



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

ESTIMATES

(Additional Estimates)

MONDAY, 23 FEBRUARY 2009

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS
Monday, 23 February 2009**

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, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, 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: Senators Barnett, Crossin, Farrell, Fisher, Marshall, Siewert and Trood

Committee met at 9 am

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator the Hon Penny Wong, Minister for Climate Change and Water

Attorney-General's Department

Management and Accountability

Mr Roger Wilkins AO, Secretary

Mr Miles Jordana, Acting Deputy Secretary, Strategic Policy and Coordination Group

Ms Elizabeth Kelly, Acting Deputy Secretary, National Security and Criminal Justice Group

Mr Ian Govey, Deputy Secretary, Civil Justice Group

Ms Sue Chapman, General Manager, Corporate Services Group

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

Mr Stephen Lutze, 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, Federal Courts Branch

Ms Toni Pirani, Assistant Secretary, Family Pathways Branch

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch

Ms Cathy Rainsford, Acting Assistant Secretary, Family Law Branch

Ms Sandra Power, Special Adviser, Federal Courts Branch

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

Ms Vicki Parker, Assistant Secretary, Intercountry Adoption Branch
Mr Matt Minogue, Assistant Secretary, Access to Justice Taskforce
Mr Geoff Gray, Special Counsel, Criminal Justice Division

Output 1.2

Dr James Pople, First Assistant Secretary, Legal Services and Personal Property Securities Division
Mr Iain Anderson, First Assistant Secretary, Territories and Native Title 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 David Bergman, Assistant Secretary, Bankruptcy Policy Branch

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 Kathryn Reidy, Acting 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 Stephen Bouwhuis, Assistant Secretary, International Law and Trade Branch
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 Jeffrey Murphy, Acting Assistant Secretary, Claims and Legislation Branch, Native Title Unit
Mr Greg Manning, Assistant Secretary, Future Acts and System Coordination Branch, Native Title Unit
Mr Andrew Henderson, Assistant Secretary, Territories East Branch
Mr Julian Yates, Assistant Secretary, Territories West Branch

Output 1.7

Ms Katherine Jones, First Assistant Secretary, Indigenous Justice and Legal Assistance Division
Mr John Boersig PSM, Assistant Secretary, Indigenous Policy and Service Delivery Branch
Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch
Mr Kym Duggan PSM, Assistant Secretary, Indigenous and Community Legal Services 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 Branch

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

Ms Elizabeth Kelly, Acting Deputy Secretary, National Security and Criminal Justice Group, First Assistant Secretary, Criminal Justice Division
Ms Sarah Chidgey, Assistant Secretary, Criminal Law Branch
Ms Sheridan Evans, Assistant Secretary, Identity Security Branch
Ms Kerry Knowler, Acting Assistant Secretary, National Law Enforcement Policy Branch
Mr Anthony Coles, Acting Assistant Secretary, Strategic Policy Coordination Branch

Output 2.2

Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division
Mr Steven Marshall, Assistant Secretary, International Assistance and Treaties Branch
Ms Belinda Barry, Assistant Secretary, Mutual Assistance and Extradition Branch

Output 2.3

Ms Catherine Smith, Acting First Assistant Secretary, Security and Critical Infrastructure Division
Mr Lionel Markey, Acting Assistant Secretary, E-Security Policy and Coordination Branch
Ms Belinda Moss, Assistant Secretary, National Security Policy Branch
Ms Annette Willing, Assistant Secretary, Security Law Branch
Mr Michael Jerks, Assistant Secretary, Critical Infrastructure Protection Branch
Mr Alex Webling, Acting Assistant Secretary, Chemical Security Branch

Output 2.4

Mr Tony Pearce, Director General, Emergency Management Australia
Mr Mike Rothery, Acting Assistant Secretary, Emergency Management Policy and Liaison Branch
Mr Peter Channells, Assistant Secretary, Capability and Operational Coordination Branch
Mr Kevin Rheese, Assistant Secretary, Community and Sector Development Branch

Output 2.5

Mr Martin Studdert, Executive Director, Protective Security Coordination Centre
Mr Paul de Graaff, 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, Assistant Secretary, Security Coordination Branch
Mr Jim Dance, Director, Attorney-General's Department Coordination Centre, Information Coordination Branch

Output 2.6

Dr Karl Alderson, Acting Executive Director
Ms Frances Brown, Assistant Secretary, Business Development and Governance

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 Kevin Rheese, Assistant Secretary, Community and Sector Development Branch
Ms Annabel Dobson, Acting Director, Natural Disaster Mitigation Relief

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner
Mr Peter Bache, Acting Executive Director
Mr Nicholas Sellars, Manager, Policy and Research
Mr Brett Adam, Director, Corporate Services

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, Programs Division
Mr Peter Brady, Senior Legal Adviser

Australian Customs and Border Protection 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, Passenger, Trade and Facilitation
Mr Steven Groves, Chief Financial Officer
Mr Peter White, National Director, Compliance
Ms Jan Dorrington, National Director, Passengers
Ms Sue Pitman National Director, Trade
Rear Admiral Allan Du Toit, Commander, Border Protection Command
Mr Kingsley Woodford-Smith, National Manager, Enforcement and Investigations
Mr Nigel Perry, National Director, Maritime Operations Support
Mr Jeff Buckpitt, National Director, Intelligence and Targeting
Dr Ben Evans, National Director, Law Enforcement Strategy
Ms Jaclyne Fisher, National Director, Cargo

Australian Federal Police

Mr Mick Keelty APM, Commissioner
Mr Andrew Colvin APM, Acting Deputy Commissioner National Security
Mr Tony Negus APM, Deputy Commissioner Operations
Mr David McLean, Chief of Staff
Mr Andrew Wood, Chief Operating Officer

Australian Government Solicitor

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

Australian Human Rights Commission

The Hon Catherine Branson QC, President
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

Mr David Richards, Manager, Finance and Services

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

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen PSM, Chief Executive Officer

Mr Thomas Story, Executive General Manager

Mr Alf Mazzitelli, General Manager Corporate (Chief Financial Officer)

CrimTrac Agency

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 Gordon Foster, Executive Director, Corporate Services

Mr Peter Bowen, Chief Finance Officer

Federal Magistrates Court of Australia

Mr Richard Foster PSM, Acting Chief Executive Officer

Mr Steve Agnew, Acting Deputy Chief Executive Officer

Mr Grahame Harriott, Acting Chief Finance Officer

High Court of Australia

Mr Andrew Phelan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Jeff Smart, Manager Corporate Services

Insolvency and Trustee Service Australia

Ms Veronique Ingram, Chief Executive

Mr Peter Lowe, Executive Director

Mr Robert (Bob) Morison, Chief Finance Officer

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

CHAIR (Senator Crossin)—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 additional expenditure for 2008-09 and related documents for the Attorney-General's Portfolio. The committee may also examine the annual reports of departments and agencies appearing before it. The committee is required to report to the Senate on 17 March 2009 and we have fixed 14 April 2009 as the date for the return of answers to questions taken on notice.

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 a committee and such action may be treated by the Senate as 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 specially provided otherwise. The Senate has also resolved that an officer of a department of the Commonwealth or of the 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 a superior officer or in fact to the minister. This resolution prohibits only questions asking for opinions on matters of policy but 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 then they 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 in fact be made by the minister and should be accompanied by a statement setting out the basis for that claim.

[9.04 am]

Australian Human Rights Commission

CHAIR—I welcome Senator the Hon. Penny Wong, who is here representing the Attorney General and the Minister for Home Affairs. I also give a very warm welcome to the Hon. Catherine Branson, who is the new President of the Australian Human Rights Commission and is here representing the commission. Ms Branson, welcome to your first estimates.

Ms Branson—Thank you very much.

CHAIR—I hope it is an enjoyable experience for you. I will see if I can do my best to make sure that it is.

Ms Branson—I am very grateful.

CHAIR—To begin our proceedings this morning, Senator Wong, do you have an opening statement that you want to make?

Senator Wong—No, I do not.

CHAIR—Ms Branson, do you have an opening statement for us?

Ms Branson—Because this is my first appearance, I am grateful for the offer. I propose to speak just briefly on three matters by way of an opening comment. Firstly, could I repeat that I was honoured to be appointed as President of the Australian Human Rights Commission for a five-year term, commencing last October. I hold this position, which I understand to have important leadership responsibilities within the commission and touching on human rights more broadly, on a full-time basis. The second matter I want to raise is that, though I have only been at the commission for quite a short period of time, I am already keenly aware of the breadth and the value of the work that the commission undertakes. But, as I think senators will understand, I have taken up this position at a time when the commission's ability to carry out in a timely manner and to a high standard its statutory mandate is constrained by the resources available to it. In speaking of that mandate, I am speaking particularly of its complaints-handling function, its function of publishing reports and making submissions to parliamentary committees and other bodies, and its public education and outreach function. Thirdly, I would just like to mention that this is an exciting time for human rights in Australia. For the first time, the government is engaging the Australian population in discussions about human rights through the National Human Rights Consultation. The commission will do what it can to assist all members of the public to take part in that consultation and will additionally itself make a substantial submission to the consultation committee on the issues raised by its terms of reference. Thank you, Madam Chair, for the opportunity make these opening remarks.

CHAIR—Thank you very much and, again, welcome. Mr Innes, Mr Calma and Ms Broderick, good morning and welcome. Are there any questions of the Australian Human Rights Commission?

Senator BARNETT—Ms Branson, thank you for being here and congratulations on your appointment.

Ms Branson—Thank you.

Senator BARNETT—I have some questions for the Human Rights Commission. The first area of questioning relates to the inquiry into the freedom of religion and belief project. I would like to go back to Mr Calma, who answered those questions at the previous estimates. At the previous estimates, I quoted from the media release of 17 September 2008. I quoted Mr Calma. Mr Calma, at the time, you were not aware of the statement that I put to you. It was directly from the media release. I did not have it in front of me at the time, but you could not recall the statement, which was quoting yourself on 17 September. The media release is

headed 'Like oil and water? - Religion and human rights in Australia'. I asked you to explain why the project included an inquiry into the involvement of religion in debates about homosexuality or abortion. I am wondering if you can firstly answer this question: why did you use the words 'Like oil and water? - Religion and human rights in Australia'? Secondly, can you explain why there was any necessity to have an inquiry into the involvement of religion in debates about homosexuality and abortion? Do you need a copy of that media release?

Mr Calma—No, I have it, thank you.

Senator BARNETT—You have read it?

Mr Calma—Yes. I agree that I could not recall the precise quote that you mentioned last time, and you were unable to provide the source from where you are quoting, so we left it at that. We took on notice a number of questions. We took question 49 on notice and provided a report to the Senate. It is important to restate that this is not an inquiry. An inquiry is a totally different formal process. This is a project that is taking place under the National Action Plan, and that is made very clear in all the documentation that we have. 'Like oil and water' was a phrase that was considered by the staff. It is something that I supported. Oil overlays water like religion overlays a lot of our lives. It was with that connotation that we looked at the phrase.

Senator BARNETT—Let us start with this not being an inquiry. You have released a discussion paper. You are calling for feedback and comments on it. I assume, in due course, you will present a report from the commission to the government. I presume that will be made public in due course. Why would it not be called an inquiry? There have been a range of articles in the media referring to it as an inquiry. Are you not seeking to gain the views of the public with respect to the discussion paper? Why would it not be appropriate to refer to it as an inquiry?

Mr Calma—The term 'inquiry', in the case of the Australian Human Rights Commission, has a certain connotation. This is not a formal inquiry process. It has not been called for either by government or as a commission-wide inquiry.

Senator BARNETT—We know it is not called for by government, because it was set up and established by the Human Rights Commission without any notice to the government at the time. You think it is inappropriate to refer to it as an inquiry?

Mr Calma—Yes.

Senator BARNETT—How else do you refer to it?

Mr Calma—It is a discussion paper that has been produced. It is a project under the National Action Plan and, as that project, it is a follow-on from a report on article 18 that we did some years ago. It is a follow-on from that that is now an issue.

Senator BARNETT—But you are seeking public on that, are you not?

Mr Calma—We are, yes.

Senator BARNETT—Will you prepare a report and recommendations to the government?

Mr Calma—We will, yes.

Senator BARNETT—As far as I am concerned, it satisfies my understanding—and the understanding of many others—of it being an inquiry. The use of the words—

Senator Wong—I think Mr Calma had something to say.

Senator BARNETT—Of course.

Mr Calma—The other key significant difference is that this is not an inquiry that is going to be tabled in parliament. It is a report following on from a discussion paper. We have invited comments from people around Australia. We have over 1,200 responses so far, and it is considered by many parties to be a very important issue to raise.

Senator BARNETT—Be assured that other members of parliament or I may table the report in the parliament. I assume you are happy for it to be a public document.

Mr Calma—It will be a public document.

Senator BARNETT—Thank you. How many complaints did the commission receive from ordinary Australians concerning their freedom to practise the religion of their choice and that practise being under threat prior to the discussion paper being made public?

Senator Wong—It might be appropriate for you to tell Mr Calma how you define an ordinary Australian.

Senator BARNETT—Would you like to have a go at that, Minister? How would you describe an ordinary Australian?

Senator Wong—I did not use the phrase. I think that, if you are asking him how many ordinary Australians did something, it would be reasonable for you to be clear what exactly you are asking him. Is it non-peak organisations or whatever? I also make the point, for the purposes of the record, that the copy of the media release I have been handed, on which Senator Barnett has been asking questions, has the phrase ‘like oil and water’ with a question mark. It is important to point out that the headline on the media release is posing a question—for the purposes of ensuring the record is correct.

Senator BARNETT—Absolutely. Mr Calma, how many submissions did the Human Rights Commission receive with respect to concerns regarding freedom to practice their religion or their choice of religion?

Mr Calma—Generally, there is no avenue for people to lodge complaints with the commission in relation to religion and belief. That was not the reason why this discussion was undertaken. It was not based on religion. I do not have those facts at hand, but they would be very minimal.

Senator BARNETT—Could you take on notice how many submissions or concerns were expressed to the commission prior to the release of the discussion paper?

Mr Calma—On submissions, we invited submissions in September last year—

Senator BARNETT—No, prior to the release of the discussion paper, which was 17 September. Could you please take on notice how many submissions or expressions of concern or letters you received with respect to that matter?

Mr Calma—Okay.

Senator Wong—Mr Calma is being very polite to take that on notice but I thought his evidence was that it was not really an avenue for complaint. You are asking for statistics in relation to an avenue of inquiry which is not really formally open to the public.

Senator BARNETT—Minister, Mr Calma used the word ‘minimal’ number. I am happy to accept that. I would like to know how many.

Mr Calma—Yes.

Senator BARNETT—In the discussion paper it says there is no evidence put forward to suggest the ability of Australians to practise their religion freely is under any particular threat, so what is the rationale behind the inquiry?

Mr Calma—As I indicated earlier, this inquiry came about as part of the national action plan project that was initiated by the previous government to look at issues relating to Muslim Australians and how they settle into Australia. We have established a number of working parties and reference groups, and as part of that they provided advice that this was an issue that needed to be followed up. This came about as part of the 2006-07 additional estimates funding. The then minister, Philip Ruddock, released the report process in June 2007, when we had that discussion, and it has followed on from there. It also relates back to article 18 of the universal declaration of 1948. We looked at that some years ago—I believe it was 1998—and this is a subsequent report to that report.

Senator BARNETT—All right. I accept what you are saying, but some would say there is a tenuous link between the terms of reference for the discussion paper and the inquiries and reports that you are referring to. Nevertheless, with respect to the words ‘Like oil and water?—Religion and human rights in Australia’, which is the heading, that would conjure up to most Australians the issue of incompatibility between the two: oil and water, religion and human rights. That would be a fair assessment: are they incompatible, question mark. Is that the way the commission sees it?

Mr Calma—I am glad you pointed out the question mark because it was a question to stimulate discussion and thinking. I must say that, from the 1,200 submissions we have seen so far, there are wide-ranging views, and most of the senior religious leaders that we have had discussions with value this study.

Senator BARNETT—I just wonder why you used those words. Some would argue that religious institutions, and Christian institutions in particular, have been at the forefront of protecting human rights, whether it goes to the antislavery movement; to combating poverty, with the Make Poverty History campaign more recently and supporting the Millennium Development Goals; to the provision of welfare for those in need; to the protection of perhaps the refugee community. And obviously yesterday we saw the leadership role of churches with respect to the national day of mourning. So it is perhaps a bit of a shock and a concern to think that there is a view, at least held by some, perhaps in the commission and elsewhere, that they are incompatible when many certainly in the religious institutions, Christian institutions, see them as actually supporting human rights rather than being incompatible with human rights. Do you wish to respond to that?

Mr Calma—I will. That is one way of looking at it. The other could be very much that people are supporting the notion that it is not like oil and water and that it will be drawn out in

the submissions that there is a very significant contribution. From the commission we do not come with any bias at all. It is a very open—

Senator BARNETT—The heading of your media release, I put to you, is quite provocative and is asking if they are incompatible: ‘Like and oil water?’ Nevertheless, let us move on, Mr Calma. One of the researchers commissioned to write the final report into the freedom of religion and belief is Melbourne Anglican priest and Monash University professor Gary Bouma. Mr Bouma was a key witness for the prosecution in a high-profile case brought against two Christian ministers by the Islamic Council of Victoria under Victoria’s controversial religious vilification legislation. Some would say that the Victorian case exposed how religious vilification laws stifle free speech and exacerbate religious tensions where harmony and tolerance previously existed. Given Mr Bouma’s support for religious vilification laws, is it fair to say that federal religious vilification laws are part of a possible recommendation flowing from the report?

Mr Calma—We do not come with any preconceived outcomes for this report. If that is what the committee and the submissions indicate then I believe that that is something that we from the commission will be promoting and it is advice that the parliament might want to consider.

Senator BARNETT—So at this stage you are not ruling out religious vilification laws as an outcome of the inquiry?

Senator Wong—I would have thought that Mr Calma had already answered that question in terms of the commission’s role.

Senator BARNETT—I think Mr Calma is doing very well, Minister, in answering questions.

Senator Wong—Yes, I think he is. I agree.

Senator BARNETT—So I am not sure why you needed to intervene and delay the process.

Senator Wong—I was not aware I was delaying, Senator Barnett. I am making the point—

Senator BARNETT—We were having a helpful interchange.

Senator Wong—I had not finished.

CHAIR—Senator Barnett, let the minister finish, please, before you interrupt her.

Senator Wong—I am simply making the point that you are re-asking a question that I think Mr Calma has already answered.

Senator BARNETT—Thank you for making the point. Let us see how we go and see what Mr Calma says. Mr Calma, would you like to respond any further?

Mr Calma—Sorry, Senator. Could you repeat the question.

Senator BARNETT—The commission is not ruling out in its recommendations religious vilification laws as an option for further action in Australia?

Mr Calma—At this stage we do not rule in or out anything that will come out of the report. I indicated that over 1,200 submissions have been received to date. They have got until

the end of the month to run, and we expect that we will receive more. A number of other consultation processes will take place.

Senator BARNETT—The commission's submission to the recent Senate inquiry into the Sex Discrimination Act recommended stripping away exemptions from antidiscrimination legislation for religious organisations and faith based schools. Can either the commission or the minister rule out taking away these important religious freedoms?

Ms Broderick—I can speak to that. Our recommendation there was that all exemptions should be reviewed under the act within the next three years. That included religious exceptions. It also included exemptions for clubs and a whole range of exemptions. The recommendation was that they should all be reviewed with a view to amending them, getting rid of them or leaving them as is. So there should be a review process.

Senator BARNETT—I seem to remember that during the inquiry, Ms Broderick—and I stand to be corrected and I am happy for you to take this on notice—there was a strong disposition towards the removal of those exemptions for religious institutions and for faith based educational institutions.

Ms Broderick—I have our recommendations here—I will just read you that.

Senator BARNETT—We can go back to the transcript; I do not want to delay you.

Ms Broderick—It was recommendation 38. It was a three-year sunset clause on permanent exemptions, of which the religious exemptions were one. So it placed a three-year sunset clause on all permanent exemptions and exemptions that limit gender equality, and referred all permanent exemptions to a second stage of review with a view to them either being removed or narrowed on human rights grounds.

Senator BARNETT—I think that confirms what I just said. We know what 'sunset clause' means. Let us go to the budget for the freedom of religion and belief project inquiry or however we wish to refer to it. With regard to the project I asked on notice for the provision of a breakdown of the total budget, including the expenditure to date, and the commission replied that a total budget of \$190,000 excluding GST was allocated in 2006-07 and that \$190,000 excluding GST had been expensed on the project. I would like you to clarify that answer. Have you already expended all the funds allocated and if not please advise the costs to date for the project.

Mr Calma—My advice is that the money was allocated and was expended in that period.

Senator BARNETT—And in 2007-08?

Mr Richards—All the expenditure that was reported in the answer to the question on notice occurred in the 2006-07 period. There has been a further amount of expenditure in the current year of \$13,217.

Senator BARNETT—That is 2008-09?

Mr Richards—Yes.

Senator BARNETT—What about in 2007-08?

Mr Richards—There was no expenditure.

Senator BARNETT—What was the \$13,217 expenditure related to?

Mr Richards—I do not have the breakdown of the expenditure but I think it is travel in relation to the project.

Senator BARNETT—That sounds like a small amount of money for a project of this size and the consultation that is planned and underway.

Mr Richards—The \$190,000 in 2006-07 was for the commencement of the project through the Australian Multicultural Foundation.

Senator BARNETT—I am happy for you to take this on notice but this is very strange. You have an inquiry taking place, you expended monies in 2006-07 and then you say there was no money spent in 2007-08 and this year some \$13,000 was spent.

Mr Richards—That is correct.

Senator BARNETT—You have released a discussion paper, you are having consultations, you have consultants, I understand, in place and you have expended \$13,000. It does not seem to add up.

Mr Richards—The contract with the Australian Multicultural Foundation relating to the service provision was established in 2006-07.

Senator BARNETT—Go on. What was the contract for?

Mr Richards—Well, I do not have the details of the contract and I am not responsible for the project.

Senator BARNETT—Well, somebody must be. Perhaps the minister could assist in this regard to help the commission find the relevant officers to answer the questions related to the cost of the project.

CHAIR—Can I just assist here: does the Department of Finance and Deregulation manage the building of those?

Senator Wong—I think Mr Richards asked if he could take that on notice. This is a contract relating to the 2006-07 financial year, so obviously it is the previous government. It might be useful if we could take on notice Senator Barnett's questions and provide him with a comprehensive answer.

CHAIR—Thank you, Minister.

Senator BARNETT—I am happy for you to do that, but could we clarify whether the consultation for which that money was meant related to the project now on foot.

Mr Calma—Yes, it was. The contracts were entered into in 2006-07 and it is an ongoing project. We expect that there will be more money expended this year as releases are made.

Senator BARNETT—Do you have consultants working on the project? If so, how many, are they full time or part time and on what basis are they contracted?

Mr Calma—We have a number of consultants writing up various projects and papers. I can take on notice and bring you back the full details of contracts per project that all come under this major project.

Senator BARNETT—Right. And is it your understanding that all of those consultants that are employed that are working now on the project were commissioned back in 2006-07 and are funded by that \$190,000-odd?

Mr Calma—Yes, that is the case.

Senator BARNETT—All right. And is Mr Bouma one of those consultants?

Mr Calma—Yes. I believe he is writing up a paper, and he is also a member of the project steering committee.

Senator BARNETT—Can you advise who else is on the steering committee and the role of the steering committee?

Mr Calma—I can provide that information.

Senator BARNETT—Do you want to do that on notice?

Mr Calma—I will take that on notice.

Senator BARNETT—All right. How many researchers are there involved in the project?

Mr Calma—Will that all be part of the question on notice you just asked?

Senator BARNETT—If you can answer it now, do so. If you need to take it on notice, I am happy for you to do so.

Mr Calma—I will take that on notice.

Senator BARNETT—Are there anticipated costs in the future regarding the project? If so, what are the projected costs? There is \$13,000 so far for this financial year. Are there any further expenses planned?

Mr Calma—I am advised that there is no further budget allocated to this project. We expect that it will conclude within the existing commitment that we have.

Senator BARNETT—Which is when? Just remind me when the report is due.

Mr Calma—The report will be due sometime in early 2010.

Senator BARNETT—We have not got a fixed date?

Mr Calma—No, we do not. It is a matter of receiving the submissions and analysing the submissions. You may recall that this project is a four-year project which concludes in 2010 with the overall national action plan funding. As part of a number of projects under the national action plan, this is just one of them.

Senator BARNETT—How many staff of the commission are working on the project?

Mr Calma—On this specific project? One full-time staff member—but not 100 per cent of her time—is devoted to this project, and there is support from senior staff.

Senator BARNETT—Where will the project be going next? Are they going to different states and territories and getting feedback from the public? Can you outline the project for us?

Mr Calma—The consultations to date have occurred in the Northern Territory, Western Australia, Tasmania and South Australia; other states are scheduled to take place up until the middle of this year.

Senator BARNETT—I am happy for you to take it on notice. We are not getting much information at this stage. I am happy for you to table any information on the project—where they are going to go, what time, what dates and places. This is what we are interested in.

Mr Calma—If we have the actual dates we can table them, but at this stage—we try as much as possible to link our interstate travel with other events to make sure that we can be as efficient as possible with the limited budget that we have for this and other projects within the commission—the dates might not be defined.

Senator BARNETT—How many submissions have there been to date?

Mr Calma—Twelve hundred.

Senator BARNETT—Why don't you take on notice and provide the committee with as much information about the project as possible in terms of past activities—where they have been held, when they have been held, what submissions have been made, the identity of those if appropriate and what your plans are for the future regarding the project. Are you able to assist the committee in that way?

Mr Calma—Yes, we should be able to.

Senator BARNETT—That would be very useful. Please attach information about the costs and budgets of each of those activities, in terms of staff, consultants and researchers.

Mr Calma—I am sure that that will be available. One point of clarification: we are indicating that the amount of money that was expended in 2006-07 was \$190,000. For the year to date this financial year, we have spent \$13,000. The overall budget for this project is \$245,000, so we expect that there is still some minor expenditure—there is about \$22,000 unexpended at this stage—for the rest of this financial year.

Senator BARNETT—All right; let us move on. Is the commission's sex and gender diversity project self-initiated?

Mr Innes—It is a self-generated project of the commission, which follows submissions we received in our 'same-sex: same entitlements' inquiry that raised issues which were broader than that inquiry.

Senator BARNETT—When was a decision made to commence the project?

Mr Innes—I do not have a date for that. The first discussion paper for the project would have been released in the first half of last year. I am sorry—

Senator BARNETT—Do you want to take that on notice?

Mr Innes—Certainly.

Senator BARNETT—No problem. Was approval sought from the minister prior to the project commencing or, perhaps with usual procedure, was the minister advised after the project commenced?

Mr Innes—Our usual procedure is not to advise the minister after the project commences; our usual procedure is to advise the minister prior to or at the time a project commences. The commission, as an independent statutory body, does not need to seek the approval of the minister or the government to commence projects such as this. In fact, part of our independent

function is that we initiate such projects. In my time at the commission—and for some time before that, as far as I am aware—it has always been the commission's practice to advise the relevant minister prior to the commencement of such a project.

Senator BARNETT—Yes, but that is after a decision has been made by the commission to commence the inquiry.

Mr Innes—It would be hard to advise the minister before a decision was made, because the inquiry would not have—

Senator BARNETT—That is because you are an independent entity and, some would say, a law unto yourselves.

Mr Innes—I certainly would not say a law unto ourselves, Senator, but we are an independent statutory authority and so the expectation as part of our function is that we would carry out projects in the area of the commission's remit, which is set out in the Human Rights and Equal Opportunity Commission Act.

Senator BARNETT—How is the project funded? What is the budget for the project? Please detail the expenditure to date and the planned expenditure.

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

Senator BARNETT—I am happy for you to.

Mr Innes—I can tell you this much. It is funded from the commission's operating budget; we do not have independent funding for this project in the way that we do for the project you were previously discussing.

Senator BARNETT—All right. In your answer on notice perhaps you could advise if any consultants, researchers or others outside of the commission have been appointed and how many staff are allocated to this project.

Mr Innes—I can advise that there have been no separate consultants appointed. The project was carried out in the main by one particular member of the commission staff, with some support from me and other staff members in charge of the Human Rights Unit. Because no consultants were appointed there is no separate budget for this project. It was part of the work of one policy officer, but would have also included the travel costs for that policy officer and me—but of course, as Commissioner Calma indicated, we work very hard not to travel to any place just for one project, so it is hard to quarantine. Also, it would have included the costs in our IT area because as part of the project we ran a blog which required some IT time.

Senator BARNETT—When will the final report be published? Can we assume that the report and the recommendations will be presented to the government and made public?

Mr Innes—You certainly may, Senator. It is our intention to publish the report next month. We are currently negotiating a time and place for the launch of that report. It will be a document presented to government and a public document.

Senator BARNETT—The commission's initial proposal for reforming the current system for the legal recognition of sex includes support for: firstly, allowing married persons to legally change their sex; second, children to legally change their sex; and, three, the invention

of a third legal category, to be known as intersex. I was wondering if you could advise whether the commission has discussed these proposals with the minister or his advisers.

Mr Innes—We did not invent that description of people; that is a term which is in use amongst the gender diverse community and has been for some time. Those matters to which you refer are matters for discussion as part of the project. The commission at that point had not determined its views in that area because putting those issues into the public arena was part of the consultation process. It has now, because the commissioners have signed off on the report, which is not yet a public document. We will certainly inform the minister and make a copy of the report available to the minister before it is made public and before the launch.

Senator BARNETT—What is the commission's position, then, with respect to endorsing or not endorsing those three points I made?

Mr Innes—That will be a matter made public when the report is released next month.

Senator BARNETT—Perhaps we could move to the issue of the commission's view on the charter of human rights. Could you outline to the committee the view of the commission with respect to the merit of a charter of human rights or a bill of rights?

Ms Branson—It may be appropriate if I answer this question. The commission has taken the position that it supports the enactment of a statutory human rights act for Australia.

Senator BARNETT—When did it make that decision and on what basis?

Ms Branson—It made that decision at the commission meeting held in November of last year. It made that decision, having evaluated options for protecting human rights for Australians and having regard to the terms of reference of the national consultation. The commission was of a view that the protection and promotion of human rights in Australia would be enhanced by the enactment of a human rights act.

Senator BARNETT—What would be included in the human rights act? Can you outline the content and objective of such legislation?

Ms Branson—What could be in a human rights act would be a matter entirely for the parliament of course, but we envisaged an act that would contain a recognition or an identification of the human rights that Australians wish to have protected in a legislative way. We envisaged that whether by that act or by some other mechanism there would be a committee of the parliament that would report to the parliament on new legislation as to its conformity with human rights in a way comparable to the report of the United Kingdom Subcommittee on Human Rights.

We did not envisage, as follows necessarily from our recommendation for an act rather than constitutional change, that the courts would be able to strike down any law. But we did envisage that the act would, to the extent that it is constitutionally possible, authorise courts to say that particular legislation was not consistent with the protection that the human rights act recognised. We envisaged that the act would be likely to provide that courts should construe legislation to the extent possible consistent with the legislation and where they were not able to construe legislation to the full extent to protect human rights as the act envisaged, that they could so state. That would be a matter we would envisage would subsequently be debated in the parliament, which would make a decision whether to amend the law or not.

Senator BARNETT—Do you think this legislation is a requirement set down in the various terms and conditions of the various international treaties and covenants that Australia has signed?

Ms Branson—Are you asking whether I think the conventions require Australia to have a human rights act?

Senator BARNETT—Yes.

Ms Branson—I am not sure that I would be the final authority on that; I have not proceeded on that assumption. I think you would need to ask an international lawyer for an opinion on that.

Senator BARNETT—Do you think that there is a very persuasive case flowing from international treaties and laws that we should have a human rights act?

Ms Branson—I certainly think, so far as my private views are important, that it is consistent with Australia's international obligations and that where Australia has taken on international obligations to respect human rights it is entirely consistent with that to have some legislative provision domestically to protect those human rights.

Senator BARNETT—Do you see the Victorian and/or the ACT legislation as models on which federal legislation should be based?

Senator Wong—I have not intervened, Senator, because Ms Branson obviously occupies a particular position and the commission has put a view about legislation around human rights, but you really are getting into the president's opinion on a hypothetical in relation to Commonwealth legislation now.

Senator BARNETT—The Victorian and ACT legislation is certainly not hypothetical—

Senator Wong—No, of course it is not. But the question is not: does that legislation exist. The question is: is that the model you would envisage for Australia, and I really think that is well beyond what the president of the commission can respond to at this stage. Ultimately that is not a decision for the commission and you are asking her a question of opinion.

Senator BARNETT—Through you, Chair, in response to the minister: Minister, the commission is an independent authority. It has been made it very clear by Mr Innes and many others at the commission that they can act alone and decide matters based on their views and consultation with a whole range of people no doubt, and that they can act alone as an independent statutory authority. They have views on human rights matters. They are the Australian Human Rights Commission. Following the fact that they have made clear that they support legislation in this country to protect Australians' human rights, to ask them if it would be modelled on existing Victorian or ACT legislation, quite frankly, is not outside their remit to answer. So I disagree strongly with your views, and I would ask Ms Branson to consider that question.

CHAIR—Perhaps if I could clarify this a little. Ms Branson, does the Australian Human Rights Commission intend to provide a submission to the current national consultations regarding a charter for rights?

Ms Branson—We do.

CHAIR—Has that submission been made and is it public?

Ms Branson—It has not been made, so, of course, it is not public. We would not expect our final submission to be available until near the closing time for the making of submissions, which is in June of this year. It may be that parts of our submission will be made available publicly earlier, but our final submission will not be available until June. However, the commission is happy to say, as I have said, that it will be advocating for a human rights act for Australia.

Senator Wong—Could I, through you, Madam Chair, just respond to Senator Barnett's comments. I think Ms Branson quite correctly prefaced all of her answer to an earlier question by saying that obviously any legislation is a matter for the parliament. That is the point I am making. You are asking this office holder to give you a view about what future legislation might look like, and in particular whether it would look like legislation which already exists. Ultimately, the commission will make its submission and the government will consider the report from the inquiry, but really the question goes well beyond what the role of the commission is in terms of legislating.

Senator BARNETT—Minister, that is nonsense and you know it. They are an independent statutory authority. We are reminded of that regularly. They are funded by the Commonwealth. They have a view. If they decline to express a view, that is their decision.

CHAIR—So, Senator Barnett, what are you seeking?

Senator BARNETT—I am asking the question, which I think Ms Branson has heard well, but I will repeat it. What do you envisage for the human rights protection legislation—human rights act—that you would put forward for Australia? Is it based on Victorian and ACT legislation? Do you see that as model legislation?

Ms Branson—Senator, the commission's processes work this way. Matters come to the commission for decision and a decision is made by the commission, normally in a meeting held every second month. A critical decision for the commission to make early in the time of the national consultation was whether the commission would choose to press for constitutional amendment in the nature of a bill of rights of the United States' kind; whether we would press for statutory protection of the kind of—but not necessarily picking up the detail—models that we have seen in the ACT, Victoria and in the United Kingdom; or whether we would advocate for other forms of human rights protection, either alone or in conjunction with those. The decision made by the commission in November was not to press for the inclusion of a bill of rights in the Australian Constitution.

Senator BARNETT—Does that mean you do not support it?

Ms Branson—We are not advocating for it and we will not at this stage be recommending it to the national committee. We will be recommending that it recommend to the government a human rights act for Australia. The detail of what would be in such an act is not a matter that has yet been before the commission, and so there is no commission view on the detail. We would not envisage drafting legislation for the national consultation to recommend to the government. We do not see that as our role. It is likely that before our submission is finalised that there will be aspects of what we think should be in that act that we will agree on as a

commission and will include in our final submission, but those details have not yet come before the commission for decision.

Ms Branson—We of course see the UK, the Victorian and the ACT acts as models which can be looked at and which will no doubt inform our consideration. We will look at what has happened under them, and I assume they will inform the recommendation made by the committee.

Senator BARNETT—Right. Because you are a statutory authority independent of government, will the commission be arguing strongly in favour of a human rights act for Australia? You will put forward a submission to the Brennan review. Will you be lobbying in addition to that and advocating strongly for a human rights act for Australia?

Ms Branson—Yes.

Senator BARNETT—How will you do that?

Ms Branson—We will do that in our submission to the national consultative committee itself. Members of the commission will be speaking publicly in a number of forums when invited to do so. There will be other materials published by the commission that will advocate for a human rights act for Australia. There are already some publications that so advocate available on the commission's website.

Senator BARNETT—How does Australia rate on human rights? You would be aware of a range of key performance indicators and 'league tables', as some people might refer to them.

Ms Branson—Generally speaking, I think Australia has a human rights record of which we, as Australians, can be proud, both in absolute terms and in comparison with many other countries—which is not to say that there are not areas in which we can do better; I think there are.

Senator BARNETT—Can you be more specific and provide advice, either now or on notice, on how you measure Australia's human rights performance?

Ms Branson—We do not maintain an overarching monitoring of the human rights records of other countries. That is not our remit. Our remit is internal, as you know. I understood you to be asking me to express an opinion, as I think you asked my predecessor. I have expressed my private opinion that I think Australia, in comparison with other countries, has a good human rights record.

Senator BARNETT—Now I am asking you to advise the committee of league tables or, perhaps, UN committee tables, inquiries and reports on how Australia rates on human rights and different aspects of human rights.

Ms Branson—I apologise that I am not aware of such a table that rates us against other countries. There may well be one, but I apologise that I am not familiar with a rating table.

Senator BARNETT—Is that something you could take on notice?

Ms Branson—I can certainly make inquiries if you would like me to.

Senator BARNETT—Yes, please. I am a little surprised to hear you say you are not aware of that. You are the Human Rights Commission. It is surprising that you are not aware of how our country rates with comparable countries around the world in credible reports and papers.

CHAIR—Would there not be, through the international sphere, a number of reports on discrimination against women or the disabled? I would have thought there was a range of reports and obligations Australia has to report internationally—say, to the United Nations. We may well be ranked differently, depending on what the area is.

Ms Branson—I understood Senator Barnett to be asking me if there were an overarching, in a sense, barometer rating all nations on their human rights record. There may be one, but if there is I apologise; I am not familiar with one. There are, of course, publications touching on different aspects of Australia's human rights record, but I did not understand Senator Barnett to be asking me about that.

CHAIR—Mr Innes, did you want to say something?

Mr Innes—No, I would say exactly what President Branson said.

Senator BARNETT—I concur with the chair and ask you to take on notice and look at the reports and papers available at an international level that would assess Australia's performance on human rights and the different aspects of human rights. For example, we have just had a senate committee inquiry into sex discrimination. During that inquiry, CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women, was referred to, and the report was provided to say that Australia was in, I think, the top two in the world with respect to the protection of the rights of women. Please take that on notice and advise the committee of the various reports that you discover in your research.

Ms Branson—I am sorry; could I clarify what you are asking me? I am of course aware of reports on particular aspects of Australian human rights records of the kind that you have just identified. If you wish me to have staff of the commission search every publication of that kind, of course I will do what I can. I understood you to ask me whether there was any composite assessment of Australia's overarching human rights record when compared with all other comparable nations' overarching human rights records. I do not know of it. If you would like me to see if there is one, of course I am happy to do so.

Senator BARNETT—Excellent, thank you; and if you can do it in two parts—the overarching and the different components.

CHAIR—Ms Branson, is that not something that is mentioned or summarised in your annual report each year? Perhaps the other commissioners may be able to assist here.

Ms Branson—The overarching record—that is, how, balancing all aspects of human rights one against the other, leading to a total score for a nation, would Australia rate against other nations? I am not aware of it existing, but it may and I am happy to make inquiries. We have not reported on it in our annual report—which is not to say that we do not report on some international reports on aspects of human rights, which we do report on.

CHAIR—That is what I was alluding to. We will go to Senator Siewert for questions.

Senator SIEWERT—Firstly, I want to ask Mr Calma some questions about the rep body process and where the consultation process is up to. It has been a little bit of a moving feast, so I would like an update on that first and then I have some more specific questions.

Mr Calma—You may recall that in July last year I presented an issues paper to the government relating to the establishment of a national Indigenous representative body. It

stemmed from a follow-up action I recommended in my 2006 social justice report. Soon after the issues paper was presented to Minister Macklin, she and the government undertook consultations around the country. Up until December last year they had conducted some 80 consultations—some major, some minor. They also had called for submissions and received in excess of 100 written submissions about what a national rep body might look like. In December last year the government asked me as the Social Justice Commissioner to undertake what has been described as the second phase of consultations. That in part stemmed from many of the consultation groups around the country suggesting that this was not a process that government should run but that Indigenous Australians should run and provide a report to government. I undertook that role in consultation with the Attorney-General and the president of the commission, recognising that my independent role as the Social Justice Commissioner would still be regarded, so any involvement I had would not compromise my independence.

Since then I have formed a steering committee of 10 Australians, five women and five men, representing the major sectors of Indigenous society nationally, so we have got gender and geographic representation. That group called for applications from people around Australia who might want to participate in a three-day workshop that we are conducting in Adelaide from 11 to 13 March this year. At that workshop 100 people will consider consultations to date and also any fresh ideas they might have, with the intention for me as Social Justice Commissioner to provide a report to the government by the end of July this year on what a national rep body might look like. As of the closing date for applications—13 February—we had received 263 applications. We have subsequently received about 30 late applications. There has been a fairly good split of applicants—56 per cent were male, 44 per cent were female—with a very good geographic spread. The next phase is to conclude a short-listing process to get from 263 down to 100 and to convene the workshop in March.

Senator SIEWERT—Thank you. Is that the only workshop that will be held?

Mr Calma—We suspect that that workshop will not be able to conclude its business, with a final model, and so the outcomes of the workshop will be written up and there could be potential for a second workshop, probably in June, to look at a final report.

Senator SIEWERT—What sort of funding is available for doing this consultation process?

Mr Calma—The overall funding, I believe, is in the vicinity of \$500,000—that is what the government has committed to the process. We are still in negotiation with the department to determine an amount that will come to the commission for us to undertake the work, but it is based on the normal government formulas for staffing.

Senator SIEWERT—When you say \$500,000 is available, is that for the whole project; it is not for the commission?

Mr Calma—That is for the whole project, as I understand it, yes.

Senator SIEWERT—Okay. So that is the money that the department has?

Mr Calma—Yes.

Senator SIEWERT—And you still do not know what funding you are going to get for this process?

Mr Calma—No, it has not been finalised as yet.

Senator SIEWERT—Okay. So, surely, you do not know whether you will be able to finalise the consultation process at this stage, if you do not know how much money you have got.

Mr Calma—The department will manage the costs associated with the workshop, and that is the bulk of the costs. The money that will come to the commission will be money to allow us to engage people to work on the project and to compensate us, because at the moment we are wearing those costs within, with the expectation of having an agreement finalised in the very near future.

Senator SIEWERT—So how many staff are working on this?

Mr Calma—There will be one full-time EL1 and a part-time ASO6, as well as my time and part of the time of the director of the social justice unit.

Senator SIEWERT—But at this stage you do not know how much money you are getting, so you are working on good faith that you will get reimbursed for that staff time. Is that the point?

Mr Calma—That is correct.

Senator SIEWERT—When do you expect to find out?

Mr Calma—In the very near future. We are in the process of finalising it. It is looking at the overall budget and it may mean that we have to go back and seek additional funding, but it would be premature to determine that now because we do not know the full costs of the workshop.

Senator SIEWERT—Okay. So you do not know the full costs of the workshop. Will the decision on the next round of consultation, if you do not conclude in the first workshop, be made depending on funding or depending on whether the workshop is needed?

Mr Calma—That is money allocated for this financial year, and my expectation is that the government will ensure that the project is finalised. We are very conscious of the limited funding that is allocated to it, so we are trying to work within that process.

Senator SIEWERT—Thank you. Every time we have estimates hearings I ask you about the NT intervention, and I am going to ask you some questions about the intervention now. Have you been involved in reviewing the intervention since last estimates?

Mr Calma—Not in any concerted way, other than having staff monitor what is happening in the media, and we continually receive phone calls and other levels of discussion from members of the community.

Senator SIEWERT—How many calls, emails and any other correspondence have you had from members of the community about the intervention?

Mr Calma—I would not know the figure precisely. I could try and determine that, on notice.

Senator SIEWERT—That would be appreciated. What is the nature of the calls that you are getting?

Mr Calma—As my staff and I travel, and when others travel to venues where we are participating in events, people raise issues. They continually raise issues about the use of the basics card and how that is limiting, particularly in trying to get access to goods and services, but also that, if they are required to participate in an event that is outside the normal, then they have restrictions on, say, attending funerals or other ceremonial activities. There are restrictions when people have to travel interstate on business; whether that is medical or personal business, their funding is restricted—or their capacity to be able to effectively live is affected.

