months ago and I am sure there are other views on it.

Mr Wilkins—I thought it might be helpful if Iain Anderson could just explain some of these steps the government is taking to try to address this issue of time frame and backlog.

Mr Anderson—It might be useful if I started with the respective roles in the tribunal and the department. The tribunal has had the role of being involved in the mediation of claims as well as other things to do with future acts and things like that. It does not have, as such, the central policy responsibility for the native title system. So, while the tribunal will have views about how long it will take to resolve current claims, it does not have the key responsibility for developing new policy solutions. That does rest with the department. The tribunal has an estimate of 30 years to reduce claims. That is the tribunal's best view and we note that, but that is not necessarily a view that the department shares.

Senator BARNETT—What is the department's view?

Mr Anderson—That it would be 30 years if nothing changed. We believe that things can change reasonably quickly within native title. The Attorney gave a speech on 29 February this year in which he indicated his desire to see all parties—governments and all other parties—take a more flexible, less technical approach to native title. The Attorney believes that that would actually cut time out of the resolution of all of the unresolved claims. Native title ministers—

Senator BARNETT—How much time?

Mr Anderson—It depends upon how much the behaviour changes.

Senator BARNETT—Did he give an estimate?

Mr Anderson—No, he did not. He called upon parties to change their behaviour. He did not say how much he thinks that they can cut out. The Commonwealth itself is a party to only 140 of the 540 unresolved native title claims—

Senator BARNETT—Was that 140?

Mr Anderson—It is 145 approximately. So we are not a party to most of the claims and, even when we are, we are often not a major party. It is the state and territory governments that are the major parties. Nonetheless, when the Attorney met with all of his counterpart native title ministers from jurisdictions around Australia in July this year they had a very productive meeting and the states and territories agreed that more can be done to change behaviour and in particular to change the way in which fundamental processes like connection are approached to see if a more proactive approach by jurisdictions and improving the quality of the claims brought by claimants can cut time out of the process as well.

There was a working group set up as a result of that, and that is why I queried before about which working group you were talking about. There is a working group on Indigenous land settlements that was set up following that ministerial meeting. That is going to report back to the ministers in July next year, and that is coming up with ways to produce quicker, more innovative resolution of land claims.

We are seeing ourselves, in claims that the Commonwealth is a party to, that the Commonwealth is changing its own behaviour. For example, the Commonwealth has announced a new policy on where it will accept native title and territorial sea. It will now accept native title out to 12 nautical miles, whereas previously it was only prepared to accept it out to three nautical miles. That is an example of taking a more flexible and less technical approach. We believe that that will reduce the time that it is going to take to resolve claims involving sea where the Commonwealth is a party. It is difficult to estimate by how much, however, but we are putting that into practice in a number of claims that we are currently mediating.

Another change, which was announced by the government on Friday, is to do with the institutional arrangements for the handling of claims. That announcement was that, whereas currently the tribunal is to mediate all claims as a principle, now the court will in fact be given the ability to decide where mediation should occur. The view of the government is that some mediation would be better conducted by the court and that that might in itself expedite the resolution of claims.

Senator BARNETT—Did the Attorney make that announcement on Friday?

Mr Anderson—There was a press release put out on Friday.

Senator BARNETT—Can I look at that?

Mr Anderson—We can produce a copy if necessary.

Senator BARNETT—Yes, thank you, as that would be useful. Could you take this on notice. Firstly, would you outline and list the current initiatives to address the backlog. Secondly, would you provide an estimate to the committee of the expectation that the Attorney or the Attorney-General's Department has in respect of resolving the applications.

Perhaps that can be specific, because we have gone from 513 down to 497, so if you could give an estimate of when those claims will be addressed and resolved.

Mr Wilkins—A lot of those issues will be subject to imponderables that are outside the control of this department or even the government for that matter. We will do our best to indicate where we would like it to go, but to actually produce that as some sort of key performance indicator is probably not sensible or possible.

Senator BARNETT—What is imponderable is the 30-year timeframe prognosis. For the many complainants that is imponderable. So let us see what we can do to address those questions, and I do appreciate your willingness to use your best endeavours.

Mr Wilkins—Absolutely; we will.

CHAIR—As there are no other questions, I thank the witnesses very much for their attendance at estimates.

Senator BARNETT—I would like to put on the record our thanks for their coming here. Ms Fryer-Smith, I understand you have another commitment. Is that back in Perth?

Ms Fryer-Smith—Yes, we do.

Senator BARNETT—So thanks very much for taking the time to come here.

Ms Fryer-Smith—Thank you for seeing us first this afternoon. That is much appreciated.

Mr Govey—While the changeover is taking place, and if it would be of assistance to the committee, I will table the response to the question that was asked about the membership of the CEDAW committee.

CHAIR—Yes, thanks, Mr Govey.

[2.57 pm]

Administrative Appeals Tribunal

CHAIR—I now welcome representatives from the Administrative Appeals Tribunal. Mr Humphreys, do you need to begin with an opening statement?

Mr Humphreys—No, Madam Chair.

CHAIR—We will go to questions.

Senator BRANDIS—Mr Humphreys, how many full-time and part-time members of the Administrative Appeals Tribunal are there at the moment?

Mr Humphreys—The answer to the question is there are 52 part-time members of the tribunal at the moment.

Senator BRANDIS—And full-time members?

Mr Humphreys—There are 18 full-time members. In addition to that we have the president, who is also a full-time member, and there are another 14 judges of the federal courts who are presidential members of the tribunal. So what it means is this: in terms of judges, 15; full-time members, 18; part-time members, 52; total, 85; and of those 85 19 are women.

Senator BRANDIS—Of the presidential members—not the president—who are members of federal courts, how many of those are members of the Federal Court and how many are members of other federal courts?

Mr Humphreys—Nine are of the Federal Court and there are five of the Family Court.

Senator BRANDIS—And of course the president is a member of the Federal Court.

Mr Humphreys—Yes.

Senator BRANDIS—So there are 10, including the president, drawn from the Federal Court?

Mr Humphreys—Yes, and five from the Family Court.

Senator BRANDIS—Is the president's assignment to the AAT a full-time assignment?

Mr Humphreys—No. He sits from time to time in the Federal Court, particularly on appellate benches. He is also appointed as a justice of the Supreme Court of Norfolk Island.

Senator BRANDIS—What proportion of his time is spent on AAT work?

Mr Humphreys—All his time except for approximately four to six weeks per year when he does Federal Court matters.

Senator BRANDIS—So effectively he is a full-time member of the AAT?

Mr Humphreys—Yes, Senator.

Senator BRANDIS—What about the nine members of the Federal Court of Australia who are presidential members?

Mr Humphreys—The majority of those sit infrequently within the AAT in relation to particular matters.

Senator BRANDIS—Is the time of any of the nine substantially devoted to AAT matters?

Mr Humphreys—No.

Senator BRANDIS—And the same goes for the five Family Court judges?

Mr Humphreys—Yes. They sit from time to time.

Senator BRANDIS—So there is only one member of the federal judiciary who devotes his time full-time to the AAT?

Mr Humphreys—Yes, Senator.

Senator BRANDIS—Dealing with the 52 part-time and 18 full-time members of the AAT—that is, those not drawn from federal courts—how does that membership compare with this time last year? Have the numbers of part-time and full-time members respectively increased or decreased?

Mr Humphreys—There have been some appointments and some resignations. This is for the year 2007-08, and it is accurate as at 30 June. There have been two resignations of judiciary members since 30 June. Justice Giles retired upon reaching the age of 70, and I think Justice French has gone elsewhere.

Senator BRANDIS—Yes. Have they been replaced, by the way?

Mr Humphreys—No, not at this stage. We lost Dr—

Senator BRANDIS—I am going to come to judicial members afterwards. Let's take this methodically. First of all, let's deal with the positions of part-time members. How many were there 12 months ago and how many are there now?

Mr Humphreys—I will work at it this way: we lost Dr Purvis, Dr Christie, Professor Davis, Brigadier Way, Mr Olney, Professor Shearer and Mr Griffin.

Senator BRANDIS—Is that eight?

Mr Humphreys—I think that is eight. I have to find the appointments. I can tell you that ex-Justice Nicholson has been appointed, Dr McPherson has been appointed and Mr Karas has been appointed. I will need to take the others on notice; I just cannot find that at the moment.

Senator BRANDIS—Can you do this for me? Surely you know this as the CEO. Has there been a net increase?

Mr Humphreys—A net decrease.

Senator BRANDIS—A net decrease in the number of members?

Mr Humphreys—Yes.

Senator BRANDIS—So eight have gone and you can think of three or four who have been appointed.

Mr Humphreys—That is right, Senator.

Senator BRANDIS—Okay. So there has been a net decrease of about four?

Mr Humphreys—Around that.

Senator BRANDIS—Is that Dr McPherson the former justice of the Queensland Court of Appeal?

Mr Humphreys—Yes. He has been appointed as a part-time deputy president in Queensland.

Senator BRANDIS—I ask the same question about the 18 full-time members of the AAT: has there been a net increase or a net decrease?

Mr Humphreys—No change.

Senator BRANDIS—Of the 14 presidential members from the judiciary, you have told us that Justice Giles has retired and Justice French has gone on to higher things. Have they been replaced?

Mr Humphreys—No.

Senator BRANDIS—So have we gone from 16 to 14 presidential members?

Mr Humphreys—No. As at 30 June we went from 17. We are now at 15 presidential members.

Senator BRANDIS—Including the president himself?

Mr Humphreys—Yes.

Senator BRANDIS—So there has been a net increase of two in terms of presidential members?

Mr Humphreys—That is right.

Senator BRANDIS—So in aggregate you are down six people—two presidential members and four part-time members.

Mr Humphreys—Again, I need to check the second figure.

Senator BRANDIS—But you think about four?

Mr Humphreys—Subject to precise details.

Senator BRANDIS—What about the case load? How is the case load—the number of matters commenced and disposed of over the equivalent period?

Mr Humphreys—I have some—

Ms Leigh—I wonder if I could add some further information in relation to the point that was just being pursued?

Senator BRANDIS—Yes, Ms Leigh.

Ms Leigh—In relation to the question of the change in the number of part-time members: the hours that part-time members work vary widely, so one cannot assess the resources available to the tribunal simply by adding up the number of part-time members.

Senator BRANDIS—Why don't you just leave that to me. I will ask the questions that I am interested in.

Senator Wong—The officer is entitled to clarify evidence before the Senate committee.

Senator BRANDIS—I am interested in the number of members, Senator Wong.

Senator Wong—She is simply making a point, as she is entitled to do, about how the committee perhaps should understand the evidence. She is seeking to be helpful. She should be treated with the appropriate respect.

Senator BRANDIS—Of course. I am sure the witness is trying to be helpful, but let me just ask the questions I choose to ask.

Mr Humphreys—I can actually now read off appointments and resignations during the year. The appointments during the year to 30 June were Mr Karas—

Senator BRANDIS—These are part-time members?

Mr Humphreys—These are part-time members. They were Mr Karas, Mr McPherson and the previous Justice Nicholson. So there were three appointments during the year. The following people resigned: Dr Christie, Professor Davis, Mr Griffin, previous Justice Olney, Dr Purvis, Professor Shearer and Brigadier Way.

Senator BRANDIS—You have lost seven and gained three—

Mr Humphreys—Yes, and we have lost another two since then.

Senator BRANDIS—so there was a net loss of four.

Mr Humphreys—In terms of your next question about our case load—

Senator BRANDIS—There are a couple of ways, I know, one can assess this, but let us deal first of all with the number of matters commenced and let us deal then with the number of matters disposed of.

Mr Humphreys—Why don't I hand up a document to you—

Senator BRANDIS—That would be very helpful.

Mr Humphreys—that shows all of the ins, outs and on hands. The first page shows, during the period, applications lodged, finalised and current.

Senator BRANDIS—You mean the second page.

Mr Humphreys—I am saying that the first page of the—

Senator BRANDIS—Page 2 of six?

Mr Humphreys—Yes, page 2 of six. It shows that 6,312 were lodged for that period, 7,237 were finalised and 7,191 were current. From that point of view we were down on applications, we were around the same on those finalised and, in terms of current matters, we are down about 800 compared to the previous period last year.

Senator BRANDIS—Has there been any relevant change in jurisdictional thresholds or substantive jurisdiction that would account for those changes?

Mr Humphreys—If you go to the next page you will see the lodgements by jurisdiction. You will see that, in terms of the particular jurisdictions, we were down slightly in compensation, down considerably in social security. Veterans affairs went down considerably—and, again, that is to be expected. In taxation we were down considerably.

Senator BRANDIS—Why is that to be expected?

Mr Humphreys—Unfortunately, we are losing a lot of our veterans.

Senator BRANDIS—For demographic reasons?

Mr Humphreys—Yes. Taxation appeals are down. We had an influx of taxation scheme appeals over a number of years. These were tax minimisation schemes that were marketed in a number of states, particularly, I should add, in Western Australia. They were the subject of an objection process within the Australian Taxation Office and they were then the subject of appeal to the AAT. We have been working through those over a number of years and we have successfully finalised many of them, although we have one large scheme that is outstanding at the moment. If you look down the page, you can see the relative differences between the jurisdictions. If you go over the page to page 4 of 6, it shows finalisations by jurisdiction. Page 5 shows current by jurisdiction and page 6 shows the relative time standards.

Senator BRANDIS—What does that mean? I see; percentage finalised. That is within 365 days of lodgement.

Mr Humphreys—Yes. We have gone slightly backwards in that area, for which we are not—

Senator BRANDIS—Nevertheless, I must say that, by comparison to some other courts and tribunals I can think of, that does not look too bad to me.

Mr Humphreys—We are working very hard at the moment to try and make sure that we can keep our throughput up.

Senator BRANDIS—Has there been any change in the cost of commencing proceedings in the relevant time?

Mr Humphreys—As at 1 July, there was a slight increase in the lodgement fee. It went up by approximately \$30.

Senator BRANDIS—But that is a de minimus amount.

Mr Humphreys—That was just a CPI increase. That has been the only change.

Senator BRANDIS—Thank you, Mr Humphreys. I have just one question which is incidental to that. To what extent, if at all, was the AAT consulted in relation to the Semple review?

Mr Humphreys—It has nothing to do with us.

Senator BRANDIS—I did not think it did.

Mr Humphreys—We were not consulted at all.

Senator BRANDIS—No; I did not think it did. Okay, thank you.

CHAIR—Thank you for your appearance at estimates today. We now need to move onto the Australian Law Reform Commission.

[3.13 pm]

Australian Law Reform Commission

CHAIR—I welcome representatives from the Australian Law Reform Commission. Do you wish to begin with an opening statement?

Prof. Weisbrot—I do not have any statement to make but I am very happy to answer questions from the senators.

CHAIR—Thank you.

Senator BRANDIS—How many references do you have at the moment?

Prof. Weisbrot—We have one current reference on Review of secrecy laws.

Senator BRANDIS—Within the last 12 months, how many reports did the ALRC produce?

Prof. Weisbrot—We completed a report on legal professional privilege and then a mega-report, if I can call it that, on privacy laws. Both would have been well within the last 12 months.

Senator BRANDIS—Were those the only two in the last 12 months?

Prof. Weisbrot—Apart from annual reports, yes.

Senator BRANDIS—When is the reporting date for secrecy laws?

Prof. Weisbrot—31 October next year.

Senator BRANDIS—Are you anticipating any new references imminently?

Prof. Weisbrot—I hope so. Normally we like to have two projects going. Having completed the privacy reference, we are now talking with the Attorney-General and the department about another project to roll in while we are doing secrecy.

Senator BRANDIS—What project might that be?

Prof. Weisbrot—We are not certain yet. There are a number under discussion.

Senator BRANDIS—What are the options under consideration?

Prof. Weisbrot—Would you like my wish list?

Senator BRANDIS—Yes, I would as a matter of fact. That is exactly what I would like.

Prof. Weisbrot—I have a number. There are a number that look at issues of harmonisation, so we are interested in looking for example at perhaps a model juries act and harmonisation of law relating to juries. That might also look at issues relating to the Federal Court's new criminal powers for criminal cartels, in which case there will have to be a jury empanelled. Review of Human Tissue Acts is another issue. The Australian Law Reform Commission did the work in the late 1970s that led to template human tissue legislation across Australia, but that was for the brave new world of organ transplantation. It was 30 years ago. It probably needs modernisation, as well as the states now being largely out of step with one another when they made amendments to their own legislation. We are considering issues of antidiscrimination law, both in terms of harmonisation and also an updating of federal law in that area.

Senator BRANDIS—Tell me a bit more about that, please. What particular areas of antidiscrimination law?

Prof. Weisbrot—At the moment we have separate laws regulating to race discrimination, sex discrimination, age discrimination and disability. In the UK they are at the moment looking at the possibility of moving to a uniform act that brings together all the various forms of discrimination, so it tries to harmonise the grounds, the defences, the complaints and dispute resolution mechanisms so that each of them are not stand alone. That is one possibility.

Senator BRANDIS—By the way, assuming the parliament were to enact the current sexuality discrimination laws so that we would have race, sex, age, disability and sexuality discrimination laws, in the ALRC's view, would that represent a complete suite of antidiscrimination laws or are there other categories that you have in mind in which there is potential for law reform in this field?

Prof. Weisbrot—I do not have anything specifically in mind. In these early days we have suggested looking at that but we have not even begun research or consultation in that regard.

Senator BRANDIS—Sure. So, antidiscrimination law reform is really consolidating the existing antidiscrimination laws of the Commonwealth and the states into a single generic statute, is it? That is what you have in mind?

Prof. Weisbrot—Ideally.

Senator BRANDIS—What other areas do you have in mind?

Prof. Weisbrot—We have suggested looking at issues of law relating to Australia's ageing population. We did a special issue of our journal *Reform* on that a couple of years ago, which seemed to have attracted significant interest. With regard to law relating to Australia's external territories, each of those are stand-alone bits of legislation which often are inconsistent with one another.

Senator BRANDIS—You mean that each of the external territories is governed by its own act and that there are some inconsistencies between the different acts.

Prof. Weisbrot—That is right. In some, for example, domestic legislation of a state or the federal government automatically applies and in some it automatically does not apply unless gazetted. There are all those kinds of issues.

Senator BRANDIS—These are all in the broad category of harmonisation or making uniform pre-existing laws. Are there any new areas of law reform that the ALRC is thinking of having a look at?

Prof. Weisbrot—Law and the ageing population I think was a new area.

Senator BRANDIS—I suppose that is true. Any others?

Prof. Weisbrot—I could take that on notice. There are some other topics that we have discussed. I cannot think of them just offhand.

Senator BRANDIS—What is the staff establishment of the ALRC at the moment, including all administrative and research staff?

Prof. Weisbrot—We do not have an establishment because we have a budget that we then use to employ staff.

Senator BRANDIS—When I said establishment, that is a rather grand way of asking how many staff are you employing at the moment.

Prof. Weisbrot—There are about 15½ full-time equivalent staff.

Senator BRANDIS—That is administrative, clerical and research staff?

Prof. Weisbrot—That is right.

Senator BRANDIS—How many full- and part-time commissioners are there?

Prof. Weisbrot—There are three full-time commissioners, including myself. At the moment, because the High Court keeps poaching our part-time commissioners, we have two part-time commissioners but we would look to make another appointment some time soon.

Senator BRANDIS—So there is a vacancy with Justice Kiefel or Chief Justice French? Who was the part-time commissioner?

Prof. Weisbrot—Both of them.

Senator BRANDIS—And Justice Kiefel has been replaced and Chief Justice French has not been.

Prof. Weisbrot—That is right. Justice Kiefel was replaced with Justice Berna Collier. We have not yet moved to replace Chief Justice French. I think we will probably wait to see what

the next major reference is and perhaps seek a part-time commissioner who has some specific expertise in that area.

Senator BRANDIS—How many people were involved in your leviathan work on privacy law?

Prof. Weisbrot—The full-time commissioner in charge of that was Professor Les McCrimmon. I guess we had a floating number of staff in and out of that. We had five or six core legal officers, but some other legal officers came in and out of the project as legal professional privilege ended, for example. At different times, we also had some student interns providing additional research assistance. There were many fewer though than people would imagine, looking at the size and the breadth of the report.

Senator BRANDIS—I am looking at the portfolio budget statement for the Attorney-General's portfolio for 2008-09. As I read it, in the section dealing with the Australian Law Reform Commission—table 1.1 on page 172—there seems to have been a slight reduction in funding, from 2007-08 to the current year, of about \$5.218 to \$5.17 million. Is that right? Did you have a funding reduction?

Prof. Weisbrot—The efficiency dividend I think would have had that effect, yes.

Senator BRANDIS—Those are actual figures, not figures adjusted for inflation, so you are actually doing a bit worse this year, in terms of funding, than you were last year. Is that right?

Prof. Weisbrot—That is right. Yes; about net \$22,000 less.

Senator BRANDIS—Has that caused any curtailment of the Australian Law Reform Commission's operations?

Prof. Weisbrot—It has not, no.

Senator BRANDIS—Are you apprehensive that it may do so into the future?

Prof. Weisbrot—We are basically a people organisation, so when we are handling these large projects, the two variables are people and time. What it would mean I suppose is that we would look to maintain that same level of activity, but with fewer people it would take slightly longer to complete the same amount of work.

Senator BRANDIS—What are the cost recovery arrangements? Let us say that Justice Collier from the Federal Court is tasked to prepare a report as a part-time commissioner. Does the Federal Court recoup from the Australian Law Reform Commission's budget a pro rata share of her salary?

Prof. Weisbrot—No. It does not quite work that way. We do not ask the part-time commissioners to write reports. What they do is sit on the relevant advisory committees, attend meetings and comment on all of the drafts. They effectively do that on a pro bono basis because, of course, under the terms of their judicial appointment, they are not allowed to earn any additional salary.

Senator BRANDIS—I was not suggesting that, but I am thinking in terms of interagency cost recovery, so where members of the judiciary act as part-time commissioners, the ALRC is not required to indemnify the Federal Court for the value of their time, in effect?

Prof. Weisbrot—No, which is why we like judges as part-time commissioners.

Senator BRANDIS—I can imagine, particularly since you are suffering reductions in your own budget. Thank you, Professor.

Senator BARNETT—In terms of the terms of reference for the secrecy laws, was that decision made by the Attorney-General or yourselves in consultation with the Attorney-General?

Prof. Weisbrot—Under the ALRC Act the ALRC only works on written terms of reference. Normally what happens is that we have some discussions about our capacity and interest to do certain sorts of work, and then we bat draft terms of reference back and forth until they are settled, and then signed by the Attorney and released. So they are issued by the Attorney, but I have always had an opportunity to comment on them.

Senator BARNETT—No, but from whence do they originate—from the commission, from the Attorney or from both?

Prof. Weisbrot—You mean as a general matter?

Senator BARNETT—Yes.

Prof. Weisbrot—From both. Sometimes they arise out of issues that the department or the Attorney has particular interest in. Sometimes, as indicated in my earlier answer to Senator Brandis, we suggest a number of topics that we think are useful. Then the department will normally advise on the appropriateness and assist with the drafting of terms of reference.

Senator BARNETT—So there would never have been a case where you would have acted alone without the authority of the Attorney-General to commence an investigation?

Prof. Weisbrot—No, that is right. Under our act it says very specifically that we do not initiate our own references. Unlike some other bodies, we only work on signed terms of reference from the Attorney.

Senator BRANDIS—But you could recommend to the Attorney-General that a reference from him would be appropriate?

Prof. Weisbrot—Oh, yes.

Senator BRANDIS—And that happens quite commonly, does it?

Prof. Weisbrot—Yes.

Senator BARNETT—In terms of the secrecy laws, where is that terms of reference up to?

Prof. Weisbrot—That only recently came. We are in the process of mapping, as we call it, federal law to try to find examples of secrecy provisions. We are well advanced in that. We have an expert advisory committee in a couple of weeks and we are hoping to release an issues paper at the end of November, beginning of December. We are well on track to complete the reference, as required by the terms of reference, by the end of October next year.

Senator BARNETT—That is all set out in the terms of reference?

Prof. Weisbrot—That is right.

Senator BARNETT—Which is a public document released by the Attorney—when was that released?

Prof. Weisbrot—It was signed on 5 August, and it is available on our website.

Senator BARNETT—Good, thank you. Thanks, chair.

CHAIR—There being no other questions of the Law Reform Commission, I thank you, Emeritus Professor, for your time and appearance today before estimates. We will break now for afternoon tea.

Proceedings suspended from 3.28 pm to 3.46 pm

Classification Board

CHAIR—I reconvene the estimates hearing of the Senate Standing Committee on Legal and Constitutional Affairs. I welcome officers from the Classification Board. Do you need to start the proceedings this afternoon with an opening statement?

Ms Booyar—No.

CHAIR—We will go to questions from Senator Joyce.

Senator JOYCE—At the outset my questions regard a survey that was brought into my office by some women regarding certain magazines which they had managed to pick up at certain service stations and corner stores. It talks to how these things got classification. I do not particularly want some of the titles and some of the information to go into the *Hansard*, so I ask for permission to have that tabled.

CHAIR—Leave is granted.

Senator JOYCE—Thank you. I will circulate that to both of the witnesses and to the senators who are present. Mr Wilkins, some of these things have received classification and they have been picked up. You can see some of the issues that are spoken to on that last page. They are direct quotes. Do you feel comfortable with those? I refer to the last page under *Live Young Girls* titles. Are you comfortable with that?

Mr Wilkins—Am I comfortable with the last page? What is the point of whether I am comfortable or not?

Senator JOYCE—The point is that this has received classification. It pertains to an insinuation that these girls are actually underage and that this is freely available at certain corner stores and service stations. Before I start asking questions I am asking you if you are aware of this and if you are comfortable with it.

Mr Wilkins—I do not know that it is important that I am comfortable with it or not, actually. I think that is beside the point. The question is whether they have properly complied with the standards set down by the parliament for classification, which I assume they have.

Senator JOYCE—Okay. These are the questions I am going to go into. I see that some of them have received classification: *Live Young Girls*, *Finally Legal*, *Finally Legal Petite*. You can imagine exactly what is in them, so I am going to ask you some questions about that. Can you please provide details on the processes of classifying magazines.

Ms Booyar—The publications get classified according to our publications guidelines and the code. They consist of three categories—unrestricted, category 1 restricted and category 2 restricted. Unrestricted magazines may be available for sale at public premises. All three

classifications deal with material that is not suitable for minors to see. The unrestricted ones are marked in that way but they are not sealed in a wrapper. Category 1 magazines are available in public premises like gas stations and newsagents. They are sealed in opaque wrappers, with only the masthead visible. Category 2 magazines are available only in restricted premises—and not at all in Queensland and some parts of the Northern Territory.

Senator JOYCE—How many requests per year does the board receive from pornography distributors for classification of pornographic publications or other classifiable or sexually explicit content magazines or other literature?

Ms Booyar—I will get some advice on that. I am advised that in the last financial year the total number of applications was 250.

Senator JOYCE—How many classifiable, sexually explicit or pornographic magazine titles does the board classify each year?

Ms Booyar—The number of 250 includes all unrestricted, category 1 and category 2 restricted. There was one title that was refused classification.

Senator JOYCE—Only one title was refused classification?

Ms Booyar—Yes.

Senator JOYCE—How many, then, were classified category 1 and category 2?

Ms Booyar—One hundred and forty-five were classified category 1 restricted and 56 were classified category 2 restricted.

Senator JOYCE—Of applications received, how many publications or literature with some sexually explicit or sexual or nude content have been classified unrestricted but with conditions requiring a sealed wrapping?

Ms Booyar—The unrestricted publications normally do not require a sealed wrapper.

Senator JOYCE—Unrestricted does not require one?

Ms Booyar—No.

Senator JOYCE—Of applications received, how many publications or literature have been classified category 1 restricted with conditions requiring their display and sale in opaque sealed wrapping or without any conditions requiring sealed wrapping or opaque wrapping?

Ms Booyar—As far as I am aware, all of the category 1 publications have a condition that they be sold in a sealed and opaque wrapper.

Senator JOYCE—Is the department or board aware of pornographic titles containing sexually explicit, sexual or nude content, such as they would likely be classifiable, which have not been classified being sold openly in corner stores, petrol stations and small supermarkets?

Ms Booyar—We become aware of those from time to time and we report them to our CLS officers, and they in turn report that to the state authorities.

Senator JOYCE—Where from time to time? Does it surprise you that some ladies can bring this stuff into my office and your classification officers are not finding it?

Ms Booyar—We do not go looking for the magazines. That is the job of the CLS officers and their community liaison.

Senator JOYCE—Does the department or the board have any information or estimates on the number of pornographic titles with classifiable content that are being sold without classification in Australian states or territories?

Ms Booyar—No, we do not.

Senator JOYCE—What role does the department or the board play in ensuring titles are classified within the National Classification Scheme? I acknowledge that enforcement is largely in the hands of the states.

Ms Booyar—The board classifies whatever is submitted to the board. The publications such as those which you have brought to our attention today are all submittable publications and they all should be submitted for classification. But, as I said before, the board does not go looking for publications which should be submitted. We can classify only what is submitted to us.

Senator JOYCE—What penalties are in place for importers, distributors and sellers who import, distribute and sell unclassified literature, publications or titles that, if classified, may be restricted or even refused classification?

Ms Lynch—The enforcement provisions are mainly in state and territory legislation. We could take that question on notice and get you an answer, but I do not have the details. There would also be some Customs offences—

Senator JOYCE—So you are not aware of any penalties except those under state laws?

Ms Lynch—And possibly Customs, Senator. I could give you the details if I could take that on notice.

Senator JOYCE—Sure. In the case of periodicals, in which classification is granted for a set time or for a set number of volumes or editions, how does the department, and specifically the board, ensure that the content originally classified is reflective of later editions or volumes?

Ms Booyar—The application that the applicant fills out must be signed by the applicant to say that any future publications of that nature will be modified to the standards that the board has required. If there is a complaint made, we go back to the distributor or the applicant.

Senator JOYCE—And you are happy that is being done at the moment or is being complied with across the board?

Ms Booyar—I am not aware of whether it is complied with across the board but I am aware that the instances that come before the board are actually looked at and we follow them up.

Senator JOYCE—What penalties would be applied to publishers of periodicals who change their content such that it is no longer reflective of its classification once that classification has been made? Mr Wilkins, you might want to answer that.

Mr Wilkins—I do not know the answer to that question but I will find out for you.

Ms Booyar—If I may clarify one section of that: one of the penalties is that they have their classification revoked.

Senator JOYCE—Does the board conduct audits?

Ms Booyar—Yes, we do.

Senator JOYCE—When was the last one?

Ms Booyar—Last week.

Senator JOYCE—How many did you check?

Ms Booyar—We audit approximately 10 per cent at the very least. That is a floor for us, not a ceiling.

Senator JOYCE—What was the range of periodicals that you audited?

Ms Booyar—Mainly under restricted and category 1, and not so many under category 2.

Senator JOYCE—Who is responsible for that? You, Ms Booyar?

Ms Booyar—For the audit part, yes.

Senator BARNETT—Is that 10 per cent of the total number of publications?

Ms Booyar—Ten per cent of the publications that have a classification or a serial classification with us.

Senator BARNETT—You do an audit of that how often?