Senator SIEWERT—Have you had any complaints about police raids or any of the other investigations that are being undertaken by the AFP?

Mr Calma—No. At the early part of the intervention, there were some discussions in relation to townships in Alice Springs, but in recent days that has not been brought to my attention.

Senator SIEWERT—Has there been any progress on Australia's commitment to the UN Declaration of the Rights of Indigenous Peoples?

Mr Calma—Not that I am aware of.

Senator SIEWERT—Have you provided any advice to government about Australia's position on the declaration?

Mr Calma—We are at every opportunity encouraging government to express their view to the United Nations as soon as possible and to confirm their public support for the signing on to the declaration—not signing on but to express to the United Nations that they are behind and supporting the declaration.

Senator SIEWERT—Have you had any contact or involvement in the case that is being taken to the United Nations about the Racial Discrimination Act?

Mr Calma—No involvement in the preparation of the case, although we were very much aware that it was going to be presented to the Committee on the Elimination of Racial Discrimination in Geneva, and in fact that committee met last week. In part in response to Senator Barnett's question, the treaty bodies do meet and they do provide concluding observations about countries. A similar report, we expect, will come out very shortly about their position in relation to the suspension of the Racial Discrimination Act in the 73 communities in the Northern Territory and whether that complies with international treaties.

Senator SIEWERT—Is it your understanding that the committee considered that report last week?

Mr Calma—Yes.

Senator SIEWERT—How many times have you or any of your staff been in the Northern Territory since we last met?

Mr Calma—I have been a couple of times. I would have to inquire as to how many times my staff have actually been.

Senator SIEWERT—At last Senate estimates, I asked you about Narrogin in my home town of Western Australia and I am wondering whether you have had any further involvement with Narrogin.

Mr Calma—I have, and I am pleased to report that there has been progress in Narrogin. The state government, in Dr Kim Hames, the Minister for Indigenous Affairs, Minister for Health and Deputy Premier, has written to me about a visit that he undertook some weeks ago. There have been intergovernment discussions to address issues down there. I understand the West Australian government will now commit funding to mental health activity in Narrogin and the local government is working on a reconciliation action plan and are getting more closely engaged with Indigenous people down there. So we have seen some progress and it has been positive.

Senator SIEWERT—My final question to you is around the SEAM Project and the truancy trials, which I understand have not started in Western Australia but have started in the Northern Territory. Have you or any of your staff any involvement in the implementation of that program?

Mr Calma—No involvement in the implementation.

Senator SIEWERT—Has there been any contact from anybody to the commission around those trials?

Mr Calma—Not that has been brought to my attention.

Senator SIEWERT—Were you asked to provide or did you provide any advice to government on that program?

Mr Calma—No.

Senator SIEWERT—You weren't asked?

Mr Calma—I was not asked.

Senator SIEWERT—Mr Innes, we talked about captioning sometime ago and I am wondering where that is up to. I understand that Channel Nine—and I hope that I have got the issue correct here—has reduced some of its captioning. I have certainly had a letter of complaint from a member of the community about it so I would just like to know what we are up to with the captioning and the discussion paper that was put out sometime ago.

Mr Innes—There are two questions there really, Senator. The first is with regard to Channel Nine. Channel Nine, whilst remaining within the letter of the exemption granted by the Australian Human Rights Commission on captioning, late last year moved outside the spirit of that exemption in the sense that the captioning across their programming did decrease. They were still within the letter of the exemption but captioning did decrease. There was strong community opposition to that and, as well, opposition from me, and Channel Nine have now changed that situation and the level of captioning has, as a result of that, gone back to where it was earlier in the year, which is a pleasing result.

The other question that you ask is with regard to the government's review in this area. The discussion paper was released by Senator Conroy, the relevant minister. The submissions on

that discussion paper were completed sometime mid to late last year and I understand that a response from government is imminent, but I am not aware of the details of that response.

CHAIR—Ms Branson and your commissioners, thank you very much for your time this morning and thank you for your first appearance at estimates. We will see you in May or June.
[10.18 am]

Family Court of Australia

CHAIR—I now welcome officers from the Federal Court of Australia. Mr Foster, do you have an opening statement you wish to provide to the committee?

Mr R Foster—No, I do not, thank you, Chair.

Senator BARNETT—Mr Foster, you must be pretty busy at the moment. You are both Chief Executive Officer of the Family Court and Acting Chief Executive Officer of the Federal Magistrates Court.

Mr R Foster—Yes, I am and, yes, it is very busy. But it is not just me; it is busy for a number of colleagues as well.

Senator BARNETT—A number of other colleagues have dual roles as well?

Mr R Foster—Mr Harriott is the Chief Financial Officer of the Family Court and also the Acting Chief Financial Officer of the Federal Magistrates Court.

Senator BARNETT—Are there any other acting officers who have a dual role?

Mr R Foster—The Manager of Human Resources from the Family Court is also the Acting Manager—

Senator BARNETT—Could you identify—

Mr R Foster—Donna Simotas is also the Acting Manager of HR for the Federal Magistrates Court.

Senator BARNETT—So we have got four people who have a dual role—

Mr R Foster—They are three primary roles—

Senator BARNETT—Was it three?

Mr R Foster—There is Mr Harriott, who is the CFO for both the Federal Magistrates Court and the Family Court of Australia, and Miss Semotus, who is the HR Manager for the Family Court of Australia and Acting HR Manager for the Federal Magistrates Court. But there are a number of other dual roles and functions. The functions have been transferred directly from the court. For instance, a number of people in finance are performing roles for both courts, there are a number of people in property, in contracts and in information management services—quite a number of people are functioning across both jurisdictions at the moment.

Senator BARNETT—This is an area we would need to pursue. Can you outline to the committee when these dual roles commenced and the terms and conditions of any commencement briefing you received from the minister's office.

Mr R Foster—Certainly. This is probably a little confusing because I am speaking in my role as the CEO of the Family Court but you are asking questions about roles in the FMC. If you do not mind mixing it up, that is fine by me.

Senator BARNETT—That is okay. We realise you are coming back in a few moments on FMC but you have dual roles so we are happy to do that—no problems.

Mr R Foster—My appointment as the Acting CEO came about in November last year. The Acting CEO of the Federal Magistrates Court has been on extended sick leave. The Chief Federal Magistrate asked the Chief Justice whether she would be prepared to let me act as the CEO of the Federal Magistrate's Court. She agreed to that, as I did. So I took up that position in November last year.

Senator BARNETT—Do you recall the date?

Mr R Foster—Offhand, I cannot. I thought you might ask me that, but I cannot remember. I can take that on notice. At a meeting of the Family Law Courts Board on 6 October 2008 the question of the Federal Magistrates Court's financial system MYOB, mind your own business, was raised because there was great concern by the then CEO of the Federal Magistrates Court that that system was not providing adequate safeguards to the court and providing financial information, et cetera. That is understood because MYOB is basically a system designed for small business, not for a complex organisation such as the Federal Magistrates Court. So the board agreed at that meeting—

Senator BARNETT—The board of?

Mr R Foster—The Family Law Courts Board, which consists of the Chief Justice, the Chief Federal Magistrate and the two CEOs of the courts. The board made a decision that the two executive directors of finance would get together, come to a set of recommendations to get the financial management system of the Federal Magistrates Court off MYOB and onto Finance 1, which is basically the standard government accounting system for organisations, run by the Family Court.

Senator BARNETT—So the MYOB system as used by the Federal Magistrates Court was inadequate and the board deemed the need for remedy measures?

Mr R Foster—That is right, and it was agreed that it would be transferred over to Finance 1 but then run by the Family Court of Australia. That decision was made basically in October 2008 and that transfer has now been effected. So the financial system of the FMC has been taken off MYOB and placed onto Finance 1. It is a separate system but is managed by the Family Court of Australia.

Senator BARNETT—Was this put to the board by the Federal Magistrates Court CEO?

Mr R Foster—Yes, it was. It came about because of a letter that the then CEO wrote to the Attorney-General's Department expressing some concerns about the reliability of the financial system and the data it could provide. As a result of that, it was suggested that perhaps the Family Court could run its financial system and the board made that decision based on that information.

Senator BARNETT—Was the board instructed by the minister to assess that? This is the Family Law Courts Board, is it not?

Mr R Foster—That is right.

Senator BARNETT—It is not the Federal Magistrate Court.

Mr R Foster—No. It is the Family Law Courts Board, as I said, made up of the members whom I previously mentioned. There was, from my knowledge, no discussion at all with the Attorney-General about it. There was liaison with the department but not directly with the Attorney-General. It just seemed like a sensible decision to make.

Senator BARNETT—Can you table that letter?

Mr R Foster—I would have thought so.

Senator BARNETT—Thank you.

Mr R Foster—Yes, happy to do that. I have not got it with me, but I am happy to do that.

Senator BARNETT—I am trying to work out the interlinking between the Family Court and the Federal Magistrates Court and when this sort of takeover or intermingling got underway.

Mr R Foster—It got underway basically after that meeting in October 2008.

Senator BARNETT—The stimulus was the financial system inadequacies?

Mr R Foster—Exactly.

Senator BARNETT—Right. And then what happened?

Mr R Foster—Because we were taking over, basically, the financial system, it also made a lot of sense—because it is linked to the payroll—for the payroll to come over. So it was agreed the payroll system would come over as well.

Senator BARNETT—When did that come over?

Mr R Foster—It has only just come over. In fact, the Family Court did the first pay run for the Federal Magistrates Court the pay before last, which was 5 February. So that has now happened.

Senator BARNETT—So the Federal Magistrates Court judges are now being paid by the Family Court financial controllers, effectively?

Mr R Foster—That is right, yes.

Senator BARNETT—From 5 February?

Mr R Foster—Yes.

Senator BARNETT—All right. Let's just keep going. What else happened?

Mr R Foster—Human resources: it was agreed at the same time that the management of human resources should also go to the Family Court, and that process is still happening. We would expect to have that completed by basically the end of this month. All we are doing is reviewing some of the HR files to make sure that they are in reasonable shape before the Family Court accepts them.

Senator BARNETT—And when did that commence—in and around November?

Mr R Foster—All this started around the same time, with different projects to do these different tasks.

Senator BARNETT—Right.

Mr R Foster—Property: the management of property happened immediately because the property manager from the FMC was on a contract and the contract was not renewed. So that was really a simple task for the property people in the Family Court to take over the management of the property for the Federal Magistrates Court, and that has been happening since.

Senator BARNETT—And that happened in November as well?

Mr R Foster—That basically happened in November.

Senator BARNETT—All right.

Mr R Foster—Contracts—a similar thing: that has basically been happening since November as well. If a contract comes up in the FMC then we test it with what is happening in the Family Court to see if it is or is not sensible to have separate contracts, and we make decisions accordingly.

Senator BARNETT—Any other functions?

Mr R Foster—The only other area was in relation to the information that comes out of our case-track system. Subsequent to this board meeting decision, the then acting CEO wrote to me, asking: could the Family Court take over the management of their information in relation to workload of courts and what have you. They agreed to provide a—

Senator BARNETT—Sorry; who wrote to you?

Mr R Foster—The acting CEO.

Senator BARNETT—But you are the acting CEO.

Mr R Foster—No, this was then. This was back before I was appointed as Acting CEO. It was Mr Glenn Smith.

Senator BARNETT—When would that have been—October or November?

Mr R Foster—That was probably towards the end of October, but, again, I would need to check that date.

Senator BARNETT—So the management of case load systems was transferred around that time, in November?

Mr R Foster—It basically happened at the same time, but the resources did not come with it. The Family Court is now trying to find resources to do that function, but we are doing it within existing resources at the moment. So it all happened pretty quickly.

Senator BARNETT—Any other functions?

Mr R Foster—No.

Senator BARNETT—Sounds like they do not have much to do over there at the Federal Magistrates Court now.

Mr R Foster—They have still got all their client service areas. The registries, generally, as you would be aware, have been run by the Family Court since the Federal Magistrates Court was established, so that work is still happening. But all the work in the federal magistrates chambers, all of their court workload, which is about 80 per cent of the filings of the courts, continues. So it is really only that area of corporate service function that has been transferred from one court to the other.

Senator BARNETT—When were you appointed Acting CEO? I know we are crossing over a little bit to the Federal Magistrates Court.

Mr R Foster—You asked me that question earlier; I said I would take it on notice. It was in November, but I do not know the exact date. I cannot remember.

Senator BARNETT—So when were these decisions made? Was there liaison with the Attorney-General's office? Did he sign off on this transfer of functions?

Mr R Foster—Not with the minister's office directly, but we liaised with the department, and so they were across the things that we were doing or contemplating doing.

Senator BARNETT—And that occurred around October or November? Can you assist us with when that was?

Mr R Foster—It was around that time. When the letter was written by the previous CEO to the department about problems with MYOB some discussions began to take place about the best way forward.

Proceedings suspended from 10.30 am to 10.45 am

CHAIR—We have officers of the Family Court of Australia with us. Senator Barnett, would you like a rest while I go to Senator Fielding?

Senator BARNETT—I am just finishing a particular topic. I would not mind finishing this topic and then I am happy to pass over to Senator Fielding. Thank you again, Mr Foster, for your informative responses. It is most appreciated.

Mr R Foster—I have got a date for my appointment, by the way. It was 25 November 2008.

Senator BARNETT—25 November 2008 when you were appointed?

Mr R Foster—Acting CEO of the Federal Magistrates Court.

Senator BARNETT—Who made that appointment?

Mr R Foster—The Chief Federal Magistrate has power under the act to make an acting appointment.

Senator BARNETT—I will ask you in your future capacity—and you can get ready for the question—when you will be appointing a new CEO. If you want to answer that now, you can; otherwise, we can wait.

Mr R Foster—My appointment is until further notice.

Senator BARNETT—We will deal with that under the next area. To finish all this, thank you for confirming the advice that there have been transfers of various functions—in fact a whole multitude of functions—starting in October last year and then in November and

continuing. I ask you and the minister, if she would be willing, to respond to the fact that the Semple review came down in December, and the government's response to the Semple review was in February. So all these transfer of functions occurred in advance of the report and recommendations of Semple—in fact, well in advance of the government's official response. So it appears that there have been actions following through on a particular policy position well in advance of those two reports.

Mr R Foster—The important point to acknowledge is that this is a transfer of corporate service function, but it is just the Family Court doing it on behalf of the Federal Magistrates Court. It is basically services provided free of charge. While it is being done by the Family Court, it is being done for the FMC. It is still the FMC's responsibility to ensure that this work happens, and in my role as acting CEO. It is not a takeover by the Family Court is the point I am making. It came about because of the letter that the previous CEO wrote to the Attorney-General's Department dated 15 August—the letter I am trying to get to table now—where he set out some serious concerns about the viability of the ongoing financial systems. That went to the Family Law Court's board meeting on 4 September. The board considered it and then asked for a report back to it by 6 October about how we might move this forward.

Senator BARNETT—The letter was dated 4 September?

Mr R Foster—The letter was dated 15 August 2008 from the then CEO to Mr Ian Govey of the Attorney-General's Department.

Senator BARNETT—You have mentioned a board meeting?

Mr R Foster—The board meeting on 4 September last year considered the CEO's letter and then asked for a report from the various executive directors corporate by 6 October about what opportunities there would be for a shared service in this regard.

Senator BARNETT—They then got that?

Mr R Foster—They got that and then made a decision on 6 October of what I have talked about—the transfer of some of that corporate service function to the Family Court subsequent to that meeting on 6 October.

Senator BARNETT—And that was the board meeting on 6 October?

Mr R Foster—Exactly.

Senator Wong—I am not sure this has been traversed in evidence—I might have missed this answer, Senator Barnett, and if so I apologise—but I understood that the Family Law Courts board is made up of representatives both of the Family Court and the Federal Magistrates Court. So both representatives, therefore, of the FMC were involved in the decision to appoint Mr Foster in his acting role.

Senator BARNETT—Minister, would you care to respond to the question I asked earlier regarding why the functions have transferred, the merit of that and if the government was aware of it and supportive of it—notwithstanding that the Semple report had not been tabled and notwithstanding that the government's response had not been tabled?

Senator Wong—Perhaps we will take that question in two parts. The first is what was the government's involvement or the Attorney-General's involvement in the appointment of Mr Foster in his dual role. I will ask Mr Govey to assist.

Mr Govey—The department was informed of the proposal in relation to Mr Foster's acting appointment. My understanding is that the Attorney-General was also informed of it. But, of course, we all took the view that it was a matter for the Chief Federal Magistrate in consultation with the Chief Justice of the Family Court.

Senator BARNETT—I am not just talking about the appointment of an acting CEO; I am talking about the transfer of functions, which is substantial, as outlined earlier in evidence.

Mr Govey—That was the first part. The second part was, I guess, very similar. Again, we were involved, obviously because of the letter that was sent to me from the Federal Magistrates Court about the concerns that were being raised about the administration and their capacity to provide financial reports. We wrote back and suggested that that was something that they might like to look at. In that sense, it was separate from the issue of the Semple report, because it was something that they were doing themselves within their existing administrative structure. The Semple report recommends a complete merger of the two courts, but, as I say, this was something that was happening separately from that and was an initiative of the courts themselves.

Senator BARNETT—Indeed, Mr Govey, but it looks very much like a *fait accompli*, with respect. Was the department aware and was the minister aware of the full range of functions that have been transferred and were transferred from October, November and since?

Mr Govey—The department was aware and the I think the Attorney-General was aware in general terms, but I am not sure of—

Senator BARNETT—Did you brief the minister?

Mr Govey—I would need to check exactly the level of briefing that was provided. We certainly briefed in general terms.

Senator BARNETT—When?

Mr Govey—I do not have those details. I will take that on notice.

Mr R Foster—I can now table the CEO's letter of 15 August.

Senator FIELDING—I want to focus on the legislation that was passed a few years ago: the Family Law Amendment (Shared Responsibility) Act 2006, which was for a presumption of equal, shared parenting and responsibility for children after a divorce. Would the court update the committee on how that legislation is being implemented?

Mr R Foster—Certainly. In fact, from the commencement of the legislation, the Chief Justice decided that the court would, for the first time, endeavour to keep statistics on the kinds of orders that were being made, with a view to understanding the results that were being obtained by the parties coming to court. In addition to cases where judges were making a decision, statistics have also been recorded of matters coming to court but in which the parties reach their own agreement without the necessity of a decision from a judge. The collection and analysis of that data has been complex. Parenting orders are not particularly

straightforward by their nature and can often involve some complexities, which complicates the recording process. Thus, it has taken some time for the court to be in a position to be satisfied that the reports are accurate and meaningful.

That point has now been reached, and an analysis of the 2007-08 shared parental responsibility statistics is now available. Some years ago, the court collected some statistical information, although not in the form or as detailed as that which is now being collected. For that reason, in some cases the court is able to draw a comparison between what was happening eight years ago and what is occurring now. There is a range of statistical information that the court now has in its keeping.

Senator FIELDING—Could you table those?

Senator Wong—Could we take that on notice? The document contains a range of advice, plus the figures. I am certainly comfortable with you having the data. We can provide that shortly.

Senator FIELDING—That is something that you would take on notice to come back the next day? Obviously you have the statistics there, so you could probably pull out the stuff that is statistical and take out the stuff that is not—

Senator Wong—We will endeavour to do that as quickly as we are able.

Senator FIELDING—As you know, and we all know, the legislation says ‘ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives’. You say you are monitoring it. How do we know whether it has been successful at achieving that goal? Back in 2006, that legislation was put through on the basis that it would substantially change the situation. At the time, there were reports that, when a kid went to the Family Court, 98 per cent of the time they effectively lost one of their parents. I use the word ‘effectively’ because it was pretty adversarial. You knew when you went into the Family Court that you would end up with one parent getting the kid and one not. That was where it was at. You have some statistics there that no-one else has seen. How do we know that it is working? Can you outline it to us?

Mr R Foster—There are some comparative statistics. Fortunately, the court did collect some detailed statistics—not in exactly the same format as shared parenting. It does enable some comparisons between what happened previously and what is happening now. I think this information, once I can table it, will clearly show there has been a change.

Senator FIELDING—I suppose you know that. Until we see the statistics, we unfortunately cannot make any comparison. I am not doubting them; I am just saying it would be really nice to get the statistics so we could at least have a decent chinwag about it.

Ms Leigh—I have some relevant information. The point you raised about assessing how the act is working is precisely a point to which we have turned our minds. The government has commissioned research in this area. I think it is the first time that hard, factual evidence has been sought to assess whether an act is actually delivering the outcomes that were sought. There are a few different pieces of research being developed in this area. First of all, specifically in relation to shared care, last year the department funded a research project to examine the developmental outcomes for children involved in different shared care

arrangements so that we could look at different arrangements and how they impact on the children. We are currently assessing a tender response for further research on the characteristics of shared care parenting arrangements that work in the best interests of the child in order to identify what aspects make shared care work well. So that is two pieces of research.

In addition, all the amendments to the Family Law Act are subject to evaluation by the Australian Institute of Family Studies—that is, extensive evaluation being undertaken by the institute on each of the components of the family law reforms: the changes to the law, the new services that have been put out in conjunction with the changes to the law, the expanded early intervention services and the expanded post-separation services. They have developed an evaluation framework that sets out the strategy for evaluating the family law reforms, and that is available on the department's website. I would be happy to get you the details of that site.

Senator FIELDING—That act has been in place for how long now, exactly?

Ms Leigh—It came into effect on a rolling basis. The general principles were introduced and then, because the services that back up the act were being rolled out over a three-year period, the act itself was rolled out over a three-year period. So compulsory dispute resolution only came into effect in July last year.

Senator FIELDING—Right.

Ms Leigh—So, to have any meaningful assessment of the impact of the legislation, you need to be able to assess how it has operated since compulsory dispute resolution and the full range of services were put in place. So it is actually still early days to make that assessment.

Senator FIELDING—I understand that. It is a very tricky area. It is not easy; I am not suggesting that for a second. It is highly emotive. I just know that there was a lot of talk and debate, when this legislation was passed, about how this would change things quite substantially moving forward, and I think there was a general desire and will on everybody's part to have this idea of shared parental responsibility. So I was pretty keen to get a feeling for how it is going. I wanted to know, for example, how often in cases of divorce do courts not grant shared parenting arrangements, and in what percentages. I would have thought that some of that would have started coming through the courts—it has been rolled out early—so we could see the statistics and see if they have changed.

It is a difficult situation when there is a divorce and there are kids involved, and, when you do go to the Family Court and, effectively, the kid loses a parent along the way, there have got to be pretty significant reasons for that. That percentage of 98 per cent—someone disputed it; it could be 95 per cent, but I do not want to go there—is quite a high, significant percentage. Previously, when a divorce went to the Family Court, a kid would end up effectively losing a parent. That causes greater problems, in that the situation is already very adversarial before you even start the process. When the relationship of a couple breaks down or is about to break down, they could start to think, 'What's going to happen? I'm going to lose the kid as well,' and then the pressure that mounts creates what is very much an adversarial approach before they even get to the courts.

So this legislation is extremely important, and I am after some indication that the outcome is substantially changing—that that percentage has not just dropped from 98 per cent to 94 or

93 per cent. It has got to be a substantial change, I think. And that signal needs to be sent out to the public that you no longer end up with the winner taking all, basically, when you separate or get a divorce.

Mr R Foster—All I have got with me is an analysis based on 1,448 finalised litigated cases and 2,719 early-agreement consent cases, so it is a pretty significant database. But I have not got the comparative data with me. All I have got is the outcomes of what is happening in the courts with that number of cases in relation to the legislation.

Senator Wong—Senator, as I understand it, just so we can be clear, you seek what information we have which would enable—with the caveat, obviously, that it is early days—a comparison or assessment to be made as to whether or not the change in the legislation has resulted in a different pattern of type of order. Is that a reasonable summary of what you are seeking?

Senator FIELDING—Correct. I have got a number of questions that are very specific, number based as well. I would like to get the information that you have got as well, but I can—

Senator Wong—The reason I was trying to make sure that we understood was that I do not think the data that Mr Foster has provides you with that information. That is why we would have to take that on notice. He has some information relating to a particular dataset but it is not clear to me from what he has shown me or from his evidence that he has a comparative set of evidence.

Senator FIELDING—Maybe I can clarify that a bit further. I am starting from the premise that there was a heck of a lot of debate and I think there was agreement on both sides of politics about wanting to see some significant change in the shared parenting responsibility, and I will not go back there. For example, if I were to ask for the number of equally shared parent responsibility orders made in adjudicated matters, would that clarify the issue? That is a specific question. Do those stats that you have got there answer the question or not?

Mr R Foster—Not really, not in its entirety.

Senator FIELDING—The reason that I am after that number is that previously it was such a high percentage—90-plus per cent—that a kid would effectively lose one of their parents and there was concern in the community that that had to change. Obviously we are not saying that 100 per cent of the time there should be shared responsibility, but there should be a very strong, substantial reason why you would not have a shared responsibility, not just a matter of little issues, and in that way it stops the adversarial effect.

Seriously, it torments parents in a divorce when they face a situation where they might lose their kids. The amount of psychological pressure on people makes them crack especially when it goes on for a long period of time. If you think for just one night that you are going to lose your kids forever, that is bad enough for one night—but seven nights, one week; 30 nights, one month; 365 nights, one year? No wonder people crack and break. So we need to start sending the signal that you are not going to lose your kids unless there is a substantial reason. I start from the basis that if someone's husband or wife dies no-one ever questions whether the other parent is good enough to be a parent. It is automatically assumed that they are. This is a very passionate issue here and the stress it places on human beings is such that I

do not think I could withstand the pressure for a year or six months of knowing that I may lose my kids—

CHAIR—Senator Fielding, do you have a question?

Senator FIELDING—I do have a question. The questions are about the statistics and the need to start getting these numbers out early. They are factual cases. Out of all the cases that have been adjudicated in the last year how many have been shared responsibility—fifty-fifty or sixty-forty? Or is it ninety-ten? That is not shared responsibility really—that's Clayton's shared.

Mr R Foster—As I have said earlier, the court some years ago did collect some data which could be used for comparative purposes. It is not an identical set of data for a whole lot of reasons. This set of data which I have was asked for by the Chief Justice when this legislation came in being, so we have been collecting it for sometime. It is only in relation to the Family Court, so it is actually a small collection, and the numbers I think I told you about. There were nearly 1,500 finalised cases at 2,700 orders by consent. So it is a reasonable set of data but it is not a complete set of data, as you are asking for. So much more work in relation to the stats needs to be done not only for the Family Court but also for the Federal Magistrates Court to get this set of data. But we can do some comparisons and, as I understand it, there is shown to be a change in the orders that impact specifically on fathers, and I do not know that I can take it much further at the moment.

Senator FIELDING—The comparisons, as you say, maybe difficult to make, but it is an actual factual question. Since this law has come in, and in some courts that has been at least a year and may be more than that, out of those cases that have been adjudicated you must know—it is a factual question—how many have been shared responsibility? You must know. It is not as if you have to say, 'We do not know the figures because we did not count them in the past.' You must know. They court rulings. They are adjudicated rulings.

Mr R Foster—We do. We are now counting them. I have a set of data that does exactly that. But to say categorically: has the situation changed significantly from previously, the datasets do not match. I think that is the research that the department has been talking about and I guess that is much more detailed than this set of data that I can provide on notice.

Senator Wong—Senator, we do understand the question you are asking, and it is a reasonable question to ask whether the act has had an impact. I again refer you to Ms Leigh's evidence, which was that the provisions did not fully commence until 1 July 2008, so we have not had a very lengthy period. I think the evidence from Mr Foster is that the information he has to date does not enable a reasonable comparison to be made. The government obviously will want to know what the effect of the provisions in practical terms is and that is the basis of the research that the department has commissioned. If we are able to assist in an earlier time frame with that kind of data we will. I just again make the point that this has not been in place for very long. These provisions were fully operative from 1 July last year. Obviously it has been less than a year, but in any event we will endeavour to assist in whatever way we are able to.

Senator FIELDING—I will just share with you the type of information I was after. That way you can handle it. Then I will place some questions on notice, if I can. I would like to

know the number of equal shared parenting responsibility orders made by consent. Some are adjudicated and some are by consent. I would like to know the number of equal time orders issued in adjudicated matters and the number of equal time orders made by consent. That is to give you a bit of a flavour. It is specific. I would be interested in having the comparison later on, because I do not want to get caught up in that now. You might say that you cannot compare and that the numbers are different. I understand that issue. But I am after actual cases that have been adjudicated. I have a number of other questions I will put on notice to help you with that from there.

Mr R Foster—Thank you.

Senator FIELDING—While I have got you here, given that they are actual cases, how long would it take you to come back with that information?

Mr R Foster—We have the data now. It is so new that it was only signed off by the Chief Justice as late as last week. That is how new this data is.

Senator FIELDING—So would you be able to provide the answers by the end of the week if I gave the questions to you today?

Mr R Foster—I would not have thought there was a problem with that, quite frankly.

CHAIR—The time for the receipt of answers to questions is 14 April, Senator Fielding. That is the time the committee has set for questions on notice to be returned to us.

Senator FIELDING—But if the department said that they can get them by the end of the week then I think we should get them back earlier.

CHAIR—The position of the committee is that they could try and do that but they are only obliged to provide them to us by 14 April.

Senator FIELDING—I am not going to cause problems.

CHAIR—If they can do something earlier than that, well and good, but they are obliged to give them to us by 14 April.

Senator FIELDING—The end of the week would be great, if you can. They are genuine questions.

Mr R Foster—Absolutely.

Senator BARNETT—I have three very brief questions. As of today, or the most recent time frame, what is the average waiting time for a case to be heard? Secondly, what is currently the longest waiting period for a case to be heard?

Mr R Foster—On average, for all final order applications in the Family Court for 2008-09 it was taking 8.1 months. That is from filing to disposal.

Senator BARNETT—How does that compare with 2007-08?

Mr R Foster—For 2007-08 it was 8.5 months.

Senator BARNETT—What about 2006-07?

Mr R Foster—I do not have that figure with me.

Senator BARNETT—What is the longest waiting period?

Mr R Foster—I am not certain of that. For various reasons it could be a couple of years. I have no idea what the longest case is.

Senator BARNETT—Can you take that on notice?

Mr R Foster—I can take it on notice and try and find the oldest case in the system.

Senator BARNETT—Could you find out the top 10 and the nature of the matters? Could you take that on notice and advise the committee?

Mr R Foster—I can take it on notice and do the best we can. I am not sure that I can identify that across the system.

Senator Wong—What do you mean by the top 10?

Senator BARNETT—The longest waiting period for a case to be heard.

Senator Wong—The ones where there has been the most length since filing and determination?

Senator BARNETT—Correct.

Senator Wong—And how far back? Since the commencement of the court?

Senator BARNETT—As of now.

Senator Wong—If you want the top 10—the ones that have taken the longest—would you go back to the commencement of the court?

Senator BARNETT—No, as of today.

Senator Wong—That means cases that are still open.

Senator BARNETT—Correct.

Senator Wong—That is not what you said before. I asked: filing until determination, which assumes they are closed. What you are actually asking for are cases that have not yet been determined—the ones that have had the earliest filing date, as at today.

Senator BARNETT—You have asked the question very well, Minister.

Senator Wong—Two or three sets of data have been requested, I think it is fair to be clear about what you are asking.

Senator BARNETT—Sure. The time from filing, the length of duration of the case, whether it has been determined otherwise.

Senator Wong—Whether it has been determined or otherwise?

Senator BARNETT—Yes.

Senator Wong—Then we are back to the same problem. Because then you could go back to 1976, when the Family Court was set up, and you could work out what took the longest from filing to determination.

Senator BARNETT—I said, ‘as of today’. That has not changed.

CHAIR—If they have been terminated they are not on the books today.

Senator Wong—Exactly. That is the point. There is a logical problem with what you ask.

Senator FIELDING—I can see where you are coming from.

CHAIR—Senator Barnett needs to clarify his question so the officers clearly know what it is that he is asking of them.

Senator Wong—I submit that it is an unreasonable burden to ask them to go back 30 years.

Senator BARNETT—I think Mr Foster knows the intent of the question: the longest length of time for a hearing whether it has been determined or otherwise, in the last 12 months—this financial year.

Mr R Foster—We will do the best we can.

Senator BARNETT—Thank you. My final question is in relation to vacancies. Are there any current vacancies and if so where?

Mr R Foster—There are currently 35 judges of the court, including the Chief Justice, and there is only one position that is under process at the moment and that is Justice Mullane in Newcastle. There is a process in place to appoint a judge to Newcastle.

Senator BARNETT—I saw a reference in the media to that recently. Is that imminent?

Mr R Foster—That is probably something that you will need to ask Mr Govey.

Mr Govey—The position is that the vacancy in Newcastle has been advertised and the Attorney-General appointed a panel to consider applications and nominations that were received. That process is currently under way. The panel has not yet completed its report to the Attorney-General.

Senator BARNETT—There are no other vacancies?

Mr R Foster—No.

Senator FIELDING—The figure of 8.1 months is down from the figure of 8.5 months for the previous year. That is the time from filing to adjudication. Is that right?

Mr R Foster—Filing to disposal.

Senator FIELDING—It is good that it has come down but 8.1 months is still 240 nights. Is that something that you are happy with? That is the average, by the way.

Mr R Foster—There is a delay and there is a time which is an appropriate delay. Parties need time to prepare their case. There is a range of issues about why things are delayed in courts. Is this an unusual or extraordinary delay? If cases were being completed within nine months of filing I would have thought that is a pretty good outcome, personally. That is for the average number of cases. Some will be done in a lot less time. Certainly those matters that are done by consent would be done in a much shorter time frame. Some of those that are much more complex would take longer to do. Bearing in mind the workload shift between the two courts, about 80 per cent of all family law filings are now in the Federal Magistrates Court, so the Family Court has about 20 per cent of the filings, which are really the most complex and difficult cases. So, on average, to be dealing with those, in 8.1 months is probably reasonable. Is it best practice? Possibly not but it is the best we can do with the resources we have.

Senator FIELDING—Do you know what best practice is?

Mr R Foster—It varies from court to court. There are not too many places like the Family Court of Australia to compare it with. Each individual's case will have individual and different requirements. Obviously, the court's desire is to meet the needs of the people that come before it, and especially the needs of the children, and make timely orders that are appropriate as expeditiously as possible. But there is a process that you need to go through to get to final decision making.

Senator FIELDING—I do not think it is an easy thing at all. In my mind it seems too long but I am certainly not an expert in that particular area at all. That is the reason I was asking the question.

Mr R Foster—One of the positive things is that we are actually disposing of more cases that are coming in, so you would expect that time frame to come down even further. We are dealing with an existing backlog and, as I said, with the most complex cases. I think those figures are a much better reflection of what the Family Court is doing now than it was doing, say, two or three years ago.

Senator FIELDING—Obviously there is a backlog and there are some delays. The eight months is an average. There are some cases that will need to take a lot longer and some cases will take a lot less time but the average is eight months. Do you think something like four months is about right for an average? Would that be ideal? The reason for the question, by the way, is that these are very highly emotive cases and that is a long time for people to be under stress and pressure. Obviously the length of time does play on people's minds.

Mr R Foster—Outputs are still saying that 75 per cent of matters be determined within 12 months and I think we are doing better than that now—whatever the figure is. I mean, how long is a piece of string, quite frankly? As soon as possible and as expeditiously as possible. But, as I keep stating, there is a certain period of time that is not delay in the courts. It is necessary time for parties to prepare themselves, present their cases appropriately. It is what is over and above that necessary time that is delay. It might be anything over six months. It is really a matter of judgment.

Senator FIELDING—Do you get any complaints about the length of time it takes? Do you record those?

Mr R Foster—We do have an extensive complaint system and we do keep details of what people complain about—delays in the delivery of judgment or getting to trial and a range of—

Senator FIELDING—Could you provide statistics on those complaints?

Mr R Foster—Yes.

Senator FIELDING—Thank you.

Senator MARSHALL—What is the actual number of days in court—the number of days for the hearing in the court situation?

Mr R Foster—The average number of days?

Senator MARSHALL—Yes.

Mr R Foster—It is around 3.5 to four days in the Family Court of Australia. That is average hearing days for a trial.

Senator MARSHALL—What is the average time for a decision to be made?

Mr R Foster—The standard is that any judgment that is in excess of three months after the finish of the evidence in the final hearing is a delayed judgment. So we keep data on those that are greater than three months and those that are between three and six months.

Senator MARSHALL—So what is the data?

Mr R Foster—As at 31 December 2008 there were 107 judgments reserved outstanding, 53 of which were older than three months. This has reduced since the end of June 2008 when there were 113 judgments reserved outstanding, 70 which were older than three months.

Senator MARSHALL—And what is the process to speed that up? You said that there are some outstanding beyond six months—you did not give me those figures but you might. What is the process for resolving those or bringing them to conclusion?

Mr R Foster—There is a monthly report that goes to the Deputy Chief Justice which lists every outstanding judgment. If it becomes an issue within a particular registry then the Deputy Chief Justice would raise that matter with the particular judge concerned.

Senator MARSHALL—So does there have to be a reason, like it is an overly complicated matter, or can the reason simply be, ‘We’re overworked, we’re too busy, we don’t have enough time’?

Mr R Foster—I do not think there is any one reason. There are a number of reasons why that might happen, but workload is certainly a significant factor. There are now only 35 judges in the court and they are dealing with a very complex and difficult workload, so they are very, very busy. But every judge understands that the important thing is to get a decision out as soon as you possibly can.

Senator MARSHALL—I think you said earlier in answer to a question that the number of mediations leading to private agreements is increasing, as opposed to adjudications required. Is that what was said?

Mr R Foster—No.

Senator MARSHALL—That was not what was said?

Mr R Foster—No, I did not say that.

Senator MARSHALL—I must have misunderstood that. So what is happening in respect to that?

Mr R Foster—There is a requirement, as you are aware, that people go to a family relationship centre before they can file in the family law courts. That is one factor that perhaps is having an impact on the number of filings in the courts generally, because, in terms of applications for final orders, the family law courts’ workload since 1998-99, or 2000, when the Federal Magistrates Courts came into operation, is down something like 18 per cent. The number of applications across the whole of the family law system in 1998-99 was 21,939, and at 2007-08 the figure was 17,306, which was a reduction of 21 per cent. On current projections, we are anticipating that there will be around 18,000 applications for final orders across both courts, which is a reduction of 18 per cent on that baseline figure back in 2000. So

there has been a significant reduction in the amount of work coming into the system, and I am sure a great deal of that is in relation to mediation outside the court system.

Senator MARSHALL—Sure. Ms Leigh, is that something that is going to be looked at in your study—the correlation between that reduction and what is happening in the mediation centres?

Ms Leigh—At the very least, it is a necessary implication from the work that is being done in that study, but we are also following these figures very closely.

Senator MARSHALL—Thank you. Just one final question: I think you said 3.5 days is the average actual time in court; is that decreasing or increasing?

Mr R Foster—In the Family Court it is probably increasing. I think that just reflects the nature of the work that the court is doing. It is an average, and we have got the most complex cases; therefore, you would expect that figure to increase.

Senator MARSHALL—Sure, and the logic is that, if more are being dealt with through mediation, of course they would be the harder cases that go to court.

Mr R Foster—That is right.

Senator MARSHALL—Okay. Thank you.

CHAIR—Do we have any more questions for the Family Court?

Senator BARNETT—Yes, one final question. The complaints handling system—since we last met, has that changed and, if so, could you advise the changes?

Mr R Foster—There has been one change. I did not bring it with me, but on the Family Court's website there are further and better particulars about how you can make a complaint. That is all. It has been made much clearer how you go about making complaints. That is the only change that has been made.

Senator BARNETT—All right. So you haven't been instructed by the minister's office or by the department with respect to complaints handling measures?

Mr R Foster—No.

Senator BARNETT—Thank you.

CHAIR—Thank you to the Family Court. We are now going to move to the Federal Court of Australia.

Mr R Foster—I do not know whether it is possible, Madam Chair, to do the Federal Magistrates Court now while we are here.

CHAIR—We have got the Federal Court first and then the Federal Magistrates Court.

Mr R Foster—Okay. I spoke to Mr Soden earlier, and he said he would have no objection if you did change the order while we are sitting here—but it is just a suggestion.

CHAIR—If it is easier to deal with the Federal Magistrates Court now, we will do that and then go back to the Federal Court.

[11.29 am]

Federal Magistrates Court

CHAIR—I welcome representatives from the Federal Magistrates Court. Senator Barnett, do you have questions?

Senator BARNETT—Yes. Hello, Mr Foster; you have been very busy!

Mr R Foster—I think I have been stumped!

Senator BARNETT—You have advised us that you were appointed in November as the Acting CEO. Are you adequately fulfilling your responsibilities with the two hats, the two functions, that you have? Do you have adequate resources to function properly?

Mr R Foster—Whether I am doing it adequately is I guess a question that should be asked of others, but answering in my own defence I would say yes, I am. In relation to potential conflicts of interest—if that is what the question was about—I would have to say that I am familiar with working in an environment where I have several masters. I come from a state system where I have responsibilities to a chief justice, a chief judge, a chief magistrate and other jurisdictional heads, so I am used to the balancing act of providing resources and advice to different jurisdictional heads in different courts. I find myself in a similar position now. Putting aside the structure of the courts, it is a similar responsibility. Do we have enough resources? I guess anyone would say we never have enough resources, but we also had to live in the real world. In relation to the corporate work that we are doing, the Family Court has basically taken on the work of the Federal Magistrates Court without any additional resources. It is doing the work with its existing resources. A number of us now have dual responsibilities. I think we are moving the agenda forward. I feel reasonably comfortable that I am doing a reasonable job in both courts.

Senator BARNETT—How does that work from a budgeting perspective? You have obviously had a budget for the 2008-09 year to employ certain people to do certain functions and now we have had a transfer of the CFO, the human relations manager and a whole range of other functions that you advised the committee of earlier. Is the budget that would otherwise have been expended in that area now a saving for the court?

Mr R Foster—No, the budget is still there. It is only the function that has been transferred to the Family Court of Australia. There are still two separate courts. The budgets that existed as at 1 July are still the budgets of the two separate courts. There will be a requirement to have two sets of financial reports. They are completely separate. They are just being operated by Mr Harriott.

Senator BARNETT—How does that work? If you have Mr Harriott, for example, who was here a few moments ago, as the Family Court Chief Financial Officer and now you are the Acting Chief Financial Officer for the Federal Magistrates Court and you have two budgets for a chief financial officer, surely you have a saving of one budget.

Mr R Foster—There is not a saving of one budget, but there is a saving overall with this transfer of function of about \$700,000 recurrent as from next year.

Senator BARNETT—From?

Mr R Foster—There is \$700,000 in savings to the Federal Magistrates Court budget. There have been a number of people who have left the court. There have been some costs in relation to redundancies. Once they have been cleared away, ongoing there is about \$700,000 in recurrent savings by running the business the way we are running it now.

Senator BARNETT—So you are saying from the 2009-10 year?

Mr R Foster—Some time through the 2009-10 year.

Senator BARNETT—Are there any other functions that you have not advised that have been transferred to the Family Court from the Federal Magistrates Court?

Mr R Foster—No.

Senator BARNETT—You said that you have been appointed as the Acting CEO indefinitely.

Mr R Foster—Basically, until further notice. The previous Acting CEO is on extended sick leave. If he returns to work, that will change my position. Or it might be as a result of any decision the government makes in relation to the Semple review. So, basically, it is until further notice.

Senator BARNETT—When did he take sick leave? When did that commence?

Mr R Foster—It commenced during October 2008.

Senator BARNETT—In terms of an appointment of a new CEO or his return, can you advise the committee of any further particulars?

Mr R Foster—There is nothing further that I can add.

Senator BARNETT—What is the future for the Federal Magistrates Court. We have had the Semple review and we have had the government's response to the Semple review and we have been advised that a multitude of functions have been transferred to the Family Court. What is the prognosis and the plans for its future?

Mr R Foster—We are just waiting for the government to make a decision on the Semple review and I guess then we will respond accordingly.

Senator BARNETT—When is that likely?

Mr Govey—Senator, the timing is a matter for the government, but the response date for submissions in response to the discussion paper that was released was 6 February, from memory. I am now reminded that there were some requests for extensions so that date was put forward by another five days, so the date for receiving submissions was 11 February.

Senator BARNETT—So those submissions are now with the department and with the government—

Mr Govey—That is correct.

Senator BARNETT—and you are reviewing those submissions?

Mr Govey—That is correct.

Senator BARNETT—What is the prognosis on a response by the government?

Mr Govey—It is a matter then for the Attorney to make a decision together with cabinet.

Senator Wong—The consultation period concluded 12 days ago. It is a matter that is before government.

Senator BARNETT—Are we talking weeks or months?

Senator Wong—It is a matter that is before government. I cannot assist you any further, Senator Barnett.

Senator BARNETT—I wanted to ask a few questions on waiting times, but I know that Senator Brandis may have some questions on this matter.

Senator BRANDIS—I really only have one question, and I apologise, Minister and officers, for arriving late in the discussion. Senator Barnett, in a sense, has covered much of this ground with his questions. I suspect this might best be a question for you, Mr Wilkins, given that as the minister has just told us the issue of the Semple report is before government. I take it that we may deduce from that statement that no final decisions have been made yet. Given that in the various respects in which you and other officers have described the position there has been a de facto consolidation of the administrative arrangements of the Family Court and the Federal Magistrates Court and even the unification in a single person, Mr Foster, being the common CEO of the two courts. My concern is: what happens if the government decides not to adopt the recommendations of the Semple report or the government decides to adopt them and introduces legislation to give effect to them but the parliament does not agree to pass the legislation in the Senate so that the pre-Semple report status quo or some variant of it remains? In those circumstances what costs are going to be involved in unscrambling these common administrative structures?

Mr Wilkins—As the minister said, this is still obviously a matter of decisions to be made before the government. But you are asking a hypothetical question. What informed the convergence of functions were efficiency issues, and this is happening throughout government throughout portfolios. There is no reason why, if you were not to go ahead with the whole of what Semple recommends, that that should not remain in place. It recommends itself in terms of efficiencies in any event.

Senator BRANDIS—I guess what I am concerned about is the issue of anticipation or prejudice. My view of this issue is that the two courts, the Family Court and the Federal Magistrates Court, have proceeded in the last few months almost as if, or on the assumption that, the Semple report were a given. As we know from the minister, the government has not yet decided whether or not or to what extent, if at all, to adopt the recommendations of the Semple report. It is a little unusual to see agencies whose structure is the subject of a review, the outcome of which is still pending a decision of government, to proceed as if the conclusions were a fait accompli. Do you understand my concern?

Mr Wilkins—I understand, but what I am saying is that there are a variety of reasons why you look for common services and you look for these sorts of efficiencies. That does not necessarily pre-empt the Semple report at all. If the Semple report were adopted then you presumably would need other changes of a legislative sort. But what I think is happening in this instance could happen in other instances in other departments. It has nothing to do with whether there is a Semple report or there is not a Semple report. It is not pre-empting it in that sense.

Senator BRANDIS—Okay. May I take it from your answers to my two questions that in the event that the Semple report were not given effect to, either by executive or parliamentary decision, there would be no additional costs incurred in consequence of the convergence of the structures that has occurred in the last few months?

Mr Wilkins—In fact, there should be continued efficiencies in terms of the current arrangements.

Senator BRANDIS—So if, for example, the Senate decided to reject legislation giving effect to the Semple report—were that the way the government went—that would not entail any costs?

Mr Wilkins—No. It would not necessarily involve any unwinding.

Senator BRANDIS—Thank you.

Senator BARNETT—Mr Foster, what is the average waiting time for a case to be heard?

Mr R Foster—In the FMC, in the 2007-08 financial year, 49 per cent of applications for final orders were finalised in less than six months and 79 per cent of applications for final orders were finalised in less than 12 months. So 80 per cent of orders are being finalised within less than 12 months.

Senator BARNETT—Would you imagine those figures would be similar in this financial year?

Mr R Foster—I would like to think there would be an improvement.

Senator BARNETT—If you are happy to take that on notice, you could give us the latest figures.

Mr R Foster—I will certainly take it on notice and get the latest figures for you.

Senator BARNETT—That would be good. What about family law matters specifically?

Mr R Foster—These are applications in family law, but only for final orders. For interim orders, 79 per cent of applications are being finalised within six months.

Senator BARNETT—In terms of the FMC and the Family Court, it seems like your record at the FMC is far superior.

Mr R Foster—I would expect that because of the less complex types of matters that are there. If you were doing things on average, you would expect that many of the matters in the FMC would be dealt with quickly. That is really the reason why the FMC has its culture of faster turnarounds et cetera. It still deals with complex cases. I am not saying they are not complex, but they are not the most complex cases. And there are more of them. They are now dealing with 80 per cent of the filings across both courts. So those figures would not be a surprise to me. In fact, it would be a surprise if it were the other way around.

Senator BARNETT—Indeed. This is I guess one of the fears that perhaps some people have about the Family Court takeover of the Federal Magistrates Court matters—the delay period. I think Senator Fielding has picked up on the concerns of having extended delays before the court.

Mr R Foster—I think the Semple report is fairly clear about having two divisions and the split of the work. It is pretty much around what it is now.

Senator BARNETT—Do you have the latest figures on vacancies and appointments for the FMC?

Mr R Foster—Currently there are 61 federal magistrates, including the Chief Federal Magistrate. There are currently no vacancies.

Senator BARNETT—You indicated earlier that the court was adequately resourced for the required workload. Can you confirm that?

Mr R Foster—I have never said that any organisation I have ever worked with has been adequately resourced, but we have to work with what we have. We are under financial pressures, as is every other agency, and we are managing the workload with what we have at the moment.

Senator BARNETT—Thank you.

CHAIR—Mr Foster, thank you very much to you and your officers for your attendance today.

[11.45 am]

Federal Court of Australia

CHAIR—Mr Soden, do you have an opening statement for the committee?

Mr Soden—No, thank you, I have no opening statement.

CHAIR—We will go to questions.

Senator BRANDIS—Mr Soden, remind us, would you, of the extent and nature of the Federal Court's participation in the Semple review process.

Mr Soden—I know that Mr Semple had two conversations with the Chief Justice of the Federal Court. He had two, possibly three conversations with me.

Senator BRANDIS—Mr Semple?

Mr Soden—Yes. I think that is the full extent of the conversations and meetings that were held.

Mr Govey—I might remind Mr Soden that the report was prepared in conjunction with the department. As Mr Soden will recall, I and other officers from the department also had discussions with him. I had at least two, probably three discussions over a period with the Chief Justice as well. I mention that for the sake of completeness.

Senator BRANDIS—I did explore this in the last estimates and the extent to which the Semple report is Mr Semple's views, the department's views or an unhappy curate's egg of the two—nevertheless, thank you. Mr Soden, am I right in thinking that other than those conversations there was no more formal manner of involving the Federal Court in this process? For example, did the Federal Court put in a written submission to the Semple review?

Mr Soden—No, that is true.

Senator BRANDIS—The Semple review is published and, as anyone who has read it—as, of course, all of you have—would be aware, it is focused almost entirely on the family law jurisdiction and makes, if I can use this expression, ‘glancing reference’ to the Federal Court. Since the Semple review was published, we have had the government’s response. Between the time the Semple report was published and the time the government’s response was published earlier this month, was there any further solicitation by Mr Semple or by the government of the views of the Federal Court?

Mr Soden—I cannot recall precisely. I might be reminded about some conversations or meetings.

Senator BRANDIS—Please feel free to jump in, Mr Govey, if you can help.

Mr Soden—I can report on one thing that was done, which Mr Govey will recall. I think it was at our suggestion or it might have been a joint view determined at the same time, we thought there was some value in Mr Govey coming to talk to a group of judges in the Federal Court about issues relating to the Semple report.

Senator BRANDIS—Did that happen?

Mr Soden—It did.

Senator BRANDIS—When?

Mr Soden—It would have been early December—maybe the second week of December.

Senator BRANDIS—Was this immediately post the publication of the Semple report? Was it pre or post the publication of the Semple report?

Mr Soden—I am sorry, I cannot recall.

Senator BRANDIS—Do you remember, Mr Govey?

Mr Govey—I would need to check.

Senator BRANDIS—Would you mind checking with your diary on that, please. I will not ask you the names of the individual judges, but how many participated in that meeting?

Mr Govey—The meeting took place after the Semple report.

Senator BRANDIS—That is fine. Roughly how many judges participated?

Mr Govey—About half a dozen.

Senator BRANDIS—About half a dozen?

Mr Soden—Five, from recollection.

Senator BRANDIS—Where was the meeting held?

Mr Soden—In the court premises in Sydney.

Senator BRANDIS—Did the Chief Justice participate?

Mr Soden—No, he did not.

Senator BRANDIS—Were any of the judges who participated judges other than Sydney based judges?

Mr Soden—Yes.

Senator BRANDIS—Remind me when the Chief Justice returned from his leave Was Chief Justice Black—

Mr Soden—He was working as normal at that time.

Senator BRANDIS—So there was not an acting Chief Justice at the time?

Mr Soden—No, not at that time.

Senator BRANDIS—Other than that meeting shortly after the Semple report was published with five of the judges, was there between the publication of the Semple report and the publication of the government's response any other involvement or participation by the Federal Court in this process?

Mr Soden—I hesitate because I cannot recall the precise details. You will not be surprised to know it was a topic of discussion occurring from time to time at that time. There would have been some informal communications between particularly me, maybe some of the senior staff and staff in the department about some aspects arising from the Semple report. The precise number and extent I cannot be sure about.

Senator BRANDIS—But, to use your words, nothing more than informal discussions involving a few random individuals?

Mr Soden—As opposed to a formal submission, obviously, yes.

Senator BRANDIS—The government published its response in the second week of February. Is it not the case, Mr Soden, that after the government published its response to the Semple report the Federal Court did formally—

Senator Wong—Can I just be clear, Senator Brandis. You keep saying 'a response'. Are you referring to the November discussion paper?

Senator BRANDIS—No, I am not. The November discussion paper is the Semple report.

Senator Wong—So what are you referring to?

Senator BRANDIS—I am referring to the government's announced response to the Semple report. Am I mischaracterising this by saying it is the government's response? How would you characterise the February document?

Senator Wong—What are we talking about?

Mr Govey—The document we are referring to is the document that was released in November, which was a discussion paper released at the same time as the Semple report was made public.

Senator Wong—I am advised—and you may not have been in the room, Senator Brandis, when I made the point—that the consultation period on that discussion paper was extended to 11 February.

Senator BRANDIS—I am sorry. Perhaps we are eliding two different things into one. Take, then, the relevant date to be the expiry of the consultation period, which is 11 February. Is there any change to the answers I directed to you, Mr Soden, if we are talking about the expiry of the consultation period rather than the publication of a response? Is there no other

mode of submission or occasion of submission of the Federal Court's views between the publication of the Semple report late last year and 11 February?

Mr Soden—There has been no response public response by the Federal Court to the Semple report, no.

Senator BRANDIS—The Federal Court did, though, did it not, express its views about the Semple report to the government earlier this month?

Mr Soden—Yes, that is true.

Senator BRANDIS—And those views were expressed, were they not, in a letter from the Chief Justice to the Attorney?

Mr Soden—Yes, that is true.

Senator BRANDIS—Remind me of the date of that letter. I believe it was sometime last week.

Mr Soden—I do not have it in front of me, but my recollection is that it is 11 February.

Senator BRANDIS—The week before last. That letter has not been made public, has it?

Mr Soden—No. It was expressly requested by the Chief Justice that it be kept confidential.

Senator BRANDIS—Why was that, please?

Mr Soden—I cannot speak for the Chief Justice.

Senator BRANDIS—But you speak for the court.

Mr Soden—I do not speak for the court. I can certainly give you my understanding as to why he requested that it be confidential.

Senator BRANDIS—That will do. That is all I want to know.

Mr Soden—I think the Chief Justice would say that, in order for him to give what he would describe as the most frank advice, he would want the letter to be kept confidential. But, probably more importantly, he would take the view, I am sure, that he would not want either himself or the court embroiled in any potential political controversy in relation to a matter such as this.

Senator BRANDIS—Perhaps he may. We do not know. That is a conjecture on your part. Mr Govey, the Family Court made public its position in relation to this review. In fact, it could not have been more apparent what the Family Court's position was in the course of the Semple review.

Senator Wong—The Family Court has already appeared, Senator Brandis.

Senator BRANDIS—Yes, I know that. Mr Govey?

Mr Govey—I am struggling to recall what happened in that regard. Certainly the Family Court spoke to Mr Semple and to some extent their position was reflected in the report, so to that extent it is true.

Senator BRANDIS—Yes, it was. Mr Semple, in his report—I have it here—recites extensively the views expressed by the Family Court in the course of his review of this. The

Federal Magistrates Court also, in the course of the Semple review, made a contribution, made its views clear to Mr Semple, did it not?

Mr Govey—That is correct.

Senator BRANDIS—Both of those expressions of view on behalf of the Family Court and the Federal Magistrates Court included a documentary submission, did they not?

Mr Govey—I think that is correct, but I would like the opportunity to check that.

Senator BRANDIS—You check that. I think you will find that is right. As we know from reading the Semple report, Mr Semple felt free to quote those views, so there was nothing confidential about them. These were freely offered to Mr Semple by the respective courts and they were relied upon by him and quoted by him as part of his process of reasoning in his report to arrive at the conclusions at which he arrived. Is that not right, Mr Govey?

Mr Govey—That is correct.

Senator BRANDIS—I am wondering, Mr Soden, if the Family Court and the Federal Magistrates Court both made submissions to the Semple review and were perfectly comfortable to make their positions public, why the Federal Court is of the view that its views on this process should not be also a matter of public record, allowing for what you say about desiring to avoid political controversy. You have three courts here, all of whom are affected by this. The positions of two of them we know, the position of one of them we know to have been stated but we do not know what it is.

Senator Wong—Senator Brandis, I think Mr Soden has been as helpful as he can be. He has indicated to you that the decision to make this correspondence confidential was a decision of the Chief Justice. He has given you his understanding of the reasons behind that. It is really not for Mr Soden to answer why the Chief Justice may have taken a different view from the Family Court or the Federal Magistrates Court.

Senator BRANDIS—Minister, what is the government's view? Should the views of the relevant stakeholder courts—the Family Court, the Federal Magistrates Court and the Federal Court—be a matter of public record?

Senator Wong—It seems to me, Senator Brandis, that there is a tradition or a convention—or in fact under standing orders for Senate committees, from recollection—that, if witnesses seek that a submission be confidential, that is respected. In this circumstance, the Chief Justice, for the reasons or in the way Mr Soden has outlined, has sought this confidentiality.

Senator BRANDIS—But that is not an answer to the question I asked you, with respect, Minister. I asked you what the government's view is.

Senator Wong—My view is—I am sure the Attorney can provide further information on this—that it would seem to me fairly reasonable, if somebody has asked that something be confidential, that that is the case.

Senator BRANDIS—Does it not strike you as anomalous, Minister, that where you have three stakeholder agencies—in this case all chapter 3 courts—affected fundamentally by a process of review initiated by your government and the views of two of them are freely placed

on the public record, does it not strike you as anomalous that the view of the third of those stakeholder agencies is not a matter of public record?

Senator Wong—Senator, I am sure you know that it is not for parliament nor the executive to direct judges what to do in a whole range of areas. It seems to me that this is a decision made by the Chief Justice and the fact that others in analogous positions have made a different decision is not the issue; the issue is what the Chief Justice thinks is appropriate in his capacity.

Senator BRANDIS—I think we both understand, Senator Wong, that it is not for the executive or the parliament to direct judges as to what to do in certain respects, in particular not when they are acting judicially. Do you not acknowledge that when the chief justice of a court, speaking on behalf of the court, participates in an administrative and financial review of its operations, plainly he is not speaking judicially.

Senator Wong—My proposition was that it is appropriate to respect the indication that the Chief Justice has made in relation to this. You may take a different view.

Senator BRANDIS—I am obviously not going to get any further, so I will not pursue that with you any longer. Mr Soden, is it the case that the Chief Justice's letter, among other things, urged the retention in some form of the Federal Magistrates Court or an intermediate and separate Commonwealth trial court?

Senator Wong—That is really asking—

Mr Soden—To me, that is asking me to disclose the confidentiality that the chief requested in terms of what is actually in the letter.

Senator BRANDIS—You are familiar with the Chief Justice's letter, are you not?

Mr Soden—I am.

Senator BRANDIS—You know what is in it?

Mr Soden—Yes, I do.

Senator BRANDIS—I am putting it to you, Mr Soden, that one of the principal items in the letter is the expression of a view on behalf of the Federal Court that the Federal Magistrates Court or some other intermediate level trial court should be maintained as a separate Commonwealth court.

Senator Wong—Senator Brandis, I think that it is most unfair to put Mr Soden in this position.

Senator BRANDIS—I am putting it to Mr Soden and Mr Soden can respond as he chooses.

Senator Wong—He has given evidence about the confidentiality request from the Chief Justice. You are now asking him to disregard that.

Senator BRANDIS—All right, I am putting a proposition to him.

Senator Wong—You are. That is the effect of your question and why you are putting it. And, frankly, if you want to play politics with this issue—

Senator BRANDIS—I am not trying to play politics. I do not regard this as a political issue, Senator Wong.

Senator Wong—The point is that Mr Soden has given evidence about the confidentiality request or position that the Chief Justice has taken. You are now seeking to undermine that by putting questions about the content of the submission to him. I do not think that it is fair to put the officer in that position, Senator Brandis. If you have a view that you want—

Senator BRANDIS—Senator Wong, it might come as a surprise to you that I do not regard this as an issue of political controversy. There is an issue about the appropriate resource allocation between, and structuring of, three Commonwealth courts, and I am sure that you would agree with me that it is in the national interest to get this right. Any decision made is going to have implications for the forward estimates and therefore these are proper questions, as the Chair by her silence acknowledges.

Senator Wong—That is a long bow, Senator. The point is that you are not asking questions about resourcing; you are asking this officer questions about correspondence in relation to which he has given evidence that the Chief Justice has sought to be confidential. I am saying to you that I do not believe that is a fair position to put this officer in.

Senator BRANDIS—In fact, Senator Wong, what I was responding to was your jibe that there was an attempt to be political about it.

Senator Wong—I did not believe that you ever responded to my jibes, Senator Brandis!

Senator BRANDIS—I understand, Mr Soden, that you are not in a position to waive the confidentiality of the letter that the Chief Justice sent to the Attorney-General and I felt obliged to put to you the proposition—but I expected to hear from you the answer that was given a little more longwindedly by the minister—that you are not in a position to say. The position explained in the Chief Justice's letter—whatever it may be—expresses, may we take it, the view of the court?

Mr Soden—Yes.

Senator BRANDIS—So the court has an opinion on this issue, that is, the issue of the future of the Federal Magistrates Court?

Mr Soden—And the Chief Justice has made that view in his submission.

Senator BRANDIS—That is fine. My question is a much simpler one: that the court has a view on this matter?

Mr Soden—Yes, it has.

Senator BRANDIS—What is it?

Senator Wong—Senator Brandis, that is the same question.

Senator BRANDIS—No, it is not.

Senator Wong—Yes, it is. I do not think that anybody watching or listening to these sets of questions would think that you were doing anything other than asking the same question in a number of different ways. You may wish to try and get Mr Soden to talk about the views

expressed in the Chief Justice's letter. He has indicated to you that the Chief Justice sought confidentiality. I do not understand why you do not respect that request.

Senator BRANDIS—I think that the parliament, which may be asked to deliberate on this matter later this year, Minister, is entitled to know what the views of the Federal Court are. Mr Soden has told me that the Federal Court does have a view about this matter and he has told me that that view has been expressed to government by a letter of the 11 February and he has told me that it is the wish of the author of the letter that that view be kept confidential and therefore he is not at liberty to go further. What this estimates committee is entitled to know of this agency—as of any agency or department of the Commonwealth, and particularly of an agency—is that, if it has a view about a fundamental issue directly touching and concerning it, what that view is.

CHAIR—As chair perhaps I can suggest a way forward here. With your concurrence, Senator Brandis, perhaps we could ask Mr Soden whether he would actually go back to the Chief Magistrate and ask whether or not he is happy for the letter to be seen or these questions to be answered.

Senator BRANDIS—I was not going to ask that. By making this issue public, as I have done, I have done what I wanted to do—

Senator Wong—Yes, exactly.

Senator BRANDIS—and I think it is now for government and for the court which Mr Soden represents here to consider its own position in circumstances in which two of the three affected courts have made their views public but one has, for reasons that seem appropriate to it, declined to do so. But I do put it to you, Mr Soden, that the Federal Court's view is radically at variance with the simple report in relation to the future, the continuation in existence and structure, of the Federal Magistrates Court. Now, I do not expect you to respond to that—

Senator Wong—No, you—

Senator BRANDIS—but I think it is fair to you that I show my hand to indicate to you where I am going with this. Thanks, Chair.

Senator Wong—Senator Brandis, I think everybody knows you are putting it to him knowing you will not get an answer but in order to seek to put your views about what its contents are on the public record. That is what you are doing, Senator Brandis.

Senator BRANDIS—I am putting its contents on the public record and inviting the court now to publish it. Thanks.

CHAIR—Let us move on then. Senator Barnett.

Senator BARNETT—The average waiting time for a case to be heard—what are the latest figures?

Mr Soden—We do not have an average waiting time for all cases, because of the broad variation between the different cases in the court—just quickly, by way of example, native title cases and C7 type cases as opposed to migration appeals. So what we look that is proportions. I can tell you that in our last annual report it was 70 per cent in less than six

months and another 14 per cent—that is, 84 per cent—in less than 12 months. That includes, as well, migration appeals from the Magistrates Court: we set ourselves a 90-day target for those and we have met that target consistently since we had that jurisdiction. If you put all of those together to make an average waiting time, it would not be as meaningful as, say, an average waiting time for one category of case. That is the way we do it and that is the way we report it.

Senator BARNETT—Understood. There was a recent report regarding your pilot program, referred to by some as the ‘rocket docket’.

Mr Soden—Yes.

Senator BARNETT—Obviously, from the report, it has been successful, but it is a pilot program. Can you describe the program and then what plans you have for implementing the program within your court system.

Mr Soden—A quick overview of the principles of the ‘rocket docket’: it commenced in Melbourne and it is better and more formally known as the Fast Track List. A party can apply to go into the Fast Track List in certain categories of cases—essentially, commercial cases. The fast-track procedures are a very short and truncated case management process. Pleadings are not used; more case summaries are required. The most important step in the fast track is a managerial like conference with the judge very early on, where the judge—and some of these conferences take hours, but they save an enormous amount of time at the other end—will work very closely with the representatives of the parties about what issues are in dispute, hone those issues and give directions to put that matter on a fast-track process towards a trial. The other major component of the trial is a shortening of the usual trial procedures, with the use of chess-clock type time limits if appropriate. The original pilot indicated that—

Senator BARNETT—Which was in Melbourne?

Mr Soden—In Melbourne. That is not to say that there were not fast-track like procedures in other places at the same time; it was a more formal use of a practice note to pilot those procedures in Melbourne. I should make that clear because there are fast-track procedures in some of our other registries. An important component was trial length. It was thought that fast-track cases should only be for matters with a trial of no more than eight days—but keep in mind that no more than eight days is now as a result of the compacted issue process so those trials could have been much longer. For our part, we gave an undertaking to the extent that we would deliver judgment urgently but no longer than six weeks. That has been met whenever a judgment has been needed.

Senator BARNETT—So what are the court’s plans now regarding the implementation of the program?

Mr Soden—The court has been looking at a fast-track direction scheme process for all of its registries. That is in what I might describe as some concluding stages of presentation. All of the judges in all of the registries would need to adopt that as a matter of practice, and that proposal will be at a judges’ meeting in a couple of weeks time, which I expect would be the formal consideration of a national fast-track procedure.

Senator BARNETT—And you hope for a positive response?

Mr Soden—I personally hope for a positive response. There is a lot of call for it and there seems to be a general consensus amongst the court that it is a good thing to do.

Senator BARNETT—If you do get a positive response, is it likely to be implemented immediately and are there any resource implications?

Mr Soden—No. It is something that could be implemented immediately by issue of a practice note applicable across the court.

Senator BARNETT—Finally, what is the current number of judges and vacancies?

Mr Soden—We presently have 46 judges, with the retirement last week of Justice Heery. The vacancies are for Sackville and Branson in Sydney in August and October last year, and Weinberg in July last year. They are yet to be replaced. Heery has just retired, and we will have another judge in Sydney retiring at the compulsory retirement age on 30 March. So there are four vacancies at the moment and one to occur shortly.

Senator BARNETT—As in March?

Mr Soden—As at 30 March.

Senator BARNETT—As a result of the 70-year constitutional requirement to retire?

Mr Soden—Justice Tamberlin will retire.

Senator BARNETT—Have there been any changes to the complaints handling system since we last met and, if so, what were they?

Mr Soden—No changes.

Senator BRANDIS—On reflection, having heard what the minister and Mr Soden had to say in response to my earlier line of questions, I probably should for completeness ask Mr Soden to take on notice this question. Will the Chief Justice consider revoking the confidentiality of his submission on behalf of the court to the federal government and publish the submission?

Mr Soden—I have no problems with taking that on notice.

Senator BRANDIS—Thank you.

CHAIR—I thought that was the compromise I had suggested for moving forward, but that is okay.

Senator Wong—You got to it earlier than some others.

CHAIR—Let us move forward anyway. Is that all the questions we have got for the Federal Court? Thank you very much for your attendance today.

Mr Govey—Madam Chair, can I correct something that we said before. There was a question about the date of that meeting. I have been told that the date of the meeting with the judges that Mr Soden and I attended was 18 December.

CHAIR—Thank you.

[12.19 pm]

Australian Law Reform Commission

CHAIR—I welcome Professor David Weisbrot to the hearing this afternoon. Before we begin, would you like to make an opening statement?

Prof. Weisbrot—No, I do not have anything beyond the submission that we made.

CHAIR—Thank you. We will go to questions.

Senator BRANDIS—What inquiries does the ALRC have on the go at the moment?

Prof. Weisbrot—We are in the midst of a review of federal secrecy laws, and just a few weeks ago we commenced a new review of the Royal Commissions Act.

Senator BRANDIS—Were these self-generated references or references from government?

Prof. Weisbrot—We do not do self-generated references. Under the ALRC Act we operate only on written terms of reference from the Attorney-General.

Senator BRANDIS—So these are both references from the Attorney General?

Prof. Weisbrot—That is right.

Senator BRANDIS—Are they currently the only two?

Prof. Weisbrot—For some years now we have been doing two references at a time.

Senator BRANDIS—Let me take you back to the privacy report that you delivered last year. Where is that at in terms of the government's response?

Prof. Weisbrot—You may remember that in launching the report Senator Faulkner said that the government had intended to divide the implementation up into several tranches and that in the first tranche, which would occur during this year, the work would be primarily on the core aspects of the Privacy Act, such as the privacy principles and the things that were integral to that. As far as I am aware, that is progressing well. But those questions would be better for PM&C for details.

Senator BRANDIS—Is that progressing within the department, is it?

Prof. Weisbrot—As far as I understand.

Senator BRANDIS—Mr Wilkins might know the answer to that.

Mr Wilkins—This is not an issue for the Attorney-General's Department; it is for PM&C.

Senator BRANDIS—I will ask in those estimates. Thank you.

Senator BARNETT—When was the report?

Prof. Weisbrot—The report was launched in August last year.

Senator BRANDIS—Is it the intention of the ALRC—and I am not for a moment suggesting that it should be; I just wondered—to make a submission to or in any other way participate in the deliberations of the National Human Rights Consultation?

Prof. Weisbrot—No, I do not believe so. Our submissions policy is that we would do that only where it relates to current or previous reference work, and as we have not done work in that area I do not think it would be appropriate.

Senator BARNETT—I have a question that relates to the inquiry established to look into alternative methods of executive inquiry other than the royal commission, which you just touched on. How long will that take and when will that report.

Prof. Weisbrot—We are due to report on 30 October this year, and we will.

CHAIR—Thank you.

[12.23 pm]

Australian Transaction Reports and Analysis Centre

CHAIR—Good morning and welcome. Would you like to commence with an opening statement?

Mr Jensen—With regard to the time, I will pass on that.

CHAIR—Thank you. We will go to questions.

Senator BRANDIS—In the last 12 months, how many prosecutions have been commenced relying upon AUSTRAC investigations?

Mr Jensen—We do not commence prosecutions under the provisions of the legislation for criminal—

Senator BRANDIS—I am aware of that, Mr Jensen. I just wondered whether you knew how many prosecutions have been commenced by the Director of Public Prosecutions relying largely upon investigations that you had conducted.

Mr Jensen—We do not conduct investigations. We analyse the data and make it available. The answer is, no, I do not know what the specific number is. Perhaps the Commonwealth Director of Public Prosecutions can provide that.

Senator BRANDIS—I will ask him. Have the new reporting requirements under the amendments to the legislation resulted in an increase in reports made to AUSTRAC?

Mr Jensen—There has been an increase in the number of reports. Each year since inception there has been a significant increase. The new reporting provisions only took effect as of 12 December last year. We are aware that in December there was a significant increase across the range of reports to us of about 23 per cent. It is too early to look at the figures for the new reporting requirements.

Senator BRANDIS—In actual numbers that 23 per cent represents an increase from what to what?

Mr Jensen—Probably from around 18 million to 20-plus million on the total reports.

Senator BRANDIS—When you say a 23 per cent increase, is that between December 2007 and December 2008?

Mr Jensen—That is correct.

Senator BRANDIS—Do you ascribe at least a part of that increase to the new legislation coming into operation?

Mr Jensen—I would suggest that that is not the case because the provisions are still under the Financial Transactions Reports Act until December and even post-December with some amendments that were made in recent times to continue the reporting during this period.

Senator BRANDIS—Allowing for the fact that I do not want you to go into operational matters, are you able to say what proportion of all the reports made to AUSTRAC in the last 12 months was subsequently investigated, referred to other agencies or not proceeded with?

Mr Jensen—Bearing in mind that we receive a range of financial transactions and not all of them will necessarily result in investigation, of the some 35,000 suspicious matter reports—

Senator BRANDIS—Just confine yourself to that.

Mr Jensen—They were all provided to the Australian Taxation Office, for example, and other agencies have access to that information. Also, because all that information is combined within our database there are linkages between those transactions and other information within the database. We get feedback from the law enforcement agencies. We had feedback for the 2007-08 financial year that there were about 2,800 investigations in which this information was relevant.

Senator BRANDIS—These are investigations by law reform agencies?

Mr Jensen—And the tax office and other national security agencies.

Senator BRANDIS—That is what I am trying to get at. Does that 2,800 figure include or exclude investigations by the Australian Taxation Office?

Mr Jensen—It would include some investigations by the Australian Taxation Office where they have reported information back to us leading to those investigations. That is their information; we may not get all the information or all the investigations. It would depend on how much or what component of that investigation comprised our information.

Senator BRANDIS—Of the 2,800—we will try to finish this in 32 seconds—approximately how many were investigations by law enforcement agencies?

Mr Jensen—I cannot give you those figures. We would have to take that on notice.

Senator BRANDIS—Roughly?

Mr Jensen—A large proportion, I would suggest.

Senator BRANDIS—And roughly what proportion were investigations by national security agencies?

Mr Jensen—I would not have that figure. I would have to provide that on notice.

Senator BRANDIS—Presumably fewer than the law enforcement agencies.

Mr Jensen—Definitely many fewer.

Senator BRANDIS—Thank you very much, Mr Jensen. You will take those last few questions on notice?

CHAIR—The rest of the questions on AUSTRAC and the questions on the Native Title Tribunal will be put on notice, though I am conscious of the fact that Native Title Tribunal people have flown here from Perth.

Senator Wong—Are the opposition senators saying that they have no questions for the Native Title Tribunal?

CHAIR—They are saying that they do but instead of them appearing now before us they can put the questions on notice.

Senator Wong—It is somewhat unfortunate. I understand the committee's timing, but it is my understanding that a number of officers have come from Perth and if opposition senators were only going to have questions on notice obviously there would have been far less time and expense et cetera if that could have been indicated prior to the hearing.

CHAIR—Yes, you are correct, Minister. Do you still want to put them on notice, Senator Barnett, or do you want to see them after the other agencies?

Senator BARNETT—I am quite happy to pursue it this afternoon. In light of the time frame, we will have to limit the number of questions and I do not want to delay them getting back to their state today. We are going to have several hours after lunch from AFP—

CHAIR—Can the Native Title Tribunal people indicate to us whether they can get a flight back tonight, if that is the case?

Senator BARNETT—If we went to them immediately after the three agencies, we could probably fit that in.

CHAIR—All right, we will reconsider that. We will try to deal with the tribunal before 5.15 pm when we take the dinner break.

Proceedings suspended from 12.32 pm to 1.32 pm

CHAIR—Just before we broke for lunch we decided we would do the National Native Title Tribunal at 1.30 pm. Sorry, gentlemen. We need them for only 15 minutes. So we are going to the National Native Title Tribunal and then they can skip home across the Nullarbor for the rest of the day. I welcome officers from the National Native Title Tribunal as we reconvene our consideration of estimates process. Ms Fryer-Smith, do you wish to make an opening statement?

Ms Fryer-Smith—No, thank you, Madam Chair.

CHAIR—That is fine. Let us go to questions. Senator Barnett.

Senator BARNETT—Thank you, Ms Fryer-Smith, for being here and coming from Perth. I have some important questions that follow on from previous questions I have asked regarding the status of applications currently before the tribunal. I think at the last estimates hearings it was down to 497 from 557. Can you provide an update and a status report, please?

Ms Fryer-Smith—Certainly. As you said, at the last Senate estimates hearing there were 497 claimant applications in the system, which was down from 513 in May 2008. Currently there are 473 claimant applications in the system. That is a reduction of 40 applications from May 2008.

Senator BARNETT—Okay. Do you prepare a prognosis for the next 12 months?

Ms Fryer-Smith—No, we have not prepared a formal prognosis, except that under our national case flow management scheme we have what is called the substantive list, in which we identify applications that we think will be resolved through to determination or dismissal or discontinuance within the next two years.

Senator BARNETT—How many are on that list?

Ms Fryer-Smith—There are about 50 matters on that list.

Senator BARNETT—Only 50?

Ms Fryer-Smith—Only 50 at this time, yes. There is some mobility in the list.

Senator BARNETT—Does it worry you that it is only 50 out of the 473? That must cause some concern.

Ms Fryer-Smith—It does cause concern, of course. That concern is widely shared among all participants in the native title system.

Senator BARNETT—Does that mean that within the next two years we can expect perhaps those 50 to be dealt with and that at least another 400 will not be dealt with to finality?

Ms Fryer-Smith—I really cannot comment on that. As I said, there is some mobility in the system. For example, in the Northern Territory, some matters are being litigated. There is an expectation that once those matters have been determined other matters may quickly follow and be determined. It is simply very difficult to estimate and the substantive list is our best estimate of that.

Senator BARNETT—Sure, but one could surmise and adduce from the figures that you are providing that it would not be unforeseen that there would be some 400 still on the list in two years.

Ms Fryer-Smith—Well, one would hope not, Senator, but it is simply too difficult to predict.

Senator BARNETT—Sure, but that would be a reasonable deduction by an objective observer.

Ms Fryer-Smith—I really cannot add to what I have already said.

Senator BARNETT—The government has announced institutional changes in response to a question on notice dealing with the backlog. I notice that it has announced institutional changes to improve the operation of the native title system where the Federal Court would assume a central role in managing claims.

Ms Fryer-Smith—Yes.

Senator BARNETT—How is that progressing? I note that the answer states that the government intends this change to commence on 1 July 2009. Why would that be if it is ready to go?

Ms Fryer-Smith—That may be a matter that is best directed to the government.

Senator BARNETT—Perhaps Mr Wilkins may assist.

Mr Wilkins—Can you repeat the question?

Senator BARNETT—Yes. The new arrangements announced by the government involve institutional changes to the operation of the native title system whereby the Federal Court will assume a central role in managing all claims and claims will be mediated by the court or the tribunal. An answer to a question I put on notice states that the government intends this change to commence on 1 July 2009. I wonder why that is, rather than it commencing immediately.

Mr Wilkins—I will take the question on notice, but I assume that we need to gear it up. I know that we have had meetings with the Federal Court about how exactly that will operate. Why don't I take that question on notice and get you a considered response, Senator?

Senator BARNETT—Okay. Can you add anything further, Ms Fryer-Smith?

Ms Fryer-Smith—Nothing very useful. We are aware that the matter is relatively well advanced; that is all.

Senator BARNETT—We are also aware that the Attorney-General has called on all native title parties to take a more flexible, less technical and a more interest based approach to native title. This is in the interests of a faster process in dealing with the backlog. Has that achieved anything; have you seen any noticeable improvement?

Ms Fryer-Smith—I think that all the stakeholders and participants in the system are very mindful of the impact of the delays and the costs associated with determining native title matters. However, it is a national scheme in which at a state level policy matters are addressed in different ways. I am sure that no-one wants the very long lead times that currently exist to continue as long as they have historically. In relation to some of the amendments made in 2007, for example, a number of applications that were in the system but with no real prospect of success have been dismissed.

Senator BARNETT—Does that include the longest duration? I think that last time we met you said that it was 14 years.

Ms Fryer-Smith—Are you referring to the Wik matter?

Senator BARNETT—Possibly.

Ms Fryer-Smith—That is still ongoing. As you will recall from the response that we provided to your question on notice from the Senate estimates hearing of 20 October, the parties in the Wik No. 1 application—which is the one you are referring to—have turned their attention and resources to a second application, which is known as Wik No. 2. They are progressing a number of Indigenous land use agreements and a determination in respect of that second application. That is on track for a consent determination very soon; in fact, as early as February 2009.

Senator BARNETT—Is that Wik No. 2?

Ms Fryer-Smith—Yes, Wik No. 2. The tribunal is preparing to resume mediation of Wik No. 1 when the parties have the resources to turn their attention to that. I should emphasise that some 80 per cent of the land area that comprises Wik No. 1 claim has been the subject of

three partial consent determinations to date. So only 20 per cent of the original claim area has not yet been dealt with.

Senator BARNETT—So there is some improvement there.

Ms Fryer-Smith—Yes, there is.

Senator BARNETT—Is it 14 years?

Ms Fryer-Smith—Wik No. 1 was lodged in 1994.

Senator BARNETT—Yes. The Attorney-General has made it clear that he wants to see improvement in this area in dealing with the backlog. The question is what is actually happening on the ground in terms of implementation to deal with it. You have just advised that you have the fast-track list of 50 out of 473. However, without further structural, organisational and resource injections, it is hard to imagine that there will be much improvement other than hearing words. The Attorney hopes that the parties to the disputes will have a more flexible approach.

Ms Fryer-Smith—Certainly, but in my view it should not be overlooked that, although to this point we have been talking about the disposition of the claimant applications, there is considerable activity in relation to other aspects of the native title system, in particular, for example, the entering into of Indigenous land use agreements, which can be for a very wide variety of uses. Because of the rigorous nature of establishing that native title exists, many of the applicants in the native title system in fact direct their resources to the pursuit of their procedural rights under the other parts of the legislation; for example, the entering into of these more flexible Indigenous land use agreements. They are also involved in future act proceedings, where grantee parties want to pursue mining rights. If one looks at the situation only from the perspective of resolving claimant applications, it is obviously not a very happy prospect. But there is significant activity in relation to these other areas.

Senator BARNETT—A funding review of the native title system was concluded in August 2008?

Ms Fryer-Smith—Yes.

Senator BARNETT—I am advised that the recommendations from the review are forming part of the 2009-10 budget process. What does that mean? Can you provide further details in terms of changes in funding for the native title system?

Ms Fryer-Smith—That matter is with the department at the moment. I cannot make any useful contribution in respect of that question.

Senator BARNETT—Does the department wish to respond?

Mr Wilkins—That is part of the budget process.

Senator BARNETT—I thought you might say that, Mr Wilkins.

Mr Wilkins—That is the fact. I cannot really enlighten you. I revert to the previous point you were pursuing. Clearly the Attorney encouraged people to take a more flexible approach, but there are also practical steps, largely tied up with these changes to the Federal Court, which it is hoped will, on the one hand, actually provide for some clear judicial rulings and, on the other hand, provide much more flexibility where it counts. In terms of whether it

makes a difference, it is partly attitudinal, but there are also some practical steps in terms of procedure. It is probably best to judge it in the light of the new procedures when they come in.

Senator BARNETT—Sure, we will be monitoring that over time, but we cannot provide a prognosis in terms of the likely benefits from such a change from 1 July 2009 at this stage, notwithstanding the fact that it is to be implemented. You cannot advise as to how exactly it will benefit the system?

Mr Wilkins—I think it will benefit the system in terms of getting some clear judicial interventions at a point where you need a judicial ruling to put the matter to rest or to encourage it to go to mediation. That is the theory of it.

Senator BARNETT—My final question, in light of the time, relates to the government's and the tribunal's efforts to improve the system. I asked a question in terms of the time taken to deal with all outstanding claims. The answer that I received was that it will depend upon the extent to which all parties are willing to change their behaviour and to engage actively in progressing claims to resolution. We have sort of touched on that, but can you provide an estimate in respect of the time it will take to deal with outstanding claims?

Ms Fryer-Smith—As far as I am aware there has been no attempt to conduct such a prognosis since last year, when the tribunal estimated that it might take 30 years.

Senator BARNETT—So there has been no change to that?

Ms Fryer-Smith—Not as far as I am aware.

Senator BARNETT—I am wondering whether that is now 25 years, 20 years, 15 years, or whether it has gone up.

Ms Fryer-Smith—Not as far as I am aware. I need to make it clear that that estimate was on the basis that, at the current rate of disposition, that was the likelihood. Of course, there is every hope that that rate will increase.

Senator BARNETT—There is every hope. However, based on the current rate is the 30-year time frame still accurate?

Ms Fryer-Smith—I really cannot comment on that.

Senator BARNETT—You must be able to comment on it. You commented on it a year ago, or your tribunal did.

Mr Wilkins—Senator, it is a little imponderable. If we are right about the structural changes, the rate will be significantly different. What you are talking about is essentially a triage of these cases through the Federal Court. You can expect improvements, but I cannot quantify that at this point.

Senator BARNETT—All right. We were advised a year ago that it would take an estimated 30 years. There have been some minor structural changes and a call by the Attorney for behavioural change. You can assume that it will be in the order of 30 years or hopefully less. Is that a fair observation?

Mr Wilkins—Certainly hopefully less. I am not sure what the exact number is. I am not sure that there is much point in pontificating about numbers in this context. I do not know, but clearly the reforms have been put through and some of the issues that I suspect might come

from the government will be designed to ensure these matters are dealt with as quickly as possible. I cannot give you a number.

Senator BARNETT—Ms Fryer-Smith, do you want to add to that?

Ms Fryer-Smith—Not really, Senator. I think the variables are such that, as I said, we have not carried out any other modelling in relation to how things might look. But we have heard nothing either to contradict or to confirm the 30-year prognosis.

Senator BARNETT—Thank you.

CHAIR—Thank you for your attendance today. We will now turn to the Australian Federal Police.

[1.48 pm]

Australian Federal Police

CHAIR—Mr Keelty, I welcome you and your officers to this estimates hearing. Do you wish to make an opening statement?

Mr Keelty—No, Madam Chair.

CHAIR—Senator Hutchins, do you want to ask any questions?

Senator HUTCHINS—Thank you, Madam Chair. Today's *Age* and the *Sydney Morning Herald* carried articles in relation to what looks like an AFP investigation into donations to the Liberal Party. Have you seen that article, Mr Keelty?

Mr Keelty—Yes, I have.

Senator HUTCHINS—Did the AFP launch an inquiry or investigation into a complainant's allegations that Mafia-linked businessmen would make substantial donations to the Liberal Party in return for help from MPs to get a deportation order against an alleged criminal, Francesco Madafferi, overturned?

Mr Keelty—There had been an earlier investigation and it is still underway. So I do not wish to go into the detail of that investigation.

Senator HUTCHINS—So there is still an inquiry or investigation underway into these allegations?

Mr Keelty—That is correct. A referral was provided to us originally on 15 December 2006 and an investigation was undertaken at that point in time. But a more recent referral was provided us on 30 January 2009. So we have reopened the previous investigation.

Senator HUTCHINS—All right. Tell me if it is inappropriate to ask you this, Mr Keelty—and I am sure you will. In the original investigation were any Liberal MPs, senators, their staff or Liberal Party officials interviewed by AFP officers?

Mr Keelty—Given the nature of the reopened investigation, I do not think it would be appropriate for me to describe who has been interviewed, whether they are politicians, former politicians or other persons in the community, until we can complete the investigation.

Senator HUTCHINS—You may again say that it is operational and that you cannot comment. During the 2006 inquiry or investigation, did your officers check donation records held by the Australian Electoral Commission with regard to the Liberal Party?