Ms Booyar—They come up at least once a week. Once a week or once every two weeks there are a number of publications that come to us for an audit.

Senator JOYCE—Can you provide details of any audits conducted in the last five years, including lists of titles which were found to be wrongly or incorrectly classified or never submitted for classification?

Ms Booyar—I will take that on notice and supply that.

Senator JOYCE—Would the department be able to detail any recent research it has conducted into the content of sexually explicit publications typically on sale in all or some of the states or territories and research specifically into the types of content and images for sale?

Ms Booyar—I am not aware of any research that the department has recently done other than in relation to the audits that the acting director has mentioned. We can take that on notice.

Senator JOYCE—Would the department detail any recent research conducted into how current classification decisions reflect or are discordant with community attitudes specifically in relation to the content of the range of periodical or other publications on sale in supermarkets, service stations and adult shops?

Ms Booyar—I will take that on notice.

Senator JOYCE—Would the board or the department please explain when themes or intimations of rape and incest are permissible in either category 1 or category 2 publications

and what factors will result in a decision to refuse classification to publications whose content includes some or much reference to these themes either separately or together?

Ms Booyar—I am happy to go through that, but I can also furnish you with a copy of the guidelines which actually talk about what is in the—

Senator JOYCE—We will cut to the chase. Are you happy with intimations of rape or incest in these classifications? Are you comfortable with them? Do you have any desire to change them?

CHAIR—Senator Joyce, officers are not required to answer questions of opinion.

Mr Wilkins—That is a policy issue.

CHAIR—I would ask that you rephrase that question.

Senator JOYCE—We will bring the matter up in parliament. Would the board or department explain and detail the factors that will cause publications with content themes relating to sexual acts with minors to be either granted category 1, category 2 classification or refused classification?

Ms Booyar—Without having knowledge of a specific situation, that would ordinarily be refused classification.

Senator JOYCE—I have submitted titles to you, which I do not want to read out, and you have seen the question at the top there. Could the board advise, on the following titles, whether it considers its original ruling is consistent with the guidelines and, where it appears a title was not submitted for classification, please advise as to how the board will address that? You have seen them; what are your views?

Senator Wong—Chair, if I could just comment, while Ms Booyar is preparing to answer the question. As I understand it, a number of Senator Joyce's questions go to the content and possibly the application of the guidelines for the classification of publications. Obviously, I am new to this committee, but I am advised that these guidelines function under a cooperative arrangement whereby they are agreed between the relevant Commonwealth state and territory ministers. I do not know whether that assists Senator Joyce in terms of the legal framework that governs the decisions that the board makes.

Senator JOYCE—Obviously, Minister, what I am trying to get at here is how we change this. This is pretty abhorrent.

Senator Wong—I appreciate your views about this, Senator. I am simply indicating my understanding of the arrangements. I do not know whether Mr Griffin has something to say.

Mr Griffin—I was involved in the early stages of the development of the cooperative scheme. This is a cooperative scheme between state and federal governments. The classification requirements are contained in federal legislation, but the offences provisions and the enforcement provisions are contained in state and territory law. Primary responsibility for enforcement lies with the states. The way to get any changes to the scheme is basically through the ministers responsible for censorship. The scheme is set up so that, under the Commonwealth act, there are criterion and principles which must be taken into consideration

and then there are guidelines established by the ministers responsible for censorship. That is more the way it goes, rather than it being directly and solely a Commonwealth responsibility.

Senator JOYCE—I will have to ask these questions in the light of your working with the states. How do the states, the department and the board agree that, under the classification legislation, including the guidelines and the code, depictions of adults engaged in sexual acts with minors should be refused classification? Do you agree that it should be refused classification?

Ms Booyar—That is in the guidelines. If there are depictions of minors—I will just read it out; it is in the refused classification—

Senator JOYCE—So if I—

Senator Wong—Senator, I think Ms Booyar is finding the appropriate section of the refused classification guidelines relating to the section.

Ms Booyar—The guidelines state:

Publications that:

... ..

(b) describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not)—

would be a refused classification.

Senator JOYCE—But you have seen these titles I have just handed out. Gosh! You can read it. You know what they are intimating. They are intimating at under age. Do you believe that these titles, these statements and these quotations from these advertisements for this explicit material intimates under age—

Ms Booyar—I would have to see that in the context of the whole magazine. It is very difficult to pick out the quotes and see what they relate to. We ordinarily look at the full magazine to classify it.

Senator JOYCE—Come on, fair go. ‘Daddy’s blanks, big blanks, little blanks’—I think we know what we are talking about here.

CHAIR—Senator Joyce, can I just—

Senator JOYCE—All right, we will go back to other questions.

CHAIR—Senator Joyce, I just want to reiterate that, in the committee’s opening statement, we make a very clear statement that officers are not to be asked their opinion of matters. I think Ms Booyar has said that she would need to see this in context and, as I understand it, the Classification Review Board is the body that makes these decisions.

Senator JOYCE—Does the board or the department hold the view that the current classification register requires that, in reality, only actors be 18 years or older? What steps will the board take to ensure that such actors are in fact at majority when they are photographed?

Ms Booyar—As to whether or not they are at majority when they are photographed, the board or the panel when it sits to consider the magazine looks at a number of different

criterion to determine whether it feels that the person is or is not under 18. These magazines that we are talking about do not leave a lot out. We look at their bodies, their physical characteristics and the set up in which they are photographed and we make a decision on that.

Senator JOYCE—Once more, I refer you to the last page, ‘Examples of content and advertisements from the magazines listed above,’ which the board currently have. You see that they suggest that the physical attributes of the people would suggest under age.

Ms Booyar—Again, I would have to see that in the context.

Senator JOYCE—Does the board or the department regard the fictional age depicted rather than the actors’ or the models’ ages of greater relevance to consideration than the contents’ lawfulness?

Ms Booyar—Can you say that again.

Senator JOYCE—Is how the person who is being exploited in these pictures depicted of more relevance than what their actual age is? If they are depicted as a 13-year-old girl, the fact that they are 19 is neither here nor there. It is suggested and is aimed at a market that wants to get a form of lift out of that sort of—

Ms Booyar—Again, I would have to see that in the context. It is hard for me to give you an opinion on something I have not seen.

Senator JOYCE—If the actor or model portrays a minor engaged in sexual acts or as a sexual participant with adults, would that depiction be unlawful?

Ms Booyar—Again, according to the refused classification guidelines, if it describes or depicts in a way that is likely to cause offence a person who appears to be or is a child under 18 it would be refused classification.

Senator JOYCE—How would the board ascertain whether the depiction portrays an actor or a model as a minor? Would depicting a female participant with pigtails, teddy bears, braces on her teeth, and hand puppets, in conjunction with content, narratives or titles or descriptors suggesting the character’s minor status weigh in favour of deciding that the depiction was unlawful and not able to be classified? Or has that got to be seen in the context?

Ms Booyar—What is the question?

Senator JOYCE—I am saying that if you have got a girl who is obviously depicted as a minor—young, with pigtails, teddy bears, braces on her teeth, hand puppets—in conjunction with content, narrative, titles or descriptors suggesting the minor status, does this weigh in favour of deciding that the depiction is unlawful and unable to be classified?

Ms Booyar—Again, it really has to be seen in context. In the magazines that are before the board there are sometimes people who are well into their 30s who are depicted like that and they are clearly not minors. So it is the context.

Senator JOYCE—If I can have these ladies deliver to me publications showing people who are obviously not in their 30s, would you suggest they are obviously being portrayed as minors?

Ms Booyar—We would look at that.

Senator JOYCE—They have given it to you. What I have tabled has already been sent to you. What are the penalties for importers, distributors and sellers who sell titles which have been incorrectly classified?

Senator Wong—Sorry, what are the penalties for importers—

Senator JOYCE—Distributors and sellers who sell titles which have been incorrectly classified.

Ms Williams—The penalties are contained in state and territory legislation.

Senator JOYCE—So it is a flick pass to the states and territories. The buck stops where?

Mr Griffin—Can I answer that?

Senator JOYCE—Anybody can.

Mr Griffin—I will try to assist the committee. I think ultimately the buck stops, in the first instance, with the ministers responsible for censorship but ultimately with governments, under the cooperative scheme. Whilst there may be criticism of some of the classifications which are made, the whole scheme sets out quite clearly the principles, the criteria and ultimately the guidelines which are to assist in the classification of films, publications et cetera. Whilst they are reasonably clear, ultimately there will be a measure of subjective interpretation in accordance with the context in which the various items appear, whether it is in a publication or whether it is in a DVD, video or computer game. That is the difficulty. One really does need to see the whole magazine, film, video or whatever to look at the context. But one needs to keep very much at the forefront of one's mind the mandatory requirements such as the one that has just been referred to, and that is that if there is a publication that describes or depicts in a way that is likely to cause offence to a reasonable adult a person who is or appears to be a child under 18, whether the person is engaged in sexual activity or not, that is refused classification both in the magazine context and also in films and videos.

Senator JOYCE—So in something like what we have here—'slutty schoolgirls'—would you presume that they were over 18 or under 18?

Senator Wong—Senator, please. Perhaps, Madam Chair, I could assist here. Can I say, Senator Joyce, that I understand your concern about these issues. I have to say I find the document you have provided most disturbing. But essentially what you seem to be asking these officers at the table is for a rationale for the classification decision the board has made in relation to these publications as against those guidelines. As Ms Booyar has indicated, that is difficult for her to do in the current context. I also understand from officers at the table that some of what you have provided—and I think you may have alluded to this—is the subject of a complaint. If you wish to continue with your questions, that is obviously your prerogative, but I wonder if it would be most helpful if the officers could be given the opportunity to consider their response, given the two contexts which I outlined.

Senator JOYCE—Minister, I want an outcome. That is the whole reason I have come down here on Monday. I have two more questions. You know what I am getting at. There is a sentiment that I am sure would go throughout this room. If people saw this they would say that it was obviously angled towards children and it has to be taken out of our agenda. That is the whole purpose of this. But I have two more questions. The first is: why have some titles

which have previously received a category 2 or been refused classification by the board been given category 1 serial classification?

Ms Booyar—They would have been like that because they would have been modified.

Senator JOYCE—If, as it appears, only a small percentage of pornographic publications are presented for classification and we are ending up with hardcore pornography in convenience stores, how can the current system be effective?

Senator Wong—I am not sure Ms Booyar can answer that question. I have outlined my understanding, which is that these guidelines have been agreed by relevant ministers across jurisdictions. I think you are asking a policy opinion question of the officers, which is not something they are generally required to answer.

Senator JOYCE—Thank you very much. You have said that some of the issues are political issues. I will be pursuing them politically.

Senator McGAURAN—I believe I am also across what Senator Joyce has brought up, so I will bring it to the attention of the minister at the table. The officers before us have had this complaint put before them on more than one occasion, and they have acted satisfactorily. They know exactly what Senator Joyce is raising and they know exactly what magazines he is referring to. This does not come out of the blue to them at all. They know there is a rort going on in convenience stores and all the major service station shops, including Shell and BP. They know that the category 1 classification is being abused to the hilt. You know it, you have had it brought to your attention, you duck, you weave, you slip, you slide.

Senator Wong—Who is the ‘you’ in that question?

Senator McGAURAN—Not you, Minister.

Senator Wong—Then I would like to make two points. First, you are making a whole range of imputations about the state of mind of the officers. You can disagree with a policy, you can disagree with classifications and you can disagree with action, but I think it is problematic to impute a state of mind. The second point I would make—and I am new to this area—is that these classification guidelines, as I have said previously, have been agreed between the Commonwealth and all jurisdictions. These guidelines, according to the document I have received, came into effect in May 2005—that is, under your government. So, if you have an issue, you should not simply be targeting the officers at the table.

Senator McGAURAN—It is not about classification; it is about enforcement. There is nothing wrong with the classification. The problem is with the enforcement and the abuse that is going on. It is your job to adhere to that classification.

CHAIR—Senator McGauran, prior to your coming to this session, Ms Booyar and Ms Lynch informed this committee that enforcement is in fact the responsibility of the states and territories. Ms Lynch, could you restate that for the record.

Ms Lynch—The Commonwealth legislation sets out the system for classification of publications, movies, computer games et cetera. Enforcement of those provisions is set out in state law and is largely a matter for the state police. The board itself has no role in enforcement, other than through the community liaison service, which visits petrol stations, DVD shops and adult shops.

Senator McGAURAN—You are talking about enforcement but, if it is brought to their attention that the classification is being breached to the hilt, what is your job then?

Senator Wong—When you say ‘your’, who are you referring to? Are you asking the department?

Senator McGAURAN—I am asking the OFLC. Do we have the OFLC before us?

Senator Wong—Yes.

Ms Lynch—Senator McGauran, the OFLC no longer exists. We have the Classification Board and the review board.

Senator McGAURAN—What is the Classification Board’s job when it is brought to their attention?

Ms Booyar—When it is brought to our attention that the classification has been breached, we endeavour to purchase the magazine through the CLS. We have a look at it and we compare it to the original classification. If we are satisfied that the classification has been breached then we write to the distributor, asking him to show cause why the classification should not be revoked because of that and give him a number of days to respond. If he or she does not respond adequately then we revoke the classification.

Senator McGAURAN—Do not tell me your department is not an enforcement body, Ms Lynch. It is an enforcement body. It makes the judgements in regard to the classifications. It is an enforcement body; it makes the judgements.

Mr Wilkins—I think we are confusing two types of enforcement. We were talking, basically, about compliance with the classification. Once a matter is classified, the primary authorities that are in charge of making sure that classification is adhered to in the community are state and territory police. That is not their job, nor is it the job of the Attorney-General’s Department. So they are not in that sense a compliance agency. They are concerned to make sure that importers—people who are bringing publications into the country—in fact comply with the sorts of requirements, of putting them in the right plastic bags and putting the right signage on them, in terms of classification.

Senator McGAURAN—That is what I am asking.

Mr Wilkins—Yes, but the critical issue that you are concerned about—

Senator McGAURAN—No, the critical issue I am concerned about is why is category 1 being abused? That is their job.

Mr Wilkins—But you are concerned about why the publications are in the service stations or wherever.

Senator McGAURAN—I am concerned why category 1 is being abused—when clearly it is RC and not category 1—and they know it and they are not doing their job.

Mr Wilkins—The question of how it should be classified is a matter for the classification board, and they act on the basis of guidelines that have been agreed to by state and territory censorship ministers. If you want to change those, it is a matter for—

Senator McGAURAN—Don't get cute, Mr Wilkins. This is quite simple. This is as simple as it can be.

Mr Wilkins—So what is the question?

Senator McGAURAN—I do not come to this committee very often, but I go to many, and there has never been one as cute and as evasive as this.

CHAIR—Order! Senator McGauran. I will ask you to withdraw that imputation about Mr Wilkins.

Senator McGAURAN—What imputation?

CHAIR—I think you made a comment about Mr Wilkins's response being cute. We do not conduct ourselves this way in the committee. He is a very senior public servant, and I would ask you to withdraw that.

Senator BRANDIS—Point of order, Madam Chair. What Senator McGauran said is perfectly within the accepted parameters of robust exchanges. Might I remind you that many of your colleagues, some of whom now sit in the federal cabinet—notably, for example, Senator John Faulkner, who made a great name for himself at these estimates committees—would routinely, and without objection from coalition chairs, engage in exchanges with witnesses much, much more robust than anything we have just heard from Senator McGauran. I caution you about being so heavy-handed in the chair that you actually constrict the operation of the parliamentary process.

CHAIR—I hear your point of order, Senator Brandis, but I am conducting the proceedings of this committee the way I believe they need to be conducted, and I do not believe that that is in your best interests. Senator McGauran, you may disagree with what the officers at the table have to say, but I would ask that you address them appropriately if you want to continue.

Senator McGAURAN—I will attempt to address them appropriately, Madam Chair. We are going around in circles.

Senator Joyce has put the whole issue on the table before you now in estimates. You have had it in a series of quite well-balanced, legitimate and evidence based complaints. I am just going to tell you directly on *Hansard* that you are failing your job miserably, and you know you are. You are up to something. I will leave it at that.

Senator BARNETT—Mr Wilkins, I hope you are getting the sense that there is extreme concern shared by a number of senators on this side of the desk, on behalf of our constituents, in regard to how these matters are operating, and how they are being managed currently. It is not personal. Please do not take any of this personally. What we are doing is reflecting the concerns of our constituents.

Senator Wong—I am not sure that Senator McGauran's saying, 'You are up to something' can be taken in any way other than personally, if you don't mind me saying. I am not quite sure how one would not take that personally.

Senator BARNETT—He has expressed a whole range of views and concerns, and many of them are very strongly held. I know Senator McGauran is bona fide in his views and beliefs and that he holds them very firmly. I want to move to a specific example: *Art Monthly*. It was

in the news, it is in the public arena, it has been drawn to your attention and it has been classified. Can you advise the committee, firstly, of the date when you were alerted to that document and, secondly, when you started the process to classify that magazine?

Ms Booyar—The director of the board wrote to the publisher on 8 July requiring the publisher to submit the July edition of *Art Monthly* for classification.

Senator BARNETT—When did you first become aware of the concerns regarding *Art Monthly*?

Ms Booyar—There were a number of media reports immediately prior to that, so it would have been in the days prior to that. It would have been around 6 or 7 July.

Senator BARNETT—So on the 6th or 7th of July you became aware of it and, as a result of that, you are advising the committee that the director of your board wrote to the publisher.

Ms Booyar—Yes, calling in the publication. *Art Monthly* usually would not be considered a submittable publication. But because the director had formed a reasonable view that it could be a submittable publication he is required to call it in for classification.

Senator BARNETT—Indeed. I think this is exactly one of the concerns that many senators and many constituents have: these publications are out there and they are unclassified until views are expressed of concern in the community, they come to the attention of your director and yourselves, and then you have called them in or you have written to them and said, ‘Please forward the publication.’

Ms Booyar—They are required to at that point. They cannot not submit them.

Senator McGAURAN—Senator Barnett, that is on one occasion. They are not as rigorous as they are making it sound to you.

Senator BARNETT—My point is that it is based on public concern. A lot of these publications are just out there, and perhaps the public’s concerns have not been made available to you or known to you, and yet these publications are out there which are indeed offensive or should be restricted or classified in some way. Does that make sense, and would that be correct?

Ms Booyar—I am not sure what your question is.

Senator BARNETT—Let me rephrase it. Are there publications that are distributed in the community that are unclassified that should be classified?

Ms Booyar—I do not know the answer to that. Under our scheme, there are specific examples and definitions of what a submittable publication is. There are myriad publications outside that which are not submittable publications. Unless the board and the director have a reason to believe that a publication may be submittable, it does not have to be submitted for classification. That is within the law and our codes.

Senator BARNETT—But the very reason that the director wrote to the publisher of *Art Monthly* is because concerns were raised by members of the public. My point is that there are other publications out there that you are not being made aware of that should be classified. Do you agree?

Ms Booyar—If we are made aware of them we will look at them.

Senator BARNETT—But there are no doubt publications in the community that you are not aware of that should be classified. Can you confirm that?

Ms Booyar—I am not aware of that, so—

CHAIR—Senator Barnett, do you have some examples of those publications to assist Ms Booyar?

Senator BARNETT—*Art Monthly* is an excellent example.

CHAIR—But are there others that you—

Ms Booyar—The *Art Monthly* magazine has been published for some time and the issue in question was that one particular issue, not every issue.

Senator JOYCE—Madam Chair, I have got an example of something that has been classified as category 2 but appeared in a package with a category 1 label. This was the category 1 label and how it was sold:

Live young girls, boobless beauty, flat as a board—and still unexplored

How would you see that in context? Would you see that as reflecting someone over 18 or under 18?

CHAIR—What publication is that from, Senator?

Senator JOYCE—That is from a magazine. It could have been *Zoo*. I will check that out.

Ms Booyar—*Zoo Weekly*?

Senator JOYCE—How would you see that? I can get for you exactly the magazine it came from, but I want to know how you would perceive that. What age group would you say that they were suggesting in their advertising?

CHAIR—Senator Joyce, I think it is unfair for Ms Booyar to be asked to provide you with a response. You need to specifically name the magazine and then she would know whether it is submittable or not. So it is difficult to provide you with an answer if you cannot give us the name of the magazine.

Senator BRANDIS—That is complete nonsense. He has given her a block of words, which is a descriptor in a magazine, and asked her to comment on what she makes of it and whether it would be a likely reference to underage. It is not necessary and you know it as well as I do.

CHAIR—Senator Brandis, what we—

Senator BRANDIS—It is not necessary for a senator to quote a source in order to put a proposition to a witness.

CHAIR—Senator Brandis, we are talking about magazines that are out there in the public that are either submittable or not submittable magazines. For Ms Booyar to be able to answer that question as accurately as she can it would be useful to know what magazine that quote was taken from. Then she could answer the pre-eminent question of whether or not that is a submittable magazine or not.

Senator JOYCE—I can get the exact magazine and I can get you the exact date. The quote is:

Live young girls, boobless beauty, flat as a board—and still unexplored.

How would you see that—as advertising in a magazine that would be selling, for want of a better word, pictures of girls over 18 or under 18?

Ms Booyar—I would have to see that in the context of the pictures.

Senator JOYCE—I will tell you how the letter to the editor reads later on and some of the things in it. This is a quote from it:

Hello! At 71 years old, I'm a big fan of your magazine. I have a few suggestions.

Some of the girls look older than printed age (18).

Speaking for myself, I prefer to see girls that look closer to 18 rather than the older...

They cannot say 'under 18' because it is illegal.

...rather than the older worldly twenty something's they sometimes tend to look like.

Hair in pigtails, school books, stuffed animals, and short schoolgirl skirts would help in this regard.

Tattoos are out! They undermine the illusion of innocence.

The editor of the magazine gets back to him and says:

Although we try to find the most innocent looking babes as possible sometimes we just cannot pass up a hot dirty, college-age cutie.

'Although we try to find the most innocent-looking babes as possible'—so they are confirming exactly what they are trying to sell. When are we going to stop them?

Ms Booyar—I am not sure what your question is.

Senator JOYCE—The question is that it is quite obvious that we are playing a little bit of a game here. We know exactly what they are selling and they know exactly what they are selling. We are not doing our utmost to stop them. It is quite evident in the way that they advertise it and in the way that their own editors refer to what they sell that they know what they are selling. They are selling the picture and they are selling the intimation. In some cases we think they are actually selling under-age girls to dirty old men.

CHAIR—Senator Marshall, did you have some questions?

Senator BARNETT—I was interrupted and I would like to finish my questions regarding *Art Monthly* if I could.

CHAIR—You can do that.

Senator BARNETT—I hope you sense, Ms Booyar, and the department, that the motive behind the questions from this side is to protect the best interests of the child. So let us pursue *Art Monthly* for the moment. You wrote to the publisher on 8 July. When did you receive the document?

Ms Booyar—We received it on 11 July.

Senator BARNETT—On 11 July—and when was the assessment made and exactly what was the assessment?

Ms Booyar—On 16 July the Classification Board classified the July edition of *Art Monthly Australia* as unrestricted with the consumer advice ‘M—not recommended for readers under 15 years’.

Senator BARNETT—So it is not recommended for readers under 15.

Ms Booyar—Yes.

Senator BARNETT—If I am a newsagency what does that mean in terms of display, promotion and advertising of that publication?

Ms Booyar—As I understand, it can be displayed in the newsagency. It does not require a sealed wrapper.

Senator BARNETT—So that is still available, then, to any person under the age or over the age who wants to come in and peruse that document.

Ms Booyar—Yes. Unrestricted magazines are like that, yes.

Senator BARNETT—Can you understand how a lot of people feel very upset by that, knowing that there are what I would consider offensive, revolting photographs of underage children in the *Art Monthly* publication? One newsagency that I visited in Launceston, for example, refused to even display it because it was, in their view, restricted. Yet you as a classification board did not see fit to restrict it.

Ms Booyar—We used the guidelines and applied them. As per the guidelines, it was an unrestricted publication.

Senator BARNETT—This is a concern that I know Senator McGauran and others have. You are interpreting the guidelines in such a way as to perhaps be more liberal than others might be in their interpretation of them.

Ms Booyar—I am happy to hand up a set of the guidelines, but under the unrestricted section it does say that classification encompasses a wide range of material—and some material that may be offensive to some people.

Senator BARNETT—I am going to move on, but let me just say that I commend that newsagency in Launceston for what they did to protect the best interests of children. I think they did the right thing and I commend them on it. It was perhaps to the financial disadvantage of that small business.

Senator MARSHALL—Senator Barnett talked about the way you are interpreting the guidelines being different from what some people might expect. Has there been a change in the way you have interpreted the guidelines recently?

Ms Booyar—No.

Senator MARSHALL—The other issue that seems to come out is that you are only responsible for classifying submittable publications. So there are a whole range of other publications out there that do not require classification.

Ms Booyar—Yes.

Senator MARSHALL—But if they go over the line you do not know about that until someone brings it to your attention. Is that correct?

Ms Booyar—Yes.

Senator MARSHALL—That seems to be the problem that has been raised. The only other way to deal with that is to make everything submittable for publication.

Ms Booyar—Yes.

Senator MARSHALL—What would that mean?

Ms Booyar—We would be classifying every magazine that is published on a weekly or a monthly basis.

Senator MARSHALL—What is the percentage of submittable publications as opposed to all other publications generally?

Ms Booyar—I am not aware of that. I can take that on notice. The submittable publications are a very small percentage of the total market.

Senator MARSHALL—So the only way really to deal with that problem would be to look at every single publication and censor every publication.

Ms Booyar—I would say so.

Mr Wilkins—Can I just add to that? There is another way to deal with it, which is the way the law currently tries to deal with it, and that is to place the onus on people to come forward and have matters of a certain description classified. For example, submittable publications are defined as follows:

- (a) are likely to cause the publication to be classified RC, or
- (b) are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication, or
- (c) are unsuitable for a minor to see or read ...

So if you do not actually come forward and submit a submittable publication to the Classification Board then you are in danger of being prosecuted. Once again, it is under state legislation and some penalty would attach. So, yes, you could either go down the route of trying to classify everything or create a situation where people, in order to preserve their position, would err on the side of coming forward to have the matter looked at. I assume that is exactly the sort of psychology that went through the heads of the people running *Art Monthly*: 'In order to be on the safe side of the law we should submit this for classification to avoid being taken to court and prosecuted.' That is the other way in which this law could operate.

Senator MARSHALL—Senator Barnett also talked about the small business owner who refused to sell *Art Monthly* in that case. I guess that is another way in which people could actually refuse to sell things that they think should have been subject to—

Senator BARNETT—I just want to clarify that. They did not refuse to sell it; they refused to display it. If you were over 18 and you wanted a copy, I am sure that they would sell it to you.

Senator MARSHALL—It has been indicated that this is a problem right now. What has led to the problem occurring at this point?

Ms Booyar—I am not sure which problem you are referring to.

Senator MARSHALL—Senator McGauran, Senator Joyce and Senator Barnett have indicated that they are very dissatisfied with the state of things as they are now. What are you doing differently now from what you were doing before to bring about their concerns?

Ms Booyar—I am not aware that we are doing anything differently. We have had these guidelines for—

Senator McGAURAN—Exactly. You do not even know what the problem is and you are not doing anything about it.

Senator MARSHALL—How long have you been conducting the affairs of the classification board in the way you are doing now? How long has that been going on for?

Ms Booyar—The current publications guidelines have been in force since 2005, so we have been applying them in the same way since 2005.

Senator JOYCE—Just to correct the record, Madam Chair, you asked me the name of the magazine. The magazine is called *Live Young Girls*.

Senator MARSHALL—Do we know whether that magazine is—

Ms Booyar—It is a category 1 restricted magazine.

Senator MARSHALL—So it is a restricted magazine.

Ms Booyar—Yes. And it has to be sold in a sealed, opaque wrapper with only the masthead showing.

Senator McGAURAN—But that is the whole point: it is in category 1 but it is an RC.

Ms Booyar—I cannot ascertain whether it has overstated its classification unless I look at the magazine.

Senator MARSHALL—That magazine would have gone through the process. That is what you are saying.

Ms Booyar—Yes.

Senator McGAURAN—No; it would not have.

Senator MARSHALL—And the guidelines would have needed to have been refined.

Senator Wong—Senator McGauran, through you, Madam Chair, I appreciate your concern about these issues but it is very difficult for witnesses to be badgered by you whilst Senator Marshall is asking questions. You could show a modicum of courtesy in the conduct of the hearing.

Senator McGAURAN—Good point.

Senator MARSHALL—Has this process, which has been in place since 2005, ever been reviewed?

Ms Booyar—I am not aware that there was a review of the publications guidelines since 2005.

Senator MARSHALL—Were there any efforts by the previous government to review this process?

Ms Booyar—I think this is a question for policy.

Ms Davies—When you talk about the process, the way this scheme treats publications—in that it only requires those submittable publications to be put to the board for classification—has basically been the same since the scheme first came into effect, so it has been that way since the act and the scheme commenced in 1996. The guidelines for publications were reviewed I believe in the late 1990s and were then amended in 2005, but in fairly minor ways. There has not been a significant review of those guidelines that I am aware of.

Senator JOYCE—The pitch is not who is at fault; it is how do we fix it?

Senator Wong—I am not sure that that has been the tenor of the questioning.

Senator McGAURAN—I will be quick on just two points. Senator Marshall's questions were excellent. Of course you cannot attempt to classify everything, and when clear breaches are brought to your attention you should act upon them. My point is that clear breaches have been brought to your attention and you have not acted. That is my point. Secondly, restricted category 1 is being abused by the distributors. They are popping RC into the black jackets, or worse. They are certainly not category 1 because category 1 says, 'Actual sexual activity may not be shown in realistic depictions.' Go to any service station or wherever they sell these black jackets and you will find that every magazine is not category 1. Now that has been brought to your attention.

Here is an example from a complainant. 'I have a picture of two girls here,' and this is before you. They are just head shots, I should add. 'What is their age? No-one has put them above 11 years of age. No-one. And they are in the magazines and the complaint is before you, yet you hold firm in saying that these magazines, which are all listed, are all category 1. Category 1 is in the eye of the beholder, but it is quite clear what category 1 should be: no actual sexual activity may be shown in realistic depictions.' Now, do you get it? Category 1 is being abused. It is not the actual guidelines itself; it is that the distributors are abusing the categories themselves right under your nose and it is being brought to your attention and you are doing nothing about it. There are two pictures of girls that people tell me are no more than 11 years old. I am happy to pass that to the chairman if she wants to involve herself. Hopefully that is the point I have been trying to make.

CHAIR—Are you tabling this, Senator McGauran?

Senator McGAURAN—Yes. I want to keep my copy. This is a copy of the complaint before you. The complainant has given it to me.

Ms Booyar—The complainant is from the organisation Kids Free 2B Kids?

Senator McGAURAN—Yes.

Ms Booyar—That complaint has been actively looked at. It has been actioned once already, and the complainant in question has made a further complaint. Only last week we received a number of the publications that she is complaining about. So it is actually under active consideration.

Senator McGAURAN—You have written to them in the past and just fobbed them off. Anyway, you now have that new complaint before you, and we will be keeping a watchful eye out.