Mr Keelty—I do not have the detail of the investigation, Senator. It would be operational in terms of what they did and the nature of the investigation and the allegation as to how far they took it at that point in time.

Senator HUTCHINS—Today's article mentions four Liberal Party members of parliament, three federal members of parliament and an unnamed member of state parliament—I assume that that is the New South Wales parliament. Are you in a position to tell us who that person was?

Mr Keelty—No, Senator, it would be inappropriate for me to comment.

Senator HUTCHINS—So the inquiry into this allegation has been reopened. That is correct; is it not?

Mr Keelty—That is correct. Some new information has been made available to us. That information was actually provided by the journalist who wrote the article in the *Age*. We are following up allegations contained in that article.

Senator HUTCHINS—As I understand it from reading that article, in 2004 a Liberal Party staffer contacted the Australian Federal Police. Is that correct?

Mr Keelty—I do not have the detail of the original complaint with me.

Senator HUTCHINS—It says in the article that at the time \$100,000 was mentioned that could allow for a visa to be granted to Mr Madafferi. It says that it was done by a Liberal Party staffer who contacted the AFP.

Mr Keelty—I do not have the actual details of the original referral. But I can say that the matters referred to us in 2006 related to allegations of actions that allegedly occurred in 2004. So there is quite a period between when the alleged offence is said to have occurred and when the actual matter was originally referred to us.

Senator HUTCHINS—So it was not referred to you until 2006?

Mr Keelty—That is correct.

Senator HUTCHINS—I understand that that was on the basis of a statement. Is that correct?

Mr Keelty—I do not have the original referral with me, so I could not elaborate on what form it took or who it was.

Senator HUTCHINS—But it was investigated then?

Mr Keelty—That is correct.

Senator HUTCHINS—The force decided not to take any further action on it?

Mr Keelty—The original matter—the 2006 matter—was finalised on 21 June 2007. It was ascertained at that time that there was insufficient evidence to demonstrate any offences had occurred.

Senator HUTCHINS—But you now have evidence to suggest that it should be reopened. Is that correct?

Mr Keelty—We have the allegations, the thrust of which are contained in today's article, and they will now be followed up.

Senator HUTCHINS—Thank you very much, Mr Keelty.

Senator BARNETT—You are aware of reports in the *Sunday Tasmanian* and today's *Mercury* regarding *Sea Shepherd* and the Australian Federal Police investigation of certain matters?

Mr Keelty—That is correct.

Senator BARNETT—That report refers to an AFP written statement and states that a warrant was executed as a result of a formal referral from the Japanese authorities. I have been to the AFP website and I cannot locate that written statement or any media statement about the alleged matter. If there is one, could you please advise the committee and perhaps table that statement?

Mr Keelty—I am advised that that was a response to a media question. No media release has been issued by the AFP to date.

Senator BARNETT—Could you advise the committee the response provided to the media inquiry?

Mr Keelty—As I understand it, all that occurred was a confirmation of the fact that the AFP had executed a search warrant on the vessel. We received full cooperation from the captain and the crew of the vessel. In fact, the *Sea Shepherd* website actually describes the events and the fact that they cooperated fully and that the AFP acted professionally in the execution of that warrant.

Senator BARNETT—Can you table the search warrant?

Mr Keelty—No, I cannot. It is another ongoing investigation.

Senator BARNETT—The report in yesterday's *Sunday Tasmanian* said that the search warrant mentioned two offences, one alleging that the *Steve Irwin* crew may have endangered the safe navigation of Japanese whaling vessel *Yushin Maru No. 3* by deploying 'a propeller entanglement system' between 2 and 5 February. The second warrant is directed at Captain Watson, alleging that he may have endangered the safe navigation of the *Yushin Maru No. 3* by deliberately colliding with it. Is that accurate?

Mr Keelty—That is the nature of the allegations that have been provided to the AFP from the Japanese authorities via the Department of Foreign Affairs and Trade.

Senator BARNETT—Which Japanese authorities? Can you identify them?

Mr Keelty—The referral came to us on 17 February 2009.

Senator BARNETT—From whom?

Mr Keelty—From the Department of Foreign Affairs and Trade. But when I say 'referral', it was simply forwarding to us the allegations made in Japan by the director general of the Japanese fishing agency on 9 February 2009.

Mr Wilkins—I think it might be useful if we were to refer that question to Mr Bill Campbell, who is in charge of the Office of International Law, to explain for the benefit of the committee how this system works. It is not a conventional type of police operation.

Senator BARNETT—Of course.

Mr Wilkins—Perhaps we can get Bill Campbell QC up here to explain how this works and the nature of the international obligations that the AFP is discharging.

Senator BARNETT—Can you clarify who is the director-general of the Japanese—

Mr Keelty—Fisheries Agency.

Senator BARNETT—The director-general made the complaint on 9 January—

Mr Wilkins—2009.

Senator BARNETT—And you understand that that went to the Department of Foreign Affairs and Trade?

Mr Wilkins—As we understand it, the matter was referred through the Australian embassy in Tokyo requesting decisive action and investigation.

Senator BARNETT—When was that sent to the Australian embassy?

Mr Keelty—That is correct.

Senator BARNETT—When?

Mr Keelty—On 9 February.

Senator BARNETT—I am happy to stop here if you want to.

Senator Wong—I am a little concerned if you are going to go down this path. These are really matters for the Department of Foreign Affairs and Trade, because obviously they were reported to Mr Keelty prior to the AFP actually initiating any action. I just raise that.

Senator BARNETT—You can raise that, Minister. I am asking questions of the AFP and the AFP is responding as appropriate—and, as far as I am concerned, as they usually do at estimates. I am asking about dates—

CHAIR—Senator Barnett—

Senator Wong—Senator Barnett, there is no need to get shirty. I am making the point that these questions relating to dates on which embassies may have done something or not are clearly matters within foreign affairs portfolio.

Senator BARNETT—Minister, I do not need that intervention, thank you.

CHAIR—Senator Barnett, I think the minister is just highlighting to you that in order for officers to answer your questions you need to be sure that you are asking the right officers in the right portfolio. So it may well be that you need to redirect your questions to the foreign affairs—

Senator BARNETT—Chair, with the greatest respect—

CHAIR—Please do not interrupt me—

Senator BARNETT—I am asking this question as appropriate—

CHAIR—while I am clarifying something, thank you. You might need to ask your questions in that portfolio area as well in the coming days.

Senator BARNETT—I wish to make a response to that. You are making a mountain out of a molehill. Mr Keelty has been here many, many times. We ask questions and he answers them in the appropriate manner. Mr Keelty should be allowed to answer the question as appropriate without undue obfuscation or intervention by the minister or you as chair.

CHAIR—Senator Barnett, I will clarify it again. We need to ensure that you are asking questions of the right officers in the right portfolio. Nevertheless, I think we are now going to Mr Campbell for some clarification of matters. Thank you, Mr Campbell.

Mr Campbell—I think the secretary thought it might be useful if I provided some background about the international obligations on this issue. The relevant convention is the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. I will not go into the actual application of the convention in this case, other than to mention some of the relevant countries. The relevant countries are Japan as the flag state of the whaling vessel; the Netherlands as the flag state of the *Steve Irwin*; Canada as the state of the nationality, as we understand it, of the captain of the *Steve Irwin*; and Australia as the state in which the vessel is currently present.

Senator BARNETT—Excuse me. Australia is the country in which the vessel—the *Steve Irwin*—is currently present.

Mr Campbell—Yes.

Senator BARNETT—But you have not mentioned the fact that the ship was in international waters at the time of the event.

Senator Wong—He is just going through the relevant countries under the convention.

Mr Campbell—My understanding is that the ship was in international waters at the time of the event. I am trying to address the issues of jurisdiction under the convention and under the act.

Senator BARNETT—Thank you.

Mr Campbell—One of the offences covered by the convention is where a person unlawfully and intentionally causes damage to a ship or its cargo that is likely to endanger the safe navigation of a ship. It also covers attempts to do such acts and threats to carry out such acts. Under the convention, each state party to the convention is obliged to take jurisdiction over offences where a possible offender is present in its territory, and it does not extradite them to another country. Under the convention, a relevant state—I suppose in this case it is Australia—is obliged to make a preliminary inquiry into facts in accordance with Australian legislation. Upon being satisfied as the circumstances so warrant, it shall in accordance with the law take the person into custody or take such measures as are necessary to ensure their presence for such time as is necessary to enable criminal or extradition proceedings to be implemented. If I can just move on quickly—

Senator BARNETT—Mr Campbell, would you like to table that statement? It would be of assistance to the committee.

Mr Campbell—I can table that information.

Senator BARNETT—Thank you.

Mr Campbell—I had not quite finished.

Senator BARNETT—Sure.

Mr Campbell—In terms of Australian domestic law, that particular convention is implemented under a Commonwealth act entitled the Crimes (Ships and Fixed Platforms) Act 1992. Reflecting the convention, the crime of damaging a ship is to be found in section 10(2) of the act. I think ancillary offences to a degree are covered in the act, but such attempts would also be covered in the Criminal Code. The act has certain requirements that must be met before a prosecution can take place and there are various alternative criteria on that, the most relevant being that the ship was flying a flag of a convention state or the alleged offender was a national of a convention state. Finally, an actual prosecution for an offence, as opposed to an investigation of an offence, may not be begun without the consent of the Attorney-General or a person authorised by the Attorney-General.

Senator BARNETT—As in our Attorney-General?

Mr Campbell—As in the Commonwealth Attorney-General. That is the international legal background to this sort of issue and also the manner in which Australia gives effect to that obligation under Australian domestic law.

Senator BARNETT—Thank you. Are you happy to table that?

Mr Campbell—Yes, I am.

Senator BARNETT—That raises a whole range of questions that I am happy to ask Mr Campbell, perhaps before going back to Mr Keelty. First, are all the countries referred to—Japan, the Netherlands, Canada and Australia—signatories to the convention?

Mr Campbell—They are.

Senator BARNETT—You referred to the fact that the alleged incident should have occurred within its territory.

Mr Campbell—No, I think what I said was that under the convention one of the criteria for asserting jurisdiction is that the ship is present in its territory, not at the time the offence occurred but when it is being investigated.

Senator BARNETT—Right. So the fact that it was being investigated in the Hobart docks rather than the incident in international waters covers that.

Mr Campbell—The incident may well have occurred in international waters, Senator, but one of the criteria for applying the convention to it and having a preliminary inquiry is that the vessel is actually located within your jurisdiction.

Senator BARNETT—You are saying that under the convention Australia is required to make inquiries into the facts alleged?

Mr Campbell—Yes, Senator.

Senator BARNETT—As a result of being a signatory to that convention?

Mr Campbell—Yes, Senator.

Senator BARNETT—You mentioned the Crimes (Ships and Fixed Platforms) Act 1992. You also referred to the Criminal Code. Are you referring to any particular sections of the Criminal Code?

Mr Campbell—I was referring ancillary offences, such attempts and things like that.

Senator BARNETT—Such as?

Mr Campbell—Attempts to do something.

Senator BARNETT—You referred to the need under this convention to have the consent of the Attorney-General.

Mr Campbell—The act says that the prosecution cannot proceed without the consent of the Attorney-General, but it allows certain preliminary matters to be done before the prosecution, such as an investigation, an arrest or something like that.

Senator BARNETT—Can we assume or can we not assume that the Attorney-General was aware of the actions of the Australian Federal Police before they commenced their investigation?

Mr Campbell—Can I answer that in two ways? First, we have not reached the stage of seeking the Attorney-General's consent. Second, the outline that I have given relates generally to the position under international law and the position under domestic law. I am certainly not seeking to apply this to the events of the past month or so, because it is not my job to do so. That is for the AFP and ultimately the Director of Public Prosecutions. On the second issue of whether the Attorney was aware beforehand that an arrest warrant was going to be executed, or the possibility of that happening, the answer is yes.

Senator BARNETT—Alright, thank you for that overview. We are all a little more educated. I think it raises a range of other questions as well. Thank you. We will go back to Mr Keelty. You were going through the scenario. The allegations were made initially by the director-general of the Japanese Fisheries Agency on 9 February to the Australian Embassy in Tokyo. Do you want to continue?

Mr Keelty—That is correct. We were separately advised by the Japanese Embassy in Canberra of that referral on 17 February.

Senator BARNETT—A separate notice on 17 February?

Mr Keelty—A separate notice about the original complaint was provided to us by the Japanese national police officer attached to the Japanese Embassy here in Canberra on 17 February.

Senator BARNETT—How was that advice provided?

Mr Keelty—Orally.

Senator BARNETT—Who took the phone call?

Mr Keelty—I think it was a meeting, Senator. It was basically a repeat of the information that had been provided through the embassy in Tokyo.

Senator BARNETT—So we have a meeting on 17 February between a Japanese embassy official and an Australian Federal Police officer. Were there any others present?

Mr Keelty—I do not have that advice. The only reason I say that is that the information came by two avenues to the AFP—through DFAT and the Japanese embassy in Canberra.

Senator BARNETT—Can the department advise whether any departmental officials were present?

Ms Fryer-Smith—At the meeting?

Senator BARNETT—With the Japanese embassy.

Mr Wilkins—I am not aware of any.

Senator BARNETT—Mr Keelty, do you know if any officials from the Department of Foreign Affairs and Trade or any other government officials were present at that meeting?

Mr Keelty—I do not think they were. In fact, I will say no. Normally police liaison officers based here in Canberra, whether they are from Japan or any other country, liaise directly with the AFP.

Senator BARNETT—Simultaneously on 17 February you advised that you also received advice from DFAT. Is that correct, and how was that promulgated?

Mr Keelty—A letter came on 18 February 2009 from the Department of Foreign Affairs and Trade.

Senator BARNETT—It was dated 18 February. I thought you said earlier it was dated 17 February.

Mr Keelty—That was my mistake, Senator. The report from the embassy came in on 17 February. A verbal report came in from DFAT on 17 February as well. That was followed up by a letter or an email from DFAT on 18 February.

Senator BARNETT—I am confused. Was it a letter or an email from DFAT?

Mr Keelty—An email.

Senator BARNETT—On 18 February?

Mr Keelty—My notes tell me it was an email letter. But I will call that an email, Senator.

Senator BARNETT—An email. Without going into the detail, was it advising of a complaint or an allegation made by the director general of the Japanese Fisheries Agency; was that the substance of the email?

Mr Keelty—That is correct.

Senator BARNETT—Is there anything else you can tell us about the email?

Mr Keelty—No. As I mentioned before the matters—

Senator BARNETT—That is fine. Did you receive anything directly from the Japanese Fisheries Agency or was it at all times via DFAT and/or the meeting with the Japanese embassy official?

Mr Keelty—That is correct.

Senator BARNETT—Right. What happened next?

Mr Keelty—As a result of the referral—and as you have heard from Mr Campbell—in accordance with our domestic obligations under the convention, we commenced preliminary inquiries into the alleged violations of Australian domestic law. We then went about preparing to gather evidence from the vessel when it docked in Australia. Obviously, the trigger for the AFP's involvement is the vessel actually coming to an Australian port. That triggers the conventions mentioned by Mr Campbell earlier. As a non-flag state, Australia has only limited jurisdiction in the matter.

Senator BARNETT—A non-flag state?

Mr Keelty—We are not a flag state.

Senator Wong—Neither of the vessels was Australian flagged.

Mr Keelty—The vessels were from the Netherlands and Japan.

Senator BARNETT—I am with you.

Mr Keelty—We have only limited jurisdiction and the purpose of our boarding the vessel was to gather any admissible evidence. We are in the process of reviewing that material now. As I mentioned before, Captain Watson, the captain of the vessel, cooperated fully and understood what we were trying to do. I should point out that 18 months ago we actually investigated a complaint made by the captain of the vessel against the Japanese authorities. In that sense we understand the legislation and the need to treat it seriously and objectively for all parties.

Senator BARNETT—You referred to an alleged violation of Australian law. Can you identify the law?

Mr Keelty—I thought Mr Campbell did that. It is the Crimes at Sea Act 2000 and the Crimes (Ships and Fixed Platforms) Act 1992.

Senator BARNETT—And specifically which sections?

Mr Keelty—Mr Campbell might have referred to the sections.

Senator BARNETT—We have section 10(2) of the Crimes (Ships and Fixed Platforms) Act.

Mr Campbell—That is the crime of damaging shipping.

Senator BARNETT—Is that the only section that has been breached?

Senator Wong—Hang on, that is a very loaded question. As I understand the evidence there has not been any decision as to anything other than the investigation about which Mr Keelty has given evidence. A question such as the one you have just asked makes an assumption that some form of prosecution or legal proceeding has commenced. No such evidence has been given. These are allegations only at this stage.

Senator BARNETT—I did say 'allegedly', Minister, but thank you. Mr Keelty, can you please identify the two sections?

Senator Wong—Two sections in relation to what, Senator Barnett?

Senator BARNETT—You have mentioned section 10(2).

Senator Wong—What are you asking, Senator Barnett? Are you asking which sections have allegedly been breached?

Senator BARNETT—Correct.

Mr Keelty—I cannot give the specifics. They would be detailed in the warrant. As I said, that is an operational issue and I would not pursue that any further. They are broad allegations and the search warrant has been granted by a justice.

Senator BARNETT—A Tasmanian magistrate?

Mr Keelty—That is right.

Senator BARNETT—My first question related to the report in the *Sunday Tasmanian* that contained the first allegation, and I outlined that. I also outlined the second allegation, and you indicated at the time that they were accurate. I am asking for better particulars, if at all possible, regarding breaches or what particular acts and legislation we are talking about. If you are not able to answer that, I accept that.

Mr Keelty—I would ask you to do that, because it would go into the detail of the investigation.

Senator BARNETT—That is fine. Let us go to the advice you received from DFAT from the Japanese embassy regarding the Japanese Fisheries Agency's concerns and allegations. Did you advise the minister? When was the minister first advised of the incident/inquiry?

Senator Wong—Which minister?

Senator BARNETT—We will go through each minister. Let us go for the Minister for Home Affairs, then we will go to the Minister for the Environment, Heritage and the Arts, then the Minister for Foreign Affairs and then the Attorney-General. We will go through each one and then possibly the Prime Minister's office.

Senator Wong—Minister for the Environment, Heritage and the Arts and the Minister for Foreign Affairs are not represented here. I can advise that I have been advised—

Mr Keelty—The Minister for Home Affairs was advised on 19 February.

Senator BARNETT—How did that advice take place?

Mr Keelty—It was a written briefing.

Senator BARNETT—From whom to whom?

Mr Keelty—From the AFP.

Senator BARNETT—From you, Mr Keelty?

Mr Keelty—No, it would have been the national manager for economic and special operations.

Senator BARNETT—And it was a brief to advise that the inquiry had commenced. What else? Can you help us with that?

Mr Keelty—Having received the referral and the proposed course of action to be taken by the AFP.

Senator BARNETT—What date was that?

Senator Wong—19 February.

Senator BARNETT—Was there any response from the minister or his office?

Mr Keelty—No, it was a routine-style briefing.

Senator BARNETT—Have you had any response from the minister or his office?

Mr Keelty—No, I have had no conversations whatsoever with the minister about this.

Senator BARNETT—Or the AFP?

Mr Keelty—To my knowledge, none of my officers have, other than the written briefing that went up on 19 February.

Senator BARNETT—Alright.

Senator Wong—It is important, Senator, and I am sure you are aware, that neither the Minister for Home Affairs nor any other Australian minister has any role in determining operational matters of the AFP.

Senator BARNETT—Sure. Were any other ministers advised by the AFP?

Mr Keelty—Not by the AFP.

Senator BARNETT—We know for sure that the Minister for Home Affairs is aware of the actions of the AFP and we know for sure that DFAT was aware. Can the minister advise the committee if the Minister for the Environment, Heritage and the Arts, Peter Garrett, was aware of the inquiry and the actions of the AFP?

Senator Wong—I am not here representing the Minister for the Environment, Heritage and the Arts.

Senator BARNETT—I know that. I am asking you if you are aware.

Senator Wong—No, I am not aware.

Senator BARNETT—Are you aware of any other ministers being briefed or advised about the incident or the inquiry?

Senator Wong—The evidence from Mr Campbell was that the Attorney-General was advised. I cannot recall if he indicated the date on which that occurred.

Mr Campbell—The Attorney-General, or his office, was advised on 16 February of the possibility of this taking place. He was advised, I think, last Friday that it had taken place.

Senator BARNETT—Was that 20 February?

Mr Campbell—Yes, 20 February, which was the day on which we understand the warrant was executed.

Senator BARNETT—How was that advice promulgated?

Mr Campbell—In the first instance in a submission to the Attorney-General.

Senator BARNETT—From whom?

Mr Campbell—On 16 February it was in a submission from Stephen Bouwhuis, who is in the Office of International Law. On 20 February, confirming the warrant had been executed, it was again from Stephen Bouwhuis, by email.

Senator BARNETT—Was there any other communication between the department and the minister regarding this matter apart from those two communications?

Mr Campbell—I would have to take that on notice, but they were the main communications.

Senator BARNETT—Mr Wilkins, can you assist?

Mr Wilkins—To my knowledge there has not been any other communication.

Senator BARNETT—Between the department and the Attorney-General or the Minister for Home Affairs?

Senator Wong—You asked a question of the department about whether there had been any further communication with the Attorney-General. You are now asking in addition to the 19 February information brief to the Minister for Home Affairs whether or not there has been any other communication?

Senator BARNETT—Yes.

Senator Wong—You would have to ask Mr Campbell.

Mr Campbell—As I said before, I am unaware of any other briefings provided to the ministers. That is up to other agencies.

Senator BARNETT—Minister, could you take on notice whether any communication has occurred and, if so, what communication, the date of the communication and to which ministers it went?

Senator Wong—You will have to put those questions on notice in other portfolios. I can take on notice questions in relation to the Minister for Home Affairs, but you have the answer from Mr Keelty. I can take on notice the question in relation to the Attorney-General, but I think you had an answer from the department. The answer is that, apart from the communications on 16 and 20 February, the department is not aware of any further communication. Is that right, Mr Campbell?

Mr Campbell—That is right, with one slight qualification. That is, prior to the submission going up on 16 February—that is, the written submission—Mr Bouwhuis contacted the Attorney-General's office to say that that submission would be coming.

Senator BARNETT—Minister, do you represent the Minister for the Environment, Heritage and the Arts in the Senate?

Senator Wong—I do and I am sure that if you wish to ask questions tomorrow we will endeavour to ensure that we have information about that issue. The environment estimates are tomorrow. I certainly do not have those officers present today.

CHAIR—Have you finished with that section, Senator Barnett?

Senator BARNETT—I have not. Mr Keelty, according to the *Mercury* newspaper videos, logbooks, photos and crew notes were taken. Can you comment on the accuracy of that report?

Mr Keelty—No, I would not involve myself with that level of detail.

Senator BARNETT—Of course. In a case where there is a successful allegation and conviction, is the material returned to the accused? In the case where it is not successful—there is an inquiry but no charge is laid—is the material returned to the accused?

Mr Keelty—Without referring to any particular case and speaking hypothetically, normally if the grounds for the search warrant have been extinguished then the property is returned to the lawful owner whether it has been through a prosecution process or there has been an investigation but no prosecution took place.

Senator BARNETT—It is an important question in the sense that the video footage is allegedly valued at \$20-odd million. You can understand the sensitivity regarding the matter.

Mr Keelty—We understand the sensitivity in this and many other matters where material is properly seized under the power of a warrant.

Senator BARNETT—Has the minister provided any directions or instructions other than simply to note the briefs that have been received by them?

Mr Keelty—I understand there was some communication between my deputy commissioner while he was acting commissioner from the minister. It was merely an acknowledgement that he had received the referral, and that is all.

Senator BARNETT—Acknowledgement?

Mr Keelty—An acknowledgement from the Minister for Home Affairs that he had received the referral. I have never had any direction on operations from any minister from any party one way or another on any operational matter, and this is no different.

Senator BARNETT—All right. Thank you.

Senator SIEWERT—How long do you expect that you will need to hold the material that has been taken?

Mr Keelty—I cannot answer that. Copies of the material that has been seized is in the process of being provided back to the owners. But it would only be a guess as to how long we would require it.

Senator SIEWERT—When you say copies have been provided back to the owners, do you mean the owners of the video material?

Mr Keelty—That is correct.

Senator SIEWERT—Have copies been provided to anyone else—for example, the Japanese?

Mr Keelty—No.

Senator SIEWERT—Have any allegations been made against the Japanese?

Mr Keelty—Not to my knowledge.

Senator SIEWERT—I apologise for coming in slightly late. I did miss a little bit at the beginning, although I have seen notes about it. As I understand it, you are operating under Australian law that implements international conventions. Is that correct?

Senator Wong—I think you missed Mr Campbell's explanation. That might be helpful. If it is okay with you, Madam Chair, perhaps we can reprise that very briefly for Senator Siewert.

Senator SIEWERT—Is that a correct understanding?

Mr Campbell—Australia has obligations under international law regarding the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. That convention is given effect in law in the Crimes (Ships and Fixed Platforms) Act.

Senator SIEWERT—And that applies in international waters?

Mr Campbell—If an event occurs in international waters, the act can apply and the convention applies.

Senator Wong—The evidence from Mr Keelty was that the involvement of the AFP under that legislation is triggered only if the vessel enters an Australian port.

Senator SIEWERT—I understand that—you have jurisdiction only because the vessel has subsequently entered Australian waters.

Mr Keelty—That is correct. That is what triggers our involvement and our obligations under the convention.

Senator SIEWERT—How soon will the copies be made to give back to the owners?

Mr Negus—Given that we understood that video footage was available and some of that had already been put on websites by the people taping the documentary, we arranged in advance, as best we could, to have facilities available to copy that material and have it returned as soon as possible to those people. I think that is underway. The amount of footage was a shock to us. As you have said, it is quite a significant amount of footage. But we do have copying facilities being made available in Tasmania so that it is not delayed any longer than necessary.

Senator SIEWERT—I apologise if Senator Barnett has already asked this. Could you explain proceedings from here, now that you have carried out your search warrant? Presumably you will be undertaking investigations. For example, will you require the *Steve Irwin* to stay in port for a certain length of time? Are there restrictions on the movements of the ship and the personnel? Where do we proceed from here?

Mr Negus—There are many variables within that, of course. The crew of the *Steve Irwin* declined to participate in any interviews with the AFP, which is their right. There are no restrictions on their movement from this point on. As I said, there are a range of different things that could occur, whether or not one of the flag states decides to take their own action through the convention. That matter will have to unfold in the coming weeks and months.

Senator SIEWERT—With all due respect, you did not answer my question about whether the *Steve Irwin* is free to go or whether it is required to stay in port.

Mr Negus—Sorry, Senator, I think I said that there were no restrictions on members of the *Steve Irwin* crew or the *Steve Irwin* itself.

Senator SIEWERT—I understood you were referring to the personnel rather than ship itself. If I understand what you said correctly, if anyone made any allegations against the Japanese fleet, Australia could take action only if a ship entered Australian waters. Is that correct?

Mr Keelty—It depends on the allegations and the alleged offence. You may not have been here earlier when I mentioned that we have in fact previously—

Senator SIEWERT—I was aware. Are you referring to the incident 18 months ago?

Mr Keelty—Yes.

Senator SIEWERT—If there were similar allegations against the Japanese fleet, as I understand the legislation, you could deal with that only if a Japanese ship entered Australian waters.

Mr Keelty—It would depend on the nature of the allegation. We would then have to see whether any offences could be grounded within Australia. That would all be part of the review process before we took on the investigation.

Senator SIEWERT—Do the Japanese have similar obligations to Australia under the convention? If a complaint is made, would law enforcement agencies in Japan be obliged to take similar actions?

Mr Campbell—Japan has the same obligations as Australia under the convention. So if the incident met the criteria of the convention, yes, it would have an obligation to investigate under international law.

Senator SIEWERT—I suppose that hinges on whether they have actually implemented it under the convention—that is, if they have implemented the requirements in domestic legislation.

Mr Campbell—Different countries have different ways of doing it, and I am not certain of the manner in which Japan has done it. But the fact remains that it would have the same obligations as Australia.

Senator SIEWERT—Mr Keelty, I am sure you will tell me if I am asking inappropriate questions. Did the nature of the allegations made previously have anything to do with the alleged illegal trade in whale meat?

Senator Wong—When was that?

Senator SIEWERT—A complaint was made 18 ago. I understood you to say that it was made by the Sea Shepherd Conservation Society.

Mr Keelty—That was in relation to allegations of a collision between the *Kaiko Maru* and the *Robert Hunter*.

Senator SIEWERT—Were those allegations made under the same provisions of the act that the Japanese are now using?

Mr Keelty—I am not sure of the detail of it. We did refer a brief to the Commonwealth Director of Public Prosecutions, but it did not proceed. It has been pointed out to me that that allegation involved events that occurred in the Southern Ocean, which may have been within Australian waters. I do not have the details of that here.

Senator SIEWERT—Can you take that on notice?

Mr Keelty—Certainly.

Senator SIEWERT—That would be much appreciated. Is there any sort of interaction between the AFP and the Japanese police about these issues?

Mr Keelty—We do not have an MOU as such. It would be done through the mutual assistance treaty arrangements, should we make a request of Japan. We do have a strong operational relationship with the Japanese National Police Agency and that dates back some years; hence their placement of an officer here in Canberra.

Senator SIEWERT—Has there been any interaction under those provisions about the whale meat scandal that was going on in Japan last year? Whale meat was being stolen off the whaling ships and sold on the black market.

Mr Keelty—Not that I am aware of, Senator.

Senator SIEWERT—Could you take that on notice to double-check that?

Mr Keelty—I will.

Senator BARNETT—Mr Keelty, have you had any direct contact since with the Japanese Embassy or directly with the Japanese Fisheries Agency?

Mr Keelty—No. Through you, Madam Chair, I would like to clarify that it was our officer who attended the Japanese Embassy here in Canberra to meet with the Japanese national police officer and the matter was discussed there. I think I described it as having occurred the other way around.

Senator BARNETT—Thank you. I was going to ask you about that. I understand that that was on 17 February.

Mr Keelty—That is correct.

Senator BARNETT—Is it usual that the AFP meet with diplomatic officials? How often would you do that in the course of a year?

Mr Keelty—We do it countless times in relation to those missions here in Canberra that have police officers attached to them. Similarly, as you are aware, Senator, the AFP has a significant number of its officers placed offshore for exactly the same purpose.

Senator BARNETT—Sure. If the Japanese Fisheries Agency wanted to make further representations or allegations or to provide further evidence to express their concerns, would they normally do it through the Australian Embassy in Tokyo or through their officials at the Japanese Embassy in Australia?

Mr Keelty—Normally it would be through the Australian Embassy in Japan.

Senator BARNETT—And at all times the Department of Foreign Affairs and Trade would obviously be advised and then it would forward it through to the relevant agency, in this case, the Department of Home Affairs.

Mr Keelty—It is a matter for the Department of Foreign Affairs and Trade to decide what it does with the information. But on this occasion it simply forwarded it to us.

Senator BARNETT—And you have not had any further information or communication since that first advice on 18 February from DFAT?

Mr Keelty—No, we have not.

Senator BARNETT—Thank you. I note one other thing on the dates. Mr Campbell, you advised earlier that the first communication regarding this possible inquiry was 16 February, when a submission was made by the Office of International Law to the Attorney-General. Based on the evidence we have, it seems that the first person in this country to become aware of this allegation was in fact the Attorney-General, representing the Australian government.

Mr Campbell—I do not think I said that there would be a search warrant. I talked about the possibility of there being a search warrant.

Senator BARNETT—So the first person in this country to become aware of this allegation from the Japanese fishing agency was the Australian government's Attorney-General on 16 February, prior to contact being made with the Australian Federal Police on 17 February and then again on 18 February?

Mr Campbell—I do not know the dates but there may have been contact—you would have to ask Foreign Affairs about this—earlier than 16 February, say, in Tokyo or something like that.

Senator BARNETT—Based on the evidence that we have received today and because the minister has not been able to provide any further particulars regarding the contact that other ministers have had, we know in this committee that the Attorney-General knew first, prior to the Australian Federal Police, of a possible investigation and follow-up by the Australian Federal Police. That is what we know.

Mr Campbell—As I understand it, a meeting occurred in Tokyo, not between ministers or anything like that, but between Foreign Affairs and an agency in Japan which referred to the issue.

Senator BARNETT—When did that meeting occur?

Mr Campbell—That is not within my knowledge.

Senator BARNETT—But you have been advised about it. What is the advice that you have received?

Senator Wong—If Mr Campbell does not know then he should be entitled to take that question on notice. The purpose of him indicating that is to explain the context in which he gave previous evidence about what advice was given to the Attorney-General.

Senator BARNETT—Minister, it is a little hard to be advised of certain dates and then to be advised of a certain meeting in Tokyo regarding an agency and the embassy when you are not able to provide information. I am not asking Mr Campbell; I am asking you. Obviously

you have been advised, through Mr Wilkins, that certain meetings took place in Tokyo, but you are not able to tell us the time or the date of that meeting.

Senator Wong—We are not the Department of Foreign Affairs and Trade and I do not have those officers here, Senator.

Senator BARNETT—But you are aware of it, Minister. How is it that you are aware of it?

Senator Wong—I was just advised by Mr Campbell.

Senator BARNETT—You have only just been advised by Mr Campbell?

Senator Wong—I was just advised by Mr Campbell about the context in which the Attorney-General's advice was given.

Senator BARNETT—When were you first advised, Minister?

Senator Wong—Senator, I am here to represent the Attorney-General. This department can assist you. Mr Campbell is halfway through an answer in which he is seeking to assist you to understand what advice was provided to the Attorney-General and when. If he can finish perhaps we might be able to proceed.

Senator BARNETT—And we will then come back to you, Minister. Mr Campbell, do you wish to say anything further?

Mr Campbell—I understand that representations were made in Tokyo, if I can put it this way, about the incident that occurred in the southern ocean prior to us advising the Attorney-General of the possibility that there would be some inquiries into it here.

Senator BARNETT—So, we know that the Attorney-General was advised by the department on 16 February and we know that embassy officials in Tokyo were aware of the incident and the probable investigation before that?

Mr Campbell—It would be a presumption on my part to say that they would be aware of a probable investigation. I am saying that I am given to understand that Japan made representations to the embassy in Tokyo on the issue.

Senator BARNETT—Minister, we need to get to the bottom of when the government first knew of this alleged incident. What did it do about it, when did that occur and what communication was there between the different ministers? Minister, I would very much like you to say when you first knew of this incident.

Senator Wong—I knew of this incident when I read about it in the papers, Senator.

Senator BARNETT—This morning?

Senator Wong—Whenever it was in the papers. From memory, there was some media reporting yesterday or at the weekend. However, I am Minister for Climate Change and Water, so I would not normally be briefed about operational matters. In answer to your question, we have been completely upfront. We explained to you the international legal framework. We advised you that the Minister for Home Affairs was advised on 19 February, and Mr Keelty has given evidence about the nature of that advice. You asked what the response was. I again remind you that no minister gives the AFP any direction in relation to operational matters, and this is such a matter.

Senator BARNETT—Of course. We know that the Minister for Home Affairs and the Attorney-General are fully aware. We have also been advised that the department of foreign affairs is aware, so we can only assume that the minister is fully aware. Finally, we could ask whether Peter Garrett, the Minister for the Environment, Heritage and the Arts, is fully aware, but it would beggar belief if he was not aware. The question is: when did he become aware, and what has he done about it?

Senator Wong—As I said, tomorrow in the environment estimates when I have relevant officers present I am happy to respond that matter on behalf of Mr Garrett. You asked what he had done about it. What is the proposition? Is the proposition seriously that the minister for the environment should somehow be engaging with the Australian Federal Police in a direction on an operational matter? That cannot possibly be your proposition.

Senator BRANDIS—Madam Chairman, I wish to take a point of order.

CHAIR—Senator Barnett, do you want to answer that question first?

Senator BRANDIS—I wish to take a point of order. I wish to make two points. First, this is a question and answer session. It is not for members of the committee to respond to questions other than to seek clarification from witnesses about the meaning of their questions. The minister is appearing here in her capacity as a witness and in no other capacity. Second—and this is the principal point that I wanted to make—if a question is relevant and an officer or the minister at the table knows the answer to the question and that answer is not in some other way or for some other reason privileged, for example, because it relates to an operational matter, the minister or, for that matter, any other officer at the table should not say, ‘That question would be more appropriately asked in another estimates committee.’ If a question is relevant and a witness, including the minister at the table, knows the answer, the answer must, according to the guidelines that you recited at the commencement of this morning’s hearing, be provided.

CHAIR—I thank Senator Brandis for his points of order, which I think are correct. I understand that the minister is clarifying what Senator Barnett is seeking to elicit from officers in this portfolio as opposed to officers in Foreign affairs or in Environment who might be better informed of facts that might assist in answering his question. If Minister Wong wants to clarify exactly what is being asked, I invite her to do that again.

Senator Wong—I think the question that has been asked relates to Mr Garrett’s knowledge. I said that I do not have that information and I do not have officers here who can assist with that.

Senator BARNETT—Minister, do you know whether—

CHAIR—Senator Barnett, let the minister finish.

Senator Wong—I just said that I do not have that information. The purview of this estimates committee relates to matters in this portfolio. We are attempting to assist as best we can. We have provided information about when the Minister for Home Affairs and the Attorney-General were briefed. I have indicated that I am happy to obtain the information that Senator Barnett seeks and provide it at tomorrow’s environment estimates committee.

Senator BARNETT—Right. I have a final question and I wish to make an observation. Minister. For the purposes of clarification, a very short no would be fine. Can you confirm—yes or no—whether or not Minister Garrett is aware of the incident that has been discussed in the last hour or so? Second, can you confirm whether or not the Prime Minister or any other minister is aware—apart from the Minister for Home Affairs, the Attorney-General and the Minister for Foreign Affairs?

Senator Wong—We have certainly been discussing it in estimates hearings, so I suppose a few people are aware of it now. As I do not have that information I would have to take on notice your question relating to which other ministers were briefed and when in order to obtain the exact information.

Senator BARNETT—I am asking you whether you can advise the committee now?

Senator Wong—I have just told you that.

Senator BARNETT—If the answer is no just say no.

Senator Wong—I would have to take that question on notice. Senator Barnett, I do not know which part of my answer you are having difficulty in understanding. I do not have that information. I will have to take that question on notice.

Senator BARNETT—So you do not know. Is that the answer? You do not know the answer to that question?

Senator MARSHALL—It is a multiple choice for the witness. The answer stands.

Senator BRANDIS—Seriously, Madam Chairman, the Minister's answer was carefully circumscribed. The question was a lot broader than the circumscription of the answer. Senator Barnett wants to know whether the minister knows whether Minister Garrett is aware of these matters. Either she does or she does not.

Senator Wong—I have said that I do not have that information.

Senator BRANDIS—So the answer is no?

Senator Wong—That is right.

Senator BARNETT—That is good. That is what we want. That would be really helpful, Minister.

Senator Wong—That is why I said we will seek the information.

Senator BARNETT—Not having the information is different from saying no.

CHAIR—Senator Barnett! A little assistance would be helpful.

Senator Wong—That is why I said I am happy to seek that information and to answer these questions tomorrow in the environment estimates committee. I think I said that about half an hour ago.

Senator BARNETT—Madam Chair, Mr Campbell has kindly provided us with information and he indicated to us that he would table that advice. As yet we have not received that advice. Is it far away Mr Campbell?

Mr Campbell—No, it is not. It is part of a broader document. I am seeking to take that out of it and to give you those bits.

Senator BARNETT—Mr Campbell, how far away is it time wise?

Mr Campbell—Thirty minutes.

Senator BARNETT—Thank you.

CHAIR—Senator Barnett, I will now go back to Senator Siewert. You sought to clarify a matter rather than to take over questioning, so I will go back to Senator Siewert.

Senator SIEWERT—I refer to the issue relating to seized video footage and I wish to clarify whether or not that material will be given to any other country under any circumstances?

Mr Keelty—Senator, I do not know whether we can give you that undertaking because I do not know what will be the ultimate outcome of the investigation and whether we have to provide any information under any treaty. Certainly at this stage the material that has been seized remains with the AFP. It is our intention to ensure that it remains with the AFP until such time as we are ready to discuss it with the Director of Public Prosecutions, if that ever occurs. You would have heard from Mr Campbell that in any event no prosecution could occur in Australia without the consent of the Australian Attorney-General.

Senator SIEWERT—You cannot state absolutely that it will not be given to a third party. I am not trying to put words in your mouth, but as you understand it you do not know what our international obligations are under the conventions under which we are operating. Is that a correct assessment?

Mr Keelty—There may well be in the future. I do not know as I am speaking hypothetically here. In a case such as this you may well receive legal action from a third party but I cannot foresee that at the moment. I cannot provide a guarantee to this committee that material that has been seized under warrant will not be the subject of any order from any other court or jurisdiction.

Senator SIEWERT—You referred earlier to a case in which no decision was taken to prosecute. Is that a correct assumption?

Mr Keelty—That is correct, Senator.

Senator SIEWERT—Are you able to tell me why no decision was taken to prosecute?

Mr Keelty—It is a DPP decision, Senator. Normally it would be because there is insufficient evidence, or witnesses do not come to proof. You would have to ask the DPP.

Senator SIEWERT—Thank you. Have you ever been asked to follow up any other court actions on whaling? I am thinking, for example, of a court case that was brought by the Humane Society International in which the Japanese were found to be in breach of domestic law. Were you ever asked to follow that up?

Mr Keelty—I will have to take that question on notice, Senator. Not to my knowledge here today but we will check our records.

Senator SIEWERT—Thank you.

Mr Campbell—I can help. That was not in the nature of a prosecution. I think what was sought was a civil action seeking an injunction. I think an injunction was given and then it was a question of the enforcement of the injunction. I do not think that has been taken any further, but it was not up to the AFP to enforce the injunction.

Senator SIEWERT—Could somebody request the AFP to enforce that injunction?

Mr Campbell—I would have to take that question on notice, Senator, but I do not believe so. I think it would involve court officers in doing so.

Senator SIEWERT—I would appreciate it if you could take that question on notice.

Mr Campbell—Yes.

Senator SIEWERT—That concludes my questions on whales. However, I have other questions for the AFP. I would like to refer to the Northern Territory intervention. How many people have been charged under the provisions of the Northern Territory intervention? What work are you undertaking in the Northern Territory?

Mr Keelty—Senator, we are under the command of the Northern Territory Police so I would not normally be in possession of that material. If you would allow us to take the question on notice I can seek to obtain that material from the Northern Territory Police.

Senator SIEWERT—Could take that question on notice? You have provided that information to me on previous occasions when you have been extremely helpful.

Mr Keelty—Thank you for that observation, Senator. We always try to be helpful. I do not have any numbers here so I would like to take that question on notice. If you are talking about recent action up there, that was really a Northern Territory Police operation, so I would have to seek that information from them.

Senator SIEWERT—I would appreciate it if you could. I am interested in how many people have been charged as a result of changes that were made to the intervention law.

Mr Keelty—Okay.

Senator SIEWERT—More widely than that, have you been involved in other states in dealing with child abuse issues, or have you been involved only with the intervention?

Mr Keelty—In that context only with the intervention. But, of course, child abuse extends to the work that we do with the abuse of children online. An extensive amount of work is done there, both in Australia and also overseas.

Senator SIEWERT—I refer to the Northern Territory intervention online and ask whether there have been any major prosecutions or charges laid under the online intervention provisions?

Mr Keelty—I do not think there would be any under the intervention legislation, Senator. I will take that question on notice and I will be thorough with the answer.

Senator SIEWERT—Okay, thank you. That is much appreciated.

CHAIR—I will go to Senator Ludlam and then to Senator Fielding.

Senator LUDLAM—As we did not get to speak directly in the October session I asked a couple of questions on notice about the role of the AFP when it engages with peace groups,

climate change groups, environment groups and so on. The answer that came back through the AFP was that you undertake overt community engagement strategies much more frequently than you would covert surveillance of campaigners. What would these overt community engagement strategies entail?

Mr Keelty—Some of it is through direct liaison. For example, I have met with Greenpeace and with some of the NGOs—for example, Caritas and other NGOs who are interested in our areas of operations such as Papua New Guinea, the Solomon Islands and East Timor. Under the International Deployment Group the managers of the various areas do the same. NGOs have come to our International Deployment Group training centre at Majura in Canberra, so there is quite a deal of interaction between us, NGOs and other groups who have a wider interest in some of the areas in which we operate.

Senator LUDLAM—So those are groups that have a direct interest in AFP operations, but what about groups that are undertaking campaigning or advocacy in relation to issues such as climate change or peace issues in Australia, for example?

Mr Keelty—I do not have any direct knowledge of that here, but I can certainly check that for you.