Mr Griffin—Can I add something more to what has already been indicated in response to Senator Barnett's question about *Art Monthly*. The initial responsibility for classifying that was the Classification Board. There has been no application to the review board to review that classification, so that is where the classification remains at the present time. There are a couple of mechanisms by which a review can be initiated. One is of course by the distributor, one is by an aggrieved person and another is by the Tasmanian minister responsible for censorship requesting the federal minister to lodge a review—and the federal minister must do so—or alternatively for the federal minister to apply for a review of the classification and then it would come to the review board. We would apply the legislative framework and the principles enshrined in the classification act to determine whether that classification ought to be maintained or increased. So that is another course by which that matter can be reviewed.

Senator McGAURAN—The classifications are fine. It is your enforcing of them.

Senator BARNETT—Thank you for that, Mr Griffin. I do appreciate you explaining it that way. It confirms again that there are some concerns with the process and with the system and the way things are working. If it had not been for a public hoo-ha about *Art Monthly*, that publication would never have come to your attention. It should have been classified and it was not classified until it came to your attention. In fact, I was one of those who brought it to attention, and I called the chairman at the time to make sure it was properly classified. Nevertheless—I have two other questions.

CHAIR—To these witnesses?

Senator BARNETT—Yes. I am not sure—it may be that the department will be best able to answer these questions. They are about video games. Is that in your bailiwick? At the moment we do not classify—

Ms Booyar—Depending on—

Senator BARNETT—Can I just clarify that. There is no classification of video games at the moment?

Ms Booyar—There is. Video games are classified using the film guidelines. The classifications range from G to MA15+.

Senator BARNETT—Yes, but there is no R classification of video games currently. Is that correct?

Ms Booyar—Yes.

Senator BARNETT—And that is the law.

Ms Booyar—Yes.

Senator BARNETT—This is the big question, and I guess it is for the department and/or the minister. Is consideration being given to the classification of video games, as in R classification for video games?

Ms Lynch—The possibility of the introduction of a classification of R for video games is a matter being discussed currently at the censorship ministers' SCAG meeting, and it will be discussed at the next meeting in November.

Senator BARNETT—Was it discussed at the July SCAG meeting?

Ms Lynch—I will pass that to Ms Davies, who was there.

Ms Davies—Censorship ministers meet in conjunction with SCAG but they generally meet only at the first and last meetings of the year, so there was no censorship ministers meeting in July. At the March meeting, censorship ministers agreed in principle to conduct a consultation on whether there should be an R18+ classification for games and to release a discussion paper on that once ministers had agreed to that discussion paper.

Senator BARNETT—Where are we up to? Have we had a consultation? Where is the discussion paper?

Ms Davies—We have not yet had a consultation. A draft paper was prepared but ministers have not all agreed to that paper, so it will be discussed at the meeting.

Senator BRANDIS—When was the draft paper done?

Ms Davies—It was sent to ministers last month. I would have to get you the exact date.

Senator BARNETT—If you could. Which states have not agreed to that discussion paper?

Ms Davies—At this point, not all ministers have responded. There are caretaker ministers and that kind of thing. The paper was sent to ministers on 15 August and, at this point, Western Australia has not responded, the South Australian Attorney has not agreed, and the others have agreed.

Senator BARNETT—So Western Australia has not responded, South Australia has not agreed. Did they give reasons for their nonagreement?

Ms Davies—No, not specifically.

Senator BARNETT—Can you still pursue the discussion paper, notwithstanding South Australia's nonagreement?

Ms Davies—That would be a matter for censorship ministers. It was developed as a paper to be released by ministers, so it will be something for them to determine in November.

Senator BARNETT—Is this discussion paper going to be available to the public? Is that where you are headed with this? And is it part of the consultation phase?

Ms Davies—That was the agreement. The original intention was that a paper would be released for public consultation.

Senator BARNETT—As in the discussion paper you are referring to?

Ms Davies—A paper, and a discussion paper has been developed to implement that.

Senator BARNETT—Can you provide us with a copy of the discussion paper?

Ms Davies—Until ministers have agreed to it, it would not be appropriate for me to do so.

Senator BARNETT—Who prepared the discussion paper?

Ms Davies—Victoria is the lead jurisdiction on this exercise, so Victoria took the lead in drafting it. But it was circulated amongst censorship officers and most officers had a greater or lesser degree of input.

Senator BARNETT—What is the title of the discussion paper?

Ms Davies—I think it is ‘R18+ for computer games’. I think it is as simple as that, but I could check the wording.

Senator BARNETT—So it is all about whether computer games can or should receive an R classification.

Ms Davies—It is intended to canvas the pros and cons of introducing an R18+ classification, the arguments for and against introducing that, and to seek community views on that issue.

Senator BARNETT—How will you be seeking these community views and who will be consulted?

Ms Davies—Obviously it will be a matter for censorship ministers whether they do agree to release the paper. The intention would be, if they do agree to release it, that it would be released via the internet and via direct contact from the different jurisdictions to stakeholders. So at our end we would be contacting the range of groups that we are aware of that have views on these issues, primarily from correspondence from the minister. So it would be people like families groups as well as the peak industry groups. Those kinds of organisations would be alerted to it and would be sent a copy.

Senator JOYCE—Mr Wilkins, you can see that the context of this issue has just got remarkably bigger.

Mr Wilkins—Yes, Senator. There are significant issues here, which the government is attempting to address. I am prepared to take up with the Attorney-General the issues you have raised. Some of them have to do with the censorship ministers conference, but I agree with you that some of them have to do with the way offences are framed. We can have a look at those issues.

Senator JOYCE—I am glad you agree.

Senator BARNETT—I do not want to delay the committee, but this is a very important area. You have alerted us to important information tonight, but we are not going to get further answers until the SCAG meeting in November, in terms of the discussion paper and the release of it. Is that correct?

Ms Davies—That is correct.

Senator BARNETT—Some of us are dumbfounded as to why we do not have an R rating for video games. Can you share any argument as to why we do not?

Ms Davies—In order to make any changes to the classification code and guidelines, including introducing a new classification, you need to have unanimous agreement from all state and territory ministers and the Commonwealth minister. To date, that has not been obtained.

Senator BARNETT—We have got a real problem here, haven't we, because South Australia is opposing the position.

Ms Davies—The South Australian Attorney is on record on a number of occasions as opposing the introduction of an R18+ classification.

Senator BARNETT—We have a real problem, and this is something the Senate and the parliament is going to have to address. If we have one state opposing this, South Australia, then clearly we are not going to have any R rating of video games. That simply cannot occur as a matter of course legally.

Ms Davies—That is correct.

Senator BARNETT—Is monitoring of online games being undertaken by the board, the department or anybody else?

Ms Davies—Online content is regulated primarily under the Broadcasting Services Act, so consideration of online content, including online games, is primarily done by the Australian Communications and Media Authority. They investigate complaints about online content, including games. They can refer, and in some circumstances must refer, that content to the board for classification.

Senator BARNETT—That is what I am interested in. How does the relationship between ACMA and the board work? With the growth of the internet and online games and so on, is there a requirement for ACMA to refer it to the board for classification or does ACMA simply act on its own volition?

Ms Davies—Under the Broadcasting Services Act not all content is required to be classified—clearly. Certain content is prohibited—if it is, or would be, refused classification or if it is X18+, R18+ or MA15+ and does not have an age restriction system in place. For content that is hosted in Australia, if it has already been classified and is prohibited, or if ACMA considers that it would potentially be prohibited, then ACMA refers the material to the board for classification.

Senator BARNETT—Can you see the dilemma we have got? We have two umpires looking at a very similar type of arrangement for games—whether it be online games or computer games—and magazines. We have two different regulators, with two different regulatory regimes being applied to what many would consider to be a very similar incidence.

Ms Davies—For online content, ACMA apply the criteria in the classification scheme and refers it to the board. So there is actually one body, the Classification Board, making a decision about the classification level of that material. In the case of an online computer game, for example, they apply exactly the same criteria as it would apply to a computer game that you can buy in a shop. So the board applies the classification code and the classification guidelines for films and computer games when it is classifying an online game.

Senator BARNETT—Notwithstanding that there is no R rating for video games.

Ms Davies—It applies those guidelines as they exist.

Senator BARNETT—Thank you for that. I appreciate your feedback.

CHAIR—With the states and territories, you have said South Australia has not agreed. Can you tell us why there has been no response from Western Australia?

Ms Davies—The letters went out just at the beginning of the period when Western Australia went into caretaker. We got a response saying that there would not be a response till after the election, and I assume that the incoming Attorney-General has not yet had the opportunity to consider it.

CHAIR—Have you got any indications from Western Australia when that will happen?

Ms Davies—No, I have not.

Senator BARNETT—Can you table or take on notice the reasons for the South Australian opposition?

Ms Davies—Do you mean the opposition to the paper or the opposition to the R18+?

Senator BARNETT—R18+.

Ms Davies—I could find the reference to where the South Australian Attorney-General spoke about it in South Australian *Hansard* for you.

Senator BARNETT—That would be useful. Thank you for that.

Senator JOYCE—Apart from South Australia, are there any other states that are recalcitrant in this process? Obviously the community's feeling is one of overwhelmingly wanting to get a result, especially on the intimations of underage pornography. Seeing that it is a Commonwealth issue and requires all the state ministers so that we can put pressure on them, can you tell us of any states or territories that do not have their shoulder completely to the wheel on this issue?

Ms Davies—On the issue of R18+ for games or, more broadly—

Senator JOYCE—On monitoring and classification, the charging of people who have illicit material on sale and the policing of it. I mean the whole gamut of issues surrounding the intimation of underage pornography.

Ms Davies—In relation to having a consultation process on R18+, there have been two changes of ministers since the last censorship ministers meeting. I have no indication of those changed ministers' views, but all ministers agree that there should be a consultation. In relation to enforcement issues, I do not have any information on that and I do not know whether the operations branch does.

Senator JOYCE—Are there any problems that we should provide support for or pressure on to try to iron them out so that we can get a result?

Ms Williams—Issues are discussed within forums, and the community liaison officers provide information about compliance issues to state and territory censorship and enforcement offices through that mechanism.

Senator JOYCE—How many federal and state compliance officers are there? How many people are policing this?

Ms Williams—In the Community Liaison Scheme there are three officers.

Senator JOYCE—In the whole of Australia?

Ms Williams—Yes.

Senator Wong—That is Commonwealth.

Senator JOYCE—Do you think that is enough?

Senator Wong—I think that is Commonwealth. As I understood the evidence previously—we are back on the classifications, are we?

Senator JOYCE—Yes. Senator Brandis has some questions relating to them.

Senator Wong—I understood that the evidence was that, other than the issue that Ms Booyar went to, which was the application of the classifications, compliance was a matter for the state authorities.

Senator JOYCE—Okay.

Senator Wong—I could be corrected, but I think that was the evidence.

Senator JOYCE—Do we know how many state compliance officers there are?

Senator Wong—I certainly do not have that information. It would not necessarily be information the Commonwealth would have. That would be information the states and territories would have.

Senator JOYCE—In the meeting of respective ministers from the states, might you be able to find that out?

Ms Davies—It is not a matter of designated compliance officers. The legislative regimes of all the states and territories are offence-based regimes, so it is a matter for their police. However many police there are in a state or territory is, in effect, the number of officers who are charged with dealing with offences for classification—in the same way as any other offences.

Senator JOYCE—It is seeing the frustration that people can have. That Kids Free 2B Kids group can go out and pick this up. I am sure Julie is not a detective but she manages to pick up all this information which the appropriate bodies do not manage to pick up. Is she just extremely good at knowing where to shop? Why can she find it but others can't?

Ms Lynch—That is possibly a difficult question for us to answer because it relates to police practices in the states and territories. The CLS officers visit a number of outlets—adult shops, petrol stations et cetera—and if they find serious breaches they refer them to state and territory enforcement agencies.

Senator McGAURAN—Do you keep a record of the visits that your people have undertaken in the last six months?

Ms Williams—Yes.

Senator MARSHALL—Going back to video games, and maybe I did not pick this up in the discussion. Are there people actually trying to get R-rated video games or computer games, however they are described, classified? Is that what is generating the need, or is it that we believe that for existing games the classification needs to go further so there is an R classification?

Ms Booyar—The classification board cannot classify content of a video game that exceeds the MA15+ classification, because there is not one available. Those classifications are available in other jurisdictions. I would suspect that gamers—

Senator MARSHALL—Other jurisdictions outside of Australia?

Ms Booyar—Yes.

Senator MARSHALL—So by not having an R classification we are in fact keeping out of the legal market anyway for anything above 15+.

Ms Booyar—As far as the board is concerned, we must refuse classification to anything that exceeds MA15+.

Senator FIERRAVANTI-WELLS—In terms of legal challenges to the decisions of the classification board, it has been a long time since I have looked at this area, but what is the nature of the litigation these days? I refer, in other words, to challenges to the decisions of the board. How many do you have a year? Can you assist me as to the sorts of people who now have standing and whether, for example, an ordinary member of the public has standing today? If so, do they effect that right and challenge through the legal processes?

Mr Griffin—In terms of applications for review, this year I think there have only been five. But there was a challenge by a group in relation to *Viva Erotica*, which we classified as X18+. That went to the Federal Court and then to the full Federal Court. The classification and also the process by which we got to the classification were upheld by the Federal Court, both at first instance and on appeal. But there are not very many reviews, as you can see. In fact, there have been fewer reviews since 2007. I think in 2007 there were eight reviews and in 2006 there were even more than that. This year the number of reviews has certainly been a much lesser number than in previous years.

Senator FIERRAVANTI-WELLS—Could you comment on the question on standing to apply for review?

Mr Griffin—A review may be sought by the distributor or by an aggrieved person.

Senator FIERRAVANTI-WELLS—And that aggrieved person could be a member of the public?

Mr Griffin—In some instances yes. It is under section 42 of the act:

(a) a person who has engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the publication, film or computer game concerned;

(b) an organisation or association, whether incorporated or not, whose objects or purposes include, and whose activities relate to, the contentious aspects of that theme or subject matter.

That is if the decision referred to is a restricted decision.

So there is a capacity, but the difficulty with an individual applying is to satisfy those criteria but also to satisfy the financial arrangements. I think it is \$8,000 for an application to review.

Senator FIERRAVANTI-WELLS—So, in other words, the right of an offended member of the public has been considerably watered down over the years?

Mr Griffin—I do not think it has been watered down. I think that has been the provision for—

Senator FIERRAVANTI-WELLS—It probably has been since the time I last looked at it.

Mr Griffin—I am sorry. I have not looked at that in terms of the historical context, but we can take that on notice. The other means by which reviews can be undertaken, or be initiated, is for the federal minister responsible for censorship to seek a review—and that has happened on a number of occasions, where representations have been made by a state minister responsible for censorship. When a state minister responsible for censorship requests a federal minister for a review, the federal minister must initiate the review. The federal minister frequently then does not participate, but we have representations from groups like the Australian Family Association, the New South Wales Council for Civil Liberties and similar sorts of parties who have a specific focus in respect of the issues which are the subject of review.

Senator FIERRAVANTI-WELLS—Do you get solicitations from members of the public in terms of complaints? Do you have some sort of a system whereby they can do that?

Mr Griffin—I think there are two issues there. One is in respect of an initial classification decision. There are representations made by members of the public periodically but, on the other hand, I cannot answer for any initial complaint made to the classification board. I can only talk for the Classification Review Board.

Senator FIERRAVANTI-WELLS—I appreciate that.

Mr Griffin—But members of the public do raise it. We have had one recently from a person who is 15 years of age. In those circumstances we determined that that person did not fit within the criteria as an aggrieved person. I think there are other informal representations made from time to time but, after discussion, the issue has not been pursued. In relation to several of those magazines to which Senator Joyce has been referring, there was a suggestion that there would be an application for review made through one of the state attorneys-general but that has not transpired, so there has been no informal application for review to the review board.

Senator FIERRAVANTI-WELLS—In view of the much more explicit nature of the material that is out there, has some thought been given to perhaps extending the criteria whereby standing can be given to a wider range of people?

Mr Griffin—As acting convenor I cannot really intimate that because that is really a policy matter for governments.

Senator FIERRAVANTI-WELLS—I appreciate that. Perhaps I can ask the minister to take that on notice. In view of the greater explicitness of material out there—material which is getting worse and worse—is this something that perhaps we ought to be thinking about? Should we be giving greater standing to people to complain about the inappropriateness of this material?

Senator Wong—I am happy to take that on notice on behalf of the Attorney-General. I am not sure when these provisions referred to by Mr Griffin were, in fact, altered.

Senator FIERRAVANTI-WELLS—I am happy for that to go on notice.

Mr Griffin—Can I just add one other point that has been drawn to my attention. There is a provision in the act that allows for the capacity—and I am aware of it but I did not remember it when I was talking—to waive fees in certain circumstances. Those fees occasionally are waived, so that the \$8,000 ceases then to be an impediment. That is set out in section 91 of the act.

Mr Govey—Madam Chair, we have got, and could table for you, the information that was sought about the South Australian Attorney-General's statement in the parliament.

CHAIR—All right, thank you.

[5.15 pm]

Family Court of Australia

CHAIR—Mr Foster, welcome. Do you need to begin proceedings with an opening statement?

Mr Foster—No.

Senator BRANDIS—What is the current number of judges on the Family Court?

Mr Foster—We have 36 judges, including the Chief Justice. We have one vacancy, with the recent retirement of Justice Mullane.

Senator BRANDIS—How does that compare with this time last year? What is the court's full staffing capacity?

Mr Foster—In June 2007 there were 40 judges, including the Chief Justice.

Senator BRANDIS—Does that exclude the Western Australian judges?

Mr Foster—It excludes the Western Australian judges.

Senator BRANDIS—In June 2007 there were 40 judges, including the Chief Justice, and there are now 36?

Mr Foster—Yes.

Senator BRANDIS—Does that mean the government has not filled four vacancies?

Mr Foster—A significant number of judge vacancies have been filled by federal magistrate appointments—so I guess they have been appointed—but not by judges.

Senator BRANDIS—Mr Foster, just follow me if you would. I will come in a moment to the relationship in workload between the Family Court and the Federal Magistrates Court. Confining ourselves for the moment to the Family Court, that must mean that four vacancies on the Family Court which have occurred since June 2007 have not been filled. Is that right?

Mr Foster—They have not been filled by appointments to the Family Court.

Senator BRANDIS—Where are those four vacancies?

Mr Foster—Justice Steele, in Sydney, resigned on 15 January 2008. Justice Kay, in Melbourne, retired on 25 February 2008. Justice Guest, in Melbourne, retired on 5 May 2008. Justice Carmody, in Brisbane, resigned on 8 July 2008. Justice Carter, in Melbourne, retired on 18 July 2008. Justice Mullane, in Newcastle, retired on 30 September. If it would help, I

can table a document which sets out the retirements and appointments, by location, since the year 2000.

Senator BRANDIS—I am sure that would be helpful, but let us just pause for a moment. Since June 2007 there have been six vacancies created on the court through retirement or resignation and two of them have been filled by appointments to the court.

Mr Foster—Of the five I mentioned, four have been replaced by federal magistrates.

Senator BRANDIS—Sorry, I thought you mentioned six.

Mr Foster—One is still vacant in terms of Justice Mullane.

Senator BRANDIS—I see. You may as well table that document you mentioned now, thanks, Mr Foster.

Mr Foster—That number of 36 judges does not include the two judicial registrars.

Senator BRANDIS—I did not understand you to be talking about judicial registrars.

Mr Foster—Fine.

Senator BRANDIS—Does the fact that these vacancies have been, as you would say, filled from the Federal Magistrates Court indicate a policy on the part of the government for a yet further increasing proportion of the Family Court's work to be absorbed by the Federal Magistrates Court?

Mr Foster—I think that is an inevitable outcome of the result of the appointments. I can give you some data on that, if that would be—

Senator BRANDIS—Just one thing at a time. You see, the other thing the government could have done is replace these judges, these retiring or resigned members of the Family Court, with new Family Court judges. It has chosen, evidently, not to do that but rather to shift still more of the work to the Federal Magistrates Court. That suggests to me that, as a result of changing jurisdictional thresholds and so forth, the amount of work being done by the Family Court as an organic entity as opposed to family law work being done by all federal courts is shrinking. Is that right?

Mr Foster—The first statement is right. The amount of work done on family law by the Family Court has diminished. But actually the number of filings in family law across the board has reduced by something like 21 per cent since 2000.

Senator BRANDIS—These are filings in the Family Court?

Mr Foster—Both courts.

Senator BRANDIS—Both the Family Court and the Federal Magistrates Court?

Mr Foster—For application for final orders. So there has been a reduction in the number of applications for final orders in family law generally.

Senator BRANDIS—What about in cases disposed of other than settlements prior to hearing? What has been the movement in that area? In other words, has the number of contested proceedings or proceedings that were contested until the hearing date shown an equivalent reduction more? What has been the movement in that regard?

Mr Foster—I have not got the number, but I can tell you that the number of matters that proceed to trial in the Family Court has increased from 4.5 per cent in 2004-05 to 9.2 per cent of filings in 2007-08.

Senator BRANDIS—Give me those figures again, please.

Mr Foster—In 2004-05, 4.5 per cent went to trial and 9.2 per cent of filings in 2007-08 went to trial. So, in effect, the number of matters going to trial has—

Senator BRANDIS—Slightly more than doubled.

Mr Foster—That is right.

Senator BRANDIS—And this is only in the Family Court, not the Federal Magistrates Court.

Mr Foster—Only in the Family Court.

Senator BRANDIS—Do you also have any figures as to the average length, in terms of judge days required, of the matters that went to trial, or should we assume that the length of these trials has been relatively constant across time?

Mr Foster—No. I would need to take it on notice to be perfectly accurate. I could give you an indication.

Senator BRANDIS—Can you give me a kind of impressionistic answer, please.

Mr Foster—I can, and that is that the average length of trials has increased.

Senator BRANDIS—By roughly what?

Mr Foster—By about a day. But, instead of answering that specifically, I would rather take it on notice to give you the actual figure.

Senator BRANDIS—That is fine. That is very helpful. Nevertheless, the number of matters proceeding to trial having more than doubled, it looks to me as if the amount of actual work in terms of hearings of Family Court judges increased between 2004-05 and 2007-08. Would that be an accurate view?

Mr Foster—I think it has for the judges that are there, because obviously there has been a reduction in the number of judges. But there has also been a significant number in the matter of applications filed. In fact, currently it is around about 80 per cent of matters being filed in the Federal Magistrates Court.

Senator BRANDIS—I am coming to the Federal Magistrates Court in a moment. I want to confine myself just for the time being to matters filed in and disposed of by the Family Court. What you have told me is that, whereas 4.5 per cent of filings resulted in a contested hearing in 2004-05, three years later slightly more than twice as many—9.2 per cent—resulted in a contested hearing. Although your impression is that the trials are now slightly longer than they used to be by perhaps roughly a day, nevertheless what that seems to indicate, to me at least, is that the amount of judge time being devoted to contested proceedings in the Family Court, for matters filed in the Family Court, has grown significantly.

Mr Foster—I think that is a fair statement.

Senator BRANDIS—Nevertheless at the moment the number of judges has fallen from 40 to 36 and some of those judges have been replaced by there having been a jurisdictional shift, as it were, down to the Federal Magistrates Court. Nevertheless that does not relieve the pressure on the Family Court in relation to matters that remain in the Family Court, does it?

Mr Foster—No. I think that is the point we were making for some time. Filings are not necessarily workload. Workload—

Senator BRANDIS—Workload is contested proceedings—we all know that.

Mr Foster—Exactly.

Senator BRANDIS—So the workload has doubled at a time when the number of judges has been reduced.

Mr Foster—I think the point to make there is the number of cases going to trial is expressed as a percentage. But that is not a number, and obviously if there are fewer cases then there is the potential, as for that percentage, that matters that go to trial would be a higher figure.

Senator BRANDIS—I understand that. So the 9.2 per cent is 9.2 per cent from a smaller base.

Mr Foster—That is right.

Senator BRANDIS—Nevertheless there is an actual growth in absolute numbers of the numbers of judge-days involved in contested proceedings in the Family Court.

Mr Foster—There is no longer the attrition rate that existed with the less complex matters. Most of the matters that now come to the Family Court involve the most difficult families—difficult cases.

Senator BRANDIS—Yes. So, to bring this to a conclusion, the amount of work being done by the Family Court judges dealing with contested matters is greater now than it was four years ago.

Mr Foster—I think of the number of contested matters that are going forward and the answer to that would be yes. I can give you a table that sets out attrition rates too, if that would be useful.

Senator BRANDIS—That would probably be helpful too although I do not want to get bogged down too much in statistics. I think you have made the point plainly enough that the Family Court judges are actually doing more work with fewer resources than they were.

Mr Foster—But the point, if I can say it, is that we are actually disposing of cases faster now than they are coming into the system.

Senator BRANDIS—That is good.

Mr Foster—We are disposing of more cases than are coming in.

Senator BRANDIS—That is an indication of efficiency rather than workload.

Mr Foster—Absolutely.

Senator BRANDIS—Mr Foster, by my reading of Budget Paper No. 4, there was a 6.04 per cent reduction in funding of the Family Court in real terms in the current budget, on the basis of the budget's assumption of 3.25 per cent inflation, which is three times more than the two per cent efficiency dividend. Do you agree with that proposition?

Mr Foster—Perhaps I could ask Mr Harriott to respond to that.

Senator BRANDIS—By all means.

Mr Harriott—I have a document here that I could table. It translates the changes in the court's appropriations over the two financial years. The reduction was a change of about 3½ per cent.

Senator BRANDIS—Is that in real terms or in nominal terms?

Mr Harriott—It is in real terms. I have a reconciliation. I am quite happy to table that and explain all the movements and changes in the budget figures.

Senator BRANDIS—I want to ask you about the impact of the efficiency dividend. Mr Foster, you made a submission on behalf of the Family Court last June, did you not? It was to the Joint Committee of Public Accounts and Audit on the effect on the court of the efficiency dividend.

Mr Foster—Yes, I did.

Senator BRANDIS—You said:

The increase in the efficiency dividend will have the following impact on the Family Court:

1. a reduction of approximately 26 full-time equivalent positions;
2. a reduction in travel for the Court;
3. a reduction in communications; and
4. a reduction in the general administration costs (of approx \$0.6m).

Do you stand by the observation that that will be the impact on your court of the imposition of the efficiency dividend?

Mr Foster—That is right.

Senator BRANDIS—You said at the end of the submission:

In conclusion, the impact of the Efficiency Dividend on the Family Court is one that will affect clients and the delivery of family law services to the community. Whilst the Court understands the initiative of the Efficiency Dividend, we would argue strongly that it is disproportionately applied to the total budget of the Court. The Court believes that given 56% of the budget is fixed, and that the Efficiency Dividend would need to be sourced from 44% of the budget we would seek exemption from the Efficiency Dividend on the fixed component of the Courts budget.

The fixed component of the court's budget presumably means sunk costs like rentals and salaries—

Mr Foster—Judges' salaries and lease payments.

Senator BRANDIS—judges' salaries and so on. That seems a pretty good argument to me, if I may say so. Did that receive a sympathetic hearing from the government?

Mr Foster—The committee has not reported yet, so I am not quite sure how sympathetic they might be.

Senator BRANDIS—I said the government, not the parliament. This was a submission to a parliamentary inquiry, but presumably the Family Court has made its views on this matter known to the government as well.

Mr Foster—We have certainly had discussions about it with the Attorney-General's Department, but I mean—

Senator BRANDIS—So the Attorney-General's Department. Presumably the Attorney-General is aware of your view of the likely impact of the efficiency dividend on the Family Court and, more particularly, is aware of the anomaly of applying the efficiency dividend uniformly across both the fixed and the variable costs of the court?

Mr Foster—I would have thought that at least the department would be aware of the impact that that efficiency dividend is having on us.

Senator BRANDIS—The department is here. Is the department aware of this?

Mr Govey—We are certainly aware of this issue, it having been raised over a period of many years.

Senator BRANDIS—The department has briefed the Attorney-General on this matter?

Mr Govey—I am not sure if we have briefed the current Attorney-General on this. We will have to take that on notice.

Senator BRANDIS—Senator Wong, do you know? Mr Wilkins is here; perhaps he can help us.

Senator Wong—While Mr Wilkins is returning to his seat, I will make a couple of comments. First—

Senator BRANDIS—Do not make any comments that are not responsive to my question.

Senator Wong—my recollection is that an efficiency dividend was imposed by your government. The second point is that I have been at a number of estimates hearings since we came to government, and coalition senators have been critical of the application of the efficiency dividend. If—

Senator BRANDIS—May I stop you—

Senator Wong—May I finish?

CHAIR—Senator Brandis.

Senator BRANDIS—because I do not want you making political points.

Senator Wong—I do not think I have taken up much time in this hearing, actually.

Senator BRANDIS—I do not want you making political points. The way these committees work, as you know as well as I do, is that members of the committee ask questions of witnesses and witnesses respond to questions. What you are saying now is a political statement which is not responsive to any question you have been asked. Mr Wilkins is here, so perhaps I can ask Mr Wilkins the question that interests me.

Senator Wong—Madam Chair, I was just responding to some of the political points made by Senator Brandis.

Senator BRANDIS—I was merely asking questions about statistics, Senator Wong.

CHAIR—Please continue, Minister.

Senator Wong—Do I have the call, Madam Chair?

CHAIR—Yes, Minister, you do have the call.

Senator Wong—Thank you. I would make the point the government does regard fiscal prudence as critical, as important—

Senator BRANDIS—We do not want the boiler plate Rudd government rhetoric, Senator Wong. You are the minister who, earlier today before this committee—

CHAIR—Senator Brandis! Order!

Senator BRANDIS—was not even prepared to tell us what the government's transparency policy was because it is so secret. So I do not think we will listen to your boiler plate rhetoric with any respect. I have a question for Mr Wilkins.

CHAIR—Senator Brandis, I am seeking order. Committee members, order! Minister, please continue.

Senator BRANDIS—Madam Chair, I have a question for the secretary of the department.

CHAIR—Minister Wong, you have the call. Please continue.

Senator Wong—Thank you, Madam Chair. I simply make the point that there are a number of portfolios in which views have been expressed about the efficiency dividend, but we have made clear that as the government our view is to the importance of fiscal prudence and the importance of a strong budget surplus, particularly in these difficult economic times. I think the Prime Minister's and Treasurer's announcement last week demonstrated the reason for the need for a budget surplus buffer. I appreciate the views that Senator Brandis is putting in relation to the application of the efficiency dividend in relation to this portfolio. Coalition senators have put those views in relation to a range of agencies and departments in other portfolios. Obviously we have to take a whole of government view on these issues.

Senator BRANDIS—Senator Wong, why don't you just play us a Labor Party television commercial? Really, this advances the matter nowhere. Mr Wilkins, I have a question for you. I think you were out of the room when we were discussing the impact of the court on the efficiency dividend. Although it was before you assumed office as secretary of the department, may I ask whether you are aware of the Family Court's submission to the Joint Committee on Public Accounts and Audit of 28 June 2008, which dealt in particular with the impact on the Family Court of the government's efficiency dividend?

Mr Wilkins—I am aware that there was a submission. I have not read it, Senator.