Senator LUDLAM—I am just wondering to what degree the AFP is engaged with mainstream environment groups or smaller campaign groups around Australia.

Mr Keelty—We have liaison with those groups through what we call our protection and intelligence area, in particular, obviously, for a number of reasons. One reason is to build a relationship but often those groups will talk to us about their planned activities. For example, we have a lot of cooperation from those groups when they want to demonstrate and do other things, either here in Canberra or elsewhere.

Senator LUDLAM—I expect that normally those sorts of relationships would be developed by state and territory police departments in other capitals rather than by the AFP?

Mr Keelty—In relation to other capitals, that is correct. But, of course, Canberra is also the focus of some attention. That is dealt with by our Australian Capital Territory policing element.

Senator LUDLAM—What is the kind of threshold beyond which you move from community engagement strategies to covert surveillance of a campaigner?

Mr Keelty—It would depend on what the intelligence is in relation to a particular group if it is known to us that they are planning illegal activities. We do not, if you like, conduct covert surveillance of any of these groups because of our own self-interest. It would only be operationally directed. We believe that we are better off having an overt and positive relationship with these groups.

Senator LUDLAM—The division or the department which you mentioned before was for protection and intelligence. Can you briefly describe the functions of that group?

Mr Keelty—That group liaises with special interest areas. I do not want to single out any particular area but, of course, there are the groups that you have described and there are also foreign missions. There are also the areas of threats against politicians and high officeholders. So they cover a full ambit of protection intelligence.

Senator LUDLAM—I recognise that you do not have this sort of material in your back pocket but I would appreciate your taking this question on notice and providing some information about whether you prioritise particular campaigns and campaign groups. For example, is there a focus on groups that are planning activities in relation to climate change issues at the moment? Are you able to provide us with that?

Mr Keelty—Not to my knowledge, Senator. Police forces, whether it be the AFP or others—and I do not want to speak for other police forces—are often caught in that space between trying to understand the plans of these groups and also protecting some of the things that we are obliged under our legislation to protect, such as some of the nuclear facilities across the country and other sensitive sites. As I said earlier, our first principle is to develop a relationship with these groups so that we can all operate and fulfil our obligations, if you like. It is not an area where we do a lot of covert work, if much at all. We feel far better dealing with these groups overtly.

Senator LUDLAM—Last October I think you listed one ongoing case. If you have this information available could you tell us how much was spent by the AFP on counterterrorism training exercises in the last budget cycle? How much is projected to be spent on these exercises in the current cycle?

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

Senator LUDLAM—I would appreciate that. How much is being spent on community engagement activities as part of your counterterrorism efforts? I understand that that is quite a distinct area of counterterrorism strategies.

Mr Keelty—I cannot give you the dollar figure today. You are quite correct; we operate an extensive program with the community. In fact, Harmony Day is coming up next month. I can give you the dollar figure if I take that question on notice.

Senator LUDLAM—Thank you. Getting a bit more specific, could you provide us with the breakdown of the total cost to the AFP of the prosecution of Dr Haneef?

Mr Keelty—I have that here. In relation to Dr Haneef it was \$4,689,448.

Senator LUDLAM—Are those investigations ongoing, or is that case closed?

Mr Keelty—That case is closed.

Senator LUDLAM—Thank you. That was \$4 million, was it not?

Mr Keelty—That is correct.

Senator LUDLAM—That is just to the AFP as part of its investigation? The Clarke inquiry, with which you are obviously familiar, documents the extensive role of Commander Ramzi Jabbour in this case. He was also involved with the Haneef and Jack Thomas cases. Clarke indicated in his report that he felt this commander had become ‘too close to the Haneef case and had lost both perspective and a degree of objectivity.’ Does Commander Jabbour still work for the AFP? If so, in what capacity?

Mr Keelty—Yes, Commander Jabbour still works for the AFP. Whilst I accept that those comments are made in the Clarke report, Mr Clarke also points out in his report that Commander Jabbour is an impressive, dedicated and capable police officer who worked under

great pressure for many hours throughout the investigation. It is well acknowledged that he is an expert, both nationally and internationally, in the area in which he worked in counter-terrorism.

Senator LUDLAM—An expert and obviously a very hard worker. I do not think that that is in dispute. Do you agree with the findings of the inquiry in that regard—that he was too close to the case and lost perspective and objectivity?

Mr Keelty—I accept the findings of the report but I also point that during the investigation he was confronted with systems and processes that did not adequately support him as a senior investigating officer, which was also a finding of the report and something that we have put forward in the recommendations that came back to fix it in the future.

Senator LUDLAM—So there has not been any internal transfer, any processes of review or any disciplinary action or anything like that taken?

Mr Keelty—Commander Jabbour no longer works in counter-terrorism; he works in our border and international area. But that was not as result of the Clarke report; that had already taken place.

Senator LUDLAM—Are you able to tell us when that transfer occurred?

Mr Keelty—I think it was around the middle of last year. If I am not correct I will correct it through the committee.

Senator LUDLAM—If you could I would appreciate that. The Clarke inquiry also recommended that a committee be established ‘to conduct a review to determine ways of dispelling misapprehensions about the respective roles, functions, responsibilities of government agencies and departments in a counter-terrorism context and the purpose of the information they produce in this context’. Can you tell us whether you are aware of this committee being established? What would have been your immediate responses to the establishment of that committee?

Mr Keelty—The AFP does not have the role to establish that committee.

Senator LUDLAM—I recognise that.

Mr Jordana—I understand from my colleagues that that is something which the Department of the Prime Minister and Cabinet will be taking forward.

Senator LUDLAM—So to your knowledge that committee has not yet been established?

Mr Jordana—To my knowledge it has not been established.

Senator LUDLAM—While we wait for that to occur, what procedurally has been done internally by the AFP to learn some of the lessons from the Haneef case and prevent that from ever occurring again?

Mr Keelty—I refer to recommendations 3, 4 and 5. The AFP is involved in work with the Attorney-General’s Department to simplify the legislation. We have also put in place legal training to ensure that officers will be trained on the operation of the new legislative provisions when they are finalised. The independent review of Commonwealth counterterrorism laws is a matter for the department.

I refer to the interoperability issues in recommendations 7, 8 and 9. The AFP has already commenced work on recommendation 7 as result of the Street review that the AFP commissioned. We have been working with partner agencies to develop a counterterrorism protocol that provides the framework for efficient and effective interaction and information exchange between agencies. We have been conducting interagency training, staff exchange arrangements between partner agencies and the improvement of information technology connectivity between organisations.

I refer to recommendation 8. Under the coordination of the National Counter-Terrorism Committee we are involved in reviewing the joint counterterrorism team arrangements to work towards a nationally consistent framework. I refer to recommendation 9. Under the National Counter-Terrorism Committee we are part of the working group that is considering a recommendation for a national case management system.

I refer to recommendation 10. As a result of the Street review the counterterrorism training exercises facilitated by the NCTC have been implemented. They incorporate testing of investigation and prosecution processes. I should point out that, of the 10 recommendations in Mr Clarke's report, at least five of them were ones that we put to the inquiry and asked for them to be recommended back. We are fully engaged in finalising those recommendations within the ambit of the jurisdiction of the AFP.

Senator LUDLAM—I have two more questions. How much did the AFP spend on investigating and prosecuting the Jack Thomas case?

Mr Keelty—I do not have the figure here. I recall that I have provided that figure to this committee previously. It would not take long to get that figure for you.

Senator LUDLAM—Thank you. I would appreciate that. Finally, I raise the issue of your online child sexual exploitation team, or OCSET. Could you provide us with an update of what is happening in the current budget cycle with your budget and your staffing?

Mr Keelty—I will ask Deputy Commissioner Negus to respond to that.

Mr Negus—Could you repeat the question now that we have the material in front of us?

Senator LUDLAM—It is a fairly general question. Could you provide the committee with an update of the OCSET unit, its budget and its staffing in the current budget cycle?

Mr Negus—The OCSET unit, as it was known, has now been renamed child protection operations and it sits within our high-tech crime operations portfolio. It continues to grow, in line with the previous government's commitment to provide an extra 91 staff over three years. It continues to provide quite significant results and quite significant outcomes in the courts regarding the prosecution of people for access to child pornography material online.

Senator LUDLAM—Can you again provide the committee with staffing figures? Was it 91?

Mr Negus—That is right. The previous government committed to providing 91 additional investigators over three years. In the first year approximately 30 staff will be provided. That recruitment is in place and it is moving forward.

Senator LUDLAM—So roughly 30 staff every year?

Mr Negus—Thirty staff every year over three years—that is right.

Senator LUDLAM—What kind of increase is that on the number of officers that you had working on that previously?

Mr Negus—From memory, under the government's cybersafety proposal 145 AFP officers will be dedicated to child protection operations by 2011. As I said, that is an increase of 91 on the previous position. Originally, 54 were committed through the OCSET process.

Senator LUDLAM—It is about two-thirds. So it is going up by a factor of 60 per cent or so. Was the new government's allocation relative to what the previous government had announced? Was that trimmed as a result of the government's razor gang process, or did that make it through?

Mr Negus—I understand that there has been some commentary in the media about the slashing of \$2.8 million from child pornography investigations. The total funding that has been proposed under the parents and families online initiative was \$51.684 million. The total under the cybersafety initiative was \$49.009 million. The difference is a result of a change in the formula and practices within the Department of Finance and Deregulation as to how corporate support costs are attributed. That does not affect the number of investigators on the ground who are doing the job.

Senator LUDLAM—How many prosecutions has this unit undertaken in an average year? Is it possible to express that as an average?

Mr Negus—I have those figures here. From March 2005 to November 2008, AFP child protection operations have made 364 arrests for 464 charges in relation to online child abuse. Since 1 May 2008, when we saw an increase in the numbers that we have just talked about, there have been 243 charges against 182 individuals. That is in addition to those matters that are also referred by the AFP to state and territory forces for further action. So these are just those on which the AFP has worked.

Senator LUDLAM—That is great. I will leave it there, thanks.

Senator FIELDING—I refer to a topic that we picked up last October relating to Britt Laphorne. I asked a number of questions about the investigation by Croatian authorities. I would like to follow up on those questions. Mr Keelty, in your professional capacity, do you have any concerns about the investigation by Croatian authorities into the disappearance and death of Britt Laphorne?

Mr Keelty—I think this is where we got to last time. I do not think it is my role to pass judgment on the efficacy or professionalism of other police forces. I expect them to give me the same courtesy.

Senator FIELDING—Last time you stated that you had requested a review into the case being undertaken by the Australian Federal Police. Has that review taken place?

Mr Keelty—The review is complete.

Senator FIELDING—What process was followed? Could you go through the process of the review? I will get to the outcomes of that review in a second, but what was the process for the review?

Mr Keelty—The process was to have an assistant commissioner, border and international, who was not initially involved in the investigation, to review the conduct of the border and international response.

Senator FIELDING—Who was interviewed in the process?

Mr Keelty—Deputy Commissioner Negus might have the detail.

Mr Negus—I do not have all the details relating to who was interviewed. But certainly the Laphorne family were interviewed, as were members of DFAT who participated in the initial response, by members of the AFP, including our initial response through Interpol, and through the missing persons unit. A number of others were called. I can obtain those for you on notice if you like.

Senator FIELDING—Thank you. On what date did the review start and when did it finish?

Mr Negus—Again, I do not have the date on which the review started but it was shortly after the matters were discussed. While we are looking for that information I might just say that the review was only provided to the commissioner last week. I have read the review and it is still waiting for the commissioner's return, as he was away last week. Three main themes are coming out of the review. I think we said last time that this would not be a public review as such, but we have communicated some of these outcomes to Dale Laphorne. Again, he was spoken to by Assistant Commissioner Morris through that process.

There are a range of themes, but the three main themes are, first, that the AFP officers involved in the matter acted in a timely manner on all occasions and in good faith. The second major outcome was that the relationship with DFAT in consular cases offshore is not clearly defined and obviously these change every time there is a consular matter that requires both agencies to respond. The recommendation is that we develop protocols for interaction between the AFP and DFAT regarding offshore consular matters so we have more clearly defined those responsibilities.

Finally, there were the expectations of family members such as Mr Laphorne that the AFP and not only DFAT, as was the case in the initial stages of the disappearance, would be made available offshore to provide direct support and assistance. You will recall that one of the criticisms of the AFP was that it had not initially spoken to Dale Laphorne offshore; that was left to DFAT officers. In hindsight, the expectation of Mr Laphorne was that we could probably do better in that regard and meet those expectations.

Senator FIELDING—Thank you for that. I might come back to some of those matters later. If you do not have the date on which it started and ended could you provide those on notice?

Mr Negus—The review ended only last week. Again, a report has been provided to the commissioner for his consideration. He has not had an opportunity to read that yet, so there may be further outcomes from that. I think I will have to take the date it started on notice; I just do not have that at my fingertips at the moment.

Senator FIELDING—Do you have handy the terms of reference for the review?

Mr Negus—I do not have those with me. As I said, the review was not going to be made public in that sense. I have just elaborated on the three major themes coming out of the review. But it is an internal review for the AFP to look at its own practices for improvement, and the review was not going to be made public.

Senator FIELDING—Could you make the terms of reference public?

Mr Negus—I think that should be available. I will take that question on notice.

Senator FIELDING—Could you expand a bit more on the second general finding? You said something about the offshore protocols.

Mr Negus—I said that the relationship with DFAT in consular cases is not clearly defined. What has happened in this matter is that clearly the primary responsibility for consular assistance rests with DFAT. I would not presume to speak on its behalf, but the AFP is regularly asked to assist it and to provide advice to DFAT in law enforcement matters offshore. We would like to work with DFAT into the future to have clear yet adaptable assignment of responsibilities and duties so that it is more clearly defined for any future cases.

Senator FIELDING—Did you look at the issue relating to the unfortunate position of parents not being notified of very suspicious circumstances—for example, their kids are missing or they are in trouble—and the privacy issue? That was a fairly big concern for many parents who thought that privacy stood in the way of them being notified that substantial information was available that suggested that a person was obviously missing or was in trouble. Did the review look at that at all?

Mr Negus—It certainly acknowledged that that was one of the issues. However, primarily that is the responsibility of DFAT. Again, it would be inappropriate for me to comment on the ability of DFAT to provide information to the families involved.

Senator FIELDING—If the Australian Federal Police has significant and not trivial information that someone is either in trouble or is missing, at the moment you are still in a position where you cannot notify an Australian resident or parent that that person is in trouble, because of privacy concerns?

Mr Negus—Where genuine fears are held for the person's safety that goes beyond the privacy conditions. Again, by the time the AFP was involved in these things that would normally be the case.

Senator FIELDING—In this case it did not relate to safety issues but someone was still missing. Today we are still left in a position where they would not be notified because of privacy concerns. I am not worried about what DFAT does—I am talking about the Australian Federal Police. You have information that clearly reveals that someone most likely is missing but you cannot notify the parents because of privacy issues. Is that still the case?

Mr Negus—Again, in those situations DFAT would have the lead in. We would talk to DFAT about that and come to an assessment together, but it has primary responsibility for providing consular assistance offshore when people are missing. DFAT would seek advice from us on various things.

Senator FIELDING—I will refer later to DFAT, which is another issue. I am talking about cases where the Australian Federal Police have information. Let us refer to this case. You

cannot notify an Australian resident. This is in Australia. I am not talking about people overseas; I am talking about people who physically are in Australia. You cannot pick up the phone and ring them and say, 'We have concerns about someone who has gone missing.' Is that still the case because of privacy concerns?

Mr Negus—Unless genuine fears were held for that person's safety; that is correct.

Senator FIELDING—Unless genuine fears were held for a person's safety. If it involved a missing person and you had more than a hunch that something was suspicious you could do not that; is that correct?

Mr Keelty—Senator, your question is too general. I know what you are saying but in a lot of missing person cases this is an unfortunate fact of life. It has nothing to do with the Laphorne matter. In the scenario to which you are referring and the questions you are asking, very often in a missing person matter the missing person does not want to be located. Referring to policy, Deputy Commissioner Negus pointed out that we want to work with DFAT on the protocol relating to consular matters. That will include privacy issues about the inability to talk openly and freely to relatives about people that they are seeking to find. These are complex issues. I know that the Laphorne case is a particular scenario but there are lots of other scenarios and those other scenarios involve people who do not want to be found or who would be quite offended if they were to find out that DFAT, the AFP or anyone from the government had passed on information relating to their whereabouts. It is a difficult area, Senator.

Senator FIELDING—If their lives were at risk you would bypass the privacy issues and contact them, even if a person did not want to be found. It seems to me that it is okay in one case but in the case of someone who is missing—

Mr Negus—There has to be a reasonable assumption that the person could be in some danger or his or her welfare was in question. If that was the case we would override the privacy principles and make that contact.

Senator FIELDING—I am still not sure whether that would satisfy most Australians. If people do not want to be contacted maybe they can opt out of the system. It seems odd to me if your kid goes missing. Most Australians would want to be notified earlier rather than later. You are saying that there are some exceptions when people would not want to be notified. Commonsense tells you that most people would want to be contacted. I am not saying that it is your fault; I am saying that that is the system we have set up. I am not suggesting that you are doing something devious; I am making it clear that if their lives were at risk you would contact them. However, if they are missing in suspicious circumstances you would not contact them. I think that is odd.

Mr Keelty—It is a difficult area and it is difficult to write a one-size-fits-all policy, in particular in the context of the Laphorne matter, which had a different and a special set of circumstances. In the context of the wider Australian community it is a difficult issue with which to work. I would like to say that it is simple, but it is not. Senator, in relation to your question about the terms of reference, they were provided to you in response to question No. 55.

Senator FIELDING—Thank you. I was wondering whether everyone else had them as well. What has changed since the Laphorne case? You were waiting for the review to be finalized. I know that it has now been finalised, but that occurred only last week. What has changed and what will change?

Mr Negus—Certainly since we became aware that the Laphorne family were not pleased that the AFP had been directing its information through DFAT and through the Croatian police, and within a few days the officer on the ground began meetings with Dale Laphorne and the family. That has continued. At the weekend Assistant Commissioner Morris spoke personally with Dale Laphorne and communicated more information about a certain request that he had. That response is ongoing.

CHAIR—We are scheduled to break at 3.30 pm Do you have much more in this area?

Senator FIELDING—I do. We could come back.

CHAIR—We will break for 15 minutes.

Proceedings suspended from 3.32 pm to 3.49 pm

CHAIR—We have questions for the Australian Federal Police. We will continue with questions from Senator Fielding.

Senator FIELDING—Thank you. I want to ask about the ongoing part of this case. I am mindful of what you can share and what you cannot share and the ongoing part of it but I understand that new information has come to light. At least three other Australian women believe that they were targeted by men during what they believe to be attempted abductions in Croatia prior to Britt's disappearance. Are you aware of those? What has been the involvement of the Australian Federal Police in relation to that?

Mr Negus—If you are asking in particular about the interview of Amber Harris on the Channel Seven program, Ms Harris was interviewed by the AFP on 25 September 2008. Her statement was then provided to the Croatian authorities the following day—on 26 September—via Interpol channels. On Sunday 8 January Jennifer Blanchard was interviewed on the Channel Seven program. On 30 September 2008 the AFP received information from a third party which appears to relate to the incident described in the interview with Ms Blanchard. This information was also passed on to the Croatian authorities on 30 September 2008. In relation to the interview with a person known as Kate on the Channel Seven program, the AFP received information from a female on 1 October 2008 which appears to relate to the incident described in the interview with Kate. This information was passed on to the Croatian police on that day—on 1 October 2008.

Since that time these issues have been worked on by the Croatian authorities. We do not have any update as to the validity or otherwise of the information provided. Our liaison officers withdrew from Croatia just before Christmas. However, they return regularly if there is something to be done in relation to the case and we are provided with a monthly update from the Croatian police on the progress of their investigation.

Senator FIELDING—Thank you for that update. So far as the Australian Federal Police are concerned, is the case of abductions in Croatia opened or closed, or can you do nothing about it at all? Quite clearly, Australians are concerned about the case. It has not been covered

on some of these programs because no-one is interested; we are all concerned. A lot of Australians travel overseas. Most of us know someone who may be over there and they are young people. We are concerned about their vulnerability. How can we be reassured that the Federal police are doing all they can to help in these situations?

Mr Negus—The role of the AFP starts and stops with the provision of the information and the offer of assistance to the Dubrovnik police. Given the sovereign state of Croatia, we are not in a position to conduct their investigations or to take it any further than that unless we were requested to do so. We continue to offer specialist and technical assistance. To this point that has been politely declined. They continue to brief our officers on the general trends of the investigation. But again, other than providing the bits of information that I have just mentioned—certainly in a timely fashion, within one day or on the same day that we receive the information—we do not have a role in the ongoing investigation in Croatia.

Senator FIELDING—Have you or the Australian Federal Police made any recommendations to the government in regard to concerns about how Croatia has been handling these cases? What else do we need to do? Obviously there are general concerns that three other Australian women seem to have been targeted. Are there any recommendations beyond the review of the Laphorne case, which is a separate issue? I am speaking generally now about young people travelling to that area. Have you made any recommendations to the government?

Mr Keelty—Senator, as a result of the review of this matter you would have heard from Deputy Commissioner Negus that we intend to pursue with DFAT better coordination in relation consular matters. If any of those result in a particular country to a change to travel warnings or other such material, that is a matter for DFAT. We also have an obligation and a responsibility to ensure that when we become aware of these matters we raise them with DFAT and that we bear in mind the travel warnings.

We are in some difficult areas in trying to corroborate some of the speculation, if you like, and to separate speculation from fact in relation to what happens to these people given, as you have pointed out, that a large volume of young people travel the world each and every day. It is a matter of balance but we will be working with DFAT on this in the future.

Senator FIELDING—I am thinking of three suspect cases in Dubrovnik. Are there circumstances in other countries where there is a similar thing? Do you have a listing of hot spots or areas where there seems to be a problem?

Mr Keelty—At any given time we are dealing with a variety of issues in a variety of places. As we have pointed out—I pointed this out on a previous occasion—first and foremost these are consular matters. Without sounding too pompous about it, it reaffirms the need for young people, or any people who are travelling, to have a look at DFAT warnings before they travel, and to be very familiar with the areas in which they are travelling. I am not talking specifically about the Laphorne matter. You cannot be all things to all people.

I think there is a higher level of expectation about what can be delivered, in particular when you are dealing with a foreign country and you are trying to do things in that foreign country. I may have mentioned to you before that if a young Croatian girl went missing in Australia, to what degree would we allow the involvement of the Croatian police to come here, conduct

their own inquiries and do their own investigation? We are trying to strike a balance. As we pointed out, we have been trying to work closely with the family, certainly since the events unfolded.

Senator FIELDING—I am aware of this because we discussed this issue last time. When the Australian Federal Police become involved in the case of a missing person in Australia, a set procedure and protocol are followed. I have not seen it in detail but it is there; it is already in place. You referred earlier to the fact that someone from Croatia might go missing in Australia. Would it not make sense to try to get bilateral agreements with different countries?

By the way, you cannot force them into it, but could you get bilateral agreements for international missing persons? That must happen from time to time. When people are travelling in Australia you must be contacted quite a bit. Do you have the same sort of procedure with other countries—not the same sort of detail—on which you could rely instead of having some sort of international bilateral agreement? You can call it whatever name you like, but you could sit down and say, ‘If someone goes missing either in your country or in our country what should we do together to try to pin it down beforehand rather than afterwards’?

Mr Negus—Senator, one of the things we intend to have a look at is the relationship between the National Missing Persons Coordination Centre and Interpol to see whether there are any improvements there. The review looked at that in a broader sense and it does work. The processes and systems that are in place are efficient and do work but if there are more things that we can do we need to do so. We will undertake to have a look at that.

Senator FIELDING—Thank you very much Madam Chair.

CHAIR—Senator Trood, do you have any questions, or does Senator Brandis wish to ask questions?

Senator FIELDING—Madam Chair, I wish to follow up on one issue. What is the ongoing relationship with the Laphornes at the moment? I do not want to go into detail as obviously you and I are in contact with them. Generally the Australian public—

Mr Keelty—Senator, Tim Morris, who is the head of border and international and who is the person who conducted this review, has been in frequent contact with Mr Laphorne. In fact, as recently as yesterday or over the weekend he spoke to Mr Laphorne in regard to some plans that he had. We have been maintaining some close contact with him here in Australia.

Mr Negus—In addition to that, commissioner, we have a family liaison officer who is trained to deal with families in times of crisis. They also have email contact and telephone contact with that person on a needs basis and it can be initiated by both themselves and the family liaison officer. For instance, they were in the area where the fires occurred in Victoria. The family liaison officer contacted them to discuss how they were travelling in that regard. So there is regular, and I think quite productive, contact.

Senator FIELDING—As it has already been raised I can mention publicly the issue of the seabed search. I think they have asked you to help in that regard. There are ongoing links between you and the Laphornes?

Mr Keelty—That is correct.

CHAIR—Senator Brandis?

Senator BRANDIS—Thank you, Madam Chairman. Commissioner Keelty, I wish to turn, first, to the new Canberra AFP headquarters. Could you give us an update on progress in relation to that project?

Mr Keelty—The company that owned the building at the time, that is, the Edmund Barton Building, has been upgrading the services. That is progressing according to a program for delivery, which will involve a staged completion of works and a full handover of the building in August 2009.

Senator BRANDIS—Is that the original projected handover date?

Mr Keelty—Yes, Senator, it is. After that date the AFP will begin fitting out the building to its own specifications.

Senator BRANDIS—All right. What is the period of the fit-out?

Mr Keelty—It will be staged, Senator. We will start moving into the building from late 2009 and we will complete moving into the building by about the middle of next year.

Senator BRANDIS—What is the current cost estimate of the works to the building, excluding the fit-out?

Mr Wood—Let me clarify your question. The works that are being done with the refurbishment of the building are being done by the building owner, not by the AFP, so we do not have visibility of their budget. We had a sense of how much they were spending on the building and we understood that.

Senator BRANDIS—What I am trying to get at is what is the cost to the Commonwealth of these works?

Mr Keelty—It will be \$115 million, Senator—that is, for the AFP fit-out of the building.

Senator BRANDIS—That is for the AFP fit-out, but what about the refurbishment of the building? Are there additional costs involved in that?

Mr Keelty—The refurbishment cost is not being borne by the Commonwealth; it is being borne by Stockland.

Senator BRANDIS—The Commonwealth or the AFP will then be acquiring a lease. Is that right?

Mr Keelty—We have already signed a lease.

Senator BRANDIS—What is the term of the lease?

Mr Wood—Senator, the term of the lease is 15 years with two options for a further five years each.

Senator BRANDIS—Have either of those options been exercised?

Mr Wood—No, Senator.

Senator BRANDIS—Could a copy of the lease be provided to the committee? I do not need it now, but could a copy of the lease be provided to the committee?

Mr Wood—We will take that question on notice, Senator. I am not sure of the commercial-in-confidence arrangements but we will take that question on notice.

Senator BRANDIS—There would not be any, Mr Wood. This is just a lease of property from a building. Is there any particular reason why you say there may be commercial in-confidence aspects to the lease of property from a building owner by a Commonwealth agency?

Mr Wood—There is nothing unusual in the negotiations that we had with Stockland.

Senator BRANDIS—That is my point. By all means take that question on notice, but I would like a copy of the lease to be provided. By the way, what is the date on which the term of the lease commences?

Mr Keelty—We had all this information for another committee, Senator.

Senator BRANDIS—Then it should be at your fingertips, Commissioner Keelty.

Mr Wood—Senator, the lease commencement date corresponds to the practical completion date, which is the August date that the commissioner has given you.

Senator BRANDIS—So the practical completion date and the handover date are the same date, are they?

Mr Wood—That is correct.

Senator BRANDIS—When you say that you are expecting a handover in August 2009, what is the most recent certification from the architect, or the appropriate certifying authority, to establish that date?

Mr Wood—I had a meeting on Wednesday last week with the AFP's architects, engineers and others who were involved. That is the current estimate.

Senator BRANDIS—Was that always the estimated date for practical completion?

Mr Wood—As the commissioner mentioned.

Senator BRANDIS—In other words it is on time?

Mr Wood—Correct.

Senator BRANDIS—That is good. The fit-out costs to the AFP are \$115 million. Is that right?

Mr Wood—Yes, Senator.

Senator BRANDIS—Who is the project manager for the fit-out?

Mr Wood—If the tender for that has not just been released it is about to be. It has just gone out to the market, Senator.

Senator BRANDIS—And when does that tender close?

Mr Wood—It will be during March, Senator.

Senator BRANDIS—Is this a fixed price contract for the fit-out?

Mr Wood—We have not yet entered into contracts with the contractor who will conduct the fittings.

Senator BRANDIS—Forgive me. Let me ask that question differently. Is the tender that is being invited a tender for a fixed price contract?

Mr Wood—I am pretty sure it is. I will just confirm that. Senator, it will be subject to negotiation as a result of the responses to the tender. It has not necessarily been presented as a fixed price.

Senator BRANDIS—Not only the cost but also the method of arriving at the cost is subject to negotiation?

Mr Wood—Correct, Senator.

Senator BRANDIS—Is the AFP getting advice from the Australian Government Solicitor or from a private law firm in relation to the contract?

Mr Wood—The AGS has been assisting the AFP in relation to the finalisation of the contracts to date and the tender documents.

Senator BRANDIS—Thank you. Before I go onto something else, under the lease what is the annual rental from Stockland?

Mr Wood—It is \$370 per square metre. There is a variable rate, depending on which space is office space verses which space is less usable basement space.

Senator BRANDIS—Is the \$370 the median rental?

Mr Wood—That is the office space. Some of it is cheaper than that.

Senator BRANDIS—Such as car parks?

Mr Wood—Car park areas, storage areas, areas of less utility, particularly around the basement areas.

Senator BRANDIS—Is there an escalated clause in that lease?

Mr Wood—A percentage is linked to the consumer price index together with market based reviews every five years during the term of the lease.

Senator BRANDIS—Can you explain to me the relationship between the two components—the consumer price index and the review to market?

Mr Wood—Because it is a fairly standard provision, as I understand the clauses, whilst the percentage increases are designed to maintain reasonable relativity to the market every five years there is a confirmation of the process that is entered into by the building owner and the tenant to ensure that it has kept pace with market rates, or if the market has shifted in a downward direction there is an opportunity for correction.

Senator BRANDIS—I was going to ask you about that. If the commercial property market in Canberra were lower at the time of the first five-yearly review for argument's sake, the lease contains a provision to revise the rental downwards, does it?

Mr Wood—Senator, I would need to confirm exactly how that clause operates, but it has been developed in a way to ensure that the Commonwealth's interests are best protected.

Senator BRANDIS—Is this a unique lease, or is it based on a standard form of Commonwealth lease?

Mr Wood—It is standard, Senator.

Senator BRANDIS—Thank you. In the event that there is some problem in providing a copy of the lease, could you also specifically take that question on notice about the operation of the escalated clause, please?

Mr Wood—Yes, Senator.

Senator BRANDIS—Have there been any delays at all to the project to date?

Mr Wood—Some of the subprojects within the refurbishment of the building are running a couple of weeks behind time, but the estimate at the moment is that the overall project remains on time.

Senator BRANDIS—And that is Stockland's problem, not yours.

Mr Wood—Just remember that we are not managing that project.

Senator BRANDIS—No, I understand that. It is Stockland.

Mr Wood—It is Stockland. They have been informing us when certain deliveries or certain parts of the refurbishment of the building have not finished on the date they were expected to complete. They keep us informed of that.

Senator BRANDIS—Which are 'they', by the way?

Mr Wood—Stockland has hired Baulderstone Hornibrook as their main contractor on-site for the refurbishment.

Senator BRANDIS—Yes. I am sorry, but my question was: Which are the aspects of the project that were running late?

Mr Wood—My apologies. I do not recall specific elements because, as I say, the overall project was still running on time. I personally was not briefed in detail on that, although the project team keeps an eye on it.

Senator BRANDIS—Good.

Mr Wood—The contractor, Baulderstone Hornibrook, has a specific delivery date with Stockland and with, as we understand, commercial clauses to protect that date.

Senator BRANDIS—Will Baulderstone Hornibrook have to pay a penalty to Stockland, and Stockland in turn pay a penalty to you if there is a delay in delivering?

Mr Wood—I do not have full visibility of the relationship between Stockland and its own contractors. We have some visibility, but certainly the relationship between us and Stockland has penalty clauses within it.

Senator BRANDIS—I see. Are they in the lease or in a different commercial instrument?

Mr Wood—They are in the agreement for lease, Senator.

Senator BRANDIS—Again, if there is some difficulty in providing the full lease, or agreement to lease, can I ask you to take that question discreetly on notice as well?

Mr Wood—Yes, Senator.

Senator BRANDIS—I turn to the AFP's annual report which reports a \$43.5 million operating loss in the reporting period. Can you explain the causes of that operating loss, please?

Mr Wood—Yes, Senator. The \$43 million loss was identified a little over half way through the financial year. In terms of the significant components, it relates to write-off of capital costs of Anzac Park West.

Senator BRANDIS—You might quantify each of these elements as you go, Mr Wood?

Mr Wood—Certainly, Senator. Anzac Park West is a write-off of capital cost, \$10.3 million. Anzac Park West has a provision of break-lease costs to the building owners of Anzac Park West, which is the Department of Finance, \$11.4 million. Anzac Park West rent is \$5.3 million. Provisions for redundancy expenditure are \$7.6 million. Those components add up to \$34.6 million. They are the significant components. They were within a range of other expenditures that we declared to the Department of Finance, such as a higher cost involved in the protection arrangements for APEC, which make up the remainder. Without those four components I have mentioned, we would still have had a deficit of around \$8.8 million or so.

Senator BRANDIS—Let me dwell for a moment on the redundancies of \$7.6 million. How many personnel does that represent?

Mr Wood—That was basically the exercise for redundancy we took during the middle of the last calendar year. It was around 170 members. The provisions that were made in the previous financial year probably covered about two-thirds, or approximately 110 of those 170.

Senator BRANDIS—In other words, the \$7.6 million is the excess over the provision?

Mr Wood—No, Senator. We did not start the year with a provision for redundancies of that size.

Senator BRANDIS—I see.

Mr Wood—That is the provisional amount.

Senator BRANDIS—So it is the full 170.

Mr Wood—No, Senator. It is 110 of the 170 that were processed in that financial year.

Senator BRANDIS—Of those 110, how many were officers and how many were support personnel?

Mr Wood—We have provided that data elsewhere. I am sure I will be able to find it in a moment. Senator, I have the breakdown for the 170. Some were paid in this financial year.

Senator BRANDIS—Yes. Read that into the record, would you?

Mr Wood—Yes. They were paid out of this financial year and hence do not appear in that deficit for the previous financial year. Fifty-four were protected service officers, 56 were unsworn employees, and 60 were sworn officers comprising—

Senator BRANDIS—I am sorry, what was that last figure?

Mr Wood—The last figure was 60 sworn police officers—comprising eight from ACT Policing, 16 from state office, 26 operation, support or corporate, and 10 inoperative. There were a number of sworn police officers who were in corporate enabling roles, or support roles, as you have described them in your question.

Senator BRANDIS—Were all or any of those officers replaced by new inductees or recruits?

Mr Wood—Some of them certainly would have been replaced in that the program areas would have identified the skills base that they needed for the future work of the AFP and would have recruited members, whether they were enabling members or sworn police officers, for the future and emerging work of the AFP.

Senator BRANDIS—You have said that 54 of them were protective service officers.

Mr Wood—That is correct, Senator.

Senator BRANDIS—From an establishment of how many full-time positions of protective service officers?

Mr Wood—I do not have the exact figure, Senator, but it is in the 800s, approaching 900.

Senator BRANDIS—So we have the retrenchment of something approaching six per cent of the protective service officers. Are you able to tell us how many of those were replaced?

Mr Wood—I do not have the figure with me, Senator, but certainly in the area of protection services, there has been a reduction in the business being purchased from the AFP.

Senator BRANDIS—Pausing there, Mr Wood, when you say ‘reduction in the business’, that is a type of corporate speak for there has been a reduction in the number of officers because there has been less work for them to do. Is that right?

Mr Wood—Yes, the demand reduced. It is not a supply issue here; it is demand. Basically as an example, the protection we used to provide at Nauru is no longer required. There are a number of sites where the AFP is in commercial arrangements with other government agencies for these services, and the demand was reduced. As a result, we have been reducing the workforce to meet the new level of demand. In some cases, while new demand might emerge, for example, in relation to Headquarters Joint Operations Command just outside Canberra, geographically that is not necessarily where the staff were whose jobs were being lost through the reduction in the business that we were attracting.

Senator BRANDIS—Mr Wood, of this six-odd per cent of reduction in the protective service officers, do you say that all of it was attributable to a fall in the demand for those officers?

Mr Wood—Not at all.

Senator BRANDIS—Or that only some of it was.

Mr Wood—No, Senator. Certainly not all, but it was a significant issues for that particular part of our business. So of the six per cent reduction, some of it but not all was due to a drop in demand.

Senator BRANDIS—To the extent to which it was not due to a drop in demand, why was there a reduction in the number of those officers?

Mr Wood—Senator, I have just had a piece of paper passed to me which states the number of PSOs is more like 1,245. My apologies: I had the figure wrong in my head.

Senator BRANDIS—So we are talking a bit under five per cent rather than something approaching six per cent. All right, that is fine. Nevertheless, does your last answer remain—that not all of this was demand driven?

Mr Wood—That is correct, Senator.

Senator BRANDIS—To the extent to which it was to demand driven, why was the number of officers reduced?

Mr Wood—Again, Senator, the nature of some of the business can change. If the existing workforce is not best suited for the nature of the business that is emerging for us and we have staff who are willing to undertake voluntary redundancies, then we use that as an opportunity to refresh parts of the workforce. That was a general comment that applied to all of AFP, including protection.

Senator BRANDIS—I understand perfectly well that there may be voluntary redundancies and so forth, but if the demand for PSO officers was greater than the amount by which the PSO staff establishment was reduced, that means, does it not Mr Wood, that there will be fewer officers covering relatively the same amount of work, even allowing for the drop in demand.

Mr Wood—I have a couple of points to make, Senator. Firstly, I did mention there was a geographic disparity where the demand was dropping and where demand may be growing, so we certainly did have to downsize or reduce staff in some areas—

Senator BRANDIS—Yes, but that is a demand issue.

Mr Wood—while at the same time increasing staff numbers somewhere else. Yes, we did replace those numbers, but in a different geographic location. But it is also an opportunity whereby individuals choose to accept a voluntary redundancy and, for whatever reason—there is a range of reasons without going into the personal details of individuals—

Senator BRANDIS—Sure.

Mr Wood—where we may well replace those people, but potentially with a different skill set or a different geographic location. But there has been a net reduction in the number of PSOs, yes.

Senator BRANDIS—And that net reduction is greater than the reduction in demand for the PSOs services.

Mr Wood—No. I did not say that, and I do not believe that is the case. Where the commercial business generates greater demand and we get the cash flow to hire more people, we recruit them.

Senator BRANDIS—Mr Wood, I understood you to be saying to me a few minutes ago that some, but not all, of the reduction in the PSO staff establishment was demand driven.

Mr Wood—That is correct.

Senator BRANDIS—That is the case, right?

Mr Wood—I am sorry, of the number of people who took voluntary redundancies, some was driven by reduction in demand, and some was driven by people who may not necessarily have been in areas where the business was reducing, but were willing to take a VR. Those people were replaced. If you are asking me whether the full net reduction was a result of a reduction in demand, as distinct from all VRs were reduction in demand, the answer is different. We are able to match the PSOs to the commercial revenue that we get, but we have

to negotiate those contracts on the basis of the cost structures that we put in place for that particular customer, and hence determine the number of people we hire for those roles, based on those cost structures.

Senator BRANDIS—It sounds to me though, Mr Wood, from what you are telling me that although some of this reduction was attributable to reduction in demand for the services of the protective service officers, some of it was not. Does that not necessarily produce the conclusion that to the extent to which some of it was not attributable to reduction in demand, there are more officers doing the same work, even adjusting for the reduction in demand? Do you see the point?

Mr Wood—I do see the point. As a general comment, the organisation clearly needs to keep finding efficiencies and keep finding the productivity gains that are expected as a result of certified agreements. Certainly we do business differently over time to manage within the budget that we have. Of course there is an element also of ensuring that we are able to fund, for example, the pay rises for the PSO group, as for any group across the Australian Federal Police, and that needs to be done in part within the way that we do our business.

Senator BRANDIS—So the answer to my question is yes.

Mr Wood—That was my opening comment after the response, yes.

Senator BRANDIS—You also said that 60 of the reductions in places were of sworn officers. The demand issue does not apply quite so purely in relation to sworn officers, does it, because sworn officers are not offered on a contractual basis to agencies in the same way as protective service officers are.

Mr Wood—In the main, that is correct. The one exception I would highlight are the arrangements between the Commonwealth and the ACT for ACT Policing.

Senator BRANDIS—Sure.

Mr Wood—As a general comment, that is correct.

Senator BRANDIS—What is the sworn officer establishment of the Australian Federal Police, including the ACT Police?

Mr Wood—I am sorry, Senator, I did not hear the question.

Senator BRANDIS—Prior to the reduction of 60 sworn officers, what was the establishment of AFP sworn officers, including ACT Police?

Mr Wood—I have three figures that give the sense of a trend. As at 1 November 2007, there were 2,655 sworn police officers in the Australian Federal Police.

Senator BRANDIS—That includes the ACT Police, does it not?

Mr Wood—Correct. As at 1 July 2008, the figure was 2,862. As at 7 January 2009, which is the date of the most recent figures I have, it was 2,877.

Senator BRANDIS—There was discernible increase in the first half of 2008 that was in accordance with pre-existing plans.

Mr Wood—Correct, Senator.

Senator BRANDIS—There has been, in the second half of the 2008 calendar year, barely any increase at all—an increase of 15 as opposed to an increase of 207 in the previous six months. The rate of recruitment is decreasing significantly. Is that also in accordance with the pre-existing plan?

Mr Wood—I do not have visibility of the pre-existing plan, but I should comment that there will be another 30 sworn police officers coming on before the end of the year.

Senator BRANDIS—By the end of 2009.

Mr Wood—By the end of the financial year 2008-09.

Senator BRANDIS—In other words, taking this in six-monthly bits, whereas police numbers increased by 217 between November 2007 and the end of the 2007-08 financial year, in the subsequent financial year, which is the current financial year, they will have increased by 45 from the increase of 15 in the second half of the last calendar year and the additional 30 you have just mentioned.

Mr Wood—That is correct, Senator, for the sworn police workforce contingent.

Senator BRANDIS—There has not been a drop in demand for the services of sworn Australian Federal Police officers, has there, Commission Keelty?

Mr Keelty—No, Senator, but obviously those figures that you are quoting take into account different programs.

Senator BRANDIS—They are the figures Mr Wood was quoting. I am just repeating them.

Mr Keelty—Yes. The program that you describe coming on board during the 2007-08 financial year also included the growth in the international deployment group. We have reached the staffing levels that we can afford, and we also can look forward to the 30 additional staff for the 2008-09 period.

Senator BRANDIS—That is fine, Commissioner. That is just a matter of arithmetic, but it nevertheless remains the case, according to Mr Wood's figures, that the increase in the sworn officer establishment of the Australian Federal Police in the current financial year, on your information to the committee, will have increased by only 45—that is, 15 between 1 July 2008 and 7 January 2009 and a further 30 that Mr Wood has told us will be deployed or recruited between now and 30 June 2009—whereas the increase in only the last eight months of the previous period was 217, which is a fairly significant shallowing of the rate of recruitment, is it not?

Mr Keelty—It is, but as I mentioned before, Senator, the figure is distorted because we were doing the last of the recruitment phase for the international deployment group, which was quite a large recruitment phase that we are working our way through.

Senator BRANDIS—By the way, Mr Wood, do you have the figures for the establishment of sworn officers as at 1 July 2007 so that we can go back to the commencement of the previous financial year?

Mr Wood—No, I do not, Senator.

Senator BRANDIS—Can you get those for me?

Mr Wood—Yes.

Senator BRANDIS—Could that be sourced pretty quickly? I am sure it is at somebody's fingertips who might be listening to this broadcast.

Mr Wood—We will place a call.

Senator BRANDIS—Thank you very much. That is very helpful. Coming back to the operating loss, you said \$7.6 million was redundancies but the lion's share is in relation to the costs associated with breaking the lease on the existing premises, isn't it?

Mr Wood—That is correct, Senator.

Senator BRANDIS—Run us through those figures again, please. There were three components, as I remember.

Mr Wood—Anzac Park West write-off of capital costs, \$10.3 million; Anzac Park West provision of break-lease costs, \$11.4 million; and Anzac Park West rent, \$5.3 million.