Senator BRANDIS—Let me pass you a copy. It is addressed to Ms Grierson, who is the chair of that committee. There are just two bits of the submission that I want to draw to your attention. In about the middle of the second page of text, after the letter of transmittal, you will see that there are four effects which, in the opinion of Mr Foster speaking on behalf of the

Family Court, will be the consequence of the efficiency dividend on the court. In your absence, I think I can fairly say, without mischaracterising his evidence, that Mr Foster reaffirmed that that is the view of the court—or that that is his view as chief executive of the court. In particular, I was drawing to the attention of witnesses the concluding words, which follow. It is, unhelpfully, an unpaginated document, but two pages later you will see a page which contains a single paragraph beginning with the words: ‘In conclusion.’ Do you see that?

Mr Wilkins—Yes.

Senator BRANDIS—Can I ask you to read that and familiarise yourself with it.

Mr Wilkins—Yes.

Senator BRANDIS—All I want to know is whether these matters have been drawn to the attention of or briefed to the Attorney-General.

Mr Wilkins—Not this specific submission. As I have said, I have not read this.

Senator BRANDIS—I said ‘these matters’.

Mr Wilkins—These types of matters have been drawn to the attention of the Attorney-General.

Senator BRANDIS—May we take it then that the Attorney-General is aware of the points made in the two parts of the document to which I have drawn your attention?

Mr Wilkins—In general terms. Whether he is aware of the specific submission, I do not know.

Senator BRANDIS—I am not sure who I should address these questions to, but perhaps I could furnish both Mr Foster and Mr Wilkins with a copy of the submission to the same parliamentary committee on behalf of the Family Court of Western Australia. Perhaps Mr Foster could have a copy as well.

Senator Wong—Could I have one, please?

Senator BRANDIS—I only have two photocopies, but I am sure you can look over Mr Wilkins’s shoulder. Let us be clear: the Family Court of Western Australia administers the Family Law Act and is resourced under a funding agreement with the Australian government. Correct?

Ms Leigh—The Family Court of Western Australia is funded by the Australian government.

Senator BRANDIS—That is what I meant. So there is a funding agreement in place?

Ms Leigh—That is correct.

Senator BRANDIS—Without dwelling too much on the detail of it, it would be accurate to say, would it not, that Commonwealth funds indemnify the Western Australian government for the costs of operating the Family Court of Western Australia?

Ms Leigh—The Commonwealth government funds the Western Australian government for its operations and it is paid on an invoice basis, on a quarterly basis.

Senator BRANDIS—So the only practical difference between the Family Court of Australia and the Family Court of Western Australia is that, nominally, the Family Court of Western Australia is a state court but it is paid for by the Australian government and it administers a Commonwealth statute, the Family Law Act?

Ms Leigh—I do not think I could agree that it is nominally—

Senator BRANDIS—Well, it is constitutionally—

Ms Leigh—It is established by an act of the Western Australian parliament and operates under Western Australian legislation. It also applies some Commonwealth legislation.

Senator BRANDIS—But, for all practical purposes, the main act it applies is the Family Law Act and it is paid for by the Australian government?

Ms Leigh—It also has jurisdiction under some state legislation and the Western Australian government also contributes to its budget.

Senator BRANDIS—Mr Wilkins, are you aware that the Family Court of Western Australia asserts, as appears at about point 8 on the second page of its submission to the Joint Standing Committee of Public Accounts and Audit, that the imposition of the efficiency dividend on it is in breach of the 1976 agreement between the Western Australian and Commonwealth government under which the Family Court of Western Australia operates. I do not ask you to pass comment on whether you accept or refute what is asserted there. I assume you would refute it. But you are aware that there is this dispute between the Family Court of Western Australia and the Australian government?

Mr Wilkins—As of 30 seconds ago.

Senator BRANDIS—You were not aware of it before?

Mr Wilkins—I am advised that we have not been told that before.

Senator BRANDIS—Is that right, Ms Leigh?

Ms Leigh—To my knowledge, the Family Court of Western Australia and the government of Western Australia have not raised this with us.

Senator BRANDIS—To the best of your knowledge the first occasion on which the assertion, to which I have drawn your attention, was made by the Family Court of Western Australia was in its submission, dated 14 July 2008, to the Joint Standing Committee of Public Accounts and Audit. Is that right?

Mr Wilkins—I am just checking that.

Senator BRANDIS—It is an important point. You might like to take it on notice.

Ms Leigh—That is correct. But, to the best of our knowledge, this issue of the inconsistency with the agreement has not been raised with the department or the government.

Senator BRANDIS—I am a little surprised that this submission had not come to your notice before now. Does not the Attorney-General's Department keep an eye on what might be being said about it before parliamentary committees?

Ms Leigh—Certainly. We were not aware of it, and it was not provided to us by the Family Court of Western Australia. I would have thought they would have done so after having observed the parliamentary rules.

Senator BRANDIS—Well, it has been provided to you by me, so at least now you know about it. On the third page of the document, at about point 7, the author of the submission, who is the Chief Judge, Justice Thackray, says:

... the annual cash efficiencies needed to be realised as a direct result of the efficiency dividend is approximately \$170,000 per annum.

At the foot of the next page, page 4, he goes on to talk about the impact of the efficiency dividend on his court. Assume, for the sake of argument, that the efficiency dividend is lawfully applicable—which he disputes—to his court. He says:

The existence of the efficiency dividend has in the past reduced the court budget by 1.25% which has proven devastating for the Court. The FCWA—

that is, the Family Court of Western Australia—

has no capacity to implement the efficiency dividend. In the past the dividend has been offset by not filling positions on the staff establishment, closing down the Building Trust fund and through a lack of service provision to regional areas. The above measures were drastic, once off and unable to be repeated.

The impact on regional areas is particularly significant as they receive a lesser service compared with the metropolitan area, particularly in relation to child related matters.

At page 6 of the submission, he goes on to say that, at most the imposition of the dividend:

may reduce the number of circuits conducted to regional areas, however the amount saved would not cover the efficiency dividend

(and could only be done once) and regional communities would be negatively impacted. This is not a sustainable option for the court.

At the top of the next page, he goes on:

It is my strong view that capacity should exist for exemptions from the efficiency dividend for small agencies that do not have access to substantial discretionary funds.

What do you have to say about that, Mr Wilkins?

Ms Leigh—The government is aware of those issues and indeed the Attorney commissioned a—

Senator BRANDIS—You were only made aware of them by me about 10 minutes ago.

Ms Leigh—To the best of my knowledge, we were unaware of the suggestion by the Family Court of WA that there was an inconsistency with the agreement between the Commonwealth and Western Australia about the efficiency dividend. There has been no change in arrangements in relation to the efficiency dividend since that was first introduced—

Senator BRANDIS—What Chief Judge Thackray—

Senator Wong—Senator Brandis, I do not think Ms Leigh had finished her answer.

Senator BRANDIS—I am sorry; I thought you had. Had you not?

Ms Leigh—No.

Senator BRANDIS—Do go on.

Ms Leigh—I was going on to say, however, that the Attorney is aware of the concerns of the WA government about the adequacy of the funding of the Family Court of WA. Indeed, he has commissioned a review of that funding. He commissioned that review in March and, if you would find it helpful, I could provide you with the terms of reference of that.

Senator BRANDIS—That would be very helpful.

Ms Leigh—That review is still underway at the moment.

Senator BRANDIS—When was that review set up, by the way?

Ms Leigh—In March.

Senator BRANDIS—When is it due to report?

Ms Leigh—We received the Western Australian government's final submission on the 6th of this month, so we are hoping that it will be finalised later this month or next month.

Senator BRANDIS—When you say 'finalised' do you mean the review will report?

Ms Leigh—That is correct, to the government.

Senator BRANDIS—Let us leave aside this issue of which we have lately become aware—the assertion by the Family Court of Western Australia that the Commonwealth is in breach of the 1976 funding agreement—and go to the broader issue of the impact on the court of the efficiency dividend. Mr Foster, what the Family Court of Western Australia is saying in relation to the impact of the efficiency dividend on it is essentially what you are saying about the impact of the efficiency dividend on you, isn't it?

Mr Foster—I assume they would have a similar argument about fixed costs. I have not read the submission, so I do not know, but I assume they have a very similar argument.

Senator BRANDIS—They do. So the Family Court of Western Australia and the Family Court of Australia have been put in the same place by this additional efficiency dividend, the two per cent. Mr Wilkins, leave aside the Family Court of Western Australia, because they are not your responsibility—at least nominally. Does the Attorney-General's Department support the Family Court in relation to this matter?

Mr Wilkins—I think there are two points. The first point is that in my experience this type of argument is advanced at state government level by all sorts of state government agencies on a regular basis across the board. There is always a good reason why they should not pursue the government's policy on efficiency dividends. I have not had a chance to look at the merits of these cases, but I would not be making a blanket assertion without the opportunity to really go over the figures and see whether or not there is actually room for proper efficiency dividends.

Senator BRANDIS—Surely you would not dispute the figures being put forward by the chief executive of the Family Court, presumably with the authority of the Chief Justice?

Mr Wilkins—No, but you have just given me this document to have a look at.

Senator BRANDIS—Indeed, but the document frames the issue, Mr Wilkins. I am not expecting you to be across the detail of a submission to a parliamentary committee which has just been put in front of you. That would not be fair. But you are generally aware of the issue. The issue has been agitated in this estimates committee before. It is a big issue in the portfolio. So may I ask you whether, as a general proposition, the Attorney-General's Department supports what the Family Court has to say?

Mr Wilkins—Can I just say that I do not think it is a general proposition. I think the devil is always in the detail on these issues and there may well be cases—

Senator BRANDIS—I do that too. I always try to avoid general questions by saying that the devil is in the detail, but sometimes it is possible to frame a question in the general as well.

Mr Wilkins—Can I finish the answer, Senator? The devil is always in the detail. I have administered a number of portfolios. I am sure you have seen this in the arts portfolio as well. A number of agencies make these conditions. Some have a good case and some do not. It is a question of actually looking at the detail. The government policy is clear on this issue and needs to be applied. There are safety valves. There is a capacity to make submissions through the budget process for relief of various sorts and there may well be agencies that have good cases to make for relief from the efficiency dividend or some form of review through the budget process, which you know is available. That is what I mean by saying the devil is in the detail. It would be premature to say—and certainly I am not in a position to say—whether this is actually correct or not. It leaves out of contention the capacity to find efficiencies through changes in policy, changes practice and changes of that sort, which may not be some of the levers that the court has but the government may have them. So there are a number of issues that need to be taken into account in coming into a landing on this question.

Senator BRANDIS—I understand that. You expressed the point very adroitly, if I may say so. Nevertheless, has the Attorney-General's Department turned its corporate mind to the position taken by the Family Court in seeking relief from the efficiency dividend?

Mr Wilkins—We are looking at, in the budget processes, a number of agencies.

Senator BRANDIS—Including the Family Court?

Mr Wilkins—Including the Family Court.

Senator BRANDIS—Is it the policy of the Attorney-General's Department that, if it is persuaded that one of the agencies within the portfolio has a good case, it will support the position of that agency to government?

Mr Wilkins—It is my position that, if I think that, then I will go and talk to the Attorney-General about it, certainly.

Senator BRANDIS—Have you arrived at a view in relation to the Family Court's position?

Mr Wilkins—No.

Senator BRANDIS—Have you or the Attorney-General's Department in aggregate yet turned your mind to the question of the Family Court's position in relation to this dispute?

Mr Wilkins—This dispute?

Senator BRANDIS—Its claim for relief from the efficiency dividend.

Mr Wilkins—No. As I said, we have not come to a landing on this issue.

Senator BRANDIS—When you say you ‘have not come to a landing’, have you taken off yet?

Mr Wilkins—Yes.

Senator BRANDIS—So, to bring the metaphor back to earth, does that mean that you have begun to consider, but have not arrived at a concluded view about, whether you support the Family Court’s position?

Mr Wilkins—That is correct.

Senator BRANDIS—All right. Thank you. Are you able to give us some indication when the department will arrive at a view? In particular, may we assume that the department will have arrived at a view by the time of the preliminary steps in the preparation of the next budget later this year?

Mr Wilkins—I think you can safely conclude that. We will be breaching a view in the context of making submissions on budget.

Senator BRANDIS—Mr Foster, what does that do for you?

Mr Foster—We are forecasting a balanced budget for this financial year. We absorbed the cost of \$2.6 million, which is the impact of the 3.25 per cent on our budget, and we are forecasting, at this stage, losses in the out years. I guess we will wait and see what the review of family law services brings. If that brings some savings, that might help the budget of both the Family Court and, perhaps, the Federal Magistrates Court.

Senator BRANDIS—Mr Wilkins, I suspect you may have been out of the room for some of this evidence, but we have learned from Mr Foster that, against a background of a 21 per cent reduction in the number of filings in the Family Court—which means the aggregate amount of Family Court litigation has fallen by about a fifth, which is a good thing, I would imagine—between 2004-05 and 2007-08, the number of contested proceedings, which is, as we all know, where the work is in the court, has risen from 4.5 per cent of all filings to 9.2 per cent of all filings. So the workload of the court in terms of judge days has more than slightly doubled. Even if you deflate that by a fifth, representing the 21 per cent reduction in initial filings over the period, it is still substantially increased. That was Mr Foster’s evidence before. Yet, at the same time, the number of judges, in terms of the failure of the government to replace retiring and resigned judges, has fallen from 40 to 36. So you have 10 per cent fewer judges doing substantially more work. On top of that, because of the efficiency dividend, the resources of the court have been shrunk. And on top of that, you have the Family Court’s argument that only 44 per cent of its budget is variable and 56 per cent is fixed. So you have the efficiency dividend having a more than a double impact on the Family Court’s budget, because it can be absorbed only by the 46 per cent of the budget which represents variable costs. Do you see the problem, Mr Wilkins?

Senator Wong—Senator Brandis, I assume you put these views through your shadow ministry, and I await the indication of your costed policy and what areas of the portfolio you would—

Senator BRANDIS—Please don't make political points, Senator Wong.

Senator Wong—The point is which areas of expenditure will the opposition suggest should be reduced in order to ensure that the efficiency dividend is not applied. It is all care and no responsibility, Senator Brandis.

Senator BRANDIS—You are being political, Senator Wong. I am asking a serious question about the resourcing of the Family Court, and you are trying to play politics. I have put the propositions. These are not politically controversial propositions. They are questions about agency resourcing. They may have political implications, which you can deal with in the chamber or in some other public forum, but this is an estimates—

Senator Wong—When you put forward a costed policy you will have some credibility in this regard, Senator Brandis. Until then, you will not.

Senator BRANDIS—Please do not interrupt me, Senator Wong. This is an estimates forum, in which senators are entitled to ask officers about agency resourcing and the implication on their agencies of decisions by government to reduce the available resources. Now, shall I run through it again, Mr Wilkins?

Mr Wilkins—No, but on a quick skim of this, and just listening to what you were saying, we do not yet have the actual absolute, or aggregate, numbers. We have been talking in terms of percentages, so we would need to know—hence my earlier point that the devil is in the detail, although this is not very much detail—exactly how many cases we are talking about and how many—

Senator BRANDIS—I think Mr Foster is very eager to provide those actual numbers.

Mr Wilkins—We need to know how many there are and how much they actually cost, because we do not know in aggregate what the changes are. All we have been talking about is in terms of percentages and portions of the pie, if you like. So we would need to go into that sort of detail in order to actually understand what the stresses and problems are confronting the Family Court. Then you have the government's announced intended reform in relation to the position of the Federal Magistrates Court and the Family Court, which goes also to the increased efficiency of dealing with family law matters.

Senator BRANDIS—I will come to that next time. I have gone about this in a particular methodical way.

Mr Wilkins—I was not aware of that in advance, so I was just trying to answer your question.

Senator BRANDIS—That is true. I indicated to Mr Foster that I wanted to deal with the Family Court first, and then the relationship, in relation to family law jurisdiction, between the Family Court and the Federal Magistrates Court.

Mr Wilkins—Yes, but the two are connected.

Senator BRANDIS—I am well aware of that. I am probably better aware of it than you.

Mr Wilkins—So you do not need that information.

Senator BRANDIS—Mr Foster, you heard what Mr Wilkins had to say about actual numbers. What do you say about that?

Mr Foster—Can I just clear up one point before I respond to that?

Senator BRANDIS—Yes.

Mr Foster—The figures of 4.5 per cent and 9.2 per cent were in relation to the matters that actually went to judgement, which are, again, the real part of the work of the court. It was not just those going to trial—so I will just make that distinction. I can table the numbers of clearance of application for final orders, from application for final orders that were filed to those that have been dealt with in a financial year.

Senator BRANDIS—Please do; that is very helpful. But are they brief enough to actually read them onto the record so we can start talking about them?

Mr Foster—Yes, they are. In 2004-05 applications were 11,954, and we disposed of 14,077. In 2005-06 applications were 11,011, and we disposed of 12,639. In 2006-07 applications were 7,854, and we finalised 10,759. In 2007-08, applications were 4,457, and we finalised 6,992. So we are consistently now finalising more cases that are coming into the system, and the number of cases coming into the Family Court has reduced dramatically.

Senator BRANDIS—That is very helpful, Mr Foster. Against those raw numbers we can now make, perhaps, more sense of the percentage relativities in that the number of matters proceeding to a final judgement after some kind of hearing has more than doubled—

Mr Foster—It is 9.2 per cent.

Senator BRANDIS—It has more than doubled—to 9.2 per cent.

Mr Foster—That is right.

Senator BRANDIS—Are you tabling that document, Mr Foster?

Mr Foster—I can, if you would like it.

Senator BRANDIS—Yes, please. Now, Mr Foster, can I invite you to speak generally to the issue of the transfer of matters from the Family Court to the Federal Magistrates Court. What is the view of at least some in the profession that more and more family law matters are being bled away from the Family Court to the Federal Magistrates Court? And if you want to illustrate those observations with other statistics and helpful tables, please do.

Mr Foster—I think to a large extent the system is beginning now to settle down in that, where there are judicial resources of a similar nature—and I guess Adelaide would be an example where there are more federal magistrates than there are judges; the filing rates in Adelaide would be far greater for the Federal Magistrates Court than they would be for the Family Court—if you have a place—

Senator BRANDIS—What percentage of all Family Court matters defined as initial filings are now commenced in the Federal Magistrates Court, please?

Mr Foster—About 80 per cent of all applications for final orders are now filed in the Federal Magistrates Court.

Senator BRANDIS—You don't have any figures as to how that may have moved over time in the last few years?

Mr Foster—I have only got the Family Court of Australia figures for the last two or three years and a combined figure. In 1999, before the commencement of the Federal Magistrates Court, there were 21,939 applications for final orders in the Family Court. Moving to 2006-07, that had reduced to 7,800 and for 2007-08 it was down to 4,457. The combined total for both courts in 1999 was the same number—21,939. In 2006-07 it was 20,447 and in 2007-08 it was 17,306. So that is a reduction from 1999-2000 of nearly 22,000 down to 17,000 in applications for final orders in family law work.

Senator BRANDIS—So the number of filings in family law matters in the Federal Magistrates Court is the difference between the 17,306 and the 4,457 filed in the Family Court?

Mr Foster—Yes.

Senator BRANDIS—By the way, does that include or exclude the Western Australian court?

Mr Foster—That does not include Western Australia.

Senator BRANDIS—So that excludes?

Mr Foster—Yes, that excludes Western Australia. There is still a number of transfers as between the two courts on top of those figures. For 2007-08 there were 1,520 matters transferred from the Family Court to the Federal Magistrates Court and 530 transferred from the Federal Magistrates Court to the Family Court, so there is still some transfer of matters after filing as between the two courts.

Senator BRANDIS—You said a moment ago that things had settled down. By that did you mean to say that the percentage of family law matters being dealt with by the Federal Magistrates Court had become a more steady percentage in more recent months?

Mr Foster—That is my assessment now, that the thing has plateaued pretty much. We would expect that filings in the Family Court would begin to plateau around that figure of 4,000 per annum, because we think that is the work that should be coming to the Family Court of Australia.

Senator BRANDIS—And that is about 20 per cent of cases?

Mr Foster—Roughly; a bit less probably but around 20 per cent of filings.

Senator BRANDIS—I do not have a calculator with me. Anyway you think the 2007-08 figures are likely to be typical and, as you say, to plateau at about that level.

Mr Foster—I think they will plateau at around 4,000.

Senator BRANDIS—As to the difference, would it be a fair generalisation that because of the changed jurisdictional thresholds all of the cases dealt with in the Family Court tend to be the larger and more complex cases?

Mr Foster—I think largely that is a reasonable assumption. Until recently, without the appointment of a federal magistrate in Hobart, for example, I think there was some work that

the Family Court judge in Hobart was doing that was probably more appropriately dealt with in the Federal Magistrates Court. But now there is a federal magistrate in Hobart and that should balance itself out.

Senator BRANDIS—That is not to say that many of the family law matters dealt with by the Federal Magistrates Court are not in themselves complex.

Mr Foster—I am not saying that at all. I think they are extremely complex.

Senator BRANDIS—Yes, I know you are not saying that. I want to ask you a couple of questions about the Semple review. Did the Family Court make a submission to the Semple review?

Mr Foster—Yes, we did.

Senator BRANDIS—Was that Family Court submission published?

Mr Foster—No.

Senator BRANDIS—Are you at liberty to furnish it to the committee if need be on an in camera basis?

Mr Foster—The Chief Justice—

CHAIR—Sorry, Mr Foster, but that is not permitted. We cannot have it on an in camera basis coming from the Public Service, as I understand it.

Senator BRANDIS—I am sorry, and I am rightly corrected by the chair. Nevertheless, are you prepared to furnish a copy of that submission to me on a confidential basis?

CHAIR—We still cannot permit that. It has to be tabled for the committee rather than on a personal basis.

Senator BRANDIS—No. I can ask for somebody to give me a document on a confidential basis. I could ask for you, Senator Crossin, to give me a copy of a secret Labor Party document on a confidential basis. I am sure you would say no. There is nothing irregular about it.

CHAIR—This is committee business, rather than personal business, so it would need to be provided to the committee.

Senator BRANDIS—I am just asking how I can get hold of it.

Senator BARNETT—He is asking the question, chair.

CHAIR—I understand that. I am providing some advice.

Mr Wilkins—I am not sure it is going to be easy to get hold of it. If you like, it is part of the process for preparing the report. It is something we would need to raise with the Attorney-General. It is a document that has been submitted to an inquiry that he has set up.

Senator BRANDIS—Yes, which is a secret inquiry. I am not sure if you were in the room earlier in the day, Mr Wilkins, when Senator Wong told us that the government's transparency project, Operation Sunlight, was so secret she could not tell us what it was.

Senator Wong—That is an extraordinary verballing, Senator Brandis.

Senator BRANDIS—That is exactly what you said.

Senator Wong—That is absolutely not what—

Senator BRANDIS—I asked you about Operation Sunlight and you refused to answer the question.

Senator Wong—May I finish. I think I directed you to the portfolio minister with responsibility for that. I also said, in relation to whistleblower laws and so forth, that there were officers who could assist you with that.

Senator BRANDIS—You did say that.

Senator Wong—Then perhaps you could desist with the verballing. If you are good enough to make political points, you should be able to make them yourself without putting into people's mouths words that were not said.

Senator BRANDIS—I am just astonished that the government's transparency policy is so secret that you are not at liberty to tell us what it is—or disinclined to tell us what it is.

Senator Wong—I have answered that question.

Senator BARNETT—I want to ask some questions on the efficiency dividend. I draw your attention to this committee's report on the annual reports of the agency. Mr Wilkins might not have seen that report. Are you aware of that report?

Mr Wilkins—No.

Senator BARNETT—I am sure there would be many officers in your department who would be aware of it. Annually, this committee provides a report to the parliament on the various annual reports that are submitted to the parliament each year. That report highlights a range of concerns about the Family Court's annual report. That is at pages 4, 5, 6 and 7 of our report. In particular, it highlights some of the concerns relating to the key performance indicators, or targets, that the Family Court has determined as appropriate to the Family Court and the fact that those performance indicators have not been met by the Family Court. Are you aware of it? Mr Wilkins has indicated that you are not. Can somebody in the department please advise us what response you have given to this committee's report on the Family Court's annual report.

Mr Wilkins—Your report was critical of the Family Court because it failed to meet certain key performance indicators. What do you mean when you ask us what our response to that is?

Senator BARNETT—I would like to know if you have responded to the committee's report. It highlights concerns about lack of resources, which has been touched on very carefully by Senator Brandis, and the impact of the efficiency dividend. It is a question for the department or possibly the minister or the Family Court. Somebody in your department would have reviewed our annual report. We have only just written it and we tabled it a month or so ago. Are you aware of it, Mr Foster?

Mr Foster—No, I am not.

Mr Wilkins—I think I will have to take that on notice and come back with a response at a later point in time.

Senator BARNETT—Then let us go to the specific performance measurements in the Family Court of Australia's annual report 2006-07. Let us start at page 35 and look at some of

those performance measures—firstly, the mediated agreements. Do you have that in front of you, Mr Foster?

Mr Foster—Yes.

Senator BARNETT—Your target for applications for final orders resolved through mediated agreements was 75 per cent, and your performance for 2006-07 was 62 per cent. Your target for applications filed that are resolved by mediated agreement do so within six months was 90 per cent, and your outcome was 64 per cent. Your target for consent orders was 90 per cent, and your outcome was 85 per cent.

Senator Wong—Can I just stop you for a minute. There is some confusion at the table as to which year you are referring to.

Senator BARNETT—2006-07. And then I want to ask for the figures for the latest year, so that is the obvious question. Obviously you are not satisfied that you have met the performance targets for 2006-07 that are set out in your annual report. Our concerns about your annual report have been expressed in our annual report. Mr Foster, can you respond to the concerns that we have about those performance targets not being met? Then I would like to know what the performance targets and the figures are for the last financial year—the most recent figures.

Senator Wong—Before Mr Foster answers that question, can I just clarify something. You are referring to the committee's estimates report? You use the phrase 'committee's annual report'.

Senator BARNETT—I understand every Senate committee does a report every year—

Senator Wong—In relation to the estimates hearings?

Senator BARNETT—No. They do agency annual reports—the different agencies within the Attorney General's Department. It happens within every portfolio.

Senator Wong—What was the date of the report to which you were referring?

Senator BARNETT—It was released last month, wasn't it? A couple of months—two months—ago.

Senator Wong—I will ask officers to check what the usual protocols are in relation to those reports.

Senator BARNETT—It is a public document.

Senator Wong—Yes. Though my recollection—

Senator BARNETT—The report that we specifically highlighted was the Family Court of Australia.

Senator Wong—Yes. I do not know what the protocols and practices are in terms of government responses to such reports and what the practice was, for example, under your government.

Senator BARNETT—I am not entirely sure what the protocol is either, so if somebody could assess that and advise the committee—

Senator BRANDIS—It might be part of Operation Sunlight, Senator Barnett. We will not be told.

Senator BARNETT—No. It highlights a range of concerns, so let us just walk through it if we can. Mr Foster, do you want to give us an update of the latest figures, please.

Mr Foster—Yes, I can. Our annual report was tabled this afternoon, so the report is now available.

Senator BARNETT—So you now have a report for 2007-08?

Mr Foster—Our annual report was tabled today, yes. The latest figures are contained in that annual report. There is marginal improvement. What I would say about it is that because we have transferred so many of the less serious matters to the FMC we are left with the much more complex matters, and we think the standards we have set ourselves are almost impossible to meet because the matters we have are so complex. So we have been looking at reviewing all our performance measures and we have been working with the Department of Finance to develop measures that are more appropriate and that more accurately reflect the sort of work that we now do. These measures were established many years ago when there was only the Family Court, basically, and it was doing a whole lot of work at both ends of the spectrum—the most extremely complex and the less complex. So I think there are some reasons why, as the number of filings that came to us became the most complex work, these percentages of work to be progressed through the system became very difficult to meet. That would be my explanation—but, in saying that, we did improve marginally in 2007-08 on 2006-07. That is contained in our annual report.

Senator BARNETT—When you say ‘improved marginally’, do you mean across the various performance measures?

Mr Foster—Exactly.

Senator BARNETT—I have not got the annual report and I have not reviewed it because it has only been tabled today. Just for your interest, we tabled our report on the annual reports on 17 September—about a month or so ago.

Mr Wilkins—That is a readily available report? Nobody that I have canvassed in my department in the last 10 minutes has heard of it.

Senator PAYNE—I thought it was compulsory reading!

Senator BARNETT—That is slightly embarrassing for the department, I would say, and perhaps also for our committee. I am not sure.

Mr Wilkins—Is it the first year it has come out?

CHAIR—No. In fact all of the Senate committees usually provide a review of the annual reports. It is done, for example, in employment, education and workplace relations, and it certainly has been done every year in the legal and constitutional committee. We look at your annual reports and provide a comment on them. Mind you, the report we have tabled looks at your annual report for 2006-07. It is always a good year or so behind.

Senator BARNETT—We are a year back. That is why I was asking for an update of the figures. I will give you the committee view, which is a unanimous position of this committee. It says:

The committee is concerned that the Court has been unable to meet its performance targets. The committee notes that the issue of the adequacy of resourcing for this Court has been raised previously at Estimates hearings and in the context of the committee's recent inquiry into the Inquiry into the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. The committee further notes that a review of the Family Court and Federal Magistrates Court is currently underway.

That is the concluding comment.

Senator Wong—Thank you. This is in relation to the 2006-07 annual report, so it relates to the period under the previous government and you want us to respond to that?

CHAIR—Yes.

Senator BARNETT—No, I am asking you—

Senator Wong—No, I am just clarifying. You want us to respond to your committee's criticism of the functioning of the court under the previous government?

Senator BARNETT—That is right, and that is why I asked for the updated figures—to see if there had been any improvement. Mr Foster says there has been a marginal improvement. You have been in government coming up to 12 months. You have expressed a whole range of objectives as to how you want to govern in this portfolio and govern this country. I now have the latest statistics; the annual report for 2007-08 is now a public document. I would be very keen to learn whether we are going to have to write a report similar to what we did last year or whether you think there will be measures undertaken to address that. Senator Brandis has outlined the concerns flowing from the efficiency dividend and the concern regarding resources and the ability of the court to do its job.

Mr Foster—I think the important point to make is that we are now disposing of cases more quickly than they are coming into the system, so we will reach a stage where, given the current level of judicial resources, we should be able to cope with that workload if it settles down to about 4,000 applications per annum.

Senator BARNETT—Okay.

Mr Wilkins—That is what I was getting at before. When you look at the numbers you can see that what Mr Foster was just talking about is the most likely scenario.

Senator BARNETT—That is good. I think we have learned something. Hopefully, you and perhaps other members of your department as well are aware of our annual report on your annual report. That is a step forward.

Mr Wilkins—I appreciate that. Thank you.

Senator BARNETT—I have one final question about the complaints mechanism. Bearing in mind that your annual report, which I have not read, has come down today, do you have any further developments, changes or reforms to the complaint-handling mechanism?

Mr Foster—We have had on our internet site the details of our complaints procedure for some time now, but it was reviewed this year, so we have improved our information to the

public about how to complain. I have a copy of the internet report if you would like me to table it.

Senator BARNETT—Is that the new update?

Mr Foster—That is the latest version of our complaints procedure.

Senator BARNETT—Please.

Mr Foster—I can table that. I can also give you details about the number and types of complaints we have had over the last financial year.

Senator BARNETT—I would appreciate that if it is not included in your annual report.

Mr Foster—There is a bit more detail in this as well. I can also table it if you would prefer that.

Senator BARNETT—Please. Are there any major changes or reforms to the complaints-handling approach of the court?

Mr Foster—No, other than that we have better software supporting our complaints-handling system so we have a better handle on the types of complaints. I have to say that the total number of complaints received represents less than 0.5 per cent of all of our clients. Compared to the number of people who come to the court, the number of complaints is quite minimal. We had a number of compliments, believe it or not, and a number of people suggesting process improvements whom we have responded to. It has been quite a successful process.

Senator BARNETT—Has the Attorney-General consulted you or the Family Court with respect to his review or approach to complaint handling and who judges the judges?

Mr Foster—Yes. There has been significant discussion between the department, the courts and the Chief Justice in relation to that issue.

Senator BARNETT—When did that discussion take place?

Mr Foster—I would have to take that on notice. There have been several discussions over a period of time. I just do not have that information.

Senator BARNETT—Over weeks, months? When did these discussions start?

Mr Foster—I would not like to say when. It has been over the last 12 months or so.

Senator BARNETT—Can you help, Ms Leigh?

Ms Leigh—I can provide some information in relation to formal correspondence. As Mr Foster has indicated, there have also been discussions. I do not have dates for those. I think the Attorney has probably discussed this issue with a number of people when opportunities have presented, but he formally wrote to the chiefs of the federal courts on 13 June.

Senator BARNETT—What was the nature or the content of that letter—without going into details?

Mr Foster—He raised the issue with them and his proposal to raise it with SCAG.

Senator BARNETT—The issue being?

Ms Leigh—The issue of a possible national complaints mechanism.

Senator BARNETT—Has the Attorney got advice that it is constitutional?

Ms Leigh—We have received some preliminary advice on this matter and we are obviously developing proposals consistent with that advice.

Senator BARNETT—I assume that is an affirmative answer—that establishing a national complaints system is constitutional.

Ms Leigh—I do not believe that I am authorised to discuss the content of any advice.

Senator BARNETT—So the Attorney wrote to the heads of the various federal courts on 13 June.

Ms Leigh—That is correct.

Senator BARNETT—Is he seeking information and feedback on the possibility of a national complaints approach?

Ms Leigh—That is correct.

Senator BARNETT—What has the feedback been to date? Can you give us further and better particulars?

Ms Leigh—The various chiefs have responded to the Attorney, but it is not appropriate for me to discuss the content of that correspondence.

Senator BARNETT—Have they all responded?

Ms Leigh—Yes.

Senator BARNETT—Which courts? Can you identify them?

Ms Leigh—The Attorney wrote to all of the federal courts.

Senator BARNETT—And you have received a response from every chief of every federal court.

Ms Leigh—That is correct.

Senator BARNETT—What is the next step?

Ms Leigh—As I indicated, the SCAG working group has been established and is preparing a paper for the SCAG meeting in November and, more importantly, the one at the beginning of next year. I think I said earlier that it was in February but that a date had not been set. It is actually likely to be in March, but, as I said, a date has not been set.

Senator BARNETT—What advice did you provide to the Attorney-General with respect to the complaints handling process? Do you support a national complaints handling process?

Senator Wong—It this a question about the content of legal advice?

Senator BARNETT—No, it is not about legal advice. You were contacted on 13 June. I am wondering if you can assist us, if possible, with respect to the complaints handling process. Do you support a national complaints handling process?

Mr Foster—I think that, as it is advice from the Attorney-General to the Chief Justice, it is really a matter for the Attorney-General and not for me to respond.

Senator BARNETT—All right. But your court has responded.

Mr Foster—Yes, we have.

Senator BARNETT—It seems that we are still in the dark. Operation Sunshine—

Senator BRANDIS—Operation Sunlight.

Senator BARNETT—Excuse me. Operation Sunlight has not been implemented in full as yet.

Senator BRANDIS—The one thing we are entitled to know about is the name!

Senator BARNETT—Thanks for your assistance, Mr Foster, and to the court.

Proceedings suspended from 6.29 pm to 7.34 pm

Federal Court of Australia

CHAIR—It is after 7.30 pm, so we will reconvene this estimates hearing of the Senate Legal and Constitutional Affairs Committee. I call representatives of the Federal Court of Australia. Minister Evans has joined us instead of Minister Wong. I will ask the Federal Court of Australia representatives if they have an opening statement they want to make before we start.

Mr Soden—No, thank you, Senator. No opening statement.

CHAIR—We will go to questions.

Senator BRANDIS—Mr Soden, how many judges are sitting at the moment? How many vacancies are there? How many of them are on leave or assigned to other jurisdictions or tasks?

Mr Soden—There are 46 judges on board at the moment. We have replacements due for Justice French, who of course has gone to the High Court as Chief Justice, and in Sydney replacements for Justices Branson and Sackville. We are yet to receive a replacement for Justice Weinberg in Melbourne. They are the present vacancies.

Senator BRANDIS—So there are four unfilled vacancies. Does the government propose to fill those vacancies, so far as you are aware?

Mr Soden—We understand so. I can indicate, Senator, while you are—

Senator BRANDIS—Yes, while I am flicking through my papers, what can you indicate, Mr Soden?

Mr Soden—The process is underway for the replacement for Justice French.

Senator BRANDIS—Will that be a Western Australian legal practitioner?

Mr Soden—I cannot say that, Senator.

Mr Govey—Senator, what we can say about that is that the position has been advertised in Perth. It was advertised in the *Australian* and the *Financial Review*, so it will now be a matter for, in the first instance, the panel that was established for looking at nominations and expressions of interest and then, of course, for the Attorney and the government following the completion of the panel's report.

Senator BRANDIS—Sure. Can you go this far, Mr Soden: would it be your expectation that it will be a Western Australian practitioner?

Mr Soden—In the ordinary course, I would be surprised if it were not.

Senator BRANDIS—All right. That is what I would have expected. Mr Soden, I want to take you, if I may, please, to the submission you made on behalf of the Federal Court on 4 July last to the Joint Committee of Public Accounts and Audit. You are familiar with that submission?

Mr Soden—Yes. I recall that, Senator.

Senator BRANDIS—In that submission you made some observations about the effect of the efficiency dividend on the Federal Court. You said, if I may quote from the foot of page 2 of your submission:

The impact of a reduced appropriation, flowing from the efficiency dividend, and escalating costs is that the Court is now running at an operating loss for 2007-08, and is projecting a further loss situation in 2008-09. This has a flow-on effect whereby reserves are funding the operating deficit, meaning that the ability of the Court to embark on capital replacement programs or new initiatives is also diminishing ... Obtaining funding for the initiatives above—

that is, the new initiatives that you refer to—

is also extremely difficult due to the current rules limiting bids for additional funding through the New Policy Proposal process.

I invite you, Mr Soden, to elaborate on the remarks you made in that submission to the parliament and to tell the committee a little more fully of the detrimental effects on the operation of the court of the imposition of the efficiency dividend.

Mr Soden—Yes, certainly, Senator. Of course, I did give evidence to that committee's inquiry. I think it is fair to say that I did in my opening submission make some comments in relation to our understanding of the logic of the application of the efficiency dividend and acknowledged that it was a well-understood way of imposing across the public sector efficiency initiatives. The point that I did want to make in that submission was that, as you have indicated, about 50 per cent of our costs were considered by us to be non-discretionary costs which comprise predominantly the costs of judges' remuneration and the cost of the rent for the special purpose court complexes that we undertake. So in my evidence to that committee's inquiry, I referred to the effect as what I would describe as a double-whammy for us in terms of the efficiency dividend being applied on 50 per cent of our appropriation. So to that extent it was necessary for us to make a submission through the Attorney for the Minister for Finance to seek approval to operate at a loss this financial year because it was too tight a timeframe to find the savings to balance the budget. We are in the process of finding those savings at the moment for this financial year to meet the operating loss. We are working on—

Senator BRANDIS—Of course that is not a long-term solution, is it? That is a kind of scissors and paste solution to tide you over for the next 12 months.

Mr Soden—Absolutely. So at the moment we are working with the finance committee of our court, comprised predominantly of judges from each of the states, on the options for further financial savings that we will need to implement in the coming financial years. Coincidentally, that committee is meeting tomorrow and we will be discussing some of those future initiatives.

Senator BRANDIS—Now, the submission from which I have quoted was a submission to an inquiry on the effects of the dividend on smaller public sector agencies. Mr Wilkins, I asked you to address this issue in the context of the Family Court. Similar considerations obviously apply to the Federal Court. I think the expression you used before is that you have not landed yet in relation to your conclusions about the Family Court. Is the same the case in relation to the Federal Court? Where does the Attorney-General's Department stand in relation to the Federal Court's difficulties?

Mr Wilkins—I am not sure whether we are landing or taking off, but the general point is the same. There are a number of smaller agencies—and this is an issue across the whole of government—that contend that the efficiency dividend is not something they can absorb or continue to absorb. As I said to you, I think there are differences between those different agencies that need to be taken into account. There are levers that are relevant in relation to some of a policy nature and in some cases not. We will certainly be taking into account all their positions in relation to the budget and, of course, looking at the government's policy positions on that. So it is all there for analysis and we will be taking it into account, yes.

Senator BRANDIS—And I assume that the same answer would apply in relation to the Federal Court as you gave in relation to the Family Court—that is, that the conclusions you will reach will have been reached by the time you make submissions in the early stages of the next budget round?

Mr Wilkins—That is right.

Mr Soden—I was going to say, to be completely accurate in relation to this issue, that whilst we certainly briefed the Attorney about our financial position, because we are yet to finalise any initiatives we might wish to take in terms of cost savings, we have not sought any assistance from the Attorney-General's Department in any funding initiatives. I should go on the record and say that when we have in the past and we have thought we have had a fairly good case, we have received support.

Senator BRANDIS—Mr Soden, what have been the movements in workload in the Federal Court in the last few years in terms of the number of commencements, the number of matters disposed of and the number of judge days?

Mr Soden—Fairly constant, Senator. I have with me the annual report, which is yet to be tabled, so I have some seven or eight figures. But I cannot provide them because that report is yet to be tabled. But our incoming work in the general trial division has been fairly constant around, let us say, the four or 4½ figure on the graph.

Senator BRANDIS—Four and a half thousand applications per annum?

Mr Soden—New cases, yes. I should report, though, that a lot of our work did go to the Federal Magistrates Court in numbers in the bankruptcy jurisdiction and migration at first instance. When you look at the total of that, the line is still fairly constant over the last few years—2003-04 through to 2008-09. It is fairly constant. There has not been too much of a variation around the total.

Senator BRANDIS—Has there been much variability between registries? I get a sense, and it is only an impressionistic sense, that more and more litigation is being commenced in

Sydney of a large commercial character at least. Is that reflected in the Federal Court's experience?

Mr Soden—The numbers of commercial type cases in Sydney are higher than in any other registry. The overall numbers of all cases in Sydney are much higher than all other registries on a comparative basis primarily because most of the migration appeals are filed in Sydney. So if you have a look at raw numbers, Sydney would have a huge blimp. A large proportion of that blimp is migration appeals. But there is no doubt that the Sydney registry of the Federal Court has the largest proportion of commercial cases followed, I must say, closely now by Melbourne.

Senator BRANDIS—By?

Mr Soden—Melbourne.

Senator BRANDIS—Now there were some remarks made by the judge who conducted the C7 litigation about the cost to the public of mega litigation of that magnitude. He made some observations about ways in which parties to litigation of that kind could be more disciplined in relation to their costs and perhaps made to secure their costs in a more thoroughgoing way than the existing law allows. Does the Federal Court have a view about that?

Mr Soden—We certainly do.

Senator BRANDIS—Well, perhaps you will share it with us.

Mr Soden—We certainly do, Senator. You will be interested, no doubt. We have a very vibrant practice committee of the court. It was convened by Justice James Allsop before he became president of the New South Wales Court of Appeal. It is now convened by Justice Peter Jacobson in Sydney. It comprises representatives of judges from around the country. It has been working on a number of major practice and procedural reforms, many of which will go towards dealing with a lot of the problems that Justice Sackville mentioned. I could give you some examples.

Senator BRANDIS—Yes. Please do.

Mr Soden—Justice Sackville complained about the need for greater authority for the court to have a power over restricting time, restricting the number of witnesses, restricting the time of each witness and restricting the issues that might be argued. Our court has had a look at some comparative provisions already in existence in Australia. There is a good collection of provisions in New South Wales—the Civil Procedure Act. We have actually made a submission to government in relation to a collection of procedural reforms—practice reforms that—

Senator BRANDIS—Are those procedural reforms that could be given effect to merely by amendments to the Federal Court rules, or would they require legislation?

Mr Soden—There are different views about that. Some take the view that we already have the rulemaking power. Others take the view that the rules would be easier to enforce if there was a specific legislative power to make that particular rule.

Senator BRANDIS—Does the court have a view?

Mr Soden—It varies, Senator, in relation to different rules and different issues.

Senator BRANDIS—I will not press you. When can we expect to see those considerations embodied in a final report or some recommendations to government?

Mr Soden—Well, the first thing we did, Senator—it may not have come to your attention—is that the Chief Justice issued a practice note giving an indication of the overarching logic of these reforms. It talked about just, inexpensive and efficient efficiency being priorities. That was issued in May this year. We are presently having discussions with officers in the department about the submission we have made. It would be a matter for them to say when that will be progressed. We do understand that the government has some similar wishes in terms of procedural reform.

Senator BRANDIS—Well, let me just ask you to pause there, Mr Soden, and we will find out. Mr Wilkins, can you help me on that point, or Ms Leigh?

Ms Leigh—Yes. The Attorney gave a speech in June canvassing these issues. One of the things that he discussed was whether it might be useful to provide the Federal Court with broad powers to make directions limiting a number of the points that Mr Soden has mentioned—the time for examining witnesses, the number of witnesses, the number of documents tendered in evidence and the time for submissions. Chief Justice Black subsequently wrote to the Attorney on 5 September with some detailed suggestions about reforms in this area.

Senator BRANDIS—Has the Chief Justice’s letter to the Attorney been made public?

Ms Leigh—I do not believe so.

Senator BRANDIS—May we see it, please?

Ms Leigh—That would not be a matter for me, Senator.

Senator BRANDIS—No. I understand I have to take that on notice. But might I request that the committee be furnished with a copy of the Chief Justice’s letter to the Attorney?

Ms Leigh—As a consequence, we are working closely with officers of the Federal Court on those proposals for reform?

Senator BRANDIS—When you say ‘we’, you mean there is a working group within the Attorney-General’s Department?

Ms Leigh—I would not say a working group, Senator. It is just the normal policy officers in the department are working on those issues.

Senator BRANDIS—When might we expect to see this exercise embodied in final recommendations, Ms Leigh?

Ms Leigh—It will not be a recommendations of a review in that formal sense, Senator. We are working on the issues. We are briefing the Attorney on them as we go. It will be a matter for government exactly how quickly decisions are taken.

Senator BRANDIS—Well, will it be a matter for government? As Mr Soden has said—and I am sure he is right—there are different views as to whether or not whatever reforms are thought to be appropriate could be effected merely by changing the Federal Court rules, which would be a matter for the court itself.

Ms Leigh—The government's position on the matter will certainly be a matter for government, Senator. Some of those desirable policy objectives that the government might decide upon may well be implemented directly by the court and some by the government. But that is a little further down the track.

Senator BRANDIS—I understand that this is something of a specialist issue, but I just cannot help wondering when those sections of the general public and the profession more particularly who are interested in these matters might be allowed into the secret. Is there a process by which there will be consultation with stakeholders—in particular, the legal profession—and, more broadly, the publication to the general public of the government's thinking in relation to these matters?

Ms Leigh—Well, as I indicated, the Attorney gave a public speech on the matter just in June.

Senator BRANDIS—Well, he has given a speech. I am interested in something a bit more specific than that, Ms Leigh, as you would imagine. Mr Wilkins or Senator Evans, for that matter, is it intended that this process of consideration—it is obviously an interlocutory process between the Attorney-General's Department and the Federal Court—about reforms to court procedure will embrace a larger number of stakeholders, in particular, though not limited to, the profession? Is it envisaged that there will be some kind of discussion paper issued so that the general public might be made aware of the government's, or indeed the court's, thinking about this matter?

Mr Wilkins—I do not know the answer to the question. It is probably contingent on the way in which we decide ultimately to proceed on this matter. If there are changes to rules, I assume that the court will consult with the profession on that. It would be a matter for the Attorney to decide how he would want to consult on various changes in that court.

Senator BRANDIS—I am not trying to be prescriptive either, Mr Wilkins. I am not saying that there should be a particular mode of consultation. But I think it would be a matter of concern certainly to the profession and perhaps to the broader public too, in particular the commercial community, who may be institutional litigants, in effect, and whose interests may be affected by very significant changes in court procedure concerning large or complex commercial cases, were they not consulted at some stage before there were a final iteration of the government's or the court's thinking.

Mr Wilkins—I take the point, Senator. It is not something which we will decide but it is something that the Attorney will decide.

Senator BRANDIS—Perhaps you will take it on notice, Mr Wilkins.

Mr Wilkins—We will take it on notice.

Senator BRANDIS—I would like to know what, if any, mode of public consultation or stakeholder consultation is envisaged.

Mr Wilkins—We will take it on notice. I think it is also contingent on the mode in which we precisely propose it to proceed.

Senator BRANDIS—Mr Soden, I think you wanted to say something.

Mr Soden—Yes, for your assistance, Senator. In March this year, through an arrangement in our usual consultative mechanisms with the Law Council of Australia, all of the judges and about 30 nominees of the Law Council of Australia from the stakeholder bodies that you mentioned had a special seminar for the purpose of looking at three related issues, which were active case management, which incorporates things like the developments of the rocket docket and the fast track list; the problems of discovery; and experts. That seminar was designed to really consult with the profession about some of the proposals we were thinking about. It did lead to that practice note issued by the Chief Justice about the future directions. I believe that the gist of those future directions does enjoy the support of, as you say, many of the necessary stakeholders.

Senator BRANDIS—Well, I am sure as an aspiration it does. But what I am a little more interested in is how you intend to progress the matter from here. Perhaps, Mr Soden, in your capacity on behalf of the court you could take on notice the question of what further methods of stakeholder consultation and engagement are envisaged in the development and further refinement of these proposals.

Mr Soden—Certainly.

Senator BRANDIS—Thank you. One last thing, Mr Soden, is the Semple review. Did the Federal Court make a submission to the Semple review?

Mr Soden—No, it did not, Senator.

Senator BRANDIS—My understanding, informed, among other things, by evidence at previous estimates hearings, is basically the Federal Court's attitude to the Semple review is that it has nothing to do with you and you just want to be left alone. Is that basically it? I am sorry if I am putting this in a vulgar, oversimplified manner. Do not let me put words in your mouth.

Mr Soden—Sorry, Senator. I was thinking of the word 'collateral', but I hesitated with the next word. There is a collateral effect on our court inevitably. There is no doubt that the bulk of the issues are in the family law area. I think I could say that Mr Semple has had an opportunity to consult with our Chief Justice about the—

Senator BRANDIS—When you say he has had an opportunity, he has in fact done so, has he?

Mr Soden—Yes, he has. He has. It was in April this year, Senator. So I suppose we are going to be affected by it in a much smaller way than in the family law area. We have given our views about what we think ought to happen so far as we are concerned.

Senator BRANDIS—But that has not been in the form of a submission?

Mr Soden—No, it has not, no.

Senator BRANDIS—It was just merely what—a conversation between Chief Justice Black and Mr Semple, was it?

Mr Soden—Essentially.

Mr Govey—Perhaps I should make it clear, Senator, that I have also been involved in discussions with the Chief Justice and Mr Semple.

Senator BRANDIS—Well, do not tell us anything you should not, Mr Govey.

Mr Govey—I probably cannot say much more than that, Senator.

Senator BRANDIS—But it is right, basically, is it not? While acknowledging that there may be some collateral effects of whatever Mr Semple recommends and the government adopts, essentially the Federal Court wants to be as unaffected by this process as it can be?

Mr Soden—I think to be frank, Senator, if there were options available, if we were not affected, I think that would be our preferred option. But we are realistic about those sorts of things. I should go on the record and say that we were one of the strongest supporters of the need for a second tier. We saw that as a solution to a lot of lower level cases being in our court that should be in a magistrates court. So we are strong supporters of the continuation of a federal magistracy dealing with general federal law work.

Senator BRANDIS—Thanks very much.

Senator FIERRAVANTI-WELLS—I have not had the benefit of having seen your annual report, which was tabled today. I take you to some comments in your 2006-07 annual report and, in particular, to the workload of the Federal Court and the Federal Magistrates Court. I will pick up on some comments made by Senator Brandis. At page 17 of that report, it looks at the growth in the work in the Federal Court and the Federal Magistrates Court from mid-2000. It states that in 2006-07 a total of 12,740 matters were filed in the two courts compared with 6,276 in 1999 to 2000. That is almost double the number. Can you just give me a breakdown of the nature of that growth. I heard evidence previously about the increase in the family jurisdiction, but could you elaborate on that, please.

Mr Soden—Senator, I do not have the 2005-06 figures with me. But there is no doubt that there was a huge and extraordinary growth in migration cases in the period of time that you mentioned. There were thousands of cases filed. That was the main reason why there was such a large rise in that period of time. While subsequently there has been a gradual decline in that total amount as the migration cases have been reduced, there is no other reason that I can recall for that. It was the migration work.

Senator FIERRAVANTI-WELLS—Indeed, if you look at page 22 and you look at the Migration Act appeals and related actions as a proportion of all appeals, it is clear that in the migration jurisdiction in 2002 we are talking about 437 appeals, which was about 61 per cent of total appeal work. That went up to 71 per cent in 2006.

Mr Soden—I am sorry, Senator. I just do not have the figures back that far. But I can give you these figures as an indication of my assertion that it was migration related. Here is an indication, Senator, which is in our report that is yet to be made available. It is the last annual report. Migration Act matters filed in our court in 2003-04 were 2,588. The following year there were 454. There was a transfer of jurisdiction at about that time, but that 2,588 matters in our court in 2003-04 we disposed of over a period of time while new cases were coming into the magistrates court. So there was a large rump of migration cases.

Senator FIERRAVANTI-WELLS—Do you think that the recent changes that were passed in the Senate relating to notification and tightening up some of the notification issues

will have some effect, particularly in terms of the more technical appeals where people are basically using notification technicalities as a way of prolonging litigation in that area?

Mr Soden—I do not know, Senator, other than to say that there is a continuing gradual decline in the number of matters coming from the Refugee Review Tribunal to the Federal Magistrates Court and on appeal to our court.

Senator FIERRAVANTI-WELLS—I take you to the budget statements. I am looking at page 347 at the moment. Your total revenue from government in 2006-07 was about \$85 million. That was anticipated to go down in 2007-08 to about \$78 million yet your total revenue from other sources was projected to increase from about \$15 million to \$24 million. Clearly, do you envisage that litigation is going to increase?

Mr Bowen—The reason that there was the change in the mix of the revenue from the government and revenue other sources was primarily because in 2007-08 we transferred \$8 million to the Federal Magistrates Court. We entered into an arrangement whereby we would then recover that money by way of invoice. So that is then shown as the additional other revenue.

Senator FIERRAVANTI-WELLS—So in terms of revenue across the two courts, we are basically neutral?

Mr Bowen—It would not have changed. It is the same.

Mr Soden—Senator, I want to qualify my earlier answer in relation to migration cases. I do not have all the information here before me.

Senator FIERRAVANTI-WELLS—Certainly.

Mr Soden—But I reminded myself that there was an increase in Corporations Act matters filed in our court in the 2005-06 period compared to earlier years that you mentioned. So that is another reason for a large increase in cases in the 2005-06 year.

Senator FIERRAVANTI-WELLS—If there are further details in relation to the nature of that growth, by all means please take it on notice and provide it to me.

Mr Soden—I will take it on notice and give you the precise details, yes, Senator.

Senator FIERRAVANTI-WELLS—Thank you.

CHAIR—Thank you, Mr Soden, from the Federal Court. We now move to the Federal Magistrates Court.

[8.06 pm]

Federal Magistrates Court of Australia

CHAIR—Mr Smith, I welcome representatives from the Federal Magistrates Court. To begin your appearance this evening, did you want to start with an opening statement at all?

Mr Smith—Yes, I do. I am here today in an acting capacity. Mr John Mathieson has been seconded to the New South Wales Attorney-General's Department to provide assistance to New South Wales state courts and tribunals. I would like to make a short statement. The Federal Magistrates Court is a busy court with a high volume workload. I table for the committee the 2007-08 workload statistics. The court's workload in a general federal law area

is significant. In 2007-08, the court disposed of 7,592 general federal law matters. Currently this court receives 80 per cent of all family law filings, excluding divorces. The court has a docket system of case management, which means that federal magistrates individually manage each matter that comes before them. It is well to state their workload to the committee. A federal magistrate who focuses on family law can expect to have an average of 400 new matters in their docket each year.

I now turn to the recent appointment of eight federal magistrates. The first of those appointees was sworn in on 15 September, with the other appointees to be sworn in between that time and the end of November 2008. The new federal magistrates will sit in family law in Adelaide, Brisbane, Hobart, Melbourne and Sydney. I table for the committee all current appointment details. The court welcomes the additional appointments, which brings the total number of federal magistrates appointed to the court to 60. Taking into account the new appointments, the court currently allocates 75 per cent of its judicial resources to family law and 23 per cent to general federal law, with 2 per cent allocated to matters of governance. The Attorney sought expressions of interest for nominations for the appointment of a federal magistrate in Cairns. I understand that the selection process is underway and involves the Chief Federal Magistrate.

I would now like to discuss the court's current financial position. Last year, the court ran at a loss of \$1.8 million. We predict that in the current year we will run at a deficit of about \$1.7 million. John Mathieson appeared before the Joint Committee of Public Accounts and Audit on 8 September 2008 and gave evidence as to the impact of the efficiency dividend on this court. For the information of the senators, I table a pie chart showing the court's budget allocations. Fifty per cent of the court's funding is for non-discretionary expenditure. Of the remaining 50 per cent of our funding, 35 per cent is provided by way of services from the superior courts free of charge. For this reason, we have limited control of expenditure for services and, therefore, reduced capacity to absorb the efficiency dividend. In effect, the court will need to absorb the efficiency dividend from the 15 per cent of its appropriation that represents discretionary expenditure. This means the real impact is far greater overall. The court is examining ways to absorb the efficiency dividend in 2008-09.

Finally, as you know, this year the Attorney-General announced he would be commissioning a review of the delivery of family law services provided by this court and the Family Court—the Semple review. In that process, Mr Semple consulted with the Chief Federal Magistrate, federal magistrates and the chief executive officer. The court welcomed the review. Both courts have a common goal to provide quality services for people involved in often distressing family law disputes. The administrations of both courts continue to work together to support the judiciary. We anticipate that the outcomes of the review will lead to improved arrangements in the family law jurisdiction. In the meantime, the federal magistrates continue to work towards the key objective to provide accessible and timely justice at a lower cost.

Can I inform you, Chair, regrettably, that the court's chief finance officer is ill and cannot be here today. Thank you, Chair, for the opportunity to address the committee.

CHAIR—Thank you very much for that opening statement. It is most helpful. We will go to questions now. Who would like to start?

Senator BRANDIS—I have some questions. Mr Smith, you are, I dare say, familiar with a story that was published in the *Australian* newspaper on 3 October this year under the by-line of Michael Pelly, who said—let me read it to you and then invite you to comment:

The federal judiciary has lost one of its top administrators in a clear sign the Rudd Government is preparing to create a one-stop shop for family law. Federal Magistrates Court chief executive John Mathieson has joined the New South Wales Attorney-General's Department only weeks after the report on the federal courts system by private consultant Des Semple was delivered to Attorney-General Robert McClelland. Mr Mathieson had considerable input into the report, which is tipped to recommend that the court be dismantled only nine years after it opened its doors.

Mr Smith, was there a relationship between Mr Mathieson leaving the position of CEO of the Federal Magistrates Court and the recommendations of the Semple review? If so, what was it?

Mr Smith—From what I know, Senator, it was an opportunity presented with the New South Wales courts. That opportunity was discussed with the Chief Federal Magistrate, who agreed to grant leave to allow Mr Mathieson to undertake a secondment. The secondment was seen in view of fostering relationships between the state and federal courts.

Senator BRANDIS—Thank you, Mr Smith, but that is not an answer to the question I asked you so let me re-put the question. Was there a relationship between Mr Mathieson's decision to leave the position as CEO of the Federal Magistrates Court and the recommendations of the Semple review? If so, what was it?

Mr Smith—I am unaware of the factors that led to the decision of Mr Mathieson's secondment, Senator.

Senator BRANDIS—So the answer to my question is you do not know?

Mr Smith—I am unaware of the factors that led to that decision, yes.

Senator BRANDIS—Can you help us, please, Mr Wilkins? Was there a relationship between Mr Mathieson leaving and the recommendations of the Semple review?

Mr Wilkins—I am in exactly the same position, Senator. I have no idea what his motivations might have been.

Senator BRANDIS—Are there any other officers of the Federal Magistrates Court or of the Attorney-General's Department who may be in a position to respond to my question? Mr Govey?

Senator Chris Evans—Just to make it clear, I think your question is to ask an officer about what might have been the motives or factors that influenced another officer. I am not sure that they will be competent to provide that sort of advice. They normally answer questions about their responsibilities.

Senator BRANDIS—Senator Evans, what I asked is whether there was a relationship between two events.

Senator Chris Evans—Well, I think you got your answer from Mr Smith in that regard.

Senator BRANDIS—No, I did not. Mr Smith told me he did not know, which is fine. That is a very honest response. But he just does not know.

Senator Chris Evans—He told you what he understood had occurred. It seems to me your question goes to personal motivation or something, which is clearly something the officer could not help you with.

Senator BRANDIS—Well, ‘motivation’ is your word, Senator Evans. I am referring to a press report by a credible journalist. I am asking whether there was, to the knowledge of officers, a relationship between two events. Mr Smith and Mr Wilkins have very candidly and frankly said they do not know. I take those answers at face value. Mr Govey was about to say something and was interrupted. Mr Govey, what were you about to say?

Mr Govey—Only that it was a matter for the Chief Federal Magistrate.

Senator BRANDIS—Not for Mr Mathieson?

Mr Govey—Sorry, I meant that the decision was between the two of them, but it was not something that the department was part of the decision-making process on.

Senator BRANDIS—No. I understand. I would not expect that the department would have been at least necessarily part of the decision-making process. Mr Smith, the Federal Magistrates Court made a submission, of course, to the Semple review.

Mr Smith—That is correct.

Senator BRANDIS—What was the gist of that submission, please?

Mr Smith—The submission that was made by the Chief Federal Magistrate?

Senator BRANDIS—Yes. On behalf of the Federal Magistrates Court. You come before the parliament representing the Federal Magistrates Court. You are the successor to Mr Mathieson in that office, so you today are here to speak for the Federal Magistrates Court. What was the gist of the submission, please.

Mr Smith—I am not in a position to comment on what the Chief Federal Magistrate put forward as part of that review. I was not involved in that process.