Senator BRANDIS—Why are the break-lease costs and the rent accounted for separately? When you break a lease, doesn't the break-lease cost usually include the rent?

Mr Wood—Effectively, that is what it has been calculated on, but we did for the purposes of transparency, I suppose. The negotiation with the Department of Finance was basically about agreeing on a period of time in which the AFP would meet the ongoing lease costs. We paid that just before Christmas as a lump sum. We have been continuing to pay rent over an ongoing period.

Senator BRANDIS—You are paying, in effect, double rent for a period, are you?

Mr Wood—For the existing accommodation and what had been the proposed headquarters. That is correct, Senator.

Senator BRANDIS—In each case, your creditor was the Department of Finance?

Mr Wood—In the case of both those line items, yes.

Senator BRANDIS—What about the capital works write-off? What are the components of that, please?

Mr Wood—Standby generator, redevelopment of the foyer area including upgrading security of the foyer, shatter-resistant glazing through the whole building, concrete changes in the car park area and various architectural design works.

Senator BRANDIS—These are capital costs that were incurred before the decision had been made to relocate, and they are now having to be written off because they have no utility to you any longer.

Mr Wood—Senator, that is correct. The costs were incurred prior to the decision not to go ahead with Anzac Park West.

Senator BRANDIS—When was that decision made?

Mr Wood—Whereas we have needed to write them off, obviously the building owner and the new tenant will gain significant utility from those changes. As I recall, the decision was made in approximately November 2007 or it may have been a little bit earlier.

Senator BRANDIS—Can you ask somebody to identify with more particularity the date? A lot of things happened in November 2007.

Mr Wood—They certainly did. My understanding was that the decision was taken in August, but the finalisation or formal exchange of letters was a couple of months after that.

Senator BRANDIS—Thank you very much.

Mr Wood—Given we had to brief a new government on what the decision was.

Senator BRANDIS—Indeed.

Mr Wood—August 2007 is the correct date, Senator.

Senator BRANDIS—Thank you, Mr Wood. That is very helpful. I will turn now to another topic, the air security officer program. Commissioner, you would be aware of reports in the media in recent weeks that the number of air security officers or so-called air marshals has been reduced. You will be aware that it is claimed that the reduction in the number of officers is of the order of some 30 per cent. Obviously I am not going to ask you to go into any operational matters or anything that you feel that you are not at liberty to talk about in a public forum. I will phrase my questions with that injunction in mind. Is it the case, though—I am not asking you now to put a figure on it—that the number of air marshals has been reduced?

Mr Keelty—Yes, they have.

Senator BRANDIS—Are you able—please tell me if you feel that it is not appropriate to say so—to confirm that the magnitude of that reduction is as has been reported, which is up to about 30 per cent?

Mr Keelty—I can comment on that insofar as I can say that the media article is patently incorrect.

Senator BRANDIS—Pausing there, Commissioner Keelty, there have been a number of media articles, but let us locate one. The *Australian* of 11 February 2009, under the by-line of a journalist named Natalie O'Brien, makes this claim. It has been made in other reports as well. For the sake of precision, let us focus on just one of these reports.

Mr Keelty—We are just focusing on that report, Senator?

Senator BRANDIS—Yes.

Mr Keelty—That report, for example, indicated that the air security officer program had annual funding of \$55 million. This is incorrect. A program's annual appropriation is \$26.9 million. The other details in that article are patently incorrect.

Senator BRANDIS—I will come back to my question, though, about the magnitude of the cutbacks. What is the approximate magnitude of the cutbacks?

Mr Keelty—Without going into the numbers—

Senator BRANDIS—I am not asking you to give us actual numbers, but I am asking you to give us a sense of relative numbers, as it were.

Mr Keelty—As I was saying, Senator, without going into the numbers, the air security officer program adopts a CSIRO-developed risk assessment model to work out the number of

ASOs to be deployed. That risk assessment is based on individual flights, and that converts to the number of air security officers to be deployed to those flights. We would say that, while there has been a reduction, as there have been in other areas concerning sworn police, as you have just heard, and as the ASO program is not excluded from those general rounds of reductions, we do not think that the program has been put at risk by the numbers that have been left to carry out the function.

Senator BRANDIS—All right. The figure quoted in the press article to which I have directed your attention and in others is variously a third or 30 per cent, something in that order. Is that approximately right?

Mr Keelty—No, it is not.

Senator BRANDIS—Is it approximately more or less than that?

Mr Keelty—It is less than that, but obviously we do not want to go into the actual figures.

Senator BRANDIS—But it is a substantial reduction though, plainly.

Mr Keelty—It is a reduction, but it is not a reduction that does not enable us to do the work in accordance with the risk assessment.

Senator BRANDIS—I understand the point you are making to me, Commissioner Keelty, but we are not talking about what lawyers call a de minimis reduction of the odd per cent here or there. This is a significant reduction in the numbers, is it not?

Mr Keelty—It is not, Senator. What I am saying is that there is a reduction but that it is not a substantial reduction. Certainly it is not a reduction that does not enable us to do the work in accordance with the risk assessment profile that we have adopted, which is not an AFP model. It is a CSIRO model. It is an independent model that we have adopted.

Senator BRANDIS—All right. Commissioner Keelty, when was the CSIRO risk assessment model adopted by the AFP?

Mr Keelty—In August 2008.

Senator BRANDIS—From the time of the inception of the air marshal program which, if my memory serves me correctly, was in the months following the September 11, 2001 terrorist strikes in the United States of America and the adoption by the Australian Federal Police of the CSIRO risk assessment model in August 2008, had there been a year in which there has been a reduction in the number of air marshals, year on year? There has not been, has there?

Mr Keelty—I cannot answer that question, Senator, because it asks for year-by-year numbers. Obviously the program did not exist before it was introduced in 2002.

Senator BRANDIS—Yes.

Mr Keelty—Obviously we had to grow the program.

Senator BRANDIS—That is right.

Mr Keelty—The program was in a growth mode.

Senator BRANDIS—Yes.

Mr Keelty—But I cannot say that the figures did not reduce in any given year in the period of time that the program has been operating.

Senator BRANDIS—Can I put it to you, Commissioner Keelty, that from the inception of the program in the early months of 2002 until at least November 2007 when the term of the Howard government ended, there was never a year in which the number of air marshals fell, that in each year of those five and a half years they either increased or remained at a constant level. In other words, they plateaued. That is right, is it not?

Mr Keelty—I would have to check because there could have been variations. I know there were a lot of problems recruiting into that area and I know there were a lot of problems retaining staff in that area. I would have to check it. I am not disguising the fact that we have reduced the number of people performing that program, but that is not an increased risk in any sense to the general public.

Senator BRANDIS—With respect, Commissioner Keelty—

CHAIR—You should let him finish speaking first.

Senator BRANDIS—With respect, Commissioner Keelty, I am trying to take you through this in an orderly way. I am interested first in talking about numbers or trends, as it were, and then I assure you I will give you the opportunity to address the issue of risk. But let us not run the two issues together. They are related, but they are not the same thing. What I have put to you is that from the inception of the program and throughout the life of the previous government the program was grown and maintained at levels that did not see the numbers abate. You have said you are uncomfortable affirming that. You are not disputing it, are you?

Mr Keelty—I do not want to say something that is misleading to this committee.

Senator BRANDIS—No.

Mr Keelty—What I am saying, Senator, is that there was no program prior to 2002, so obviously a program had to be put in place. That program had to be grown. I am not disguising the fact that in the last 12 months we have decreased the number of people attached to that program, but we have not increased the risk.

Senator BRANDIS—Pausing there, you, Commissioner, would have been consulted, would you not, on the creation and development of the program at the time of its inception?

Mr Keelty—That is correct.

Senator BRANDIS—May I take it that you had a view as to the optimal size of the program in accordance with the purposes that the program was designed to serve and the resource demands on the AFP?

Mr Keelty—That is correct, but what I will add is that that was at a period of time when the other security measures adopted by the airline operators and by the airport operators were very different to what they are today.

Senator BRANDIS—We can explore that.

Mr Keelty—The air security officer program is but one layer of security adopted by both airlines and airline operators. It is very much more secure today than it was when this program was first introduced. What I am saying is that, yes, there has been a reduction in

staff, but that reduction has not come at a cost to the security of the travelling public of Australia.

Senator BRANDIS—You have made that point very clearly, Commissioner Keelty. I do not think anybody is missing that. I will turn to the risk assessment in a moment, but let us just deal with the staff establishment first, please. Commissioner Keelty, as you were consulted about the growth and development of this program from the time of its inception in 2002 through the subsequent years—let us say the next three or four years thereafter—were you at the time satisfied that the number of air marshals deployed in the program was the appropriate number?

Mr Keelty—In accordance with the risk that we were facing at the time, yes.

Senator BRANDIS—In August 2007—let us say 12 months before the CSIRO report, which you received in August 2008—were you satisfied that the number of air marshals deployed in the program was the appropriate number?

Mr Keelty—Yes.

Senator BRANDIS—All right. Thank you. I assume the CSIRO risk assessment model is a confidential document.

Mr Keelty—Yes.

Senator BRANDIS—By which section or department within CSIRO was it developed?

Mr Keelty—I will have to take that on notice.

Senator BRANDIS—That is fine. Who provided the instructions to CSIRO to develop this model? Was it the AFP? Was it government? Was it someone else? Who?

Mr Keelty—Ourselves in the AFP, and I am instructed also the department of transport.

Senator BRANDIS—Were you involved throughout the inception and throughout the decision to commission CSIRO to develop this model?

Mr Keelty—Not personally. It was a step that we took to have more precision about the business model that we were adopting. The ASO program, as I have said, is but one layer of security. It is also random policing. One of the difficulties with random policing is that it produces random results. What we were trying to do was get more scientific about the assessment of the risk, come up with a model that suited the current environment, but also come up with a model that actually took into account things such as other countries developing their own air security officer programs that were flying into Australia, which was not the case back in 2002. It was a holistic approach to see how good the model was in accordance with the original principles in developing it in the first place.

Senator BRANDIS—Thank you, Commissioner Keelty. When was the decision made—to the nearest month will do—to commission the CSIRO to develop this model?

Mr Keelty—I do not have that detail in front of me, Senator, but as I recall it was following a review that was conducted on the program.

Senator BRANDIS—When? Was it in the early part of 2008?

Mr Keelty—It was 2008.

Senator BRANDIS—We have talked about this in previous estimates hearings in a somewhat different context, but was not this decision to commission the CSIRO to develop this model influenced in part by the felt need of the AFP to husband its resources in consequence of efficiency demands being made upon it at the time?

Mr Keelty—That is correct.

Senator BRANDIS—I take it the brief to the CSIRO is also a confidential document.

Mr Keelty—Yes.

Senator BRANDIS—Which agency was the lead agency in preparing the brief?

Mr Keelty—The AFP.

Senator BRANDIS—Without trespassing on matters that should not be aired in the public arena, in a general way can you please describe to the committee what the brief was? What were they asked to do?

Mr Keelty—You are now asking me to answer a question which I said I was not able to answer.

Senator Wong—Madam Chair, I really think Senator Brandis is reprising what happened earlier today. He has asked a question. The witness has given his answer about the confidentiality of the brief. Senator Brandis is now ignoring or trying to get around that answer and is simply asking the question in a different way.

Senator BRANDIS—As a matter of fact, Minister, I am not. I freely concede that the brief would be a confidential document but, as the committee, the minister and the witnesses appearing before the committee would appreciate, a description in the broad of the task an agency is being requested to perform is not an inquiry as to the content of the brief. Perhaps it was my artless questioning. Let me rephrase it. What was the task that the CSIRO was asked to do in preparing this model?

Mr Keelty—Without going into the brief that went into the CSIRO, things had changed. New aircraft had started to fly into and out of Australia, and passenger numbers had changed.

Senator BRANDIS—To what—more or less?

Mr Keelty—With some aircraft they had increased. Obviously with the A380 they had increased.

Senator BRANDIS—Yes.

Mr Keelty—With the changing environment, both from an aircraft point of view and in respect of the security environment, we wanted the CSIRO to look at all the conditions under which we were operating to see whether we could come up with a much more scientific model to apply to providing the program in a more effective way.

Senator BRANDIS—The volume of air traffic, both domestically and internationally, over the period between 2002 and 2008 had in fact grown, had it not?

Mr Keelty—That is correct, but there was a commensurate growth in security, both with aircraft construction and with security placed at airports and in a number of airports around the world.

Senator BRANDIS—Commissioner Keelty, I am sure you are aware that the cutbacks to the air marshal program, however they are sought to be justified by compensating with other security measures, are a cause of great concern among some of the officers of the AFP concerned in the program. You know that, do you not?

Mr Keelty—Obviously people whose jobs are affected are concerned, but at the same time we have to cut the cloth to fit and we have to look, as we do in every part of the organisation, at ways of operating more efficiently.

Senator BRANDIS—But this is more than an industrial relations issue, if I can put it that way. You are aware, are you not, that some of the officers concerned in the program, including officers who have not been retrenched or redeployed but are continuing to be responsible for the operation of the program, have expressed grave concerns from a risk assessment and security point of view about the consequences of the cutbacks to the air marshal program. Irrespective of whether they are right or not, you know that this is being said, do you not, Commissioner Keelty?

Mr Keelty—None of those officers has ever raised those issues that you have just described with me.

Senator BRANDIS—I am not saying they did, but you know, do you not—

Mr Keelty—If they are not raised with me, Senator, I cannot comment on the suggestions you are making.

Senator BRANDIS—I am not asking you to comment on it. I am merely asking you whether you are aware that this chatter is going on among some of the officers concerned who are at the coalface of the operation.

Mr Keelty—I am not personally aware, nor are the senior staff that are with me.

Senator BRANDIS—The stories in the press which refer to unnamed sources did not come out of thin air, did they?

Senator Wong—As a member of parliament, Senator Brandis, particularly in a lot of recent cases I am sure we would all agree that the press—

Senator BRANDIS—Senator Wong, Senator Wong—

Senator Wong—No, let me finish, Senator Brandis.

CHAIR—Please let the minister finish.

Senator Wong—We all may have differing views at times about which of the facts in the media are ones we want to rely on. Senator, the commissioner has answered in terms of his knowledge. I am not sure pressing him about what you say can be interpreted from media reports is really a very sensible approach.

Senator BRANDIS—Thank you very much, Minister, but I will phrase my questions, if I may, with all their inadequacies. As long as they are not outside the rules of the committee, that is a matter for me. Commissioner Keelty, you have said that one of the considerations that bore upon these decisions was the fact that there are other security measures in place now that were not in place in, let us say, the early part of 2002 at the inception of the program. Does that express it correctly?

Mr Keelty—That is correct.

Senator BRANDIS—But of course these measures are not measures within the jurisdiction or under the direct control of the AFP, are they?

Mr Keelty—That is correct.

Senator BRANDIS—The only security measure in relation to airline security that is under the direct control of the AFP is the air marshal program. Is that correct?

Mr Keelty—In addition to the airline program, Senator, you would be aware that we have the airport uniform policing program in place and the counterterrorism first response at Australia's airports.

Senator BRANDIS—Were those two you have just mentioned among the additional programs that you had in mind when you said that there were additional measures? I thought you were talking about measures that, for example, the airlines had instituted.

Mr Keelty—There is a large combination of programs, some from the airlines and some from airport operators.

Senator BRANDIS—Other than the two that you just mentioned, the programs operated by the airlines and by airport operators—which have been developed in the years since 9/11, of course—are not programs under the direct control of the AFP, are they?

Mr Keelty—That is correct.

Senator BRANDIS—Dealing with the question of risk, the document prepared by the CSIRO is called the 'risk assessment model'—or was that just your paraphrase of what the document is? Does it have a title?

Mr Keelty—My description of it is the risk assessment model, but it may have a more formal title.

Senator BRANDIS—My point to you is that the CSIRO, no matter how sophisticated its expertise in scientific and technical matters, is not a risk assessment agency in the sense of an agency that is professionally competent to make assessments of the magnitude of a terrorist threat, is it? In other words, it is not a national security risk assessment agency, is it?

Mr Keelty—Senator, you are really now starting to touch upon the brief that went into the CSIRO.

Senator BRANDIS—No, I am not. I am simply putting to you the proposition—and if you want to disaffirm it, please do—

Mr Keelty—Well, I was trying to disaffirm it.

Senator BRANDIS—All right, go on.

Mr Keelty—It is a combination of factors. The CSIRO is one factor. Our intelligence is another factor. The intelligence community and their feed into the AFP is another factor. All of these things combined help us to determine where to put the resources we have and how much in resources we need.

Senator BRANDIS—What I was getting to, Commissioner, is this: no matter how sophisticated the CSIRO's modelling might be as to the most efficient allocation of your

limited resources on a given number of airline routes, for example, and given passenger loads, and so on, the major premise in any such assessment logically would have to be an assessment of the terrorist risk—the risk of a terrorist attack on airliners. The proposition I am putting to you is that that major premise is not something which one would regard as being with the CSIRO's professional expertise, as opposed to the professional expertise of law enforcement and intelligence agencies, including yourselves, the AFP.

Mr Keelty—The extent of the work of the CSIRO is much broader than just this assessment model we asked them to consider. But the problem with the way you are shaping the question is that you are intimating that the CSIRO do not have a role in doing a risk assessment of this nature because they are not part of the intelligence community. We believe that the CSIRO took into account the matters that we wanted them to take into account in presenting their response to our brief. We are very happy with the response that they have given us. There is a combination of factors, as I said to you before—some coming from the intelligence community and some coming from a scientific model like this. I do not want to go into the brief.

Senator BRANDIS—I am not asking you to.

Mr Keelty—But I would not underestimate the detail of the brief to the CSIRO.

Senator BRANDIS—Commissioner, where did the threat assessment come from, if I can draw a distinction between a threat assessment and risk assessment, allowing for the fact that a risk assessment would be a broader exercise and would take into account a multiplicity of factors beyond a raw threat assessment? From which agencies did the threat assessment come in feeding into the CSIRO's modelling?

Mr Keelty—As I said, the threat assessment is something that is a collaboration of the risk assessment model and other material.

Senator BRANDIS—Sure.

Mr Keelty—The CSIRO is possessed of some of that material and is not possessed of other material.

Senator BRANDIS—Right. I think we are on the same track here, Commissioner. The output of this exercise is a document. You have made it perfectly clear to us that this document was a collaborative exercise in which the minds and the expertise of a number of agencies other than the CSIRO contributed to the process. That is a fair description, is it not?

Mr Keelty—It is a model from the CSIRO. This is no different to any other aspect of policing. You assess the risk and you apply the resources to the assessed risk.

Senator BRANDIS—Just stay with me on this development of the model issue, though, would you please. What I want to know is this: in this collaborative process in which, as you have told us, a number of intelligence agencies or national security agencies, including of course the Australian Federal Police participated, it is the case, is it not, that the threat assessment, the judgment of the likelihood of a terrorist strike on an Australian airliner, was contributed not by the CSIRO but by national security and enforcement agencies. That is right, is it not?

Mr Keelty—No, it is not.

Senator BRANDIS—Are you saying that the CSIRO in its own right has some independent expertise to make this assessment—

Senator Wong—Let him finish, Senator. Chair—

CHAIR—I am sorry: Senator Brandis, I think Mr Keelty was taking a breath there, so let him finish and then you can make some comments.

Mr Keelty—The assessment of all the factors is made by the management in the national manager of aviation. In their role, they make the decision about the number of ASOs to be deployed to aircraft. They are the ones who consolidate the intelligence from the intelligence community, the risk assessment model from the CSIRO and determine the appropriate resource to put to this program.

Senator BRANDIS—I thought we had established, Commissioner Keelty—at least, you seemed to accept this distinction I drew—between threat assessment and risk assessment. I am sure that any competent modeller with sufficient expertise and sophistication can develop a risk assessment. But the point I am at pains to make to you is that the major premise of any such risk assessment has to be a view of the existence and imminence of a threat—in this case, a terrorist threat. Whatever else it is, the CSIRO does not work out whether there are going to be terrorist threats to Australia. ASIS might, ASIO might, you might, but the CSIRO does not, does it?

Mr Keelty—You are embellishing what the threat is—

Senator BRANDIS—I am putting a proposition to you, Commissioner.

CHAIR—Senator Brandis!

Mr Keelty—Senator, you are focusing on a terrorist threat. It might take one person to bring down an aircraft.

Senator BRANDIS—Yes. That person would be a terrorist.

Mr Keelty—That person might be a mentally ill person as well. One of the factors in assessing the risk is just how you counter an individual, let alone a group, of people who may wish to bring down an aircraft. History shows that on some occasions it can be just one individual who is personally motivated to do that.

Senator BRANDIS—That is right.

Mr Keelty—So the risk assessment is a combination of the model from the CSIRO and the assessment of the current risk from the intelligence community.

Senator BRANDIS—Right, okay. Great! We have got there at last! It is a combination of those two elements, and the assessment of the current risk from the intelligence is the part of the exercise that assesses the imminence of the threat.

Mr Keelty—It is the total package. You cannot have one without the other.

Senator BRANDIS—That is right. So the CSIRO develops, with its sophisticated modelling and expertise, a risk assessment based on a number of factors and the intelligence agencies contribute into the process a view as to the threat. There are other integers in this calculation, including the frequency of airline traffic and the number of passengers on given

routes and all manner of other essentially commercial, industrial and aviation industry data, which of course bear upon a probabilistic assessment of risk. But in the end it goes back to a judgment about threat, and that is not the judgment the CSIRO makes. It is an intelligence judgment, is it not?

Mr Keelty—It is an assessment made with the combination of all the input from both the intelligence community and the CSIRO risk model. The CSIRO risk model does take into account a number of factors that you could interpret as being intelligence factors.

Senator BRANDIS—Commissioner Keelty, Mr Wood told us before about redundancies. Were some of those redundancies of which you spoke, Mr Wood, officers in the air marshal program?

Mr Keelty—Yes, they were.

Senator BRANDIS—Thank you. Were they replaced?

Mr Keelty—No, they were not.

Senator BRANDIS—All right. Thank you. Can I turn to something else? Chair, I understand we are adjourning at 5.15 pm.

CHAIR—We are finishing at 5.15.

Senator BRANDIS—Can I indicate that I will have more than five minutes worth of more questions for the AFP.

CHAIR—So you want the AFP back at seven o'clock rather than to put the questions on notice?

Senator BRANDIS—Yes.

CHAIR—I see.

Senator BRANDIS—Senator Barnett, didn't you have some questions about Sydney?

Senator BARNETT—Yes, I do.

Senator BRANDIS—Perhaps I will yield to Senator Barnett for a moment.

CHAIR—All right.

Senator BARNETT—Just briefly, in terms of Sydney and the Sydney office, there has been a recent report in regard to the standing down of certain officers at the Sydney office and comments by the AFP Association's president:

... operationally the law enforcement agency's busiest in the country—

as in Sydney—

were routinely 'stood down' at the end of each quarter, forcing their overworked colleagues to pick up any remaining slack.

I wonder if the AFP could advise if that is correct and what is being done about it? Secondly, is this occurring in other locations around Australia?

Mr Keelty—I am aware of the issues concerning the Sydney office. Overtime is available to be utilised in accordance with the operational priorities, which are managed under the AFP collective agreement 2007-11. The agreement is still current today and has been made in

conjunction with the Australian Federal Police Association. It provides for a number of core hours to be worked and a composite payment for a flexible working practice to assist the management of investigations. Where appropriate, overtime payments can be made for extra hours worked outside the core duties. There has been no directive or instruction issued not to work overtime. AFP members in the Sydney office and across the whole of the AFP have worked and continue to work overtime when required based on the operational responsibilities. The issue is that what was being applied in the Sydney office is the collective agreement, and the collective agreement is as much about managing your time off as it is about the workload to be performed.

Senator BARNETT—That is an understandable answer, but it does not really answer the question. Are they regularly stood down in the Sydney office? Are they regularly stood down in other offices around Australia?

Mr Keelty—When you say ‘stand down’, people are not stood down, told not to work. The work is done, but what is being managed is the hours at work, in accordance with the collective agreement, which is an agreement between the AFPA and the AFP.

Senator BARNETT—Is this an agreement that has been promulgated as a result of the two per cent deficiency dividend cut imposed by the government?

Mr Keelty—No, it is not. This is about looking after the workforce as much as anything else and ensuring that the agreement which is in place is properly managed by both office managers and the staff.

Senator BARNETT—I have a quote here from the *Australian* newspaper of 21 January where Mr Hunt-Sharman is quoted as saying:

“What’s happening on average is that they’re getting to their tenth week out of a 12-week cycle and so the only way you can employ people is to put them on overtime,” ...

It goes on:

“And the AFP isn’t doing that, because they can’t afford it.”

Is that accurate?

Mr Keelty—I do not want to comment on a newspaper report quoting Mr Hunt-Sharman, but I can tell you that I met with Mr Hunt-Sharman and Mr Torr from the AFPA. They are currently working with us to provide joint solutions in terms of trying to find some employment solutions to our current budget situation.

Senator BARNETT—What sort of options or solutions are you talking about?

Mr Keelty—Things such as buying back leave. But they are part of a working group that is trying to develop solutions to the current problem. So I do not see that that issue is one that is of major concern to Mr Hunt-Sharman, because he has not raised it with me personally and I have been meeting with him and have been in frequent contact with him.

Senator BARNETT—Well, it certainly appears of concern to others, and if it is happening in other parts, in other locations—you have indicated this type of practice does occur in other parts of the country.

Mr Keelty—Look, I would not want to overstate what has happened here. All that has happened here is an application of the collective agreement that we have with the workforce and with the AFP. It is as much about making sure that people are not overworked as it is about anything else.

Senator BARNETT—And that occurs in different parts of the country—it is not just the Sydney office.

Mr Keelty—That is correct.

Senator BARNETT—I think we are out of time.

CHAIR—It is 5.15 pm. We will break for dinner and resume at 7 pm to continue questioning the Australian Federal Police.

Senator Wong—I remind the committee that I have another estimates hearing to attend, so there will be another minister representing.

Senator BRANDIS—I just wonder if I might ask for a couple of those statistics or pieces of information I asked of you, Mr Wood? You seemed to indicate they were only a phone call away. If we could have them when we resume, that would be very helpful.

CHAIR—Mr Wood, are you indicating you have those now?

Mr Wood—It will take 10 seconds.

CHAIR—If Hansard is happy, we will go for 10 more seconds.

Mr Wood—The 1 July 2008 figure has been adjusted slightly to 2,855, and the 1 July 2007 figure, which I did not have, is 2,501.

Senator BRANDIS—The first figure is 1 July 2008?

Mr Wood—Correct.

Senator BRANDIS—Thanks, Mr Wood.

Proceedings suspended from 5.16 pm to 7.00 pm

CHAIR—We will reconvene this sitting of the Senate Legal and Constitutional Affairs Committee and our consideration of estimates. I welcome back the Australian Federal Police and Minister Ludwig. Welcome to this evening's session of our committee.

Senator Ludwig—Thank you, Chair.

Senator BARNETT—Welcome, Minister Ludwig. It is good to see you. With respect to an AFP security breach, there was an article on 8 November 2008 regarding a security breach of sensitive documents which allegedly took place in Katmandu. I am just alerting you to that one. Are you aware of that one, Mr Keelty?

Mr Keelty—Yes, I am.

Senator BARNETT—I just want to follow up on that and ask some questions about whether the AFP officer concerned was using an hotel computer because the AFP did not give him access to a secure laptop to work on.

Mr Keelty—No, Senator. That is not correct. It is a female. The problem identified is that an inappropriate USB drive was used by some of the people involved in the investigation. We

conducted a review. We asked Mr Martin Brady, the former director-general of defence intelligence, to do that review for us to look at our procedures in relation to the use of USB drives. We have now, as of this month, implemented a whole series of policies in relation to the use of those drives. Those policies were in place beforehand, but access to the drives was not so freely available to people serving overseas.

Senator BARNETT—Was not freely available for people serving overseas?

Mr Keelty—They were available, but obviously people needed to make the effort to actually get hold of the special drive, the encrypted drives, that are required for those sorts of inquiries.

Senator BARNETT—So the USB that was being used was a regular sort of Harvey Norman version?

Mr Keelty—That is correct.

Senator BARNETT—And before we go into—

CHAIR—No offence to Harvey Norman, mind you.

Senator BARNETT—No offence to Harvey Norman. I am sure they would be delighted with the publicity that we are giving them at the moment.

CHAIR—Maybe not that sort of publicity, I do not think.

Senator BARNETT—Before we go to the policies that have been implemented today to address the problems that were in and around the time where this particular officer was using a Harvey Norman version of the USB stick, what led to the use of that USB stick? What were the reasons for that? Let us drill down to the rationale or the reasons for the problem occurring in the first place.

Mr Keelty—That is the subject of the professional standards investigation. But as far as I am aware, the individual officer concerned did not follow the accepted protocols and did not use an encrypted USB drive on an external system to the AFP. So, in using the hotel computer, the requirement under our policy is that you use an encrypted USB drive. And the officer failed to do that on that occasion.

Senator BARNETT—So they were using a hotel computer?

Mr Keelty—That is correct.

Senator BARNETT—Is it common that AFP officers use hotel computers?

Mr Keelty—If they use hotel computers and they use USB drives, the policy is that they use encrypted USB drives.

Senator BARNETT—And how long has that been the policy? For a good long period?

Mr Keelty—A long period, yes.

Senator BARNETT—So they either have their own laptop that they use wherever they go or whatever they are doing or, if they are using a hotel computer, they use this encrypted USB?

Mr Keelty—That is correct, because of the ability of computers to actually store information despite the fact that you do not save it to the computer.

Senator BARNETT—This is all your officers, or are you just talking overseas officers?

Mr Keelty—All of our officers.

Senator BARNETT—And what proportion use laptops and what proportion would use just the USB sticks encrypted?

Mr Keelty—I could not answer that question, Senator.

Mr Wood—Senator, the number of laptops in the organisation is, from memory, over 2,000, so the provision of suitably encrypted laptops is commonplace in the AFP.

Senator BARNETT—So this just happened to be an unusual situation. Should the officer have had a laptop?

Mr Wood—They may well have had a laptop. But I think we do need to remember, Senator, that professional standards review of this matter is not closed. Whilst we do have some views about what happened, they may be contested by the individual still, so we should not go into too many specifics.

Senator BARNETT—That is fine. How often would this occur within the AFP? Is this an isolated incident, or is this something that happens regularly?

Mr Keelty—I get briefed on every professional standards matter. To my recollection, I do not recall another incident of this type. It is important to remember that the individual officer has her own version of what occurred. But, of course, we also have a forensic examination that occurred on the computer in Katmandu. That may prove to be an inconclusive forensic examination. But we identified what the problem was. As I said, we engaged Martin Brady to do the review. We have now fully implemented a new program of ensuring that the use of those USB drives actually does not work on our systems.

Senator BARNETT—And the specially encrypted USBs, do you undertake the special encryption within the AFP, or are they outsourced, as it were?

Mr Wood—Senator, they are commercial off the shelf, but they meet DSD standards for the type of encryption that we require for our business—DSD being the Defence Signals Directorate.

Senator BARNETT—Thanks for that. I will move on to another topic, which is the AFP officers currently assigned to the Robina headquarters. I have some questions about that.

Mr Keelty—I wish our headquarters were at Robina. There is an office at Robina.

Senator BARNETT—How many officers were assigned to the Robina headquarters in November 2007?

Mr Keelty—I do not have that figure available, Senator. I could take it on notice.

Senator BARNETT—In terms of the planned cuts to the number of officers operating within the AFP, how many will come from the office at Robina in Queensland?

Mr Keelty—That would not have been determined yet.

Senator BARNETT—When will it be determined?

Mr Keelty—When we finally work out what our staffing level will be for the coming financial year. That, of course, will be linked to the budget. At the moment, we do not have any plans for further voluntary redundancies.

Mr Wood—I think you asked for a date back in 2007 in terms of the number of staff. We certainly do not have that, but we do have the current numbers at Robina—

Senator BARNETT—Fire away.

Mr Wood—which is 20 as at January 2009.

Senator BARNETT—Do you know what they were 12 months ago?

Mr Wood—No, I do not. We can take that on notice.

Senator BARNETT—Take that on notice. So we do not know how many are likely to be cut? You do not have that information because you are still undertaking that review?

Mr Wood—There is no specific plan for that office or any other office.

Mr Keelty—We have not identified that office as an office to be cut. In fact, the Robina office has had a number of iterations. It was the office from which we were doing all the online child sex investigations for quite a period, so its staffing levels rise and fall with the crime type that is being dealt with in that office. As I say, there are no planned specific reductions for Robina. Any staffing reductions, if there are any, to occur in the next financial year will be based on whatever our funding level is.

Mr Wood—I might add that we actually just re-signed a lease for Robina in the last few months, so there is a commitment to that office, if that is perhaps where you are coming from.

Senator BARNETT—That is of great interest. How long is the lease?

Mr Wood—I did just ask that, and we are not sure.

Senator BARNETT—You could take it on notice.

Mr Wood—I could take that on notice.

Senator BARNETT—And is it for the same area?

Mr Wood—The same floor space, yes.

Senator BARNETT—Thank you. That is of interest. How many of the officers at Robina are involved in patrol operations at Coolangatta Airport?

Mr Wood—None.

Mr Keelty—Coolangatta Airport people work out of Coolangatta Airport.

Senator BARNETT—Thanks for that. I want to move to the federal audit for the AFP that has been promulgated by the Minister for Home Affairs, Bob Debus. You may be aware of an article in the *Australian* dated 18 February last week on the federal audit for the AFP. It says that there is to be a federal audit of AFP's capability, staffing and direction in line with a commitment made by Labor in the lead-up to the last election. The audit will be conducted by Roger Beale, a senior associate with the Allen Consulting Group. I wonder if you can provide

the committee with the further and better particulars. I presume there are terms of reference for that which may be public, but I have not seen them. Perhaps you could alert us to that.

Mr Keelty—As a point of clarification, it is not a federal audit of the AFP, although it has been widely quoted as such. It is a federal audit of police capability. The government did announce in opposition that it was going to undertake that review. There is a review that is being undertaken by Roger Beale. That has been announced by the minister. It began in early February. It is examining and reporting on the AFP's capabilities to provide for current and future demands, looking up to five years ahead, and for policing and law enforcement services to the Commonwealth, including how the AFP will meet or be able to meet the government's priorities. Key issues will include the effectiveness of the AFP's current operating arrangements, any gaps and overlaps in AFP capabilities relative to other agencies and jurisdictions, and opportunities for improvement and rationalisation in the AFP's strategic, operational and corporate capabilities to deliver the government's required functions. The review will extensively consult with other stakeholders, including state and territory police, as well as the non-government sector and the Australia New Zealand Police Advisory Agency. Mr Beale is to report to government by 30 June, 2009. We and no doubt the government will consider the recommendations made out of the review.

It is important to remember and put on the record, certainly from my perspective as commissioner, that, as I understood the driver for this review, it was to look at the impact the AFP was having on state and territory police in terms of recruitment and staff taken from the state and territory police to staff the IDG and the airport uniform function that the AFP was delivered through the COAG arrangements. The terms of reference, I think, have been made public by the minister. I have a copy of them here.

Senator BARNETT—Are you happy to table them? Were you reading from that, Mr Keelty, when you outlined the—

Mr Keelty—No. I was not, Senator.

Senator BARNETT—I was just saying that if you wanted to table whatever you were reading or something similar to it, that may assist the committee.

Mr Keelty—Basically what I was saying came out of here, Senator.

Senator BARNETT—Is this a review that you will have close contact and liaison with Roger Beale between now and 30 June? Is that envisaged?

Mr Keelty—Yes. I have fortnightly meetings with Mr Beale. Mr Beale is working partly out of our office in the conduct of the review. The AFP is funding the review.

Senator BARNETT—The AFP is funding the review. And he is undertaking the review from your offices?

Mr Keelty—Partly. Obviously he is spending a lot of time on the road and he has other roles that he is performing. But we have accommodated him at the AFP.

Mr Wilkins—I will add to that. This is very much something the Attorney-General's Department is involved in as well. There is a steering committee for this, which includes senior people from a number of government departments, including Finance, the Attorney-General's Department and, I think, Prime Minister and Cabinet and Treasury.

Senator BARNETT—Could you advise me who is on that steering committee?

Mr Wilkins—I am, for one. I am not sure of the names of the other people, but I could find out and give you the names. It is a question of who the department heads of those departments nominate. Also, as part of the team that is assisting Mr Beale, there will be people from the Attorney-General's Department and Finance and so not simply people from the AFP.

Senator BARNETT—Do you chair the steering committee?

Mr Wilkins—I think we are jointly chairing the steering committee.

Senator BARNETT—Who is that?

Mr Wilkins—The commissioner and myself.

Senator BARNETT—Do you want to add something, Ms Kelly?

Ms Kelly—I understand that Mr Wood, the chief operating officer, and Mr Wilkins are jointly chairing the executive reference group and its first meeting is tomorrow.

Senator BARNETT—So we have a steering committee and we have an executive—

Ms Kelly—There is no steering committee. The name of the committee is the executive reference group. It functions in the nature of a steering committee, but that is the title of the committee.

Senator BARNETT—So who are the joint chairs of the executive reference group?

Ms Kelly—The chief operating officer of the AFP, Andrew Wood, and Mr Wilkins, the secretary.

Senator BARNETT—And can you take on notice the other members of that executive reference committee?

Mr Wilkins—Yes.

Senator BARNETT—Thank you for that. I am just a little puzzled that you have members of the AFP as sort of joint chair on a committee that is reviewing the AFP. When you are looking into yourselves—

Mr Wilkins—Clearly, the information and the people best placed to provide information will be in the AFP. So it would be silly not to include the AFP front and centre in this exercise. But there are obviously other departments involved as well who both have interests and can give it some objectivity and neutrality in its considerations. Roger Beale himself has been a deputy secretary in the Department of the Prime Minister and Cabinet. I think he was an associate secretary, in fact, and ran the department of transport and the department of the environment. He is an experienced public servant.

Senator BARNETT—Certainly. I can understand that.

Mr Wilkins—He just finished the quarantine work.

Senator BARNETT—So how often will the executive reference committee meet?

Mr Wilkins—I am not sure about that yet. We are meeting for the first time tomorrow. Obviously, I am not going to spend my entire life meeting on this committee, but I would

think it would be at regular intervals. That will be something we will discuss with Mr Beale and sort out.

Senator BARNETT—And will Mr Beale report to the executive committee? Is that the relationship? What is the relationship and how is it going to operate?

Ms Kelly—The draft report will be delivered to the secretary and the commissioner. The executive reference group will function as a clearing house and a sounding board for ideas. It will also consider drafts of the report. There are various milestones in Mr Beale's contract and various things that he has to deliver at certain points within the conduct of the audit. Those documents will go to the executive reference group, but the final report will be delivered to Mr Wilkins and the commissioner.

Senator BARNETT—Which ministers will it then be delivered to for a response—the Attorney-General and the Minister for Home Affairs?

Mr Wilkins—I think a number of ministers will be interested in it because it deals also with budgetary issues and strategic issues; hence Prime Minister and Cabinet, Finance and Treasury will also be interested. So it is something which will be of interest to a number of ministers, committees and parts of government as well as to the AFP, obviously.

Senator BARNETT—But along the way Mr Beale will be reporting to this executive reference group, of which we have an AFP officer as a co-chair with yourself, Mr Wilkins.

Mr Wilkins—That is right.

Senator BARNETT—And it will meet regularly, but we are not sure how often.

Mr Wilkins—Yes. The function of the committee is not to interfere with the independence of Beale. I do not think you could. It is more a sounding board for ideas and a committee that he can bounce ideas off. If he wants things done, we can actually facilitate those things. It is not going to give him writing instructions, if that is what worries you about it.

Senator BARNETT—At face value that could be a concern that could be held by some looking at such an inquiry or such a review.

Mr Wilkins—That is one of the reasons why it has the people from other departments as well.

Senator BARNETT—Can you advise the details with respect to the contract for Mr Beale?

Ms Kelly—What details are you referring to?

Senator BARNETT—The terms and conditions of his contract and the cost of the review.

Ms Kelly—It is not our custom to review the details of particular arrangements in relation to particular fees. But the contract is a document that is in the possession of the department. It is being executed, I understand, by Allen Consulting Group.

Senator BARNETT—tenders.gov.au provides pretty much every government tender and contract that is available. It is very extensive and comprehensive. I am wondering why this would be any different to all of the hundreds and possibly thousands on the tenders.gov.au website. What is different?

Mr Wilkins—With this type of inquiry, you would not just put it out to tender. You would appoint someone to do it. There is a process in government for doing that. You want somebody of that standing to do the report.

Senator BARNETT—Sure. One-sixth, I understand, of the contracts on that government tenders website were appointed directly without going to tender. I think three out of every six were put to tender and one-third were, I think, appointed via a panel of some sort. So I am just asking if you can perhaps take it on notice and provide further and better particulars with respect to the contract.

Mr Wilkins—We will take the question on notice. You have the terms of reference, which is the key part of it.

Senator BARNETT—I am happy for you to take that on notice and consider the merit or otherwise of that. Thank you for that. I have one other question regarding AFP officers reporting their colleagues for engaging in criminal or improper behaviour. I refer to an article in the *Australian* of 27 October 2008 with the headline ‘Rise in “dobbing” by AFP officers’. It states:

THE number of Australian Federal Police officers dobbing in their colleagues for engaging in criminal or improper behaviour has almost doubled in the past five years.

It sets out some details of an investigation by that particular reporter. I was wondering if you could clarify for the record the statistics referred to in that article. Can you advise the committee as to the veracity of the report or otherwise.

Mr Keelty—If you do not mind, before I answer that question, just for the *Hansard*, in that previous line of questioning you did start to ask me questions about Mr Beale being housed in the AFP. I think you were inferring a potential conflict of interest. You described it as an audit of the Federal Police, and I just want to clarify that it is not an audit of the Federal Police. Therefore, that presumed conflict of interest does not exist. In relation to the answer—

Senator BARNETT—Can I just respond to you, Mr Keelty, and say that the terms of reference is headed ‘Federal audit of police capability’, so some people might understandably say it is a federal audit of Federal Police capabilities, of Federal Police. That is what it is headed. It says ‘Federal audit of police capabilities’.

Mr Keelty—That is right. It is of the Federation. The intention of this policy, when it was first announced in opposition by the now government, was to look at the impact the AFP was having on state and territory police across the Federation in terms of recruitment for the international deployment group and airport uniform policing. So it is a federal audit of policing, not an audit of the Federal Police. They are two distinctly different things. If the government intended or is going down another path, they have not informed me.

In relation to your current question, the AFP operates what is called a confidante network. People within the organisation are trained as confidantes to accept and receive complaints about improper behaviour by other members of the organisation. It is a program that was instituted following a number of anticorruption strategies implemented by the AFP in the early part of this decade. Whilst I do not have the document in front of me and I cannot attest to the veracity of the newspaper article, I think really all that is happening here is an activation of the program to ensure that any improper or inappropriate behaviour by peers or

seniors in the organisation is reported through the confidante network. It is actually a network that is quite highly regarded amongst developed policing organisations around the world. The model actually works.

Senator BARNETT—It sounds like a good model. The report says that the numbers jumped from 2003-04, when officers made 113 complaints about their workmates, to 211 in 2006-07, easing to 194 in 2007-08. You must have those figures of the confidante network with you.

Mr Keelty—There are a couple of reasons for that, potentially. One is the growth in the organisation in that period. Also, we deliberately, as an anticorruption strategy, promote the system from time to time. We actually train people in how to deal with whistleblowers and how to bring complaints of improper behaviour to the attention of the executive management without actually having to go through a chain of command, which is one of the problems that was identified, as I recall, in the Wood royal commission in New South Wales, where because complaints were going through the chain of command, they were being stifled on the way through. This is a mechanism by which to get around that problem.

Senator BARNETT—What are the latest figures you have? I have the 2007-08 figures. I assume the ones that I have referred to are accurate. Have we got the latest figures for 2008-09?

Mr Keelty—We have not compiled them for the annual report, but I will provide the figures we have for the year thus far to you on notice.

Senator BARNETT—Thank you. So you are happy with the system—you think it works well. The level of increase, which seems to be quite significant over that five-year period, is not concerning to you—the fact that there are more of what you would call reports or complaints in that period?

Mr Keelty—I think it is actually healthy that the organisation has people who will bring matters forward in that way. I would be concerned if there were a commensurate growth in findings through professional standards investigations. We have not seen that trend. I will just point out that during that period we had something like 2,000 additional staff come on board, so for many of those staff, particularly those who came from former police organisations, they would not have been familiar with this model of reporting. That is not an excuse in any way. It is just a fact that it may well be that we were promoting the program, as we do from time to time, as an anticorruption strategy.

Senator BARNETT—And it is well accepted, obviously, within the AFP.

Mr Keelty—It is.

Senator BARNETT—I will move to another topic, this spectrum case management system. Can you provide an update to the committee as to the success or otherwise, the merits or otherwise, of this new case management and intelligence system, which I understand cost in the order of \$84 million, which is a big investment.

Mr Keelty—It is a new policy initiative of \$82 million over four years. The funding was initially provided to the AFP for the 2007-08 financial year. The AFP has recently undertaken a redefinition activity in line with the requirements of the Department of Finance and

Deregulation and the Department of Prime Minister and Cabinet to change the focus of the program from an information and communication technology program to a business change initiative. A revised business case illustrating this change of focus has the support of the Department of Finance and Deregulation and PM&C. The funding allocation for the program will remain the same but will be rephrased in line with the revised business case. In December 2008, the spectrum program went through the independent Department of Finance and Deregulation gateway to review process and passed with a green rating, indicating the program is on target to succeed. That is where it stands.

Senator BARNETT—You referred to the revised business case. What is that? Can you provide further particulars?

Mr Wood—One of the aspects of the original business case was that it was too much, as in the balance was too much on the side of being a technological project. That is just not the way to run IT projects that have a significant impact across the whole of an organisation's method of doing business. They need to be business driven rather than technology driven. So the business case was rewritten to focus on improving the way that a federal agent operates day by day in their role in the Australian Federal Police, with the technology being an enabler of that rather than a leader of the project. So the business case was recut as a business driven project, using technology to enable new business rules but not using the technology to drive the project itself.

Senator BARNETT—When was the business case reviewed?

Mr Wood—The business case was reviewed in the period from about mid last year through to October-November last year. It was lodged with the Prime Minister and cabinet's department and the Department of Finance and Deregulation in late November, early December.

Senator BARNETT—Last year?

Mr Wood—In 2008—correct, Senator. We have recently received advice that both those departments are satisfied with the new business case and that it remains consistent with the original cabinet decision but focused on, as I described, a business driven change initiative across the organisation rather than a technology driven one.

Senator BARNETT—Has it changed the budget in any way? It was an \$82 million project over four years.

Mr Wood—No. The commissioner mentioned that the project budget remains the same. That was part of revisiting the whole project—to ensure that the budget was aligned with the new business case. That has been agreed with the other agencies. The timing of expenditure has been rephrased to fit in with—

Senator BARNETT—What is the revised program of expenditure?

Mr Wood—There are three specific tranches of work now defined, rather than a single project. So the \$82 million over four years has now been spread over those three specific tranches of work, or leases.

Senator BARNETT—Can you detail that now, or can you take that on notice?

Mr Wood—I probably can talk about it for hours! Perhaps I will provide some information on notice.

Senator BARNETT—Good. There is a report in the *Australian Financial Review* of 6 January entitled ‘AFP commits to full spectrum upgrade’. Part of that report says that the AFP has committed to using commercial off-the-shelf software wherever possible instead of custom building applications. Is that part of the business case approach?

Mr Wood—Firstly, derisking projects like this is certainly to look at what is best practice already and whether it is suitable for the future systems for the AFP. Therefore, we do look at commercial off-the-shelf opportunities. But it is a business case decision as to whether individual modules are purpose built, custom built or pulled off the shelf. The business case does not specify which modules might be development or commercial off-the-shelf. It merely says both options need to be kept open.

Senator BARNETT—So is it subject to review externally or just internally?

Mr Wood—The gateway process that was mentioned is a process set up by the Department of Finance and Deregulation. It is conducted by four or five independent IT project experts—that is, hired by the Department of Finance and Deregulation. So that review was an independent review conducted using a department of finance process and paid for by the Department of Finance and Deregulation. And we will be subject to other gateways as the project progresses.

Senator BARNETT—Thank you for that. We have some other questions. We will put them on notice. Thanks to the AFP for your assistance today.

CHAIR—No more questions for the AFP? Mr Keelty and your officers, thanks very much.

Mr Keelty—Thank you, Madam Chair.

[7.37 pm]

Australian Crime Commission

CHAIR—Mr Milroy and your officers, good evening.

Mr Milroy—Good evening, Madam Chair.

CHAIR—Did you want to commence with an opening statement?

Mr Milroy—No, thank you.

Senator BARNETT—Hi, Mr Milroy. All the best with your future endeavours regarding your plans post the ACC.

Mr Milroy—Thank you very much.

Senator BARNETT—Perhaps we could kick off. At the last Senate estimates hearings we had some questions about the Northern Territory intervention. I want to address that matter initially. We were told that the ACC had advised that five organisations warranted further investigation in relation to the possession of pornography on publicly funded computers. I wonder if you can tell us about the current status of that investigation.

Mr Milroy—We would have to take that question on notice, Senator.

Senator BARNETT—The ACC's second audit was scheduled for 1 December last year; did it get underway? When is that due for completion?

Mr Milroy—The second audit of?

Senator BARNETT—That matter regarding the pornography on publicly funded computers, I understand.

Mr Milroy—I think you will find that that is a question that needs to be directed to FaHCSIA. They are the agency doing the audit in relation to those systems.

Senator BARNETT—So you are not undertaking any audits?

Mr Outram—We did provide some technical assistance to FaHCSIA but of a very limited nature in relation to scanning of computer hard disk drives and things like that.

Senator BARNETT—If you are happy to take on notice that first question regarding the possession of pornography on publicly funded computers, we will go with that. Thank you. I will move back to the matter of outlaw motorcycle gangs. It has been of considerable interest around the country for some time. I am keen to get an update of your views with respect to the South Australian legislation to outlaw motorcycle gangs which was enacted last year. Obviously there was a view that we needed to see, with the passage of time, exactly what its impact on OMCGs in South Australia would be and whether they would then perhaps move from that state to other geographic areas—perhaps Victoria, New South Wales and Western Australia. I was wondering if you could provide an update to the committee with respect to the impact of the South Australian legislation.

Mr Milroy—Senator, you may be aware, of course, that the Parliamentary Joint Committee on the ACC is currently still considering the various legislation that might be available to governments in relation to OMCG and organised crime agencies. I believe that they are still reviewing that matter. I believe that they still have to carry out some further hearings. We would have to probably take that on notice in relation to commenting on the impact of the current system in South Australia.

Mr Outram—I may be able to add something. As I understand it, the position is that the legislation has been passed through and the South Australian police are currently working through the first phase, which is identifying the groups that are to be proscribed, and that process has not yet finished. The second phase is to then identify individuals within the groups and put legal restraining action around that. So it is far too early to calculate the impact from an operational perspective.

Senator BARNETT—That is what I was hoping to get feedback on. I am aware of the Parliamentary Joint Committee on the Australian Crime Commission, of which I am a former member. But this matter is under consistent and constant review. So is there anything further you can add to that observation regarding the impact of the South Australian regime?

Mr Outram—It is too early to estimate the impact of it, as I say, because it is very early on in the process in South Australia. I do not think the various applications have yet gone through to the final stage of having organisations proscribed. But nonetheless we do liaise very closely with the South Australian police and others in relation to South Australian based

outlaw motorcycle gangs and other criminal gangs as well. But, as I say, it is far too early to either monitor or estimate any impact of that legislation at this point.

Mr Milroy—In relation to the point you raise about what impact it may or may not have in relation to the movement of OMCG groups across states, we would probably need to take that on notice through the intelligence that we collect under the serious and organised crime intelligence task force, which would be monitoring some of those groups' activities. But we would need to provide that at another time.

Senator BARNETT—Thank you for that. We will move on to the issue of Project Wickenby, if we can. Would you like to kick it off with regard to a status report.

Mr Milroy—Yes. As far as Operation Wickenby is concerned, the investigations are continuing. Given the complexity of the cases, their international links and the nature of the alleged offences, we are satisfied that the cases are progressing well. To date, the tax office has advised that \$147 million of amended tax assessments have been or can be issued as a direct result of the disseminations from the ACC's Wickenby investigation. That is over the life of the determination. Additional amounts are anticipated. Several cases have progressed to court. There has been one matter completed, where the person served a period of imprisonment. There is also a three-day committal hearing commencing in February—that is, this week—in relation to four fraud charges. There are three other persons who have a trial commencing in March 2009 in relation to conspiracy to defraud the Commonwealth of \$6.6 million. Of course, on 30 December 2008, Jersey police arrested a male person in Jersey who is currently the subject of an extradition proceeding, which is being handled by the Attorney-General's Department. We are continuing to acquire evidence in overseas jurisdictions. At this stage, a total of 42 mutual assistance requests and supplementary MARs have been made to 13 countries during the conduct of the investigations. We have been well assisted by overseas law enforcement agencies in relation to the execution of search warrants. As far as we are concerned, at the present moment, progress is on the timetable to complete the cases. There are some other possible prosecutions over the next 18 months.

Senator BARNETT—So the timetable to complete the cases is over the next 18 months?

Mr Milroy—We have a number of matters at the present moment that are in various stages of brief preparation. Some are under consideration by the Commonwealth DPP. There are those matters that I have referred to that are the subject of current trials or extradition proceedings. So we are reasonably satisfied, as are our partners, in the progress to date.

Senator BARNETT—But is there a prognosis or an expectation that the matters will come to finality or conclusion within the next 18 months?

Mr Milroy—We would expect that there could be further charges over the next 18 months. Some of, of course, the court cases, trials et cetera, that is out of our control in relation to the timetable if some of these matters are challenged. But in relation to the completion of the briefs of evidence and possible further prosecutions, we are confident that we will meet the timetable.

Senator BARNETT—You mentioned the \$147 million of amended Australian tax office notices have been issued. Can you provide further information regarding that? That is a lot of money. Are they new notices? Is that an additional \$147 million?

Mr Milroy—Well, that is the figure we have at the present moment of amended tax assessments. We would have to probably provide that and further information on notice as to what funds have been realised and further projections.

Senator BARNETT—I am just trying to get a little clarity around the amount collected to date and then the amount that is expected to be collected as a result of the amended notices to be issued.

Mr Milroy—We would have to consult with the tax office in relation to that because, as you know, this is a multiagency investigation with the AFP and tax and the DPP and ASIC. So we need to take that on notice.

Senator BARNETT—I am happy for you to take it on notice. When you do, break it down in terms of what has been collected to date and what funds are expected to be collected as a result of the amended notices to be issued.

Mr Milroy—Okay, Senator.

Senator BARNETT—You indicated a number of cases that were currently afoot. Can you identify exactly how many cases are current?

Mr Milroy—In relation to my opening comments?

Senator BARNETT—Yes.

Mr Milroy—There is the extradition matter. There are three persons who are the subject of a trial commencing in March on two counts each of conspiracy to defraud the Commonwealth of \$6.6 million. There is a three-day committal hearing commencing in February in relation to four fraud charges against another individual. Of course, we have the previous matter, where the person was subsequently convicted, sentenced and has carried out or served their term of imprisonment.

Senator BARNETT—So just those ones?

Mr Milroy—That is correct, yes.

Senator BARNETT—There was a report—I do not have the exact date; it was in the *Financial Review* mid-February, not that long ago—headed ‘Wickenby Faces Dates Challenge’. It was about the Phillip Egglshaw matter. It said in its opening that the federal government’s \$300 million Wickenby tax evasion investigation could be in jeopardy, as Phillip Egglshaw, the man whose data laid in a laptop triggered the probe, challenged the validity of its seizure. I was wondering if the ACC would like to respond to that report.

Mr Milroy—That matter is currently before the courts. I am not sure of the date. We are awaiting judgement in relation to that matter.

Senator BARNETT—So it is a reserved judgment?

Mr Milroy—That is correct, yes. The matter you are referring to was in South Australia. That is right. It was in the *Australian Financial Review* on 6 February.

Senator BARNETT—Six February, yes.

Mr Milroy—That is right.

Senator BARNETT—So it is difficult for you to answer. Do you consider what is set out in that article as serious in terms of impacting on future ACC actions to recover funds?

Mr Milroy—Well, as you would appreciate, previously we provided the committee with a list of the legal challenges that we have experienced over the period that we have been investigating these nine cases under Operation Wickenby. As you know, the majority of these challenges have been unsuccessful. Other than attempts to delay, I guess, the investigation, we really have not seen any major impact on the ongoing investigation as a result of these challenges. It is understandable in complex fraud investigations that parties tend to challenge on a regular basis.

Senator BARNETT—So for the record, to confirm how many convictions we have had to date, I think at the last estimates was it three?

Mr Milroy—In relation to Wickenby, other than the matter where the person has served their sentence, the other matters are all the subject of current trials.

Senator BARNETT—But with respect to Wickenby, how many convictions have we had to date?

Mr Milroy—One.

Senator BARNETT—It is just the one, is it?

Mr Milroy—One. That is correct.

Senator BARNETT—Which was?

Mr Milroy—That is why one of the matters in relation to a gentleman who was sentenced on 6 July to 2½ years imprisonment who has served their sentence has now been released. But bear in mind as far as this operation is concerned, there are nine cases under investigation. You should not get it confused with the larger operation Wickenby matter.

Mr Outram—Senator, I will just add some context to that from an investigative point of view. It has been a very protracted and complex investigation. As has been said, we have had to undertake mutual assistance and supplementary mutual assistance requests to a lot of countries overseas. There has been some difficulty with that process. We have been sued numerous times in the civil courts along the way as well, which has had a delaying effect. But nonetheless, given all the complexity and the difficulties with the investigations, we are satisfied with the progress to date.

Senator BARNETT—All right. The Glenn Wheatley matter has been in the public arena extensively, so I am not saying anything untoward there.

Mr Outram—That is correct, yes.

Senator BARNETT—It is in the public arena. So is that the matter you are referring to, or are there other matters in terms of convictions that you are referring to?

Mr Outram—That is the matter we are referring to.

Senator BARNETT—Good. I am getting clarity on that. Thanks for that. Is there anything else you wanted to update the committee on with respect to project Wickenby and the progress to date?

Mr Milroy—No. At this stage, as Michael indicated and I indicated earlier, the investigations are progressing as well as we would expect under the circumstances with complex fraud investigations. As I indicated, the cases are being progressed in a variety of courts both here and overseas. On further matters, the briefs of evidence are being compiled for consideration by the Commonwealth DPP.

Senator BARNETT—Thank you. I will pass back to Senator Brandis.

Senator BRANDIS—In the July 2007 round of the proceeds of crime funding, the Attorney-General's Department provided almost \$500,000 to the South East Asian Collaborative Group on Precursors to host forums with Asia-Pacific neighbours to combat the illegal trade of precursor chemicals used in the manufacturing of illicit drugs. That is right, is it not? Was \$500,000 provided to fund that international participation in the conference on precursor chemicals?

Mr Milroy—I think that is a matter for the department, really.

Senator Ludwig—Senator Brandis, was that funding to the ACC or funding by the Attorney-General to some other agencies? It might be helpful to clarify that.

Senator BRANDIS—By the Attorney-General's Department to support the ACC's participation.

Mr Jordana—Senator, we might have some general advice. We administer the proceeds of crime funding. My colleague Elizabeth Kelly might be able to give you at least the broad brush answer to your question.

Senator BRANDIS—Let us not take up time with a broad brush answer. Let me come to the point. Am I correct, Mr Milroy, in understanding that the Australian Crime Commission was funded to participate in international fora on precursor chemicals? It has been the practice of the ACC to participate in these international fora?

Mr Milroy—We have attended one or two conferences at the request of the Attorney-General's Department. My officers have made presentations.

Senator BRANDIS—Am I correct in my understanding that, as a result of funding cuts, the Australian Crime Commission was in December forced to decide to cease its participation in those international forums?

Mr Milroy—No. My officers indicate that that is not the position.

Senator BRANDIS—I see. So those who say that the ACC's participation in international fora of the kind I have described has been curtailed are wrong, are they? There has been no curtailment in its—

Senator Ludwig—I am sorry, Senator Brandis. You say 'those who say'.

Senator BRANDIS—Yes.

Senator Ludwig—Is that a statement that you are making, or is that a statement you are gathering from somewhere else? It may assist the witness in providing an answer.

Senator BRANDIS—The latter.

Senator Ludwig—And so who was that?

Senator BRANDIS—I am not going to disclose that, Senator Ludwig.

Senator Ludwig—It just might put the witness at a disadvantage in being able to provide a full explanation.

Senator BRANDIS—No. A credible claim has been made to me that the Australian Crime Commission's participation in the South East Asian Collaborative Group on Precursors has been abandoned because of funding restrictions. Is that statement correct or not correct?

CHAIR—Before you answer that, can I get some clarification from you, Senator Brandis. We are not talking about a speech or an article or a paper here? Are you not quoting from something that has been published?

Senator BRANDIS—I do not see any need to elaborate on my question. I am putting a proposition to you. If this proposition is wrong, tell me it is wrong.

Ms Bailey—I think the issue is we have undertaken a review of all of our expenditure, including travel. But I am aware that international travel is still continuing and participation in key forums. I understand there was recently one in New Zealand. I think those issues come to the executive for a decision. I do not recall that we have refused or not let people travel to those symposia.

Senator BRANDIS—What I want to focus on is an international forum known as the South East Asian Collaborative Group on Precursors. Is it not the case that that is an international forum dealing with the issue of combating the illegal trade in precursor chemicals in which the Australian Crime Commission has participated?

Mr Milroy—But in relation to that, I am not aware of the reference at the table to the forum.

Senator BRANDIS—Is there an officer here who might know?

Mr Milroy—One of my staff in actual fact was just sent overseas only in the last few weeks to attend a precursor chemical forum and was one of the major presenters. So we would have to probably check on the reference or the name that you are using for the forum because—

Senator BRANDIS—The name of the forum about which I am inquiring is the South East Asian Collaborative Group on Precursors.

Mr Kitson—There is such a forum. The ACC has contributed to that forum. But we do so at the invitation of the Attorney-General's Department. To the best of my knowledge, there have been two, perhaps three, forums where we have contributed to that. Certainly some of those forums have taken place overseas. To the best of my knowledge as well, we have not had any instance where we have declined to allow ACC to participate in that forum.

Senator BRANDIS—When was the last occasion on which the ACC participated in that forum?

Mr Kitson—I would have to take that on notice, Senator.

Senator BRANDIS—Was it last year?

Mr Kitson—I would have to take it on notice.

Senator BRANDIS—Are there any of your officers here who know?

Mr Milroy—We can make a phone call while I am answering further questions.

Senator BRANDIS—Please do that. Perhaps I can ask the relevant officer of the Attorney-General's Department if they can be of assistance. We have heard from Mr Kitson that the Attorney-General's Department has facilitated the participation by the Australian Crime Commission in the South East Asian Collaborative Group on Precursors. We have got that far. Can you tell me the last time that took place—that Australia was represented at that forum through the ACC?

Ms Kelly—The department has been involved in supporting that forum. On three occasions moneys have been allocated from the Proceeds of Crime Act fund to support that. I have dates for two of those occasions, but not the third, unfortunately. The first occasion was \$310,000, which was to create the forum. So I assume that is the first meeting. I do not have a date for that.

Senator BRANDIS—Can you tell me which year?

Ms Kelly—No. I cannot, unfortunately.

Senator BRANDIS—That is all right. You might take that on notice. Go on.

Ms Kelly—Yes. I will, Senator. The second occasion was \$166,602 for the second South-East Asian Collaborative Group on Precursors meeting in Tokyo in February 2007.

Senator BRANDIS—Yes.

Ms Kelly—And the third occasion was \$252,000 to facilitate the third meeting of the South East Asian Collaborative Group on Precursors, which was scheduled to be held in Hobart in September.

Senator BRANDIS—Of which year?

Ms Kelly—2007.

Senator BRANDIS—September 2007. Has a decision been made to defund that participation? Has a decision been made to no longer provide funding to enable the Australian Crime Commission to participate in future meetings of this body?

Ms Kelly—I am not aware that any component of that funding that I am referring to went to support the Australian Crime Commission. I can take that on notice. My understanding is the fund went to support Asia-Pacific countries to participate in the forum. But I can take that on notice and see whether any assistance was provided to the Australian Crime Commission.

Senator BRANDIS—Yes, please.

Mr Milroy—Senator, I can advise you that one of my officers attended—you identified the country; it jogged my memory—the forum, or the conference, in Tokyo. In relation to Hobart, we did send an officer in September to attend a precursor or ATS type forum. And only recently we sent another officer at our cost to New Zealand in relation to a precursor chemical conference.

Senator BRANDIS—Mr Milroy, would it help if I read to you from your own document? I can hand you a copy if you like. It says: 'A new round of funding under section 298 of the

Proceeds of Crime Act opens on 7 February 2009. Applications for funding from incorporated, not-for-profit community groups and local government associations are sought for projects which address one of the following areas—one of the areas specified is crime prevention. ‘Eligible organisations are able to seek funding of up to \$500,000 for each project. Applications close on 20 March 2009. Applications are available from the Strategic Policy Coordination Branch of the Attorney-General’s Department.’ Perhaps this is best directed to the Attorney-General’s Department, but has that program been cancelled or defunded?

Ms Kelly—No. That program is proceeding. Applications are due to be completed within a short period.

Senator BRANDIS—Thank you very much. You will take those other questions on notice in relation to the ACC’s participation in the South East Asian Collaborative Group on Precursors, will you not?

Ms Kelly—Yes.

Mr Wilkins—So that is a question about whether those funds are used to fund the ACC to attend those conferences. Is that correct?

Senator BRANDIS—I asked whether funds made available, as I understand it, through the Attorney-General’s Department to facilitate the Australian Crime Commission’s participation at that forum have been terminated.

Mr Wilkins—Or whether they were ever made available.

Senator BRANDIS—Yes. If they never were, then—

Mr Wilkins—The only thing I am concerned about is that I think we are using this money to fund other South Pacific countries and the ACC might have very well funded itself.

Senator BRANDIS—I see.

Mr Wilkins—We will have a look.

Ms Kelly—It might just be important to note that the nature of that funding is a grants program. So there is no ongoing funding. Each time there is a meeting, there is an application made for the fund to cover the costs of participation in that meeting. So it would be a situation whereby, if there was a further meeting, a further application would be made to the fund.

Senator BRANDIS—Or there had been a decision not to make that pool of funds available for that purpose in the future.

Senator Ludwig—Senator Brandis, the only thing I can recollect is that, of that grant money, there was also money available under, as I think you have correctly identified, national crime prevention. Some of those moneys might have also been under this, which were single grants made for a period of time up to \$500,000 or whatever it might be. That may have been under this one as well. I think the previous government had made it available to various departments or Commonwealth agencies and to other groups as well. That is my recollection.

Senator BRANDIS—Thank you. Let me move on to something else. I want to take you back to some evidence that was given in the November estimates about the impact on the Australian Crime Commission of efficiency dividends. The evidence of the Australian Crime

Commission then, you will recall, was that members had been offered voluntary redundancy packages. Officers seconded from state and territory police forces were being returned to the state and territory police forces. Since that time, there has been some coverage in the press of ACC staff cutbacks. Let us take it from 1 July 2008. Since then, how many members of the Australian Crime Commission have taken voluntary redundancy packages?

Ms Bailey—Sixteen staff have taken voluntary redundancies. There may have been some who occurred late in June. So in total it has been 16 in that period since.

Senator BRANDIS—And what about in the previous financial year?

Ms Bailey—I think the process was started. So some people may have exited in that year and the expenditure may have been incurred then. And for some it has carried over into this year. But 16 is the total number who have now left.

Senator BRANDIS—Since the program of offering voluntary redundancy began?

Ms Bailey—That is right, yes.

Senator BRANDIS—Remind me what the total staff establishment is.

Ms Bailey—Now? At this point?

Senator BRANDIS—Yes.

Ms Bailey—In our annual report, if you want to go back to the numbers in there, I think we had just over 600 for the last financial year. In terms of 30 June—I will double-check the table in the annual report—I think we had some 573 staff plus contractors. There were around 64 contractors and a number of task force and seconded police as well.

Senator BRANDIS—I am not so much interested in the secondees. Does that figure of 16 come off the 573?

Ms Bailey—They were public servants. Yes, that is right.

Senator BRANDIS—So the 573 was at what date?

Ms Bailey—That was in our annual report table for 30 June last year. It was for 2007-08.

Senator BRANDIS—What was the staff establishment for the period in the previous year to 30 June 2007?

Ms Bailey—For 2006-07, it was 555 public servant type staff. But I do not have a contractor number for that year.

Senator BRANDIS—So it was 555 in 2007?

Ms Bailey—In 2006-07.

Senator BRANDIS—It was 555 at the end of 2007, and 573 at the end of 2008?

Ms Bailey—Yes.

Senator BRANDIS—And then that 573 has been reduced by 16?

Ms Bailey—It has been reduced. There were 16 voluntary redundancies. There has also been some attrition where we have not filled some positions.

Senator BRANDIS—I was going to ask you about that so let us go on to that right now. How many positions remain unfilled?

Ms Bailey—At 31 December, the difference in our numbers was that we were down to 538 public servant staff.

Senator BRANDIS—The difference between the 573 and 538 would include the 16 voluntary redundancies?

Ms Bailey—That is right, yes.

Senator BRANDIS—And are the rest attributable to attrition?

Ms Bailey—Attrition. Yes, people who have left. Jobs have not been replaced. You will recall—

Senator BRANDIS—Have there been any involuntary redundancies?

Ms Bailey—No, Senator.

Senator BRANDIS—Other than voluntary redundancies and attrition, is there any other category of departure?

Ms Bailey—We did terminate some non-ongoing staff contracts early—around seven staff. And for other non-ongoing staff, when their contracts ran out, they were not replaced.

Senator BRANDIS—Is that within—

Ms Bailey—Yes. Within the 537. The non-ongoing and ongoing were in that number.

Senator BRANDIS—So, in the last six months of last year, we have had a reduction of—

Ms Bailey—Thirty-five.

Senator BRANDIS—What is that—about seven per cent of the staff?

Ms Bailey—I will take your word for that, Senator.

Senator BRANDIS—Roughly. About seven per cent of the staff.

Ms Bailey—Yes.

Senator BRANDIS—During that period, the second half of calendar year 2008, when the staff had been reduced from 573 to 538, had there been a seven per cent reduction in the caseload or workload of the Australian Crime Commission? In other words, is this demand driven?

Ms Bailey—Senator, the process we undertook starting in May last year to identify what staffing profile we would need for the forward year was to go across all our cases on hand and all our work and determinations and understand what the critical things we would continue doing were, what things would be ceased and what things we could delay.

Senator BRANDIS—You were paring back to core business, were you, Ms Bailey?

Ms Bailey—Well, we were making some decisions about what the priorities were to achieve a balanced budget outcome.

Senator BRANDIS—Given the budget parameters imposed upon you by the government?

Ms Bailey—Well, given the budget parameters as we had them, yes; that is right.

Senator BRANDIS—Thank you. Of these 35 staff positions that disappeared in the second half of last year, how many of them would have been classified as investigative staff? All of them?

Ms Bailey—No, Senator. I do not have the breakdown for the whole 35. I could take that on notice. I do have the breakdown of that for the 16 voluntary redundancies. Of that 16—

Senator BRANDIS—Well, just tell us about that and then take the 35 on notice.

Ms Bailey—Of the 16, three were classified as investigation staff, although one was an investigations support officer. Three were intelligence and 10 were corporate.

Senator BRANDIS—By what numbers were the secondees from state and territory police forces reduced?

Ms Bailey—Thirteen at that time.

Senator BRANDIS—Tying this down by dates, I suppose, is the best way to do this. Let us take 30 June 2007, 30 June 2008 and 31 December 2008 to try to get a picture of the way this is going. What was the number of secondees on each of those three dates, please, in aggregate?

Ms Bailey—In aggregate, I will just give you my numbers. At the end of 2007-08, we had 59 secondees.

Senator BRANDIS—Just pause it there, Ms Bailey. Let us just clarify this. When you have secondees, are the cost of their salary and other associated costs of the secondment borne by the ACC and remitted to the authority from which they are seconded?

Ms Bailey—If I can go back: 47 of those were funded by the ACC at the end of 2007-08. That is the total seconded staff to the ACC. Twelve were funded by jurisdictions.

Senator BRANDIS—So you had 47 places out of your budget that you funded for these secondees?

Ms Bailey—That is right.

Senator BRANDIS—That is the end of 2007-08. Have you got the figures for 31 December 2008, please?

Ms Bailey—I have. We now have 32 who are funded by the ACC and 12 who are funded by the jurisdictions.

Senator BRANDIS—So, in addition to the 35 staff places that were lost in the second six months of the last calendar year, there has also been a reduction of 15 funded seconded places?

Ms Bailey—That is right.

Senator BRANDIS—So we have in fact reduced the number of ACC funded positions by 50?

Ms Bailey—That is right.

Senator BRANDIS—That is 35 ACC positions and 15 ACC funded seconded positions?

Ms Bailey—That is correct, Senator.

Senator BRANDIS—Thank you. So it is getting towards about nine per cent of the ACC's establishment in six months. I assume that, because the secondees are from state and territory police forces, these would all have been investigative officers?

Mr Milroy—The actual secondees represented Commonwealth and state and territory forces. They mainly consist of surveillance and investigative staff who bring with them their powers.

Senator BRANDIS—Thank you. So they are mainly surveillance and investigative staff?

Mr Milroy—That is correct.

Senator BRANDIS—Were there any of these secondees funded by the ACC in the 15 positions lost who were not investigative or surveillance personnel?

Ms Bailey—I would have to take that on notice, Senator.

Senator BRANDIS—It sounds to me from what Mr Milroy says, though, that most of them were. Of the entire sample, most of them were.

Ms Bailey—I suspect that is true, but we will just have to take that on notice to be correct.

Mr Milroy—I think an important point I should make, Senator, is that, if you are looking at the ACC's capability to do the activities approved by the board, you have to look at the staffing arrangements in an area that is covered by six categories. You have your APS staff, which are funded by the ACC; contractors funded by the ACC; and secondees, where we buy that capability, whether it is investigative or surveillance, from the Commonwealth, state and territory police forces, funded out of our appropriation. In addition to that, you have a number of secondees funded by the jurisdictions.

Senator BRANDIS—Yes. We have dealt with those.

Mr Milroy—Then I will add another table because the changes in our capabilities are the result of our changing our priorities. Then we have task forces funded by jurisdictions. These people actually work in the ACC offices funded by the jurisdictions that come under our management. In addition to that again, we have what we call board approved task forces, where the board member agencies, under a joint agreement, commit investigative, surveillance and other resources to work on a joint task force in addition to the resources that work in our office under our management. So our capability to actually do the board approved work is not as straightforward as just looking at the ACC's capability and what we can fund out of our budget.

Senator BRANDIS—This is the budget estimates for the ACC.

Mr Milroy—That is correct.

Senator BRANDIS—So it seems to me, with respect, that a logical point to get into this discussion is with the ACC funded positions out of its budget. Of the categories you have identified, Mr Milroy—that is, ACC staff—we know from your evidence that, in the last six months of the last calendar year, that number fell by 35 positions. Of the secondees, we know from Ms Bailey's evidence that, in the last six months of last year, that number fell by 15 positions. Did the number of staff or personnel engaged under contracts rise or fall in the last six months of the last calendar year? If so, by how much?

Ms Bailey—Senator, they declined.

Senator BRANDIS—From what to what?

Ms Bailey—From 68, I think, as is reported in our annual report, to 14.

Senator BRANDIS—So that is another 54.

Ms Bailey—I will just add there, Senator, that those were staff brought on specifically to do a number of IT projects. They were always going to lapse in that time frame.

Senator BRANDIS—I just want the raw figures, thank you. I am sure that it all evens out in the end with these special projects that come on stream at some time and go off stream at other times. In addition to the 35 staff positions lost and the 15 secondees positions lost, there were in the last six months of last year 54 fewer contract workers. You say that is in part because certain special projects that they were engaged in came to an end?

Ms Bailey—That is right, yes.

Senator BRANDIS—So we have 104 fewer. Now, Mr Milroy, what about the task forces funded by the jurisdictions? That does not come out of your budget, does it?

Mr Milroy—No. Of course, when—

Senator BRANDIS—The contracts come out of your budget.

Mr Milroy—That is correct. The only thing that comes out of our budget is the fact that we receive these resources funded by jurisdictions. We then have to provide the support because they work in our office, so there is a cost to the agency.

Senator BRANDIS—I understand that. But presumably it is an efficient thing to do, because you would not have them if you did not get good value from them.

Mr Milroy—That is correct.

Senator BRANDIS—You would not engage in these arrangements unless they were an efficiency, would you?

Mr Milroy—That is right. That is correct.

Senator BRANDIS—Am I right in my understanding, then, that there are three categories of personnel that are funded directly from your budget—your own staff, contract personnel and those secondees from the jurisdictions who are ACC funded as opposed to being funded by the jurisdictions?

Mr Milroy—That is correct.

Senator BRANDIS—Those are the three?

Mr Milroy—That is right.

Senator BRANDIS—In the second six months of last year, the first of those categories fell by 35, the second of those categories fell by 54 and the third of those categories fell by 15.

Mr Milroy—That is correct.

Senator BRANDIS—Thank you. I want to turn to something else, please. I want to ask you about the Australian Crime Commission's participation in Operation Borah. Are you

familiar with that? I do not want to go into operational matters, but are you familiar with Operation Borah?

Mr Milroy—Yes.

Senator BRANDIS—That is about outlaw motorcycle gangs, is it not?

Mr Milroy—The operation no longer—

Senator BRANDIS—That was about outlaw motorcycle gangs.

Mr Milroy—That is correct.

Senator BRANDIS—Were you about to say, Mr Milroy, that that operation is no longer current?

Mr Milroy—I believe that is correct. No, my advice is that it is probably still current and it would not be appropriate to talk about it because it is an operational matter.

Senator BRANDIS—No. That is fine. So Operation Borah is a current operation in relation to outlaw motorcycle gangs. Is it the case that, of the funding for Operation Borah, \$10 million has come from funding allocated for the Northern Territory intervention?

Mr Milroy—No. That is not correct.

Senator BRANDIS—Has some of the funding of the ACC for Operation Borah come from moneys allocated for the Northern Territory intervention?

Mr Outram—What I can say, Senator, is that we—I have to be careful about how I phrase my words here—did do some activity in the Northern Territory, where we were looking at activities by a criminal group who we suspected of having involvement in Indigenous communities. One of the tasks allocated to the particular work group relating to Operation Borah was to explore that intelligence gap. Therefore, as I understand it—and I would need to check the facts on this—some funding was applied from the National Indigenous Violence and Child Abuse Intelligence Task Force because there was a significant crossover in objectives.

Senator BRANDIS—How much was that, please?

Ms Bailey—Senator, we would have to take that on notice. I do not have the details of that funding with us.

Senator BRANDIS—Would you? Thank you. That is all I have for the Australian Crime Commission, thanks, Madam Chair.

Mr Milroy—Senator, in relation to the costs, I think it is important to say that the perception of \$10 million is totally incorrect.

Senator BRANDIS—You have made that clear, Mr Milroy. I am not disputing that matter. I put it to you—

Mr Milroy—We are probably in a position to give you an approximate amount.

Senator SIEWERT—I would like to take up where we have just left off, and that is on the NT intervention. Could you tell me how many people have now been charged in relation to

any offences under any investigations by the Indigenous intelligence task force in the Northern Territory?

Mr Milroy—As you would be aware, the whole purpose of the national intelligence task force is not for us, the ACC, to actually progress towards charges or prosecutions. Our job is to collect the intelligence and look at nature and scope. Then we disseminate that information to a number of the law enforcement agencies. They have acknowledged that some of that information and intelligence has assisted them in their investigations. I believe that there have been some charges laid. But we would need to consult our partners and provide that information to you out of session.

Senator SIEWERT—Please do that if you could. Perhaps I should tell you on notice the sort of information I am after. I am after the number of charges that have resulted from your investigations; whether those people are Indigenous or non-Indigenous; whether they are from remote communities; and whether they are outsiders from Aboriginal communities. How many of those people that have been charged are actually juveniles who have been charged in relation to underage sex rather than other charges, such as paedophilia? What is the total number since your investigation started in the Northern Territory? Are there any charges outside the Northern Territory? My understanding is that the task force works outside the Northern Territory. That is a correct understanding, is it not?

Mr Milroy—That is correct. But you will appreciate, of course, that we will have to consult every agency to collect such information. At the present moment, we are in the process of finalising some of the activities across the country and then providing a report in June to a board. Most of that information would need to be compiled between now and then to actually provide that information to the board.

Senator Ludwig—Senator Siewert, I am curious as to whether or not it is actually a question appropriately directed at the ACC. As I understand it, there is the national Indigenous intelligence task force, where it is conducting its initial intelligence collection. So, as I understand it, is not in fact doing it. I am open to correction. But would the questions you have asked about the number of charges, the types of charges, the people who the charges have been laid against and all matters such as that be more likely to be held by the relevant authority to which it has been referred, such as the Northern Territory Police or the AFP? The question I am really going to is: should the questions really be directed there rather than to the ACC, which may have imperfect knowledge about all those matters, given that they are an intelligence dissemination task force?

Senator SIEWERT—I have actually asked the ACC for this information before and they have provided it in the past. I take note of your comments, but I have asked for this information before and it has been provided previously.

Senator Ludwig—I will leave it to the ACC to make a decision about that.

Senator SIEWERT—I did follow up this information with the AFP earlier, and they were unable to provide it to me either. I note that that is interesting because this information has been provided during estimates previously. So I am merely trying to update previous answers.

Senator Ludwig—I understand the reason. My concern really grew out of whether or not the ACC would have perfect information about all of those matters. I want to make sure that

you have a full picture about whether it is the appropriate place and whether the question being directed to the ACC is appropriate. I defer to you if you can manage to convince them to provide that information. That is a matter for you and the ACC, then.

Senator SIEWERT—If you could take those questions on notice, that would be appreciated.

Mr Outram—Senator, I could assist. I think it is important to understand that the Indigenous intelligence task force is not an investigation. The objectives are very much to scope out, sometimes at a very high level, and to improve our understanding of the issues and problems. What we have not done is get involved in collecting evidence to any standard that would be required by a court. We do sometimes disseminate information that may be very generic in nature to another agency. In other cases, there may be specific references to specific individuals. Of course, what we have not been able to do is alleviate the difficulties that they would then face in giving credible evidence in front of a court and proving it to the requirements of a court. So scoping out the information intelligence gaps and problems with information sharing across agencies and getting a better understanding of some of the problems have very much been our focus. In that, we have provided 592 disseminations that were enforced by government agencies. All those disseminations would contain very different kinds of information. We will certainly try and follow up with our partners as to what happened with that information. We do do that.

Senator SIEWERT—That would be appreciated. You have quite wide powers under the changes that were made through the package of legislation that went through with the intervention. That gave you powers to compel the giving of evidence et cetera. Are you saying that you have not been using those powers and have not been gathering that sort of information? Is that what I interpret you to have just said?

Mr Outram—No. That is not correct. We use those powers to collect intelligence sometimes. Sometimes we are able to examine witnesses who would only be prepared to give information with the protection that they would then get from legislation like the ACC legislation because their confidentiality and the secrecy is assured. So we do not have to always use our coercive powers in a traditional investigative sense to produce a brief of evidence. This is a special intelligence operation as opposed to a special investigation, so the objectives are very much intelligence based. The coercive powers can be very effective in terms of unlocking some previously unseen bits of information or issues. In that context, obviously it is conducted in secrecy. They are, as you say, very wide powers, but there are certain limitations on the powers. People are entitled to legal representation and so forth. But they are used in a very different context than what you might imagine for, say, an investigative or prosecutorial context.

Senator SIEWERT—So how many people did you say you have referred? Was it 592?

Mr Outram—That is disseminations of intelligence.

Senator SIEWERT—So that is the dissemination of 592 pieces of information?

Mr Outram—Yes.

Senator SIEWERT—And it could be a number about one person? Is that right?

Mr Outram—That is right. And 1,133 reports uploaded to the Australian Criminal Intelligence Database.

Senator SIEWERT—Again, that might not necessarily be about 1,133 people?

Mr Outram—That is correct.

Senator SIEWERT—Thank you. But you do not know how many of those bits of intelligence have resulted in any charges being laid?

Mr Outram—No.

Senator SIEWERT—Thank you. If you could take that on notice, that would be great. Have you used your powers to get access to information from any type of Indigenous health organisations in the Northern Territory?

Mr Outram—There are some matters before the courts relating to those sorts of issues.

Senator SIEWERT—Can you tell me how many particular health organisations you are currently taking actions against?

Mr Milroy—We would have to provide that on notice because there have been a number of summonses issued. First of all, of course, there has been none issued against any actual victims. But there has been a broad range of summonses issued across four or five states for people who wish to assist the ACC. We would probably have to provide that on notice.

Senator SIEWERT—That would be appreciated if you could. I am not going to ask for the names of the organisations or anything like that. What types of information do you need to gain access to these organisations?

Mr Milroy—You mean in relation to what the summons has been issued for?

Senator SIEWERT—Yes.

Mr Milroy—As I said, there have been quite a number of summonses issued in New South Wales, the Northern Territory, Western Australia and South Australia, so we need to take that on notice to provide a table that indicates what was required in relation to the various matters. In some instances we have called academics, experts and service providers. So there is a broad range of areas that we are looking at. To answer that appropriately, it would be better to take it on notice.

Mr Outram—I could add some context to that, though, if I may. That is that the kinds of information you asked about tend to have the personal information cleansed from them. That is the sort of dataset. Examples are the number of repeat referrals for domestic violence and the number of repeat referrals for sexually transmitted diseases within age brackets. They are examples of the kinds of information we might seek.

Senator SIEWERT—So you are after statistical evidence for health outcomes?

Mr Outram—Very often that is the case.

Senator SIEWERT—Very often. Not all the time?

Mr Outram—Well, it is difficult. There are a lot of different scenarios that one might face. But we are acutely aware, and we have had numerous discussions with a lot of health service providers, about the issue of patient confidentiality and those sorts of issues. But what we are

really interested in is not necessarily identifying the individual but identifying vulnerability and maybe geographical areas that represent a different risk or different level of risk. They are the sorts of issues that we are trying to draw down into.

Senator SIEWERT—You get that from the health data from specific—

Mr Outram—Quite often.

Senator SIEWERT—If you could provide that table, that would be very useful. I want to ask a couple of financial questions. What has been the expenditure to date this financial year on the Indigenous intelligence task force?

Mr Milroy—You mean to date?

Senator SIEWERT—To date, yes.

Mr Milroy—We would probably need to take that on notice. In relation to the funding, of course, for this financial year, which is tied funding, it is \$2.026 million.

Ms Bailey—Senator, my recall is that we are planning to spend all the money within the budget allocation we have this year. My recall of that particular cost centre is that it is pretty well evenly phased. So I suspect that we are about seven-twelfths of the way through the expenditure, I would have thought. But my instinct would be around seven-twelfths. We are pretty well tracking. It is a pretty even divide in that program, as I recall. That is how the money is expended.

Senator SIEWERT—Thank you. Can you remind me how long the taskforce was funded for?

Mr Milroy—I think the ministerial council requested it be established in September 2006. There is still a small amount of funding in 2009-2010 of \$443,000. That is correct.

Senator SIEWERT—And the taskforce will wind up then?

Mr Milroy—Well, by this stage, of course, the bulk of the funding lapses on 30 June this year. The board will meet to consider the results of the task force's work. Then there will be a program of works set for the 2009-2010 year. In relation to the \$443,000, that will probably be in relation to analysts finalising the data and finalising the report. But, again, it is a matter for the board to be satisfied that the task force should finish on the date where the tied funding lapses.

Senator SIEWERT—Thank you.

Mr Milroy—Bear in mind that, under our appropriation, the board can set certain priorities for the ACC. It is not always governed by tied funding.

Senator SIEWERT—I appreciate that. Thank you. Is it possible to break down the expenditure state by state? How much has been spent in, for example, the Northern Territory and in some of the other states? Is that an unrealistic ask?

Mr Milroy—I think it would be at this early stage because this is a national taskforce and we are carrying our activities across a range of jurisdictions. If you are looking at it on an annual basis, it would be something that we would have to probably spend quite a bit of time

to try to estimate just how much was spent in Tasmania, for example, in one year and then the next year.

Ms Bailey—It is quite difficult because we are often based out of the Territory but gone out to do work in other states. So that would make it quite difficult for us to break it down by that level.

Senator SIEWERT—Would it be fair to say that the bulk of it has been spent in the NT as part of the intervention?

Mr Milroy—Well, it is not part of the intervention because the task force was set up as a separate issue.

Ms Bailey—But the intervention, maybe, yes.