Senator BRANDIS—That is a different matter. I am asking you what was the gist of the submission. Whether you were involved in the process or not does not mean you do not know the answer to my question.

Mr Smith—What I can say is Mr Semple consulted with the Chief Federal Magistrate and the federal magistrates in all of the main registries.

Senator BRANDIS—Did he also consult with Mr Mathieson? I imagine he did.

Mr Smith—I understand he did, yes. He consulted with the chiefs.

Senator BRANDIS—So he consulted with the Chief Federal Magistrate. He consulted with other senior members of the court. He consulted with Mr Mathieson. Certain views were expressed by them to him?

Mr Smith—And the views would have gone to the current issues as far as the federal magistrates were concerned about family law service delivery.

Senator BRANDIS—Yes.

Mr Smith—Across the various registries, there would have been different perspectives put forward to Mr Semple, yes.

Senator BRANDIS—All right. I am interested in the views that were expressed at the peak level of the court—by the Chief Federal Magistrate and by the then CEO of the court. What was the gist of the views put to Mr Semple on behalf of the court by those officers?

Mr Smith—Without speaking for the Chief Federal Magistrate, obviously, or Mr Mathieson in his absence, the issues would have gone to managing a high volume workload, managing the docket and some of the factors that go to the resourcing that was supporting the work of the court. That would be the best way I could put the gist of the matter, Senator, yes.

Senator BRANDIS—The views expressed on behalf of the Federal Magistrates Court by the Chief Federal Magistrate and by Mr Mathieson were expressed inter alia in the course of conversations with Mr Semple, were they not?

Mr Smith—That is what I understand, yes.

Senator BRANDIS—But they were also reduced to a document, were they not?

Mr Smith—I understand that the Chief Federal Magistrate put in a submission on behalf of the court. That is right.

Senator BRANDIS—So there is a document?

Mr Smith—Yes.

Senator BRANDIS—Did Mr Mathieson contribute to the document?

Mr Smith—That I do not know, Senator. I could not comment.

Senator BRANDIS—You do not. Are you familiar with the document?

Mr Smith—I am aware that a document was submitted, yes, at the time. But I was not CEO at the time.

Senator BRANDIS—We know that, Mr Smith. We know that you were not CEO at the time. It does not follow from that that you are not presently aware of what happened then. That is what I am concerned to ask you about. Mr Smith, have you read the document?

Mr Smith—The submission?

Senator BRANDIS—Yes.

Mr Smith—No, Senator.

Senator BRANDIS—Are you generally aware of its contents?

Mr Smith—I am aware of the issues that the federal magistrates would have raised as part of that, yes. To that extent I can comment.

Senator BRANDIS—I will take that as a yes. May I take it that you are aware of its principal recommendations?

Mr Smith—No. I am not aware of the principal recommendations. I am aware that the issues that would have been canvassed through the discussions would have gone to accessing resources, particularly as they related to judicial support.

Senator BRANDIS—Well, I think we could all work that out for ourselves. Of course it is about resources. That is what the Semple review is essentially about—resource allocation.

Mr Smith—Just to pick up on the things that you are asking, I was going to say specifically that the issues the federal magistrates raised and were raising before the review and would have raised with Mr Semple went to being able to access judicial resources at the right time to help them manage their large dockets to work through cases. It is an issue that relates to the style of court that the Federal Magistrates Court is, if that helps you in terms of the gist of the submissions.

Senator BRANDIS—Mr Smith, when did you take up your job as the acting CEO?

Mr Smith—It was 23 September.

Senator BRANDIS—And the Semple review, we know, was delivered to the government on 4 September, so it was prior to your becoming the acting CEO. What was your job immediately prior to being the acting CEO?

Mr Smith—Deputy chief executive officer for court services.

Senator BRANDIS—So you were deputy to Mr Mathieson?

Mr Smith—Yes.

Senator BRANDIS—And you were deputy to Mr Mathieson at the time this document was prepared?

Mr Smith—Yes.

Senator BRANDIS—Were you consulted in relation to its preparation?

Mr Smith—The preparation and submission by the Chief Federal Magistrate? No.

Senator BRANDIS—Were your views not sought at all, Mr Smith?

Mr Smith—Not directly with Mr Semple, no, Senator.

Senator BRANDIS—Whether they were sought by Mr Semple or by Mr Mathieson, your then superior, were they sought by Mr Mathieson, your then superior?

Mr Smith—What was sought was the issues in terms of the impact of current work and the sorts of things that were problematic. I suppose that is the best way to put it, yes.

Senator BRANDIS—Well, what were the issues that were problematic?

Mr Smith—What I was saying earlier regarding judicial support.

Senator BRANDIS—Well, that does not really mean much, Mr Smith. Can you be more particular, please.

Mr Smith—To manifest the answer, being able to access in particular, say, family consultants and getting the right support at the right time across all of the registries would be the sorts of things. Similarly, there is access to registrar services as well. That would be the simplest way to put it, yes.

Senator BRANDIS—What about the relationship, please, between the Federal Magistrates Court and the Family Court in relation to the family law jurisdiction? What was the gist of what was submitted to Mr Semple on that topic?

Mr Smith—Again, from my perspective on the things that I know were of concern to federal magistrates—

Senator BRANDIS—I will pause there, Mr Smith. I do not want to be picky here, but what I am asking you about is what you can tell us was the substance of the submission or the point of view advanced to the Semple review by or on behalf of the Federal Magistrates Court. Now that may or may not have reflected your own private views. I suspect to some degree it did because you were a very senior officer at the time. I do not think I could be making myself much clearer. What I want to know is what the Federal Magistrates Court, through the Chief Federal Magistrate and the then CEO, had to say to Mr Semple was the Federal Magistrates Court position as to the appropriate relationship between your court and the Family Court concerning the family law jurisdiction.

Mr Smith—The issues would be summarised that with an expanding jurisdiction and an expanding workload in the first instance court, coupled together with the needs of the superior court of record with an appellate jurisdiction, there was a conflict or a creative tension there on access to resources, with two different courts in the one jurisdiction having very legitimate needs but them not necessarily being able to be best placed to support both sets of judiciary. That would be my summary, Senator.

Senator BRANDIS—All right. I am trying to decode what you are saying, Mr Smith. You are being properly circumspect. Did it amount to this—that the Federal Magistrates Court position was that it favoured some sort of consolidation or uniform structure between it and the Family Court concerning the family law jurisdiction?

Mr Smith—I think I can say that the federal magistrates' views put to me would not necessarily go to structure. They would go to outcome. What they wanted was to be able to get resources to help them do their work. I have not heard them necessarily articulate that in their discussions or the way they have raised it as, 'Our preferred model is X'. It is rather the frustration they felt with 80 per cent of the work that they were not always able to quickly get access to the support to help them make decisions, particularly managing a docket. Without speaking on behalf of the judiciary, and I am being circumspect, it was more a desire to make sure that the best outcome for the litigant meant the resource was pointed in the right direction as opposed to, 'We would like a structure that looked this way', if that helps.

Senator BRANDIS—What you have described, Mr Smith, is an aspiration that was no doubt expressed to you in one way or another by a number of members of the court. But I want something a little more concrete than that. What I want to know is what structure the Federal Magistrates Court, through its spokesmen, the Chief Federal Magistrate and the CEO, proposed to Mr Semple. What was the preferred model?

Mr Smith—I do not know the answer to that, Senator. I do not know what they proposed specifically. I know that in—

Senator BRANDIS—Okay, the word 'specifically' gives you away. You do not know what they proposed specifically. I am not asking you a very detailed question. Not specifically but in general, what was the structure that they proposed or the model that they proposed?

Mr Smith—As I say, even in general, I do not know. I have not heard either verbally or seen in writing a preferred structure.

Senator BRANDIS—But you said that although you had not read the submission you were generally aware of it?

Mr Smith—I can only answer what I know, and you have asked me was I told that there was a preferred structure. No.

Senator BRANDIS—I am not even interested in what you were told. I am interested in what you know.

Mr Smith—Certainly. Am I aware that there is a preferred structure that has been proffered?

Senator BRANDIS—Yes.

Mr Smith—No.

Senator BRANDIS—So you are not aware that there was a proposal for a consolidation between the Family Court and the Federal Magistrates Court in its family law jurisdiction into a single uniform structure?

Mr Smith—I am sure that when the review was commissioned all options were under consideration. Forgive me if I am not following, but was that view proffered by the Federal Magistrates Court? I am not aware of or have not heard of any preferred model that went to consolidation of the type that you talk about.

Senator BRANDIS—Is it your understanding that that was the view that was proposed by the Federal Magistrates Court?

Mr Smith—Again, going back to when I was deputy CEO in that time, no. I certainly have never had that understanding, from what I have been told.

Senator BRANDIS—So what did the Federal Magistrates Court want out of the Semple review, Mr Smith?

Mr Smith—Sorry, Senator?

Senator BRANDIS—What did the Federal Magistrates Court want out of the Semple review? What were the specific outcomes that your court was looking to the Semple review for?

Mr Smith—A good outcome for litigants.

Senator BRANDIS—That is just a vague aspirational statement.

Mr Smith—Sure. Specifically, I would imagine it best articulated that the can-do culture of the federal magistrates be maintained and sustained and, indeed, enhanced. That would probably best capture so much of what the federal magistrates would have to say about what they would like out of the review.

Senator BRANDIS—What role did the Federal Magistrates Court envisage for the Family Court of Australia?

Mr Smith—I am not sure I could really comment on that.

Senator BRANDIS—Why not?

Mr Smith—Except to say they have a role as the superior court and obviously have an appellate division.

Senator BRANDIS—Well, you mentioned that before. I noted that you said as the superior court of record with its appellate jurisdiction. Was it the preferred model that the Federal Magistrates Court would be the trial court for effectively all trials and the Family Court of Australia would become essentially an appellate court?

Mr Smith—Again, I do not think there was a preferred model. I am not aware of a preferred model. I am sorry I cannot help you there.

Senator BRANDIS—Well, when you say the Family Court being a superior court of record with an appellate function, what else does that mean, Mr Smith?

Mr Smith—I suppose my comments went to when I was describing some of the issues that occurred where you had two different courts in the same jurisdiction. So it was more just a descriptor of where we were at when the review was announced.

Senator BRANDIS—Well, this is the problem, is it not? That is why the Semple review was set up—because there are two different courts dealing in the same jurisdiction. Your court does the lion's share of the work in terms of caseload. That is in some people's minds an anomaly.

Mr Smith—We will anticipate that the review will resolve some of those issues. They would be good outcomes.

Senator BRANDIS—What outcome would you like to see from the Semple review, Mr Smith?

Mr Smith—I would like to see an effective targeting of resources to ensure prompt and efficient resolution of family law disputes. That is not aspirational. I think that is the simple fact of the matter. With federal magistrates managing, particularly in family law, anywhere upwards of 400 matters in their docket—this is our perspective now—they need to be able to get the right judicial support at all times from within the family law system. There were some considerable difficulties there, without a doubt, faced with the competing interests of the two courts and a finite resource. We hope that the Semple review will go some way to acknowledging and addressing those issues and producing a model or a structure that ensures that a federal magistrate from our perspective—I can only speak from our perspective—is able to undertake the work before them in a way that gives good outcomes for litigants.

Senator BRANDIS—And how would that best be done, Mr Smith?

Mr Smith—I would be moving into speculating. I think to ensure that the resources are managed in a way that the particular workload is acknowledged and is understood and is directed appropriately. As to the actual structure that would do that, I would not want to speculate, Senator.

Senator BRANDIS—You are telling the committee that you do not know what preferred model or structure was advanced to the Semple report by Mr Mathieson or the Chief Federal Magistrate?

Mr Smith—No.

Senator BRANDIS—Thank you.

CHAIR—Is that all the questions you have there?

Senator BRANDIS—Of the Federal Magistrates Court, yes, Senator Crossin, I think it is.

CHAIR—Anybody else with questions for this group? If not, I thank you for your attendance this evening. I invite representatives from the Australian Human Rights Commission, which was recently renamed from the Human Rights and Equal Opportunity Commission.

[8.29 pm]

Australian Human Rights Commission

CHAIR—I welcome representatives from the Australian Human Rights Commission. Mr Calma, Ms Broderick or Mr Innes, do any or all of you have an opening statement you wish to provide to us?

Mr Calma—Thank you, Senator. I have a very brief opening statement. Firstly, I apologise for Catherine Branson, the president, and Susan Roberts, the executive director, of the Australian Human Rights Commission, who are both overseas on business at the international coordination committee of the national human rights institutions in Nairobi, Kenya. It is a longstanding appointment. Consequently, they are not here. Karen Toohey is the acting executive director, who will support us.

CHAIR—Thank you, Mr Calma. Ms Broderick or Mr Innes, did you have something you wanted to say before we went to questions?

Mr Innes—No.

Ms Broderick—No.

CHAIR—All right. Do we have questions?

Senator BARNETT—Thank you, Mr Madam Chair. Mr Calma, Ms Broderick and Mr Innes, welcome. I pass on our best wishes to Ms Branson and Ms Roberts, who are not with us today. I have two areas of questioning. Firstly, in terms of the name change, could you advise the committee how that came about? Who was consulted? Was it approved by the Attorney?

Mr Innes—The commission was concerned about a number of issues. Firstly, several state equal opportunity commissions had over the course of a number of years included the term ‘human rights’ in their names, which was causing a degree of confusion amongst the organisations. Secondly, the commission was keen to, if you like, put a stronger focus on human rights as part of its strategic planning exercise and its new vision, which were carried out earlier this year. So the commission decided as part of that new strategic plan and new vision to, if you like, refocus its branding and to call itself the Australian Human Rights Commission.

Senator BARNETT—When was that decision made?

Mr Innes—The decision was made at a meeting of commissioners. I would have to take on notice the date of that meeting, but it was earlier this year.

Senator BARNETT—Did you put a recommendation to the Attorney-General's office or did you simply act of your own volition? What involvement did the Attorney's office have?

Mr Innes—The Attorney's office was apprised of the process and was consulted, but the commission took the decision and advised the Attorney's office of the change of name.

Senator BARNETT—So you did not seek the consent of the Attorney?

Mr Innes—No. The commission did not seek the consent of the Attorney. The commission consulted with the Attorney during the decision-making process and advised of its decision. Of course, at this point the statutory name for the commission has not changed.

Senator BARNETT—That was my supplementary question, Mr Innes. Is the government required to change and amend the legislation because under the law as it currently stands you are still legally referred to as the Human Rights and Equal Opportunity Commission. That is my understanding. Is that correct?

Mr Innes—Our name by statute is still the Human Rights and Equal Opportunity Commission, so this is at this stage, if you like, a branding exercise. But of course the commission has no capacity to change its name by statute. That is a matter for the parliament. The question as to whether the government was planning to do so would be a matter for government.

Senator BARNETT—Well, what is the government's position? Perhaps the minister might like to respond.

Ms Lynch—I might respond. The president of the Human Rights and Equal Opportunity Commission, or Australian Human Rights Commission, has written to the Attorney asking him—

Senator BARNETT—Well, let me get it clear, Ms Lynch. How do you refer to it?

Ms Lynch—I tend to still call it HREOC more by accident rather than by design, Senator. We refer to it in most documentation as the Australian Human Rights Commission, but I understand, for instance, in court documents that it will continue to be referred to as the Human Rights and Equal Opportunity Commission.

Mr Innes—That is correct and that is what we do.

Ms Lynch—I was going to say that President von Doussa wrote to the Attorney-General on 4 September requesting that he consider changing the name of the commission. The government is considering that request.

Senator BARNETT—Is that request referring to a change of legislation or a change of name?

Ms Lynch—As I understand it, it would require a change of legislation to formally change the name for all purposes.

Senator BARNETT—With the greatest respect, the commission has already of its own volition acted and has already changed its name. So you are telling me that you received a letter from President von Doussa on 4 September which went to the Attorney's office which requested the change of name—I am not sure exactly what period of time—some months after the commission had already changed its name?

Ms Lynch—It requested that the Attorney consider a legislative change to the name.

Senator BARNETT—We are getting two different stories, are we not? Perhaps Mr Wilkins can assist us.

Mr Wilkins—No, I think you are getting the same story. One is a branding exercise changing the name, which does not alter what the law says. So for some legal purposes that remains the proper terminology. Now the Human Rights Commission has written to the Attorney-General saying, ‘Wouldn’t it be better if you just changed the name of the statute so for all purposes it was called the Australian Human Rights Commission?’

Senator BARNETT—Well, he has had his hand forced, wouldn’t you say? The name change has already occurred. It is a fait accompli. They have advised the Attorney’s office. The Attorney has obviously consented or said yes. Now they get a letter dated 4 September to the Attorney saying, ‘Please change the legislation to accord with the name.’

Mr Wilkins—I am not sure they forced his hand. He is still considering the matter, I gather. He has not announced it.

Senator BARNETT—Is the name the Australian Human Rights Commission a business name that has been registered? Is it a legal entity?

Mr Innes—Yes, it is, Senator. We have registered the name.

Senator BARNETT—In every state and territory?

Mr Innes—I think it is a national registration. Yes, it is a national registration, I am advised.

Senator BARNETT—Well, business names, I understand, are registered in states and territories.

Mr Innes—That is not my understanding, Senator.

Senator BARNETT—Could you take that on notice and perhaps confirm or otherwise?

Mr Innes—Certainly. Yes, I am happy to take that on notice.

Senator BARNETT—All right. Let us go to the next part of this question, and that is the cost. What is the cost to date of the change of the name and the corporate identity?

Mr Innes—I think we would have to take that on notice because it would be difficult to separate the cost from the cost of the broader strategic planning exercise, but we will do what we can.

Senator BARNETT—Well, you would not go down the track of changing your name and having a strategic exercise, using your words, without having some understanding of the cost and the operational changes to your commission and to the people who work within it. You have the letterhead, you have business cards and logos, all that sort of thing. So I am asking: since the date—I still have not been advised of the exact date—when the commission decided to change its name, what cost and expenditure has been incurred in terms of the change of name, the corporate identity change, and any other related purposes?

Mr Innes—Senator, you are absolutely right that you would not undertake such an exercise without being aware of the cost. But my response to you was that I am not in a

position today to separate the cost of the change of name from the cost of the broader strategic planning exercise.

Senator BARNETT—What is the cost of the broader strategic planning exercise, then, Mr Innes, with respect to the change of the identity from HREOC to the Australian Human Rights Commission?

Mr Innes—The broader strategic planning exercise did a great deal more than change the identity, Senator. I am not sure if Ms Toohey is in a position to give you the cost of the strategic planning exercise, but it did a great deal more than just determine the identity of the commission. So I would not like to give the impression that the cost of the broader strategic planning exercise in any way related to the costs of the changing of the name. Just before Ms Toohey comments on that, I will just come back to your earlier comment. As we speak, I am looking in my diary to find the date on which the decision was made. But it would have been very soon before the letter to which Ms Lynch referred to the Attorney. So the two events were closely related and one followed the other.

Senator BARNETT—So perhaps in and around the August period—

Mr Innes—The end of August or beginning of September.

Senator BARNETT—The letter was 4 September.

Mr Innes—Yes. That is right.

Senator BARNETT—Does Ms Toohey want to add anything?

Ms Toohey—I do not have details of those costings, so we would have to take that on notice.

Senator BARNETT—So you will take on notice the costings for the overall strategic change?

Ms Toohey—Yes.

Senator BARNETT—And then a breakdown of the expenses to date and the forward expenses budgeted for with respect to the change of name and the corporate identity?

Mr Innes—Yes.

Senator BARNETT—Can the minister advise any response to that letter of 4 September? We have a letter of 4 September. It is now mid-October. That is about six weeks or so. Can the minister advise the response to the request by the president for a change of name and for a change of legislation? What is the plan?

Senator Chris Evans—Perhaps Ms Lynch or Mr Wilkins can say where that is at. Is it still with the Attorney-General?

Mr Wilkins—It is still under consideration by the government, Senator.

Senator BARNETT—Perhaps I will move to the other area because we are a bit tight on time. In terms of the commission's project on freedom of religion and belief in the 21st century, can you provide a breakdown of the total budget and expenditure to date?

Mr Calma—We will have to take that on notice and furnish you with those costs.

Senator BARNETT—It appears your financial officer is not able to. This is a major project. This is a major initiative by the commission. We have four officers at the table and you have not been able to advise the costs and any budget figures relating to this project. I am flabbergasted. Do you want to take it on notice?

Mr Calma—We will take it on notice.

Senator BARNETT—Let us go to the issue of consultation with the minister regarding this initiative. Let us start perhaps with how this idea came into your minds in the first place. Can you address that question?

Mr Calma—I can. Under the previous government under the national action plan, funds were provided to the then HREOC over a four-year period to be able to address issues in relation to relationships between the Muslim communities and Australian society. They ranged from the police to government and generally, I guess, they could come under the banner of social cohesion. This is one of a number of projects that were developed as part of that initiative. We had a reference group. We had a number of reference groups and three consultations that we undertook prior to receiving the national action plan funding. Freedom of religion was one of those issues and areas that we understood the community felt was important to consider.

Senator BARNETT—How did you assess the community felt it was important to have an assessment of the appropriate role of churches in our community and the appropriate role of religion in our community? How did you assess community opinion? Did you do any opinion polling? Can you provide the committee with a copy of the polls? Were any surveys undertaken?

Mr Calma—We can provide the committee with the report called *Breaking the silence*, which is the report that was undertaken prior to the national action plan projects commencing.

Senator BARNETT—That is a public document, is it not, *Breaking the silence*?

Mr Calma—It is a public document.

Senator BARNETT—Well, we do not need that. That is on the public record, but thank you. Are there any other documents in which you have assessed public opinion as to the importance of assessing the appropriateness of churches and their role in the community? How have you determined that?

Mr Calma—We have a steering committee that has looked at a whole range of different initiatives that we needed to get up. This is one of those projects.

Senator BARNETT—Mr Calma, you are sounding very much like an internal self-appointed committee to assess what is in the best interests of the community. That is how it is sounding. That is how it is coming across. There is no empirical evidence or other polls or surveys to confirm the merits of undertaking such an inquiry that I can see. You have not advised the committee of any of that.

Mr Calma—No. That is right. In the ISMA report produced in 2004, we conducted consultations throughout the country. This was a recurring theme in those consultations. The ISMA report is a public document as well.

Senator BARNETT—As assessed by the commission. When did you decide as a commission to proceed with this inquiry? What date?

Mr Calma—The precise date I would have to—

Senator BARNETT—Can you give me a month? Can anybody assist from the officers at the table?

Mr Calma—I do not have it. I would have to take it on notice to be precise within the month.

Senator BARNETT—Let us go to the supplementary question regarding the involvement of the minister. When was the minister first advised of the commission's decision to proceed with the inquiry?

Mr Calma—I guess it was prior to when it was publicly launched on 17 September 2008. That is when the public launch took place and when we invited submissions from the community to consider the issue. So it was in the months leading up to that.

Senator BARNETT—That is when you released the terms of reference and made it public that you were going ahead with this inquiry on 17 September?

Mr Calma—Yes.

Senator BARNETT—How soon before that did you advise the Attorney-General?

Mr Calma—To let you know the precise date, I would have to take that on notice. But it was in the months leading up to that.

Senator BARNETT—Weeks or months?

Mr Calma—I could not say for sure. But it would be at least a month.

Senator BARNETT—Can the Attorney's representative or the department advise when they were first advised by the commission that the commission had set forth and prepared these terms of reference and was proceeding down this track? When was the Attorney first apprised of this decision?

Ms Lynch—I am sorry, Senator. I do not have those details in my notes. We can take it on notice. I do not have it with me.

Senator BARNETT—You can understand it is a little frustrating trying to get to the bottom of this. Let me ask another question in terms of the minister. So you advised the minister you were proceeding. You did not seek his consent. It was simply advice that you were proceeding along these lines and whether he would be there at the launch of the terms of reference. Was it a letter along those lines from the president?

Mr Calma—There was a letter. We had previously sought the involvement of the Attorney-General, who was not available, and Laurie Ferguson then participated in the event.

Senator BARNETT—You can understand perhaps where I am coming from. Australian Law Reform Commission representatives were before us earlier today. In terms of their inquiries, they consult directly with the Attorney and then gain the approval of the Attorney. But it is obviously entirely different, and some would say the Human Rights Commission

perhaps is a law unto itself in this regard. You simply liaise and advise the Attorney of what you are doing from time to time.

Senator Chris Evans—I think, just to interrupt, we will probably put this in context. As I understand it, this program was part of the general funding approved in July 2006 for HREOC to take a number of projects as part of the national action plan initiated by the previous government.

Senator BARNETT—Not these terms of reference.

Senator Chris Evans—No. I am saying that we need to put it into context. I think maybe Mr Calma did that. As I understand it, they receive funding for their part to play in the national action plan. It is a four-year program. There is a range of initiatives they have taken. I understand from Mr Calma that he started to talk about the steering committee that determined the projects. Perhaps if he gave you more information on that, we would get a bit better context of where this fits within that decision-making. You were going to the decision-making question, which is perfectly appropriate. I am not sure what the answer is.

Senator BARNETT—I do not want to take the time of the committee because we have only got a bit over two hours to go and there are other agencies. I will ask a final question.

Mr Calma—Can I just clarify that this is not an inquiry. This is a project, which is very distinct from an inquiry. I am not sure what inquiry the Australian Law Reform Commission was talking about. I think it is a totally different response.

Mr Wilkins—I might just add that the statutes are completely different in relation to the Australian Law Reform Commission.

Senator BARNETT—That is becoming patently obvious as a result of further questioning.

Mr Wilkins—The ALRC is required by statute to get its reference from the Attorney-General. But the Human Rights Commission is in a different position.

Senator BARNETT—In terms of the investigation or the project, as you call it, it includes the inquiry into the ‘involvement of religion in debates about homosexuality or abortion’. Why is that considered to be a matter for the expenditure of public funds by the commission?

Mr Calma—Sorry, Senator. Where is that quote from?

Senator BARNETT—That is from a media release of 20 August 2008.

Mr Calma—That was a HREOC one?

Senator BARNETT—That is a HREOC statement. That is my understanding. I can get back to you on that. So that does not ring a bell to you?

Mr Calma—No, it does not.

Senator BARNETT—As part of the project?

Mr Calma—No. It does not immediately come to mind. The other important issue to recall is that this funding came not from the Attorney-General’s Department but from the minister involved in multicultural affairs and immigration.

Senator BARNETT—Sure. But whatever views you might come up with, you have to understand that issues like that are very sensitive and that people have views one side and the

other. There is a conscience vote considered coming up in due course, certainly in the Senate. I will leave it there. We will pursue this in due course at a subsequent time. Thanks, Chair.

Senator FIERRAVANTI-WELLS—I will pick up on that point. Can you explain and take on notice, Minister, how funding in this area in terms of abortion and the other matters that Senator Barnett raised are relevant to multicultural issues? I am really quite concerned about that. Could you just take that on notice. How do they relate to each other?

Senator Chris Evans—Well, I would be happy to, but no-one has acknowledged at this stage what Senator Barnett is referring to.

Senator BARNETT—Have you got a copy of the terms of reference in front of you?

Senator Chris Evans—My notes on the project, which is done in partnership with RMIT, Monash and the Australian Multicultural Foundation, do not refer to the sorts of issues Senator Barnett referred to. I am happy to be helpful, but I just want to be clear.

Senator FIERRAVANTI-WELLS—Thank you, Minister. It just seemed a bit unusual.

Senator Chris Evans—I am not sure we are on the same page at the moment so I do not want to promise too much. I am not sure we are talking about the same thing. We will have a look. If there is anything we can help with, we will.

Senator BARNETT—I draw the attention of obviously not only us but others, including the public, to the terms of reference, which are very broad. They are very concerning to a lot of people. The feedback that I have had is quite significant. Thank you.

Senator SIEWERT—I have some broader budget issues and then some specific issues for Mr Calma. At our last estimates, as I recall our discussions, it was a bit early for any real comments to be made about what the impacts of the efficiency dividend were going to be on the operations of the commission. Since that period of time, has there been any refinement or any better understanding of what impact the efficiency dividends is having in each specific area that the commission works in?

Mr Calma—I defer to Karen Toohey.

Ms Toohey—I think at that stage the budget issues had only just been notified to the commission. Since that time, the commission has taken the approach of spreading both the effect of the efficiency dividend and the budget cut that we incurred earlier this year across all areas of the commission. That has been taken as a 14½ per cent cut to each of the unit budgets.

Senator SIEWERT—Fourteen and a half per cent?

Ms Toohey—Yes. To each of the unit budgets across the commission. Essentially it has been left to the unit managers and for the commissioners obviously to decide how best to implement that with respect to player program budgets.

Senator SIEWERT—I am conscious of time. I am conscious that I have a lot of questions. Maybe you could take on notice what that meant in terms of any cuts to your programs—your staffing and whether any projects have been cut. Are there any notable projects that have been cut? Are there big headline projects that you have had to cut because of the funding cuts?

Ms Toohey—Senator, I would have to refer that back to the commissioners. We can take it on notice, if you would prefer to do that.

Senator SIEWERT—If you could, that would be appreciated. Thank you.

Ms Toohey—Certainly.

Senator SIEWERT—As I understand it—I do not think this had occurred prior to the last estimates; I may be amiss in recollecting—Mr Calma, you had not been made the race commissioner at that stage?

Mr Calma—No. I was still acting at that time.

Senator SIEWERT—It seems to me—

Senator Chris Evans—The next line ought to be congratulations.

Senator SIEWERT—Sorry. Congratulations. What I am concerned to see is if in fact there has been a budget cut—as I understand it, each of the commissioners has had a cut across the units—does that mean that you have picked up additional workload with a cut in funding?

Mr Calma—The two impacts we have had are the efficiency dividends and, as we mentioned, the cuts that were relating to the \$1.8 million. The race discrimination commissioner position has never been funded. I do that gratis. My position is the social justice commissioner position. The impacts of the 14 per cent cuts have been across the board in my race policy unit. For the education projects section of race, which is \$4.5 million we received under the national action plan, that funding has not been affected.

Senator SIEWERT—Has not?

Mr Calma—No. That has not. But the 14 per cent cut was experienced in my race policy unit.

Senator SIEWERT—It was?

Mr Calma—It was, yes.

Senator SIEWERT—What specific outcomes or lack of outcomes has that had?

Mr Calma—It has virtually limited our capacity to undertake some of the race policy area work. Staff have been restricted to not doing the level of travel that they have previously done. So we are constrained to desktop audit as much as anything.

Senator SIEWERT—What does that mean? You actually cannot go out and talk to people on the ground?

Mr Calma—My staff are having difficulty. They have to be very discerning as to who they work with. The other significant impact is our capacity to undertake education activities, particularly in relation to discrimination matters and race discrimination matters.

Senator SIEWERT—I would have thought that, given the issues around the Northern Territory intervention and the rather controversial exemption from the Racial Discrimination Act, you would have had quite a lot of contacts around these issues. Would that be a correct deduction?

Mr Calma—We have. We have in the past. Since the cuts, we have had to be very discerning as to what travel we undertake.

Senator SIEWERT—Does that mean you have not been able to deal with all the issues that have been coming out of the NT intervention as they relate to the Racial Discrimination Act?

Mr Calma—Well, the key issue is that the Racial Discrimination Act in those prescribed communities in the Northern Territory is suspended, so there is no role other than an anecdotal investigative role.

Senator SIEWERT—I understand the exemption. I know there is no formal role. But I would have thought that does not necessarily stop people complaining about it and trying to take it up with you.

Mr Calma—That is right. Our capacity to travel and consult and to hear the complaints is very, very limited.

Senator SIEWERT—Which takes me on to the—

CHAIR—It is nine o'clock. We have it determined in our program that we will have a 15-minute break, which we have agreed to. The committee is suspended until 9.15 pm. Thank you.

Proceedings suspended from 9.01 pm to 9.15 pm

CHAIR—It is 9.15 pm. I am going to reconvene this hearing so that we can get through the next hour and three quarters. We will continue questions with the Australian Human Rights Commission.

Senator SIEWERT—Mr Calma, I want to go to your social justice report and the NTER review. I have noticed that one of the recommendations for the NTER review is very similar to one of your recommendations about community partnership agreements. Has there been any progress in the recommendations you made in terms of starting to implement your recommendations in your report, particularly that recommendation?

Mr Calma—We have had some discussions with senior departmental officers, but I cannot say that we have progressed very much along those lines. A lot of what the response has been to date is to wait and see what the review team recommended. We will be pursuing, now that the report is out, discussions with officers of FaHCSIA.

Senator SIEWERT—Do you have a timeline for pursuing that? Has the department indicated a timeline for pursuing that?

Mr Calma—I have a quarterly meeting with senior officials. The next one is some time in November.

Senator SIEWERT—I am conscious of time. I have a series of questions to put on notice around the report. I am also particularly keen to talk to you about the Narrogin visit to Western Australia, my home state, last week I think it was.

Mr Calma—Yes.

Senator SIEWERT—I am wondering if you could tell us the reason for your visit and what have been the outcomes of your visit.

Mr Calma—Thank you, Senator. It was an important visit. It was an initiative by community members, who had had invited me to come down and hear their concerns within the Narrogin community, which is a couple of hours drive into the wheat belt out of Perth. They have experienced eight suicides and attempted suicides in the last six months with indigenous males. They were particularly keen to have me hear what their concerns were so I was accompanied by Yvonne Henderson, the equal community commissioner for Western Australia. We participated in a meeting of an estimated 150 Aboriginal people from Narrogin and the surrounding district.

It was a very productive meeting where we heard the community share their concerns and the grief that they have experienced through the loss of so many people. They raised a range of issues and concerns that they had. We heard them. Yvonne Henderson will be taking a team of her people back to workshop within the community trying to inform them about their rights to be able to lodge complaints and concerns, particularly in relation to racial discrimination. I will be endeavouring to ask Ms Henderson to represent our interests from the commission's perspective because we do not have the capacity to return there or the financial capacity to run those programs.

I think it was a very productive meeting. Following the closed community meeting, we met with the mayor of Narrogin. She heard some of the issues and pledged her support to work with the Aboriginal community in addressing issues. There were senior police there. We had a brief discussion. I guess one of the major concerns that the community expressed was that at the moment Oxfam Australia is providing the financial resources to engage a psychologist one week per month to work in the community as well as a couple of case workers. They were concerned that the funding was running out and thought it was a responsibility of the state or the federal government to fund some psychologists or psychiatric support for the region. I have taken that issue up with the Deputy Premier, who is also the minister for indigenous affairs and the minister for health in Western Australia, Dr Kim Hames. He has taken it on notice and will try and organise a meeting between the Commonwealth and the state government to look at that issue in particular and to see how they might work collectively and cooperatively within the community. We still see too much evidence of siloed activity in the area and a lack of really collegiate and cooperative effort from the state and the federal government.

Senator SIEWERT—Thank you. Did you say Oxfam are funding the psychologist?

Mr Calma—A psychologist for one week per month, yes.

Senator SIEWERT—So there are no other resources available other than Oxfam providing it?

Mr Calma—That is correct. That funding is due to cease some time, I believe, in November.

Senator SIEWERT—But the state government has now undertaken to talk to the Commonwealth?

Mr Calma—I mentioned that to them and they will endeavour to take it up with the Commonwealth, yes.

Senator SIEWERT—Under what banner could the Commonwealth provide resources?

Mr Calma—In each of the states and territories of Australia there are the indigenous coordination centres. They are to look at a response to the community on issues in relation to what programs the federal government might be able to mount. There is also funding in which they could look at this community as a community in crisis and to be able to provide support. But I think the real value is in trying to coordinate the efforts of the state and the federal government as well as how the local government can get better engaged.

Senator SIEWERT—Two questions come to mind directly as a response to that. Does that mean the ICC has not been engaged before?

Mr Calma—We were not able to establish that they had been engaged, but I mentioned that to Bernie Yates this morning, who is head of the Office of Indigenous Policy Coordination.

Senator SIEWERT—I think we will chase that up on Friday at the cross-portfolio committee hearing. The other issue is you said a community in crisis. Is that your opinion of Narrogin? Is it a community in crisis?

Mr Calma—I believe that if we have a community where there are so many suicides and attempted suicides in a small population, it is a community in crisis and it needs to have a close planned initiative by all government agencies to be able to look at what sort of response can work within the community.

Senator SIEWERT—You also made a point earlier, if I understood what you said—I am going back to an issue I raised—about the budget and not being able to do community visits. Is that because your budget has been cut and you cannot go back?

Mr Calma—For our staff to go back and deliver human rights training, yes.

Senator SIEWERT—What are the main elements that are causing the crisis in Narrogin?

Mr Calma—It is difficult to be able to establish that in just a three and a half hour meeting. But there were a whole range of issues—major concerns about racism or perceived racism. It is important to recognise the impacts that racism can have on an individual's mental health and physical health and wellbeing. That is well-documented. That is a real issue. There is the issue of opportunity for employment. There were concerns of disempowerment and some concerns about the uncertainty surrounding government programs, particularly CDEP, over there and what might be happening in that area. It is an issue that I think is a concern. People felt a loss of control over their lives, which is also a major stressor that impacts on a person's mental health. There were concerns about the changes to programs without the community really being engaged or understanding. They all get around to a clear partnership that needs to be established between not only federal and state agencies but with the community. So the community has to be actively involved. There needs to be greater engagement between agencies and the community to try to identify some of the solutions and to identify some of the major stressors that are impacting on people's behaviour.

Senator SIEWERT—So although you cannot visit or the staff cannot visit again, you will still be keeping an eye on what is going on there?

Mr Calma—I will keep a watching brief over it. When I am next in the region, I will pursue it. There will still be discussions between key indigenous people over there. It is just that the capacity to be able to go from Sydney to Perth on a trip is difficult.

Senator SIEWERT—Thank you. I think probably every time, or certainly recently, I have asked you questions about representative bodies. You started undertaking a consultative process. That is a correct understanding, is it not?

Mr Calma—No. Not really. What I prepared and submitted to the minister for indigenous affairs was an issues paper in July. That was looking at past national representative bodies in Australia as well as a number of examples internationally. From that, I drew out a whole range of lessons that could be learnt from them and presented that to the minister to consider and to be able to utilise and reference when the government undertook consultations with Aboriginal and islander people nationally.

Senator SIEWERT—Have you been involved in the subsequent consultations?

Mr Calma—The consultations, no. The consultations were undertaken by the government.

Senator SIEWERT—Have you had any further involvement?

Mr Calma—In recent times I have had discussions with the minister about how the report may be developed up and further consultations and how they might best be carried out. Those discussions are progressing.

Senator SIEWERT—The discussions are progressing between yourself and government, do you mean, or between the government and the community?

Mr Calma—Well, I and the minister in relation to my engagement in the process, and the minister and her staff are undertaking the consultations. The minister is particularly keen to find out what are some of the best ways that government can consult with Aboriginal and islander people to make sure that good advice comes back to them about what models need to be pursued.

Senator SIEWERT—I realise you have not undertaken any formal consultation. Have you had any informal consultation or feedback from the community about the process? The reason I ask is I get around to a few communities and the feedback I have had has been, I must admit, fairly negative in terms that they do not feel they have been given an opportunity to have a say. Has that been reflected back to you or is that what they tell Greens pollies when they are out in the community?

Mr Calma—I have had some of those same views expressed to me and I believe government has also. This is why we are undertaking this next round of discussions between me and the minister to look at other ways consultation might take place to ensure that we do have a fairly good cross-section of people inputting into what a national body may look like.

Senator SIEWERT—Are there timelines for the next consultation process?

Mr Calma—I have called on the government to have a body established by the middle of next year—30 June—as a target. They have indicated that they will try and achieve that target, at least with an interim body, and by the end of next year have a formal body.

Senator SIEWERT—The end of next year?

Mr Calma—That has just been part of the discussions. I would not say that is a formal position of government, but they are the sort of timeframes that are being thrown around.

Senator SIEWERT—I have one final question and I will put the rest on notice. It concerns the new welfare reforms as they link to school attendance. Were you consulted about the government's reform program in terms of income suspension and income quarantining and school attendance?

Mr Calma—No.

Senator SIEWERT—Not at all?

Mr Calma—No. Other than submissions we have provided, we have not. Public submissions were called. We made submissions in relation to the NT intervention, yes.

Senator SIEWERT—You make some comments in here about truancy trials, but you were not formally consulted before any legislation was drafted?

Mr Calma—No.

Senator SIEWERT—Thank you. I will put the rest on notice. Thank you.

CHAIR—Are there any other questions for the Australian Human Rights Commission? No, there is not. That being the case, I thank the three of you for your attendance this evening.

Mr Calma—Thank you.

[9.24 pm]

CHAIR—According to my notes, we are now returning to outcome 1.

Senator FIELDING—I wonder whether I could raise an issue. I note the committee has already agreed to go back there. I am wondering whether the committee could reconsider that decision to look at, say, adding the Australian Federal Police before we move on.

CHAIR—We need to have a meeting of the committee to do that, Senator Fielding.

Senator FIELDING—I could put that proposal to the committee.

CHAIR—We would need to have another committee meeting to agree to that. We have an agenda before us. My understanding is we are now up to output 1.2. I will ask if there is anybody here who has questions on output 1.2. If not, we will move to outcome 1.3. I ask if there is anybody here with questions for output 1.3. No. We have dealt with output 1.4. Let us move on to 1.5. Any questions for 1.5? Output 1.6 is native title. Any questions for 1.6? If not, let us move on to 1.7, which is indigenous law and justice and legal assistance. Any questions for 1.7? No, there is not. Output 1.8 is personal property securities. Are there any questions from anybody on that output? No. Then I say good evening to officers who are responsible for outcome 1 and we will move on to outcome 2. We are up to outcome 2 now. We are moving to outcome 2.1, which is criminal justice and crime prevention. Are there questions for outcome 2 and output 2.1?

Senator ELLISON—Yes. Thank you, Madam Chair. The previous government had a crime prevention program. I understand that a new one has been instituted by this government. Under the previous regime under proceeds of crime there was a provision which allowed for expenditure of money on crime prevention and drug treatment and law enforcement. Does that still remain?

Dr Heriot—Yes. The proceeds of crime arrangements remain unchanged.

Senator ELLISON—Is there any change to that anticipated?

Dr Heriot—In terms of the grants element?

Senator ELLISON—Firstly, legislatively, is there any change anticipated? Secondly, in terms of the grants, are they still continuing?

Dr Heriot—To deal, Senator, with the second part of your question first, there have been no announcements of new rounds of NGO grants this year, which is not to say that they have ceased. There just has not been a round. As you may recall, the Proceeds of Crime Act 2002 was reviewed by Mr Tom Sherman. The department is currently finalising a response to put to the government's consideration around some possible legislative refinements for that act, but that has not yet gone to government.

Senator ELLISON—Can you tell us how much is in the account?

Dr Heriot—I think it is around \$18 million at the moment. An amount of \$18.9 million was in the confiscated assets account as at the end of September.

Senator ELLISON—Thank you. In relation to the grants that I have mentioned, we have drug treatment with the drug treatment program. There is also law enforcement. Has any grant been made for law enforcement purposes?

Dr Heriot—Sorry, Senator, I am having trouble hearing you.

Senator ELLISON—In relation to those funds, if I recall the legislation correctly, moneys could be applied to law enforcement, crime prevention and drug treatment programs, roughly put.

Dr Heriot—Yes. There are four purposes—crime prevention, drug treatment, drug diversion and law enforcement. There have been two projects funded through the Australian Federal Police in the law enforcement area this year.

Senator ELLISON—How much were they worth and what were they for?

Dr Heriot—One was for the convening of a proceeds of crime conference. That was worth some \$200,000. The other one was for a surveillance capacity. It was worth somewhat over \$2 million. It was \$1.146 million.

Senator ELLISON—And no other grants to, say, Customs or anyone else or the Australian Crime Commission? I remember they always used to be looking for something. Or CrimTrac?

Dr Heriot—I want to correct my evidence. The proceeds of crime conference for the AFP was \$105,000, not \$200,000. I do apologise. The last money CrimTrac received was from the

automated number plate recognition work, which was funded last year. So the two AFP projects are the two most recent.

Senator ELLISON—This year?

Dr Heriot—Yes.

Senator ELLISON—So in the last 12 months they would be the only ones. Is that right?

Dr Heriot—Yes.

Senator ELLISON—I am obliged. Thank you. No further questions, Madam Chair.

CHAIR—We are dealing with outcome 2.1.

Senator BARNETT—I have a quick question. I asked earlier about the AUSTRAC annual report and the department's response to it and specifically the concerns expressed in the annual report about a 54 per cent jump in the reported number of people carrying mailing or shipping more than \$10,000 in or out of Australia. Has the department considered that annual report and advised the minister of any concerns that you have about it?

Dr Heriot—I do not know that the department has concerns about the annual report. The annual report notes—and I am sure AUSTRAC representatives could speak more ably than me if they were here, but I will do my best—that there has been a significant increase in the reporting of transactions across all transaction types. In part that is due to the considerable increase in businesses that have started reporting to AUSTRAC under the new legislation to a higher awareness of reporting obligations amongst businesses due to AUSTRAC'S very active outreach and compliance activities and to some increased financial activity within the economy. AUSTRAC anticipates that there will be a further significant increase when the remaining reporting obligations commence in December this year. But the increase in reporting goes across suspicious transactions, significant cash transactions, international funds transfer, the cross-border movement of physical currency and cross-border movement of fair and negotiable instruments. So it is an across-the-board increase.

Senator BARNETT—You would no doubt have seen an excellent article in the *Financial Review* today by Marsha Jacobs headed 'Rise in dodgy deal reports to AUSTRAC'. That outlines some of the concerns expressed in the annual report. Is the department aware of any trends flowing from the global financial crisis with respect to the movement of funds into or out of Australia that may be connected with the global financial crisis?

Dr Heriot—Well, I think that the annual report, referring back to the previous financial year, would not reflect trends. I think that if you wanted to ask about trends in AUSTRAC reporting, that would be a question for AUSTRAC, I am sorry.

Senator BARNETT—I am now moving from the AUSTRAC report to the department and specifically yourself. Are you or the department aware of any movements in finance funds, or do you have any concerns flowing from the instability caused by the global financial crisis of the last weeks and months?

Dr Heriot—I guess what I am trying to suggest, and not very clearly, is that the department does not have access to that level of operational data. We are not an operational agency. If you wanted to ask about recent trends in financial movements, that would be a question that would

necessarily need to go back to AUSTRAC because we do not have access to that operational data.

Senator BARNETT—We can put those questions on notice. Mr Wilkins, are you aware of anything?

Mr Wilkins—No. I was going to say, Senator, I think the problem under the current freezing of credit is that the lack of transactions would be the concern. But we will ask AUSTRAC whether they can discern any trends or they have any concerns.

Senator BARNETT—Well, I just notice this 54 per cent increase in the reported number of people carrying mailing or shipping worth \$10,000 in or out of Australia in terms of cash.

Mr Wilkins—I think Dr Heriot has just addressed some of that. It is a long time ago.

Senator BARNETT—Yes. That is from the previous financial year, 2006-07.

Mr Wilkins—But we will take your query on notice and see if there are some trends.

Senator BARNETT—We are in a very fluid time. I wanted to ask you if you are aware of any movements of cash or funds that may be directly related to the crisis.

Mr Wilkins—Do you think people are carrying around cash?

Senator BARNETT—Yes. That is a question worth asking.

Senator FIERRAVANTI-WELLS—It used to happen one time. Now it does not.

Senator BARNETT—Thank you, Chair. That is it for me.

CHAIR—We are dealing with outcome 2. Any other questions in outcome 2?

Senator BRANDIS—Of Attorney-General's?

CHAIR—Yes.

Senator BRANDIS—I have some questions after Senator Humphries.

Senator HUMPHRIES—Thank you, Chair. Could I ask about the Australian Strategic Policy Institute report entitled *Taking a punch: building a more resilient Australia*, which was brought down in May this year. I understand from the estimates committee in May or June that a response was being considered by EMA. I wonder whether it is possible for EMA or the department to advise us of any particular response or change in policy as a result of the production of this report.

Mr Pearce—As I recall, there were about three or four questions in relation to the *Taking a punch* report, all on notice. We provided the information back on each one of those by the deadline requested.

Senator HUMPHRIES—Well, they were not questions for me. I want to know whether any of the responses which the department has developed to this report, the ASPI report, are to be made public.

Mr Pearce—I could not advise you, Senator, whether or not it is to be made public. The advice I gave at the last estimates hearing was that a number of the issues raised in the ASPI report are actually already being addressed by our organisation specifically and in partnership with some others. The outstanding issues from that report from May that were to be addressed

we provided information on. But I could not advise you as to whether there will be a public declaration on the outcome of the report. I do not think that there is. I think last time I said that I was not aware that that would be the case but that we were working on a number of recommendations that arose from the report.

Senator HUMPHRIES—You can appreciate that there is a bit of irony in the non-publication of any response which the government develops to the report because the report in part says:

... we have yet to see a genuine effort by our national security leaders to engage the public too frankly and openly inform them on where we face major threats, how best the community should better protect itself and improve risk reduction measures.

They go on to refer to the fact that there are several significant reports relating to large-scale emergencies that have been permanently embargoed on the grounds that to publish them might only serve to frighten people. Does the government accept that there should be a greater engagement to frankly and openly inform Australians about the threats facing them? If so, how does it propose to do that?

Mr Pearce—Senator, I could not respond on behalf of the government as to whether or not it thinks that is appropriate or not. What I can say to you, as I have already said, is that the issues within the report that my organisation can directly respond to and address are being addressed. There is quite a number of those, as I said, particularly a community emergency warning system and a number of others.

Senator HUMPHRIES—Can the minister respond if the EMA cannot? Can the minister answer that question?

Senator Chris Evans—I might ask Mr Wilkins whether he can help me, Senator. I am not the responsible minister. I am not across the detail of your query. I do not know whether the departmental officers have another perspective. Mr Jordana, are you in on this?

Mr Jordana—Senator, I think it would be fair to say that emergency management across the country is obviously very much significantly or substantially in the hands of the states and territories. Emergency Management Australia, of course, plays an important role in some national aspects of handling reactions to disasters and to emergencies. But the principal relationship of emergency managers with the public actually rests with the states and territories. Very firmly that is a relationship which they manage. It is not a complete answer to your question, of course, but it is a fact of the way that emergency management is handled across the country.

Senator HUMPHRIES—But in a number of statements that the Attorney-General has made himself, he seems to have picked up the themes that were identified in the ASPI report. He seems to have suggested the government is going to make *Building a more resilient Australia* along the lines of this report part of government policy. For example, on 21 August he addressed a dinner of ASPI, where he said:

Building resilience is a partnership between governments and the community. The Rudd Government is doing this by boosting volunteer recruitment and retention and anticipating climate change impacts and factoring these into our strategies to deal with cyclones, floods and bushfires.

I want to bore down to those two issues that he has raised. Can you tell me exactly how the government is boosting volunteer recruitment and retention?

Mr Pearce—Currently, not just the government but the ministerial council of the police and emergency management—the emergency management aspect of that council—and the Australian Emergency Management Committee are both jointly working and have tasked EMA with identifying, in working with the jurisdictions, what potential recruitment and attraction capacity there is at the moment with regard to attracting volunteers into the emergency service sector and being able to retain them. There are a number of reports over a number of years that have been pulled together on this issue. The government has asked us to actually consolidate all of that and to come back to the ministerial council with a recommendation on strategies to do that. That work is currently underway within EMA at the moment.

Senator HUMPHRIES—Well, the minister actually said that the government is boosting volunteer recruitment and retention. You are saying that the government is looking at ways of doing that?

Mr Pearce—No. That is one aspect of it. One way that it currently does it is through the national emergency volunteer support fund, which is a funded grants program that actually targets the attraction and retention of volunteers. That is a grants program available right across the country for all jurisdictions.

Senator HUMPHRIES—That is a new one, is it?

Mr Pearce—No. That is an existing program.

Senator HUMPHRIES—So at this stage no new policy decisions have been made to boost the retention or recruitment of volunteers?

Mr Pearce—No. I have suggested anything like that would come out of the consolidation of the work that has already been done and recommendations that EMA will make back to the Police Ministers Council.

Senator HUMPHRIES—I want to ask about the Smith review of homeland security arrangements, if that has not already been asked about.

Senator BRANDIS—It has.

Senator HUMPHRIES—Okay. I am sure there are answers in *Hansard*.

Senator BRANDIS—Spectacularly, we learn that the governance has been gathering dust on the Prime Minister's table for four months, Senator Humphries.

Senator HUMPHRIES—I find that hard to believe, Senator Brandis, but I will check the *Hansard*.

Senator BRANDIS—Surprise, surprise.

CHAIR—That might be an overstatement.

Senator HUMPHRIES—I want to be clear about the ASPI report. As far as the government is aware, there will be no publicly available response to the ASPI report?

Mr Pearce—Senator, I cannot comment on behalf of the government as to whether they will respond.

Senator HUMPHRIES—I am not asking you necessarily, Mr Pearce. I am asking those at the table who, between them, presumably can answer the question.

Mr Jordana—ASPI as a body, as you know, in the Australian context is the closest we get to a kind of a think-tank. It certainly presents interesting and well-informed reports for people's consideration. But, as such, it is a type of document that would clearly not oblige a government to make a response as it would do to a parliamentary committee report or whatever. So it is the kind of document, indeed, which within the department we take seriously. I think there are some useful and important things that are said. That will be folded into the types of deliberations that are taking place with respect to the government's management of emergency management going into the future.

Senator HUMPHRIES—I appreciate that. The question was asked at the last estimates about whether the government was in fact formally considering these recommendations. I understand that you said that it was and that there would be some paper produced to respond to what ASPI was saying. But I gather that what you are saying is that there is not going to be a publication of any of that.

Mr Pearce—I seem to recall that the comment at the time was the same as today. We were not aware that there was going to be any public statement in relation to the ASPI report but that a number of the recommendations were already being addressed by EMA and others. That is my recollection of the May estimates.

Senator HUMPHRIES—Can you just give me a philosophical answer, then, to the question?

Senator Chris Evans—I am not sure we carry doctors of these philosophical—

Senator HUMPHRIES—There may not be many philosophers available.

Senator BRANDIS—It might be very Hegelian.

Senator HUMPHRIES—ASPI recommends that we should move from a culture of need to know to a culture of one of need to share. Do you think that describes where government policy is heading in this area?

Mr Wilkins—At the risk of being pigeonholed in that Hegelian type of position, can I simply say the observation that you made earlier about some of the themes in this ASPI report reflect thinking in a number of areas about the way in which policy should be developed in this area and, in particular, resilience. I am a relatively new player to this area. Resilience seems to be a key concept in terms of encouraging people and providing them with the incentives and the basis on which they can better prepare themselves and communities can better prepare themselves to deal with emergency situations and not just sort of sit around and wait for battalions of people to turn up with fire trucks and things like that.

It also goes to issues around other levers of policy, particularly in relation to climate change, where you are looking at issues from things like zoning to questions about all sorts of policy areas that are not necessarily within the remit of emergency management but which are very relevant to the resilience of the community or the capacity of the community to deal with

emergency situations. So some of the observations you made earlier about some of the trends are not peculiar to the ASPI report. They come up in a number of areas. The officials across Australia who deal with this issue are sort of dealing in one way or another with a lot of these things here. As you remark, the Attorney-General in his speech also mentioned these issues. So we are looking at a number of areas and a number of ways in which we can actually, if you like, deal with this in a slightly different way and change the sort of emphasis. So that is the sort of philosophical trend and a philosophical statement. As Mr Pearce said, the right way to take it forward is through the Commonwealth-state processes. We are in the process of doing that now. There will be papers going to the next meeting of ministers for this area, which I think is taking place in a month or so.

Mr Pearce—On 6 November.

Mr Wilkins—So we are trying to progress it in that way.

Senator HUMPHRIES—I might put a question on notice to you, particularly about how coordination would occur with, say, a major national disaster—an earthquake or something like that. I would appreciate some guidance as to how the actual situation would be dealt with in terms of coordination by the Commonwealth in that respect.

Mr Wilkins—All right.

Senator BRANDIS—I have some questions for the department, Madam Chairman.

CHAIR—Senator Humphries, have you finished with outcome 2?

Senator HUMPHRIES—Yes, I have, thank you.

[9.59 pm]

Senator BRANDIS—Mr Wilkins, I want to ask you about electronic conveyancing. In particular, I want to ask you about the announcement following the July COAG meeting that—I am paraphrasing here—the Commonwealth would move to superintend and implement a national electronic conveyancing system in relation to all property transactions across the nation by 2010. You are familiar with this issue?

Mr Wilkins—I am familiar with it, but you are probably better to get an answer from one of my officials, who understand it much better than I do.

Senator BRANDIS—Certainly, Mr Wilkins. All I want is the answer. I do not mind who answers the questions as long as they are the best witness.

Senator Chris Evans—I think we might have strayed back.

Mr Wilkins—We are now on 1.8, I think.

Senator BRANDIS—No. Whatever. Mr Popple, you, of course, I assume, since you have come to the table, are familiar with the announcement that was made by the Prime Minister and Mr Tanner following COAG. You would, I dare say, be aware of the controversy concerning the suitability of the Victorian based electronic conveyancing system as the basis for the proposed national system? You are aware of that controversy?

Dr Popple—Yes. I am aware of that.

Senator BRANDIS—I daresay that you have followed the articles written by the journalist Chris Merritt in the *Australian* in recent months to expose the difficulties and conflicts involving ECV, the Victorian government's electronic conveyancing system. Are you familiar with Mr Merritt's articles?

Dr Popple—Yes, I am.

Senator BRANDIS—What is the attitude of the Australian government towards the adoption of ECV system as the template for a national system?

Dr Popple—I do not believe the Australian government has an opinion about the appropriate template for a national system. The Australian government, through the COAG process—particularly at the July meeting, which I believe is the meeting you were referring to—

Senator BRANDIS—The 2 July meeting, yes.

Dr Popple—The 2 July meeting was part of the COAG process encouraging the states and territories to agree to an appropriate model for the implementation of a national electronic conveyancing system. Out of that meeting a timeline for implementation was agreed—

Senator BRANDIS—Culminating in 2010.

Dr Popple—That is right—a new system in March 2010. The Commonwealth's involvement is to encourage that process, because it is primarily a matter for the states and territories, given their responsibilities for land registration.

Senator BRANDIS—Is the Commonwealth not aware that, for example, the New South Wales government has expressed considerable misgivings about whether the ECV system is an appropriate national template or an appropriate basis for a national system?

Dr Popple—We are aware of many of the criticisms because we have been involved, particularly on one steering committee, for some while now, but the point I am making is that the route that COAG has chosen to take involves setting up a new entity to consider these issues and others, to make a decision about how best to proceed and then to implement a system along those lines.

Senator BRANDIS—Are you aware that a man called Rick Dixon provided briefings to the federal Treasury and the federal business, regulation and competition working group? On 23 September, in circumstances in which they had been authorised by COAG to oversee the introduction of the national e-conveyancing system, Mr Dixon made a presentation in relation to ECV.

Dr Popple—I am not aware of that.

Senator BRANDIS—Well, that happened. Are you aware that Mr Dixon is a principal of a computer consultancy called Ajilon which built the ECV system?

Dr Popple—I think I recall reading something like that in one of those articles in the *Australian* that you referred to, but I am not otherwise aware of that.

Senator BRANDIS—Are you aware that employees of Ajilon hold a number of senior management positions in the Victorian state government, in particular in the Department of

Sustainability and Environment, which is the Victorian department responsible for the development of the electronic conveyancing system in that state?

Dr Popple—Again, I am aware only from what I have read in that newspaper.

Senator BRANDIS—Since Ajilon is a contractor to the Victorian government for the development and implementation of the ECV system, and as Mr Dixon and other people interested in the company Ajilon are also on the payroll of the relevant department of the Victorian state government, and as the COAG process has endorsed ECV as a potential template—I am not saying it has a concluded view—for a national electronic conveyancing system, is the Commonwealth not concerned about the obvious conflict of interest involved in those with a commercial interest in the ECV system being employees of the state government which is seeking to implement and recommend to COAG the same system?

Dr Popple—I could not possibly comment on the Commonwealth's view on that. The Attorney-General's Department was not involved in arranging the presentations you talked about. It relates to a state government operation and, as I said before, the only knowledge I have of this, sadly, is what I have read in that newspaper.

Senator BRANDIS—On the basis that the allegations made by the journalist appear on their face to be specific and credible, would the Attorney-General's Department not be concerned if the implementation under its auspices, and under the auspices of SCAG, of a national electronic conveyancing system, favoured a system developed in a particular state—that is, Victoria—in circumstances in which there are credible allegations of a plain conflict of interest between the promoters of the system in their capacity as entrepreneurs and the responsible state government department which employs some of those self-same entrepreneurs?

Dr Popple—The proposal is that the system will be built not under the auspices of SCAG, or under any of the attorneys-general departments, but under the COAG process. I can only suggest that the appropriate organ of the Commonwealth government to ask those questions of would be those that were responsible for the COAG working group—and I think that is the Department of Finance and Deregulation.

Senator BRANDIS—You came to the table, Dr Popple, because you were the officer present who knew about this matter. It had its genesis in the SCAG agenda, did it not?

Dr Popple—It did, but it has taken on a life beyond that since then.

Senator BRANDIS—I understand that, but SCAG continues to have a close interest in the development and implementation of a national electronic conveyancing system, albeit through the COAG process, does it not?

Dr Popple—I am sure that is correct, but it is the COAG process that is being adopted at the moment.

Senator BRANDIS—Indeed, and it is not unknown for a policy proposal germinated within one department, or within one federal and state group of like departments, to find its way onto the COAG agenda. Since this germinated through the SCAG process, and there are now serious and credible allegations that the development and selection of a particular system is not only unsuitable in the eyes of at least one state government but also corrupted by a

conflict of interest within the state of Victoria between the entrepreneurs and the Victorian state government department, what steps will the Commonwealth Attorney-General's Department take, as the auspicing authority through the SCAG process, to ensure that these issues of conflict of interest and potential corruption are addressed? What due diligence will you undertake?

Mr Wilkins—Can I answer that question, Senator? I am not quite sure what due diligence we would undertake, but certainly we would need to look at these newspaper articles and, in the context of deciding to go forward, clearly the agencies—which include probably the Attorney-General's Department, the Department of Finance and Deregulation and other state agencies—would need to assure themselves that they were not falling into any traps of the sort you are talking about in terms of conflict of interest and that things were above board. So that would clearly need to be part of the process. Precisely what steps are involved in that I do not know, but you can be assured that the agencies would make sure that there was integrity around the process and that there were no concerns of this sort before they proceeded with anything along those lines. As I say, I have not had a chance to look at it, but we will certainly be bringing it to attention in the process.

Senator BRANDIS—Thank you, Mr Wilkins; that is really the assurance I was seeking. May I take it that it is implicit in that assurance that the Attorney-General's Department will take the trouble to investigate these allegations so as to reassure itself as to these matters?

Mr Wilkins—'Investigate' might be too strong a word.

Senator BRANDIS—Well, have a good look at it.

Mr Wilkins—Yes, indeed—we will have a good look at it.

Senator BRANDIS—That will do me, I think. Thank you very much, Mr Wilkins. I have one other matter for the Attorney-General's Department. On 12 October, the Prime Minister, on behalf of the government, announced a series of measures to address the global financial crisis. Those measures included an Australian government guarantee on deposits in banks, a guarantee of term funding for institutions and the purchase of \$4 billion of residential mortgage backed securities by the Australian Office of Financial Management. As well, on 23 September 2008 the Australian Securities and Investments Commission announced a prohibition on the stock market practice known as short selling. In relation to any of those measures—that is, either the ASIC measure in relation to short selling or the Australian government's range of measures announced on 12 October 2008—was legal advice sought from or provided by the Attorney-General's Department in relation to the structuring or the implementation or, in any other respects, the legal aspects of those measures?

Mr Wilkins—We have had some discussions with Treasury and Finance on some of those matters.

Senator BRANDIS—Which ones, please?

Mr Wilkins—All except the last one, which was the prohibition on short selling.

Senator BRANDIS—In those discussions, presumably the Attorney-General's Department was included for the purpose of providing its perspectives and its advice.

Mr Wilkins—Primarily on constitutional issues, but on other aspects as well.

Senator BRANDIS—And the Attorney-General's Department gave advice in relation to those matters?

Mr Wilkins—Yes.

Senator BRANDIS—Was that advice reduced to documentary form, either in the form of a letter of advice or counsel's opinion or even a minute of the oral advice given during the conversations?

Mr Wilkins—I do not believe so, Senator.

Senator BRANDIS—Would you take that on notice, please.

Mr Wilkins—Yes.

Senator BRANDIS—And if the answer to any of those questions is yes, might a copy of that advice be provided to the committee, please.

Mr Wilkins—I do not think we provide advice, but I will certainly—

Senator BRANDIS—I think the practice is that if you do not provide advice you provide a reason for not doing so, and that is something I would invite you to consider and take on notice.

Mr Wilkins—I will do one or the other.

Senator BRANDIS—Thank you, Mr Wilkins. That is all I have for the Attorney-General's Department.

CHAIR—Senator Brandis, do you have any more questions for outcome 2?

Senator BRANDIS—I do not have anything more for the Attorney-General's Department.

CHAIR—We are dealing with outcome 2. Are there any further questions?

Senator TROOD—No.

Mr Wilkins—Excuse me, Madam Chair. We would like to make a small correction.

Ms Leigh—Earlier, in responding to questions about the development of a national mechanism for handling judicial complaints, I said that the Attorney had written to all the chiefs of the federal courts and that they had all responded in writing. I also said that I was sure he had had discussions with a number of them but that I was not commenting on that. In relation to a response in writing, I would like to correct the record. In relation to the Federal Court, the Attorney wrote to the then acting Chief Justice and the Attorney has not received a response from the Federal Court.

[10.14 pm]

CHAIR—We will move to outcome 3 on the territories. Are there any questions in relation to outcome 3?

Senator TROOD—No.

CHAIR—All right. We do not need those witnesses either. Thank you for coming. We will go back to the agencies now.

[10.14 pm]

Australian Commission for Law Enforcement Integrity

CHAIR—I welcome officers from the Australian Commission for Law Enforcement Integrity. Mr Moss, do you have a statement that you wish to make?

Mr Moss—I have no statement.

Senator BARNETT—Mr Moss, thanks for being here. Since your previous appearance, can you provide a status report on your current investigations? I think one was the ACC matter. We would like to know if those investigations are complete and resolved.

Mr Moss—Since ACLEI commenced 21 months ago, we have received 75 corruption issues. Of those issues, 53 are still current. I have currently underway eight investigations, and two investigations have been completed by ACLEI in the last financial year.

Senator BARNETT—So we can assume this covers both AFP and ACC. Any other investigations?

Mr Moss—The jurisdiction of ACLEI covers the Australian Crime Commission, the Australian Federal Police and the former National Crime Authority.

Senator BARNETT—You say 53 are current, does that mean 22 have been completed?

Mr Moss—53 relate to corruption issues that I am assessing. I have an assessment process before I decide whether to investigate or otherwise in relation to a matter that is referred to me. There are 53 of those current at the moment in the process of assessment. As I mentioned just a moment, I have eight investigations currently underway. Two have been completed in the last financial year.

Senator BARNETT—Thanks very much for that. In view of the time, I do not have any further questions. I appreciate the opportunity to receive the information.

Mr Moss—Thank you.

CHAIR—There are no further questions for ACLEI. Thank you, Mr Moss, for your time this evening.

As chair, I will ask the other agencies to take an early mark. We will conclude the rest of the evening, the next 40 minutes, with the Australian Federal Police. If senators have questions of the other agencies I request they put them on notice. And anyone else on that list, other than the AFP, can take themselves home. Thank you very much for spending what was probably the best part of a whole day here.

Senator ELLISON—Chair, just to clarify: I understand that the other agencies are now being sent away. There is no prospect of them being called tomorrow morning before we start Immigration?

CHAIR—No, there is no prospect of that happening. We have another program to deal with in the morning and a different department.

[10.22 pm]

Australian Federal Police

CHAIR—Welcome. Mr Keelty, good evening. Do you wish to make an opening statement on behalf of the Australian Federal Police before we go to questions?

Mr Keelty—I do not. I apologise for the short delay in getting here. We were following the program.

Senator FIELDING—I understand the AFP runs the National Missing Persons Coordination Centre. Is it true that, in missing persons cases, it is very important to act quickly to ensure a person is found alive and well. Once a person is reported missing, can you describe the risk assessment process carried out by police to determine whether a missing person case is of genuine concern and should be prioritised. It is a double question.

Mr Keelty—The answer is yes.

Senator FIELDING—To both questions?

Mr Keelty—Yes.

Senator FIELDING—How long would you expect a risk assessment process to take once a person has been reported missing?

Mr Keelty—It depends on the circumstances.

Senator FIELDING—Does that risk assessment process involve contacting the family of a missing person to interview them?

Mr Keelty—As I say, it depends on the circumstances: whether the missing person is reported as missing within Australia or overseas. If it is overseas then of course it is a consular matter for the Department of Foreign Affairs and Trade.

Senator FIELDING—By the way, when would you not contact the family in a missing person case?

Mr Keelty—Normally, the first report of a missing person comes from the family.

Senator FIELDING—Would it concern you if it took police four days to contact the family of a missing person as part of that risk assessment process?

Mr Keelty—It depends on the circumstances.

Senator FIELDING—Let me keep going for a moment. Are you concerned that it took police in Dubrovnik four days to initiate contact with Britt Laphorne's family from the time she was reported missing?

Mr Keelty—I am happy to answer the question but I would just point out, Madam Chair, the body of Britt Laphorne has only been returned to Australia in the last 24 hours. This is a tragedy for the family. There have been a lot of published statements. There has been a lot of reporting in the media. Not all of that has been correct. But I do not think it is helpful for me to enter into public debate or public dialogue at a time when the family has not finished grieving. They have not even had a funeral yet. I do not mind answering questions about this case, but I think it is important that we take a step back and understand what the family are going through. They still have not had a funeral yet.

CHAIR—That is a good point, Mr Keelty. You have made your comments to me. Can I suggest that senators ought to be mindful of that fact.

Senator FIELDING—Can I share with the committee that, on numerous occasions, I have been in touch with Dale Laphorne and his wife. They are very happy with the line of

questioning tonight. They have seen quite a few of the questions and they are very happy for them to be asked. In that light, I think it would be fine for me to continue with these questions.

CHAIR—I ask you to use your discretion.

Senator FIELDING—Certainly. Mr Keelty, given that, in Australia, 90 per cent of missing people are found within a week of their disappearance, are you concerned that it took police in Dubrovnik four days to initiate contact with Britt Laphorne's family? Do you think it is strange at all?

Mr Keelty—You are asking me to answer a question that it is not within my power to answer. I cannot speak on behalf of the Croatian police.

Senator FIELDING—I am after your view on that. Given that the Australian Federal Police are involved with this case and an officer was sent to Croatia, I would be surprised if you did not have a view on it. Again, I ask the question: are you concerned that it took police in Dubrovnik four days to initiate contact with Britt Laphorne's family?

Mr Keelty—I am not in a position to answer that question.

Senator FIELDING—Why not? I find this absurd.

Senator BRANDIS—You were asked for your professional appraisal of a circumstance in which the AFP had an involvement. You must have a view, and your view is relevant.

Mr Keelty—Madam Chair, who am I to answer?

Senator FIELDING—The question has been asked by the Senate. The Senate is asking you a question.

Senator FEENEY—But he has been asked to make a professional judgement about a foreign police service, for which he is not responsible.

Senator BRANDIS—That is right. Absolutely.

Senator Chris Evans—I think the key question is that Mr Keelty has to give answers to questions asked of his responsibilities. This, I think, takes him into the area of an opinion about the actions of another police force. I think it is reasonable for Mr Keelty to be a bit circumspect about that opinion, particularly as it is about a case that is still under investigation et cetera. I think it is fair enough to ask Mr Keelty about our procedures, our processes and his and the AFP's engagement with the case. But I think to ask him to pass opinions on another police force's activities is probably beyond what is reasonable. You might want to phrase the question in terms of Mr Keelty's responsibilities or the AFP's engagement with the issue. But you are asking him to make public judgements about a foreign police service's actions, which I think is just outside what is reasonable.

Senator BRANDIS—With respect, Senator Evans, the question that my colleague Senator Fielding is asking is not merely asking Commissioner Keelty for an opinion; it is asking for his professional judgement, his professional opinion, about an operation in which the Australian Federal Police had an involvement. Commissioner Keelty must have a view about this. He is entitled to have a view about it. He would not be doing his job if he did not have a view about it. The committee is entitled to know his opinion. He can be circumspect in

expressing it. But to say that it is beyond the bounds to ask him to express an opinion that he undoubtedly has, which is germane to this element of the estimates, is really to constrain the rights of the committee far too narrowly. I am sure the chair, if she is doing her job, will tell you that what you have said is not within the definition of relevance that she read this morning.

Senator Chris Evans—I do not think it serves this committee well for us to be distracted by some sort of argument about these matters.

Senator BRANDIS—It is a matter for the committee, Senator Evans; it is not a matter for you.

Senator Chris Evans—Don't try and bully me.

Senator BRANDIS—It is a matter for the committee.

Senator Chris Evans—You have had your go; I am replying to your commentary. I think this is a particularly sensitive area where all of us ought to show some restraint. While Mr Keelty's opinions may be valued by the committee, he is not here to actually offer his opinions. But I think if senators are interested in pursuing information here, they ought to think about how they phrase the question. Senator Fielding, you are wanting to jump to a conclusion. If you move through the things you are interested in, I think Mr Keelty will try and be as helpful as possible and you will get to where you want to get to, rather than seeking to start with him providing a critique and opinion which is perhaps—

Senator FEENEY—Inflammatory, potentially.

Senator FIELDING—With all due respect, many Australian parents are extremely concerned about their kids when they travel overseas. I have been through these questions with the family. They are not only doing this for themselves; they are doing it for others to give reassurance to the Australian public that everything is being done that is possible when the Prime Minister says that everything is being done. We are just walking through this and I find it hard to believe—

Senator Chris Evans—That is why it is perfectly competent for you to ask questions about what the AFP—

Senator FIELDING—I have not interrupted you.

Senator Chris Evans—Sorry.

Senator FIELDING—I find it hard to believe that the head of the Australian Federal Police would not answer such a question given their own documents concerning missing persons in Australia say that the first week is important. Four days in this matter were wasted. I will continue on because I am not going to get an answer, I don't think, at this stage.

Senator BRANDIS—Keep asking the questions.

Senator Chris Evans—No, I am trying to assist you. I think it is an important line of questioning and I am sure Mr Keelty will respond. I think if you are asking him questions that are within his responsibilities—what the AFP did, what the Australian government did, what our processes are—you will get the sort of assessment you want.

Senator FIELDING—Let's keep on going then. Would you explain to the committee the role of the AFP agents when they are assigned to be a liaison officer in a case in a foreign country?

Mr Keelty—The role is to liaise on behalf of Australian police forces with the local authorities.

Senator FIELDING—In the case of the disappearance of Britt Laphorne in Croatia, would you please explain to the committee the role of the AFP liaison officer and give an example of a typical day's work?

Mr Keelty—In relation to that particular matter, it would be to act in support of the Department of Foreign Affairs and Trade to the Australian mission in Croatia and to also work with the Croatian police.

Senator FIELDING—Right. Would the officer be expected to report daily to superiors on the investigation?

Mr Keelty—Yes.

Senator FIELDING—Which superiors?

Mr Keelty—The national manager for border and international operations.

Senator FIELDING—Right. Who else did he give briefings to each day?

Mr Keelty—As I understand it, to his senior liaison officer in London.

Senator FIELDING—Consular officials or the ambassador?

Mr Keelty—The ambassador in Croatia, yes.

Senator FIELDING—Daily?

Mr Keelty—Yes—if not the ambassador, representatives from DFAT who may have been present.

Senator FIELDING—Would he be expected to be in daily contact with the missing person's family? If not, why not?

Mr Keelty—It depends on the circumstances.

Senator FIELDING—Under what circumstances wouldn't the officer be in contact with the family? It seems very odd to a lot of people that the officer would not be in contact?

Mr Keelty—The primary responsibility, for persons who are missing overseas, is with DFAT. It is what is described as a consular matter, and the AFP acts in support of DFAT in support of a consular inquiry. There are many of these inquiries right across the world on a very regular basis, and they are consular matters where the Department of Foreign Affairs and Trade has primacy.

Senator FIELDING—Let us keep on going to get a few more facts on the table. Would you explain why a second AFP liaison officer was sent to Dubrovnik? What was the work of the first officer, and was he unable to do what was required? Was the second officer sent to do extra work? What was the reason?

Mr Keelty—The second officer was the senior liaison officer in London, and we asked the senior liaison officer in London to assist with the inquiry and to ensure that all that could be done was being done.

Senator FIELDING—So it needed a second person to do that?

Mr Keelty—The matter had assumed significant importance given the length of time it was taking to get a result, and it was important that we had the senior liaison officer to whom the person in Dubrovnik normally reported in Dubrovnik to oversee his work and to ensure that the liaison with the Croatian police was at the level that it ought to be.

Senator FIELDING—How many days after Britt had gone missing was the first officer sent to Dubrovnik?

Mr Keelty—On 24 September Interpol Canberra received a Victoria Police missing person report regarding Britt's disappearance that had occurred on 18 September. So there was a six-day delay already before it was received by Interpol Canberra—which is where the AFP was involved. The very next day, 25 September, the AFP senior liaison officer in Belgrade met with the Interpol Zagreb case officer during a routine visit to Croatia. The Interpol Zagreb officer provided a briefing to the SLO at Belgrade on the progress of their investigation. The senior liaison officer at Belgrade subsequently briefed the Australian head of mission in Croatia on the meeting with Interpol Zagreb. The Australian head of mission confirmed that the Department of Foreign Affairs and Trade were managing the disappearance of Ms Laphorne as a consular matter. It was on 29 September, 2008, in consultation with DFAT, that it was decided then to deploy an AFP liaison officer to Dubrovnik to assist the consular staff with police-to-police assistance with the Croatian police, and it was decided to send a person who could speak Croatian.

Senator FIELDING—When was the first contact between the AFP officer in Croatia and the family, given that he was sent on 25 September?

Senator Chris Evans—I think Mr Keelty's evidence was that the decision to deploy the officer was on 29 September. I think he referred earlier to an officer being briefed, because they were actually there.

Senator FIELDING—Yes, so it was 29 September. And when, after 29 September—when the person arrived—did they contact the family? When were they actually in touch with them by phone?

Mr Keelty—He did not arrive in Dubrovnik until 1 October. The Croatian police at that stage were not requiring any direct AFP assistance but were appreciative of the offer of assistance, and it was decided to continue liaison with the family through the Department of Foreign Affairs and Trade, because the matter was still very much a consular matter.

Senator FIELDING—You are aware of the family's concern about the officer not being in touch with the family, are you not? To start with, you are aware of that?

Mr Keelty—As I said at the outset, I do not want to get into a public argument or discussion about that. I do not know that it is helpful. I will put on the record, though, in support of something that you said earlier, that I too am a parent who had a daughter in that part of the world earlier this year. Whilst I can never understand or appreciate what Mr and

Mrs Laphorne have been through, I do appreciate that I would not want a whole lot of public debate about who said what to who and when at a time when Ms Laphorne has not even been buried.

Senator FIELDING—Did either of the officers that were sent have expertise in missing person cases?

Mr Keelty—Yes. The senior officer from London was a very experienced community police officer. The officer we sent was a police officer with 25 years of experience. A lot has been said about this case. I have not said anything publicly about this case, and I do not know that it is helpful to be critical of anybody at this point in time.

Senator FIELDING—Do the duties of an Australia police officer assigned to a missing person case in a foreign country include meeting regularly with the family of the missing person?

Mr Keelty—You are actually creating a role that does not exist. The role of dealing with a missing person overseas is, as I said, primarily a DFAT role and a consular issue. The AFP works in support of DFAT.

Senator FIELDING—Okay. Let's get to one of the points here: why did the Australian Federal Police officer assigned to the case not make contact with the Laphorne family for five days after he arrived in Dubrovnik?

Mr Keelty—Because it was the position that the DFAT Head of Mission and their representative would liaise directly with the family.

Senator FIELDING—Why in the end did the Australian Federal Police officer get in contact with the family? He did not for five days and then all of a sudden did. I do not understand that.

Mr Keelty—Obviously there was some discussion between the DFAT and the AFP officers on the ground and it was decided that the best way forward at that point in time was for the AFP to work with the family more directly.

Senator FIELDING—It was reported that the AFP agent had 'Serbia Forever' tattooed on his leg. I am not questioning the agent's professionalism, but do you think that someone with that tattoo is the best person to send to Croatia, knowing its background and history?

Mr Keelty—The person who went to Croatia at no time displayed that tattoo. That is a bit of mischievous reporting that came from a third party. We are aware of who that third party is. That had absolutely nothing to do with this investigation or the officer's competence in carrying out this investigation.

Senator FIELDING—I do not think that we are questioning the competence. The question was whether you think it was wise to send such a person, given the background between the countries.

Mr Keelty—Before we even sent that officer the senior liaison officer in Belgrade checked with the Croatian police whether it would be acceptable to them to send the officer concerned. We explained that he had a Serbian background, and that was of no concern to the Croatian police. I have had conversations with the commissioner of the Croatian police and with the

investigating officers and they have absolutely no concern about the Serbian background of our officer. It was mischief making at worst. There is in fact support from the Croatian police for the officer that we sent there. As it happened, there was an Interpol general assembly held in St Petersburg, Russia, at the height of this inquiry that was attended by all the heads of police agencies from all around the world. There was a passing of a motion in support of how the AFP conducted itself in Croatia, and the Croatian police, in support of this investigation.

Senator FIELDING—Okay. Why did the AFP warn the Laphorne family not to contact the media?

Mr Keelty—Again, Senator, I do not want to get into who said what to whom or when or be critical of anybody. I am not prepared to say anything further about that.

Senator BRANDIS—It is a proper question, Commissioner—you know that.

Mr Keelty—It is only a proper question if it is true, Senator.

Senator BRANDIS—Do you dispute it?

Senator FIELDING—Is it true or not?

Mr Keelty—I do not know—and this is the point that I was making right at the outset of this. I do not know that it is helpful to anybody to say who is alleged to have said what to whom and when.

Senator FIELDING—You see, the issue is that you and I both know that there are 76 people in Australia who can ask questions—and it is not the Laphorne family. I am asking these on their behalf, and you know that that is the reason. It is very hard. They have certainly got a lot of questions. Are you concerned that Britt Laphorne's family and the Australian journalists were often way ahead of the police investigation and they were talking to key witnesses that the police had not contacted and, in some cases, still do not seem to have contacted?

Mr Keelty—Taken out of the context of the Laphorne matter, it is not unusual for journalists to get ahead of the game, so to speak, because there are absolutely no rules about gathering evidence, there are no rules about inquiries in foreign countries, there are no rules about the admissibility of the issues they find. There are rules and regulations that govern the actions of police. You have got to remember—and I do not mean that disrespectfully—our Australian Federal Police officer has absolutely no powers whatsoever outside of this country. He has no powers in the country of Croatia. So you are there, as I said before, as a liaison officer trying to facilitate inquiries. It is often the case in these matters that the media will get ahead of the game because they are constrained by nothing.

Senator FIELDING—Okay. I understand that the AFP contacted witnesses the Croatian police have not talked to. Is that true?

Mr Keelty—I am not aware of that, Senator. I have no knowledge of that.

Senator FIELDING—Because I am not sure—but I think the role of the AFP was to assist. They did not interview people at all?

Mr Keelty—If they interviewed people it would have been in support of the Croatian police, but I am not aware that they have done formal interviews with people. Of course, they may have spoken to other Australians who may have been in the area at the time.

Senator FIELDING—Is the AFP concerned about the reports of the CCTV footage outside the club disappearing or being inconclusive? Has the AFP looked at that level of detail in this case?

Mr Keelty—We are not actually conducting the investigation, Senator. We are obviously liaising with the Croatian police, and we are aware of each step of the process. But you have got to remember the Croatian police could withdraw their consent for us to be briefed on this investigation at any time. We are there as their guests. We have no power to be there; we have no power to insist that they tell us what is going on. One of the reasons I expressed some reticence at the outset of this is that we want that cooperation with the Croatian police to continue. It is to the advantage of the Laphorne family that a positive relationship is maintained with the Croatian police.

Senator FIELDING—On 6 October, the Croatian police found a body, and at that stage it was thought that it was probably Britt Laphorne's. The police did not inform the Laphorne family before passing the news to the media. When did the AFP get this news? And with that same question: could the government have informed the family before the news went public? Because they heard it publicly in the end.

Mr Keelty—My instructions are that on 10 October Croatian police confirmed that a body that had been located was that of Britt Laphorne and that DFAT and the AFP met with the Laphorne family and advised them of the formal DNA identification of Ms Laphorne. Of course, one of the difficulties is that it is not unusual for some bodies to wash ashore in that part of the world. Of course, one of the things that they wanted to do was to ensure the identification of that body as opposed to another body. I can give you some very vivid examples of where the wrong bodies were identified and the wrong relatives were notified. It is not unusual for them to confirm the DNA test before they have actually identified the body and then inform the family.

Senator FIELDING—The question was whether the AFP heard before the Laphornes heard it through the media. I thought you might know. I would be interested to know the date and the time when the AFP knew about that news.

Mr Keelty—On my instructions it was 10 October. If that is incorrect, I will correct the record.

Senator FIELDING—You said that you spoke with the commissioner of police. When was the first phone call or discussion and how many discussions did you have?

Mr Keelty—The discussion I had with the commissioner of police was through an interpreter and that was on 7 October 2008. I did not attend the INTERPOL General Assembly and the senior police in the Croatian police did attend that INTERPOL General Assembly after that. Our representative at the INTERPOL General Assembly, who is the national manager for border and international operations, continued the liaison directly with the Croatian police at INTERPOL. It was a better way to do it, rather than me talking over the phone through an interpreter.

Senator FIELDING—Will you be doing a review of this process given the public's concern about the level of support and their concern about Australians travelling overseas?

Mr Keelty—I have already asked for a review to be conducted. I directed that that occur late last week.

Senator FIELDING—What are the terms of reference for the review?

Mr Keelty—I can provide them to you, if I can do that on notice.

Senator FIELDING—Thank you. That would be good. Do you know when that review is to be completed?

Mr Keelty—No, because the investigation is still underway and, of course, now the Victorian coroner has jurisdiction in the matter, and we are liaising with the Victorian coroner in relation to a second post-mortem examination. Obviously, when the Victorian coroner is satisfied, the Victorian coroner will have to issue a death certificate and decide what is to occur after that.

Senator FIELDING—If that coroner's report does show foul play, what role will the Australian Federal Police have with the Croatian police?

Mr Keelty—That is a very good question. We will continue to liaise with them. We do not have jurisdiction to investigate an Australian murdered overseas except for in exceptional circumstances involving terrorism. We have offered forensic assistance and formal assistance to the Croatian police and we will continue to do that. That is one of the reasons why we want to maintain a positive relationship with them. I think that is in the best interests of the Laphorne family. Can I say I absolutely understand their anger and frustration at what has happened, but of course I have to manage the other side of it and hopefully deliver to them at some time in the future a result.

Senator FIELDING—Thank you.

CHAIR—Senator Brandis, is your question related to this?

Senator BRANDIS—Yes, it is. I think that you have touched on this but I want to press you a little further on it. When a decision was made to deploy Australian Federal Police personnel to Dubrovnik, why was only one investigator sent, rather than a team?

Mr Keelty—The purpose of the deployment is to liaise. We cannot go there and conduct our own investigation. It is to liaise with the Croatian police and to provide support to DFAT. Had the Croatian police sought further assistance from us, then we would have been in a position to have provided it. But our first approach to the Croatian police was that they did not require any further assistance at that point in time in terms of investigative resources.

Senator BRANDIS—Did not, nevertheless, the Australian officer who was deployed to Dubrovnik assist the Croatian police?

Mr Keelty—In terms of liaison—

Senator BRANDIS—No, in terms of the investigation. Did he not provide assistance to them?

Mr Keelty—Not in terms of undertaking the investigation.

Senator BRANDIS—We understand that the Croatian police were the lead agency. Can you describe for us then the nature of his participation in and engagement with them in respect of the investigation?

Mr Keelty—It largely formed briefings on the progress of the investigation and the direction the investigation was proceeding in.

Senator BRANDIS—You see, Commissioner Keelty, although you were at pains to say earlier to Senator Fielding that this was primarily, or indeed that this was exclusively, a consular matter, from the time of 29 September, I think you said, when the AFP resolved to deploy one of its personnel, by the AFP's own assessment it ceased to be merely a consular matter and became a matter engaging the AFP for purposes beyond consular purposes. You must accept that.

Mr Keelty—No, I do not.

Senator BRANDIS—Are you saying the AFP officer was really an adjunct to the consular role?

Mr Keelty—Yes.

Senator BRANDIS—I see. Finally, can you tell me what support was provided by the AFP?

Mr Keelty—The AFP offered the family the support of a family liaison officers. That is continuing.

Senator BRANDIS—Returning to an issue that Senator Fielding raised with you, as I understand it, you do not dispute the assertion that the family was told by the AFP not to speak to the press?

Mr Keelty—I said that I did not think it appropriate to enter into a debate about that. I am aware that there was a conference call with the family. People's recollection of that conference call differs.

Senator BARNETT—Did the AFP officer offer help and assistance to the Croatian police?

Mr Keelty—Yes.

Senator BARNETT—And that offer was rejected.

Mr Keelty—Initially, yes.

Senator BARNETT—And subsequently?

Mr Keelty—Subsequently we are continuing to liaise. Both the AFP officers are still in Dubrovnik assisting with the liaison with the Croatian police.

Senator BARNETT—But the initial offer was rejected.

Mr Keelty—That is correct. The offer of forensic and other support was rejected. That is not unusual. Obviously what occurs in some of these countries needs to be something that is familiar to their own systems of investigation; their own coronial systems. So it ought not be seen as a negative reaction; it is understandable in the circumstances. But obviously, as I have just said to Senator Fielding—and I mean this—the best thing that we can do is maintain the liaison at a positive level in order to deliver some sort of outcome to the Laphorne family.

Senator BRANDIS—You see, that is why the very question that Senator Fielding asked you, which elicited an objection from Senator Evans, is so germane. You offered assistance. That offer was rejected. Surely in those circumstances the Australian public and indeed the family are entitled to know whether you, in your professional opinion, were satisfied with the quality of the investigation being undertaken by the Croatian police, particularly since they had rejected your offer of assistance.

Mr Keelty—I am sorry, Madam Chair, but that to me was a statement not a question.

CHAIR—It is past 11 o'clock.

Senator ELLISON—I have a couple of questions that I would like to ask.

CHAIR—I am sorry, the committee needs to adjourn now.

Senator ELLISON—There are some misunderstanding about how law enforcement works internationally. I think it is important that we clear it up.

Senator BRANDIS—It has not been the practice of any Senate estimates committee that I have ever been involved in about 8½ years that timetables are enforced with such rigidity that a line of questioning is interrupted when senators are interested in pursuing the matter and are willing to sit on a little later.

CHAIR—Well, Senator Brandis, you need to have a discussion with Senator Troeth about when she chaired the employment, education and workplace relation's committee.

Senator BRANDIS—It would be a great shame if the Senate's determination of this matter—

CHAIR—It being passed 11'oclock the committee is adjourned until tomorrow morning.

Senator BRANDIS—relates to a grudge between you and Senator Troeth.

CHAIR—I thank the witnesses for their attendance today.

Senator FIELDING—On a point of order; if the Senate works on the basis of the way that you are portraying it here tonight at this committee, then it would stall. Many times I have given approval for the Senate to sit longer, with both sides of government. I find it insulting to all Australians that when there are some genuine questions on this issue you will not extend the time. I think that it is an indictment on the Senate to think that you can get away with this. Why not?

CHAIR—When you agree to extend the time of the Senate sitting there is a motion before the Senate and the Senate votes on that. I have no motion before me, as Chair, to proceed past 11 o'clock. We would need to have a private meeting to do that.

Senator BRANDIS—Point of Order, Madam Chair—

CHAIR—I have determined—

Senator BRANDIS—You do not need a motion because it is the custom and the practice of these committees, as you know as well as anybody else, for the Chair, with the consent of participating Senators, to agree to extend the time. You do not need a motion.

CHAIR—It is past 11 o'clock and this committee is adjourned until tomorrow—

Senator BRANDIS—This is a disgrace, Chair, and you are an embarrassment to the Senate.

CHAIR—when we will consider outcomes from the Department of Immigration and Citizenship.

Senator CHRIS EVANS—Senator Brandis, it is too late for overacting. You have finished your line of questioning.

CHAIR—I do want to remind Senators that we have had 14 hours today. Perhaps if time had been organised a little better, then you may have had longer for the Australian Federal Police to appear before you. The committee has determined the program to finish at 11 o'clock and that is exactly what we are doing. I have no other motion before me. The committee is adjourned until 9 o'clock tomorrow morning.

Senator FIELDING—Point of order: can we put a motion in front of the committee?

CHAIR—We are adjourned. Thank you.

Committee adjourned at 11.03 pm