Mr Milroy—But quite a high percentage would be spent in the Northern Territory, mainly because that is where a large number of the resources are based. We have two offices in Alice Springs and Darwin. So, again, we could probably estimate the percentage of the expenditure for this financial year and indicate what percentage of the budget was spent in the Northern Territory.

Senator BARNETT—I have some final questions. They refer to Horizons documents and red spot issues for the future regarding organised crime in Australia. You said you are investigating people movement and trafficking of sex slaves and people intended for other forms of slavery. Have you got a figure in terms of sex slaves in Australia?

Mr Kitson—No, we do not have a current figure. The Horizons documents are a series of largely open source information awareness raising products that are designed really to stimulate debate. They are not designed to represent an authoritative assessment by the ACC. We do not currently have that data available because it is not part of the board approved menu of work.

Senator BARNETT—I am aware of the Horizons documents. I think they are excellent documents. I appreciate what you do to identify crime areas of concern. But are you saying that we have no idea of the number of sex slaves that currently live in Australia or come to Australia each year? You must have some indication or an estimate of that.

Mr Kitson—I think that, as you would be aware, Senator, the ACC used to have a determination called 'people trafficking for sexual exploitation'. That involved some detailed research which at the time provided some estimations, but they were estimations. But the primary agency with responsibility for this is not the ACC. So we would inevitably be dependent upon a feed of advice from agencies.

Senator BARNETT—So that is DIAC, is it?

Mr Kitson—The Australian Federal Police has the major caseload investigation on that. But I would imagine that DIAC could have some valuable information with regard to it.

Senator BARNETT—We can follow that up on notice.

CHAIR—That is all we have for the Australian Crime Commission, so thank you.

Mr Milroy—Thank you, Madam Chair. I thank the committee.

[8.43 pm]

Australian Customs and Border Protection Service

CHAIR—Welcome to you and your officers, Mr Carmody. To begin our proceedings this evening, do you want to commence with an opening statement at all?

Mr Carmody—No, thank you.

CHAIR—We will go to questions.

Senator BARNETT—Let us start with whales. Can we?

Mr Carmody—We can.

Senator BARNETT—Could you provide a status report regarding Customs involvement, if any, in monitoring and inspecting whaling in our Southern Ocean?

Mr Carmody—There has been no further development since the one trip of the *Oceanic Viking* that was taken last year.

Senator BARNETT—Can you recall the date and just confirm the time period in which the *Oceanic Viking* was at sea?

Ms Grant—The *Oceanic Viking* commenced its patrol to the whale-monitoring activity on 8 January 2008 and effectively finished its mission of direct monitoring on 15 February 2008.

Senator BARNETT—Did it provide a report to Customs, and could that be tabled, in terms of what it discovered, in terms of its monitoring?

Ms Grant—The material that was gathered during that monitoring exercise was provided to the Department of Environment, Water, Heritage and Arts for analysis by that department.

Senator BARNETT—And?

Ms Grant—And that was the end of our involvement with the particular exercise. We were undertaking the operational activity of monitoring and bringing back some video footage and some photographic material for that department.

Senator BARNETT—Did you undertake that monitoring at the request of the department and the minister for the environment at the time?

Ms Grant—Customs was tasked by the government to undertake that monitoring activity, so it was on behalf of the government.

Senator BARNETT—Can you table the report that you provided to the department of the environment, heritage and the arts?

Ms Grant—Well, the material was the videos and the photographs rather than a report. We do not have ownership of that material. I think you would need to seek that material from the relevant department.

Senator BARNETT—That would have been forwarded with a relevant letter or report of some sort?

Ms Grant—I would have to take that on notice. I do not have that detail of precisely what letter of transmittal we used.

Senator BARNETT—You can take on notice that request for that letter?

Mr Carmody—Yes.

Senator BARNETT—Have you received any report back from the department of environment with respect to your monitoring?

Ms Grant—I would need to confirm that on notice. But not to my knowledge we have had no report back.

Senator BARNETT—Can you advise the context of the video and the photos? Can you tell us further and better particulars with respect to what you discovered?

Mr Carmody—Well, I think some footage was made available by the government. I am sure you would have seen that. I do not think there is any more that we can provide at this stage.

Senator BARNETT—Was that made public at the time?

Mr Carmody—Yes. There was footage made available to media outlets and it was shown on the news.

Senator BARNETT—Was any not shown?

Mr Carmody—There was a substantial amount of footage taken. Not all of it was released. But, as Marion Grant has mentioned, that has been provided to the department of environment.

Senator BARNETT—Could you release the—

Mr Carmody—I think there have been issues to deal with the release of this. I think that because there is still a question of whether this would be used in any eventual challenge it would not be appropriate for us to release that.

Senator BARNETT—Challenge by who?

Mr Carmody—The government has put on notice, and it is my understanding, that there was consideration of whether there should be a legal challenge. I am not aware that that position has changed. On that basis, it would not be appropriate to release the footage. This would be a matter, I think, that you would have to further put to the department of environment.

Senator Ludwig—That is still my understanding as to that, Senator Barnett.

Senator BARNETT—But the purpose of the instructions to the Customs Service to monitor the whaling in the Southern Ocean, at least as we were advised at the public level by the government at the time, was for the purposes of potential litigation against Japanese whaling in the Southern Ocean. That was the purpose of the monitoring.

Mr Carmody—That is correct. That is what I said.

Senator Ludwig—That still holds. Therefore, what the response is from Mr Carmody is that that information, first of all, was a matter that was provided to the department of environment and heritage and it should be a matter directed to them as to whether or not they wish to release it. Secondly, the overriding consideration is that there is, on my understanding, consideration for litigation and challenges potentially. Therefore, the material should not be

released. Some material was released and was made publicly available, as I recall. I think the response to date is that Customs cannot provide you any information that they have now. It has been taken out of their hands and provided to the department of environment and heritage.

Senator BARNETT—Thank you, Minister. A question for you, Minister, and perhaps the department is: bearing in mind that this was so long ago, has the government given up on its efforts and objective of litigating and stopping whaling in our Southern Ocean? This was certainly the view and objective of the government more than 12 months ago. Some time has elapsed, so we are entitled, I think, to know exactly what the position of the Australian government is. Minister, you might be able to assist in answering the question.

Senator Ludwig—I have not seen the position that has been enunciated by the Attorney-General. Unless you can draw me to something that has changed his opinion, I think the statement that Mr Carmody made is correct. There is still the potential for litigation. But I can check the facts.

Mr Wilkins—I was just thinking that Mr Campbell might be able to assist you again.

Senator BARNETT—He is very helpful, Mr Campbell. He has been tremendous today. He has made a great effort.

Mr Wilkins—I will just explain the status of the material which you have been asking Mr Carmody about. That goes to your question about any potential litigation in relation to this area.

Senator BARNETT—If it is as brief as possible, Mr Campbell, because we are a bit tight on time. So give it a shot.

Mr Campbell—I will make it brief, Senator. The first thing to say is that the original material that was collected was transferred to the Attorney-General's Department. If you were to ask me the precise date on which it was transferred, I would have to take that on notice.

Senator BARNETT—Thank you.

Mr Campbell—It still remains the case that the material we have has a potential use in a legal action. The government has stated that at the moment it is pursuing diplomatic initiatives, but it is still considering taking a legal action.

Senator BARNETT—That is what we want to get clarity on tonight, with respect, from the department and/or the minister: the government's position. Does it wish to? Is it pursuing legal action at an international level to stop whaling in the Southern Ocean? If not, why not? If it is, why is it taking so long? It has been more than 12 months since the monitoring was undertaken. It was in January and February last year, so it is now well over 12 months. Has any litigation been commenced? How far down the track are we?

Mr Wilkins—First of all, I think that is a matter for Minister Garrett. But the government has made clear they are pursuing diplomatic attempts to try to sort this issue out. What Mr Campbell was just pointing out is, if you like, keeping one's powder dry. But the government has been fairly clear on that issue, so I am not quite sure what you are asking.

Senator BARNETT—If litigation were to commence, do you have all the evidence available to mount a meritorious case?

Senator Ludwig—That is an extraordinarily hypothetical question.

Senator BARNETT—It is a good question.

Senator Ludwig—No, it is not. It is a hypothetical question, in truth, because you are asking ‘if’. The government in this instance has stated that it is pursuing a diplomatic resolution. If that should succeed, that would be excellent.

Senator BARNETT—Let us move on because we are a bit tight on time. You indicated that you will take it on notice to provide the dates of receiving that material. Thanks, Mr Campbell. How long is a piece of string? We will be sitting here this time next year. We might be getting the same answers from the same officers. I guess that is possible. This is the environment in which we live. Can we just ask a few questions, Mr Carmody, regarding staffing and the impact of the efficiency dividend. Could you provide an update or status report on your current staffing arrangements.

Mr Carmody—Yes.

Senator BARNETT—That is an opening question for Senator Brandis to pursue.

Mr Carmody—I suspected it might be, seeing his eagerness!

Senator BRANDIS—I turn to page 125 in your annual report. Although they are tables, they are called figures. There is figure 44 and figure 45.

Mr Carmody—Pages 124 and 125, yes.

Senator BRANDIS—Yes. In figure 44, there are staff numbers by classification and gender as at 30 June 2008 and staff numbers by location and classification as at 30 June 2008, respectively.

Mr Carmody—Yes. I have seen those figures.

Senator BRANDIS—Are you familiar with those tables?

Mr Carmody—I have them in front of me, Senator.

Senator BRANDIS—They disaggregate the staff by, in each case, nine identical categories—Indigenous, cadets, graduates, Customs trainees and CL1 through to CL5 and SES. Do you see that?

Mr Carmody—Yes, I do, Senator.

Senator BRANDIS—And it is a common date of 30 June 2008.

Mr Carmody—Yes.

Senator BRANDIS—This is an analysis of an identical staff establishment, according to the two different criteria of gender and location, is it not?

Mr Carmody—Staff numbers by location and classification and staff numbers by classification and gender.

Senator BRANDIS—Yes. They should add up to the same number, should they not? Because they do not. Table 44 adds up to 6,293 and table 45 adds up to 6,300. You seem to have lost seven people between table 44 and table 45. Do you know where they are?

Mr Carmody—No.

Senator BRANDIS—Can that discrepancy be explained, or is that just sloppiness? Is it an applicable difference?

Mr Carmody—Perhaps we will get Linda to make a comment, please.

Ms Smith—Looking at that, I would think that the difference would be possibly when we have people that are in acting positions. So there would be people on leave and then people acting. So the staff numbers by location and classification include SES employed and they include non-SES staff on higher duties at that point in time. Figure 44 would be staff numbers by classification. That would be a headcount.

Senator BRANDIS—I am sorry, Ms Smith, but the two footnotes to table 44—

Mr Carmody—Senator, I think the two footnotes are—

Senator BRANDIS—and table 45 are the same. If the explanation applied to those people, it should apply commonly across both tables.

Ms Smith—I would agree. I apologise.

Senator BRANDIS—I do not want to embarrass anyone.

Mr Carmody—There is a difference of seven from the 6,300. We will take it on notice to find the explanation for that.

Senator BRANDIS—I am sure the explanation is an arithmetical error.

Mr Carmody—There could be arithmetical errors. It could be in compiling differences you do different rounding figures for particular issues. I think it is not unusual.

Senator BRANDIS—It is not a big deal, Mr Carmody. But I do think the parliament is entitled to assume, when agencies sign off on these reports, that they would be checked with an appropriate degree of scrutiny to ensure that errors like this do not happen. Correct?

Mr Carmody—As I said, we will look at it. But, as I said, it could be that in compilation charts there are different rounding approaches and so on, given the number.

Senator BRANDIS—Let us take the higher figure, 6,300, which is also closer to being a round number. That was the staff establishment of Customs on 30 June 2008. Can you tell me, please, applying the same classifications—I just want the aggregate numbers; I am not asking you to disaggregate—what was the staffing establishment of Customs on 31 December 2008?

Mr Carmody—I have tables here which give paid FTEs.

Senator BRANDIS—I want to compare like with like.

Mr Carmody—I understand you want to do that, but I am not sure of the numbers. There are different issues of headcounts and FTEs. I can give you—

Senator BRANDIS—I think we have established that by the discrepancy between tables 44 and 45. What I want to know is whether the staff numbers are going up or down or are constant; and, if they are going up or down, by how much?

Mr Carmody—Absolutely. That is what I was going to go on and say. To give you like with like, I have a different table that has been prepared for estimates, which is an FTE table. If you include—

Senator BRANDIS—That is not in the annual report? This is something that you have brought along today?

Mr Carmody—Understanding that we might be asked a question about staff movements, I had a table prepared which uses the FTE figures. So there will be potentially a slight difference or a difference. But if we include people on leave without pay—I can give you the information with the leave without pay figure or without the leave without pay figure—the number of paid FTEs, which is interesting, given it is leave without pay, at the start of July is recorded here as 5,983. So these will be consistent figures. I should say, to give you absolute clarity, that these figures are an average figure for a month. So the figures I have for you now give you the average for July 2008. I do not have the comparable figure for the annual report. But on this basis—

Senator BRANDIS—Sorry. So the figure of 5,983 is the average number of FTEs including or excluding—

Mr Carmody—Including leave without pay.

Senator BRANDIS—Including leave without pay averaged across the 31 days of July. Is that right?

Mr Carmody—Yes. To give you an idea of the movement from then until the January figure, including leave without pay, it is 5,832. If the arithmetic in this table is accurate, it is 152 less.

Senator BRANDIS—Well it is not. It is 151.

Mr Carmody—It is 151. Well, there is a rounding issue.

Senator BRANDIS—It is not a rounding issue. These are two figures from which the—

Mr Carmody—There is one person. It is one FTE.

Senator BRANDIS—sum is computed are also rounded. So it has gone down by 151 places over six months?

Mr Carmody—Yes, on almost 6,000.

Senator BRANDIS—It has gone down by 151 places over six months. Have you done the same exercise for the first six months of the last calendar year?

Mr Carmody—I do not have it in front of me, no, Senator.

Senator BRANDIS—Have you done the exercise, though, for the first six months of the last calendar year?

Mr Carmody—I do not have it.

Senator BRANDIS—No, that is not what I asked you. I asked you if you had done the exercise.

Mr Carmody—We regularly have updates in our executive meetings, but I am not conscious of that particular figure.

Senator BRANDIS—Would you please take on notice what the—

Mr Carmody—I am sure we can provide that, Senator.

Senator BRANDIS—In fact, do you do this on a monthly basis—work out the FTEs?

Mr Carmody—We have a general understanding. We have executive meetings each month at which we look at our budget and our strategies and so on. FTE comes as part of that.

Senator BRANDIS—So at your monthly executive meetings you have the most recent reporting month's FTE figures?

Mr Carmody—The most recent, yes.

Senator BRANDIS—So one would expect that you do this basically on a monthly basis?

Mr Carmody—They are available on a monthly basis.

Senator BRANDIS—They are available, are they? Could we have them, please? I know you will have to take this on notice.

Mr Carmody—Certainly.

Senator BRANDIS—Can we have the figures for each month of the calendar year 2008, please.

Mr Carmody—We will give you on an equivalent basis to the figures I have just quoted you the figures for that year.

Senator BRANDIS—That is FTEs on an average monthly basis, including leave without pay positions.

Mr Carmody—Leave without pay, yes.

Senator BRANDIS—Thank you.

Senator Ludwig—Should we be having a break now, Chair?

Senator BRANDIS—I thought it was at 9.15.

CHAIR—No. It is actually at nine o'clock.

Senator BRANDIS—I will just wind up on one last question.

CHAIR—That is what I was hoping you would do. Then I thought it would be logical, thank you—

Senator BRANDIS—Mr Carmody—

CHAIR—Minister Ludwig, I thought it would be logical to finish on this and this agency and then we will have a break.

Senator Ludwig—Yes. I was just making sure it was not missed.

CHAIR—That is okay. I am happy to swap chairs with you any time, if you like.

Senator Ludwig—No, Senator Crossin; I am quite happy with your chairing.

Senator BRANDIS—Mr Carmody, are you able to tell us impressionistically or without putting a specific figure on it whether the number of positions in the first six months of the calendar year 2008 also declined?

Mr Carmody—No. I do not have that.

Senator BRANDIS—Mr Groves seems to be rushing to assist.

Mr Carmody—I think that year was a period of growth.

Senator BRANDIS—Of growth? But in the second half of the year it was a period of decline.

Mr Carmody—By the numbers I have spoken of, yes.

Senator BRANDIS—Of 151 positions.

Senator Ludwig—Might I suggest it fluctuates over the year, Senator Brandis.

Senator BRANDIS—Well, I am interested in the most recent reporting period, Minister. You will give us those figures on notice. Thank you, Mr Carmody.

Mr Carmody—Certainly.

CHAIR—Thanks, Customs and Border Protection. You can regain your life.

Proceedings suspended from 9.06 pm to 9.22 pm

Attorney-General's Department

CHAIR—We will now move to the Attorney-General's Department. We will go to the general cross-portfolio area first. Mr Wilkins, you do not have anything you want to say as an opening statement?

Mr Wilkins—No.

Senator BARNETT—Firstly, with regard to the government's stimulus package, does the department have any involvement in measures announced as part of the \$42 billion package?

Mr Wilkins—As part of the \$42 billion package? No.

Senator BARNETT—In terms of the efficiency dividend, I want to get a status report on the implementation of that within your department and an update on where the savings have been achieved and which programs and resources have been cut.

Mr Wilkins—You are talking about the efficiency dividend in the last budget?

Senator BARNETT—Right.

Mr Wilkins—Basically, there is no tale of cuts in any particular area. It is basically drawing in one's belt across the whole department.

Senator BARNETT—So no specific programs?

Mr Wilkins—No.

Senator BARNETT—Can you provide an update with respect to the current staffing numbers?

Mr Wilkins—I might get Sue Chapman, who is in charge of the human resources area, to take you through those.

Ms Chapman—In relation to the staff numbers, the current paid headcount as at the end of January is 1,521.

Senator BARNETT—Is that full time equivalent?

Ms Chapman—That is a headcount, not full-time equivalent.

Senator BARNETT—Have you got a full-time equivalent figure?

Ms Chapman—For the end of January, no; I do not have that with me. I can take that on notice.

Senator BARNETT—What about from 30 June last year or the most recent figure?

Ms Chapman—For FTE?

Senator BARNETT—Yes.

Ms Chapman—I do not have the FTE with me, but I do have the headcount as at the end of June 2008. There were 1,464.

Senator BARNETT—What was the head count of—

Ms Chapman—June 2008? The headcount?

Senator BARNETT—Yes.

Ms Chapman—It was 1,501.

Senator BARNETT—So you have actually increased 20?

Ms Chapman—Yes.

Senator BARNETT—How many temporary positions exist?

Ms Chapman—I do not know the number. I know the percentage. The percentage as at the end of January was 10.7 per cent of our total.

Senator BARNETT—It was 10.7 per cent?

Ms Chapman—Yes. Non-ongoing and casual employees made up 10.7 per cent.

Senator BARNETT—And at 30 June last year?

Ms Chapman—For 30 June last year, I do not have that figure. I am sorry, Senator. I could take that on notice.

Senator BARNETT—That is okay. How many employees have been employed on contract? What is the average length of their employment period in the 2008-09 financial year?

Ms Chapman—The average length of time on contract is, I think, 15 weeks, from memory. I am just trying to find my exact numbers. I cannot find it just at the moment. I will keep looking, if you like, as you talk. But I do have them here somewhere.

Senator BARNETT—That is okay. Thank you. Which programs are currently tracking to underspend this financial year, 2008-09?

Ms Chapman—Which programs? I cannot answer that. I believe that that is the CFO.

Mr Lutze—Senator, at this stage, as at 31 January, our programs are tracking on budget.

Senator BARNETT—Sorry, I did not—

Mr Lutze—At 31 January, which is the latest date available, our programs were tracking on budget.

Senator BARNETT—All programs?

Mr Lutze—All programs overall, yes.

Senator BARNETT—How many were not tracking on budget?

Mr Lutze—Are you talking about administrative programs or departmental?

Senator BARNETT—Departmental. Let us do both. I will take whichever you have first.

Mr Lutze—In terms of the department, there are not that many major variances. They are really a gap between the directorates.

Senator BARNETT—When you say ‘no major variances’, what is the variance?

Mr Lutze—There is only one area of more than 16 per cent, which is a journal entry. The rest are in the order of 3 to 4 per cent.

Senator BARNETT—And administered programs?

Mr Lutze—Of the administered programs, we look overall. Our forecast on 31 January was to spend \$566.765 million. We spent \$564.069 million. Within that there are some variations, but overall we are tracking towards budget.

Senator BARNETT—And no significant variations?

Mr Lutze—There are. The one that is mostly overspent in terms of the forecasts that we projected on a monthly basis would be the natural disaster relief and recovery arrangements. We had forecasts to spend by 31 January nearly \$40 million. We spent \$57 million out of a total budget of \$89.5 million.

Senator BARNETT—Sorry. You spent how much?

Mr Lutze—\$57 million.

Senator BARNETT—Instead of \$40 million?

Mr Lutze—Yes. We had forecast to spend \$40 million and we have spent \$57 million. That is, of course, based on applications we get from the states for compensation for natural disasters. So it is a demand-driven program, as a lot of the programs are. But that is \$57 million out of a total of \$89.5 million that is available and that has been budgeted this year.

Senator BARNETT—Out of a total of? I am sorry. It is hard to hear sometimes.

Mr Lutze—Out of a total of \$89.54 million that has been set aside by the government this year.

Senator BARNETT—If it is demand driven—

Mr Lutze—Yes.

Senator BARNETT—what happens if we—

Mr Wilkins—Senator, can I comment on that? This is a fund which is available when natural disasters occur. States put in a claim under a formula which is devised between the Commonwealth and the states for a certain percentage of compensation for infrastructure which has been destroyed and needs to be rebuilt, for example. So it is a notional amount which is in the budget. It very much depends on what natural disasters occur in that particular financial year. This waxes and wanes, obviously.

Senator BARNETT—Of course.

Mr Wilkins—I think what we are saying here is that, as you probably noted, natural disasters have been a feature of Australia this year, so the number is higher than normal.

Senator BARNETT—Indeed. What is the prognosis for the remainder of the financial year in terms of that particular fund?

Mr Wilkins—It will depend on how quickly the states—well, obviously there have been some disasters—put in claims and what the order of those claims is. But you can imagine there will be quite a few claims coming up in the lift.

Senator BARNETT—Yes. That is what I wanted to get to. We can touch on it now or we can cover it under Emergency Management Australia. But you must have done some assessment or an estimate of funds to be expended in terms of the Victorian bushfires specifically, and I am also thinking of the North Queensland floods.

Mr Jordana—Senator, would you like those questions fielded now, or would you like to wait until we get to—

Senator BARNETT—Well, I am happy to wait. I know there is another senator who wants to ask about that. But while we are doing cross portfolio, is there an answer that you are able to provide at this stage, or do you want to wait until we get to Emergency Management Australia?

Mr Wilkins—As I say, I am not sure that we have done any scientific estimates of what the order of that might be. We can talk about that.

Senator BARNETT—Perhaps we can just take that on notice and we can kick it off when we get there in terms of exactly what estimates we could expect in terms of costs to the Commonwealth this financial year and into the next, I assume.

Mr Wilkins—Yes.

Senator BARNETT—In terms of the states, of the applications that are made, do they put in dollar for dollar?

Mr Wilkins—I think we had better get the EMA in. We are beginning now to talk about the way it works and the formula.

Senator BARNETT—That is fine. Let us come back to that in due course. I will move on.

Ms Chapman—Senator Barnett, could I give you the figures that you asked for on the length of contracts. I did find it. For all non-ongoing employees, the average length of non-ongoing contracts has been 15.6 weeks over the last period. That is for people in non-ongoing contracts.

Senator BARNETT—Good. We will go back to the staffing matters. What changes are underway or planned for graduate recruitment, cadetships or similar programs?

Mr Wilkins—On cadetships or similar programs, we are not really contemplating any at this stage. On graduates—

Senator BARNETT—Are you not planning any at this stage?

Mr Wilkins—I was not planning any changes. You asked me what changes. I said I was not planning any.

Senator BARNETT—Good. Just getting clarity around that. No changes at this stage.

Mr Wilkins—No. In terms of graduates, I have just spent some time meeting with all the graduates that have come through the Attorney-General's Department in the last year or so. I am contemplating having a smaller group because I actually think that it would be better for the graduates and better for the department to have a smaller group of graduates.

Senator BARNETT—How many did we have last year? How many do you propose to have this year?

Mr Wilkins—I think there was in the vicinity of something like 50.

Ms Chapman—I think it was 50.

Mr Wilkins—But what you find, if you take in too many people, is you do not spend enough time and effort getting the best out of these people.

Senator BARNETT—So when you are talking smaller, how much smaller?

Mr Wilkins—Maybe half that number. But I think next year and the following year—we have 45 this year—you would be contemplating maybe 25 or something like that as an ongoing number, I would have thought.

Senator BARNETT—Do you have any plans to reduce staff in the foreseeable future?

Mr Wilkins—No.

Senator BARNETT—Has your consultancy expenditure increased in the last 12 months?

Mr Wilkins—Can we take that on notice?

Senator BARNETT—Yes. I will put some questions on notice regarding consultancies. If you take that on notice, we will get that. The government has introduced new legislation, the Federal Financial Relations Bill, which appropriates money to Treasury to pass on to the states. Has your department received any appropriations that will be transferred to the Treasury department? If so, what are these?

Mr Wilkins—It is possible that some of the legal aid money may represent such a program. But there are still discussions going on between us and the Treasury as to whether that actually is of the nature of a payment under that legislation. I am not aware of any other payments.

Senator BARNETT—Do you want to take that on notice, because that seems like an equivocal answer?

Mr Wilkins—No. I am not being equivocal. In fact, I am still having a discussion with Treasury about whether it fulfils the criteria or not. So I am giving you the answer.

Senator BARNETT—We support anybody who is debating or fighting with Treasury.

Senator BRANDIS—I hope the Treasury is not taking its legal advice against you from the Australian Government Solicitor, Mr Wilkins.

Mr Wilkins—I do not know where they are getting their legal advice from, Senator.

Senator BARNETT—Did your department use any depreciation funding for recurrent expenditure in 2007-08?

Mr Wilkins—I do not know the answer to that question.

Mr Lutze—It pre-dates me. We will take that on notice. I do not think so, no.

Senator BARNETT—When you do take it on notice, can you advise what happened in 2007-08 and your plan for 2008-09 and any change for 2009-10?

Mr Lutze—Yes.

Senator BARNETT—Have you used—I am happy for you to take this on notice—any depreciation funding for recurrent expenditure this year?

Mr Wilkins—Was that not the last question?

Senator BARNETT—It is related to the last question.

Mr Lutze—I will take that on notice again. There is no point in giving half an answer if you want a comparison between this year and last year. I will give both in writing to you.

Senator BARNETT—In terms of cross portfolio, I have been advised the National Human Rights Consultation Committee comes under 1.3. I thought I would ask that and get clarity on that.

Mr Wilkins—Just before we do that, you asked me about these Commonwealth-state payments. I was just made aware that there are some payments that are made for liaison officers in relation to classification. These are officers, I think, where we fund the states. They go around and see whether the classification scheme is being properly enforced and being upheld. I am informed that that program may be captured by this legislation.

Senator BARNETT—Thank you. To get clarity re this human rights consultation committee, is that 1.3, or do you want to deal with it now?

Mr Wilkins—Go ahead, Senator.

Senator BARNETT—I know a senator behind me wants to ask about that. Before we pass on to that, in terms of reviews by the department, how many reviews are currently being undertaken in the portfolio? What is the topic for the review and the consultant, if identified? When did the review start? When will it be concluded? I will put some further questions on notice. Do you have a list of reviews that you can advise the committee.

Mr Wilkins—I am not sure what you mean by a review, Senator. We would not use the term 'review'. Do you mean work that we are doing?

Senator BARNETT—You answered a question on notice about reviews. It is question No. 10 on 20 October. That included consultancies. Question No. 6 was: identify the reviews, including the topic of the review, the date of the report for the review and any other relevant particulars. Have you got a list with you now, or do you want to take that on notice?

Mr Wilkins—No. I will take it on notice. I would not use the term 'review' necessarily. I think that is probably the wrong terminology, even though we used that term, I think, last time around. But I think what you are asking is something different, actually.

Senator BARNETT—All right. I will take that on notice. If you want to include consultancies with that, that might broaden the spectrum for you. Consultancies and reviews currently underway.

Mr Wilkins—We will come back.

Senator BARNETT—In terms of cross portfolio, I have completed that. We can ask questions about the Human Rights Consultation Committee. I am advised that now would be an appropriate time, Senator Brandis.

Senator BRANDIS—Well, I am in the hands of the chair, of course, Senator Barnett. However, if—

CHAIR—Cross portfolio questions, though.

Senator BRANDIS—I do have some questions on the National Human Rights Consultation Committee.

CHAIR—We are doing cross portfolio questions across the department.

Senator LUDLAM—This is relating to the A-G's work in pursuing the antiterrorism laws. Is that cross portfolio?

CHAIR—Antiterrorism laws in A-Gs is more in outcome 2, probably.

Mr Wilkins—Outcome 2, actually.

CHAIR—Yes. Let us go, then, from cross-portfolio matters. We will move to—

Senator BARNETT—George wanted to ask about human rights consultation.

CHAIR—human rights consultations in this area. All right. We will deal with that, then.

Senator BRANDIS—It is convenient now, is it, Chair?

CHAIR—It is. Thank you.

Senator BRANDIS—I think there was \$2.8 million allocated to this process in the last budget. How much of that has been spent so far?

Ms Lynch—I am not sure that I can tell you how much has been spent to date. Up until around December, the money that had been spent was largely being spent on staffing costs within the department.

Senator BRANDIS—So they were absorbed costs, were they?

Ms Lynch—No, we had funding. Part of that money you have referred to was used for staffing for us.

Senator BRANDIS—I see. How much as a percentage, then, has been spent?

Ms Lynch—I am just checking. I do not think I have that figure here, but I may be able to get it for you shortly.

Senator BRANDIS—Can you please get it for me shortly, in the next little while?

Ms Lynch—My colleague is looking for it at the moment.

Senator BRANDIS—Thank you very much. Has the National Human Rights Consultation committee produced a budget?

Ms Lynch—The secretariat has done some financial planning, which I do not have with me, on the breakdown between travel costs, support costs, printing costs and those sorts of things.

Senator BRANDIS—That is what I mean. So there has been—

Ms Lynch—I have seen forward planning from the secretariat on how the money will be spent.

Senator BRANDIS—I think that is what most people would think is a budget. So you have worked out how much this is going to cost. Is that up to the end of the period of travel and community consultation in July this year?

Ms Lynch—The committee's terms of reference have been extended to 31 August.

Senator BRANDIS—To 31 August this year. But I think the period of travelling finishes—the period of these community hearings—a little while before that, does it not?

Ms Lynch—It does.

Senator BRANDIS—And the list of sites on the website of the National Human Rights Consultation lists 50 locations. It shows very commendable industry, I might say, on the part of the members of the committee. Many of these places are very far afield, like Broome and Thursday Island and so on.

Senator BARNETT—Strachan in Tasmania.

Senator BRANDIS—I would not regard Strachan as too far afield, Senator Barnett. It is very much part of metropolitan Australia, I would have thought. What is the cost in terms of travel and accommodation to reach all these 50 places?

Ms Lynch—I do not have those figures with me. I need to take on notice what the indicative breakdown is at this stage between costs.

Mr Arnauo—Could I say that also, in developing the plan for travel, the committee is mindful to tie in and group as many as possible locations that are close by. For example, I think Western Australia is likely to happen within a week or so and a week and a half.

Senator BRANDIS—It would be like a parliamentary committee. They would not be zigzagging across the country.

Mr Arnauo—No. That is right. So they have been mindful in terms of designing their itinerary for the range of locations to visit to meet their requirements under the terms of reference as well.

Mr Wilkins—I think they are also splitting up, Senator.

Senator BRANDIS—I was going to ask that. Are all four members going to go to all these places, or are they going to receive these hearings in a kind of divisional way?

Mr Arnauo—I expect that it is really a matter for the committee members themselves in terms of how they work their program out. But definitely one of the issues that they have been discussing is splitting up into teams of two, perhaps in some locations as well.

Senator BRANDIS—Is it contemplated that they might split themselves into as little a committee as one person to go to some of these places?

Mr Arnaudo—I think that is possible, yes. In some situations, they might also be invited to different events to hear views that maybe other organisations hold. In that capacity, members might travel individually. Or they might be attending other functions at other locations and split up within those locations.

Senator BRANDIS—How many officers of the Attorney-General's Department have been allocated to the consultation to constitute the secretariat?

Mr Arnaudo—At present, there are six officers. I think we also received some support from the information technology part of the department in terms of the website support. But I can take that on notice and provide you with a more detailed answer.

Senator BRANDIS—Are the costs of those officers being borne by the consultation's budget?

Mr Arnaudo—Yes. They are.

Senator BRANDIS—In addition to the travel and accommodation costs and the secretariat costs, there is also the question of the remuneration of the four commissioners themselves. What is Father Brennan's fee or remuneration?

Mr Wilkins—It is modest, Senator. But I would like to take it on notice. I am not sure of the nature of the negotiations there have been with Father Brennan, so I would prefer to take it on notice. If he does not have a problem, we are happy to sort of—

Senator BRANDIS—I will just stop you there, Mr Wilkins. Is your sensitivity to this question in part because Father Brennan is a priest and you do not want to embarrass him?

Mr Wilkins—No, it is a general point. If we enter into an arrangement with somebody and it is confidential for some reason—

Senator BRANDIS—Why should it be confidential? These people are being paid a fee, are they not—these four members of the consultation?

Mr Wilkins—Yes.

Senator BRANDIS—Each of them is being paid a sum of money for their work, which is perfectly appropriate. This is public money.

Mr Wilkins—Yes.

Senator BRANDIS—There is no commercial dimension to this. I would just like to know what the fee is.

Mr Wilkins—As I said, we will come back to you on that.

Senator BRANDIS—Mr Wilkins, do you know what the fee is?

Mr Wilkins—I do, yes.

Senator BRANDIS—Well, may I insist, Mr Wilkins, that if you know what the fee is then it is not a question you need to take on notice. With respect, you are not at liberty to take it on notice. If you do not know the answer or you hesitate about the propriety of the question, that is fair enough; take it on notice. But if you know what the answer is, and nobody suggests it is not a proper question, you are not at liberty to take it on notice. You have to answer my question.

Senator Ludwig—The only issue that is in doubt in my mind is whether there is a confidentiality agreement in place. We can check that.

Senator BRANDIS—Let us ask Mr Wilkins. Is there a confidentiality agreement in place?

Mr Wilkins—That is what I am trying to find out, Senator. If there is not, then I do not have any problems.

Mr Arnaudo—Senator, I would be prepared to check if there are any confidentiality aspects to the agreement. Subject to that, if there are not, we will be able to provide with you the fee for the chair.

Senator BRANDIS—Can that inquiry be made between now and, say, quarter past 11 tonight?

Mr Wilkins—Let us try and do that.

Mr Arnaudo—We can try and do that.

Mr Wilkins—I take your point.

Senator BRANDIS—I think the public is entitled to know what these people are being paid, out of taxpayers' money, to perform a service on behalf of the Commonwealth.

CHAIR—So, Mr Wilkins, you are going to go and ascertain the answer?

Mr Wilkins—I am not personally going to go, but somebody has got to go.

CHAIR—When I say 'you', I do not mean you literally.

Senator Ludwig—I suspect someone up the back has heard.

Senator BRANDIS—I suspect somebody has heard it.

CHAIR—I mean 'you' as in you will instruct someone in your department to do that for us by 11 o'clock tonight, if that is possible.

Mr Wilkins—Yes.

Senator BRANDIS—I have no difficulty—let me stress this—with these people being paid a perfectly handsome fee. I just think we are entitled to know what it is.

Mr Wilkins—And I have no problem telling you, Senator. I just want to check that I am not—

Senator BARNETT—I have a follow-up question, an obvious question that relates to all of the people involved, not just Father Brennan. You indicated earlier, with respect to Roger Beale, who is undertaking the audit of the AFP capability, that you would not reveal the fee and the contract arrangements, but here you are happy to take this on notice. What is your response to that? Can you take that matter on notice and reveal the fee to the committee?

Senator Ludwig—Perhaps Senator Brandis pressed more.

Senator BARNETT—Perhaps so. Mr Wilkins, what is your response?

Mr Wilkins—Same issue. We do not normally do that with private contracts involving consultancies.

Senator BARNETT—Just to make it very brief, are you happy to take that on notice and assess whether there is a confidentiality clause?

Mr Wilkins—I will take that on notice and I will come back to you about that.

Senator BARNETT—Thank you.

Senator BRANDIS—With respect, Mr Wilkins, it is not right to say that you do not normally do that with private contractors. In a former life, I used to be paid very handsome fees by the Commonwealth and that was a matter of public record in a tabled document. There is nothing unusual about—

Mr Wilkins—Well, there is if you agree not to.

Senator BRANDIS—people whom the Commonwealth retains for professional services having the fees they are paid made a matter of public record, as it should be. Anyway, let me move on. By what process were these four people—Father Brennan, Ms Kostakidis, Ms Williams and Mr Palmer—selected?

Mr Arnaudo—Senator, they were selected by the Attorney-General.

Senator BRANDIS—Was there any public advertisement for expressions of interest in being a member of the human rights consultation committee?

Mr Arnaudo—No. There was not, Senator.

Senator BRANDIS—Was there any other manner of solicitation of interest from members of the public in being a member of the consultation committee?

Mr Arnaudo—No. There was not, Senator, given the nature of the consultation.

Senator BRANDIS—So the Attorney-General came up with four names and, what, took them to cabinet and those were the names that were signed off on?

Senator Ludwig—I am not sure you can go to the issue of cabinet. But I think what has been said is that the Attorney-General has appointed a four-person consultative committee, and we know who those four people are. I think that is the evidence to date. I am not sure we can go behind that.

Senator BRANDIS—I am not asking what was said in cabinet, of course, Senator Ludwig. Of course I am not. Were they actually appointed as a result of a cabinet decision? Was this an executive council appointment?

Mr Arnaudo—Senator, it was not an executive council appointment.

Senator BRANDIS—Did the question go to cabinet? I am not going to ask you what was said. Did it in fact go to cabinet?

Senator Ludwig—I still think that is putting the question about what could be potentially before cabinet, so I am not sure that the witness can answer that question, quite frankly, Senator Brandis.

Senator BRANDIS—Well, you might take that on notice, Minister, and think about it. I think that is a process question, which customarily has been allowed. Indeed, on many occasions, I have heard you ask similar questions.

Senator Ludwig—And I am not sure I got an answer. But my experience is you are entitled to ask the question. Whether or not you are entitled to an answer is another thing. But I have found that if I do not challenge you on every point, you will take it as given that you can ask it again. So in this instance it is much better to challenge that question and then we will see what we can do.

Senator BRANDIS—I think the question not objected to is regarded as having been acknowledged to be a fair question. Yes, I think you are right.

Senator Ludwig—Well, I am not sure that would be the same position I would adopt. Nevertheless, it seems to be a position you adopt, Senator Brandis. Therefore, I will challenge you on every point that I think necessary.

Senator BRANDIS—Well, every point you think appropriate, Minister. That is fair enough. How was the number four arrived at? It seems a strange number, to have an even number.

Mr Arnaldo—It was just part of the process in which the Attorney-General examined in terms of the functions that were asked of it as part of the terms of reference.

Senator Ludwig—It is not exactly an odd number. I would have thought it is an even number, I would have thought.

Senator BRANDIS—That is my point. It is strange to have an even number. Were the four people who were appointed interviewed beforehand, before the appointment was made?

Mr Arnaldo—I would really have to take that on notice.

Senator Ludwig—Interviewed by whom?

Senator BRANDIS—That might be the next question, Senator Ludwig. Do you know whether they were interviewed?

Mr Wilkins—No.

Senator BRANDIS—You do not know, or they were not, Mr Wilkins?

Mr Wilkins—We do not know, actually. I do not know whether Mr Govey has any additional information.

Senator BRANDIS—Mr Govey?

Mr Govey—I think we are safe in saying they were not interviewed in a formal sense of the word and they were not interviewed in any sense of the word by the department. But what discussions took place between the Attorney or his office and the four people I guess we would have to check on.

Senator BRANDIS—Mr Govey, were people other than the four people whose appointment was announced also interviewed or considered as part of the same process?

Mr Govey—A number of people's names were put forward, Senator. Again, I would have to take the rest of that on notice.

Senator BRANDIS—I am sure that when the Attorney turned his mind to this question he would have thought of more than these four names. But what I am interested in knowing is how extensive the discussions, however you want to characterise them, that took place were.

How many other people were engaged in these discussions to determine whether they were the best people for the Attorney to appoint to this consultation process? Do you understand my question? I understand you will need to take that on notice.

Mr Govey—Yes. We will have to take that.

Senator BRANDIS—I would like to know the names of those other people, please. I assume you will take that on notice too.

Mr Govey—Well, I am not sure it will be appropriate to disclose those names, as you can imagine, Senator, but we will take all of that on notice.

Senator BRANDIS—Well, I cannot see why it would not be. But nevertheless I am inviting you to say you will take it on notice so you can think about that.

Mr Govey—Thank you, Senator.

Senator BRANDIS—I suppose this is to you again, Mr Govey. One of the main issues, if not the main issue, before this committee is to decide whether or not to recommend to the government that Australia should have a bill of rights, not a constitutional bill of rights. The Attorney-General has always made that perfectly clear. It would be some form of non-constitutional bill of rights or charter of rights. Are you aware, Mr Govey—

Senator Ludwig—I will clarify that. I am looking at the terms of reference. The Australian government is committed to the promotion of human rights, a commitment that is based on the belief in the fundamental equality of all persons. It goes forward to say the committee will ask the Australian community. It has three dot points. I am sure you have a copy of that terms of reference. In conducting the consultation, the committee will do a range of things. Then the committee will report to the Australian government by—it has now been extended, obviously—a date in August on the issues raised and the options identified for the government to consider to enhance the protection and promotion of human rights. I am not sure I have identified the question that you have asked as being part of the terms of reference.

Senator BRANDIS—I refer you to the Attorney-General's press release—

Senator Ludwig—That would be helpful.

Senator BRANDIS—of 5 December 2007, which I think is uncontroversial. It says this process is the culmination. You are right, Minister, when you say that the nature or the issues to be considered have been somewhat broadened from when the Attorney-General said on 5 December 2007 that the government was going to establish a committee to seek community views on whether Australia needs a bill of rights. I am paraphrasing, but that is an accurate paraphrase of what he said. I do not think there is any dispute, is there, Minister, that one of the issues before this committee is whether there should be a bill of rights.

Senator Ludwig—Well, all I was doing is ensuring that the question you put to the witness was an accurate reflection of what this committee could in fact do.

Senator BRANDIS—Well, what I was asking the witness is to acknowledge what I thought was uncontroversial and I think in fact is uncontroversial. One of the most important issues before this committee is whether Australia should have a bill of rights. There is no dispute about that, is there?

Mr Wilkins—Senator, they are not being asked to make recommendations to the government. Their terms of reference asks them to explain what options are available. So I am sure that they will consider this issue that you have raised, but it will not necessarily be a recommendation.

Senator BRANDIS—Well, that is interesting, Mr Wilkins. Let us explore that. So it may be that what this committee does is present to the government not a set of recommendations but a set of alternative options which does not prefer one above the other. Is that my understanding?

Mr Wilkins—It is possible.

Senator BRANDIS—It is a possibility.

Mr Wilkins—It asks them to identify options.

Senator BRANDIS—It will be presumably up to the committee to decide whether or not to make recommendations or whether merely to present options without preferring one option to the other or to take some intermediate course, will it?

Senator Ludwig—Well, that is why I was curious about the question. It seems to me the committee will report to the Australian government by the date in August on the issues raised and the options identified for the government to consider to enhance protection and promotion of human rights. That seems to be the remit. Of course, the committee is to set out the advantages and disadvantages, including social and economic costs and benefits, and an assessment of the level of community support for each option identified. It seems to me that is what the task of the committee is. But I do not want to interrupt your flow of questions.

Senator BRANDIS—Well, please do not. Senator Ludwig, with all due respect—

Senator BARNETT—Too late.

Senator BRANDIS—you are not the minister. You are not the senator representing the minister in the Senate. You are here on behalf of Senator Wong because she is elsewhere. We have all read the terms of reference. I am pursuing a line of questioning of the officers who are closely involved in this process because I want to focus on one issue in particular. It really does not do, with all due respect, merely to have you read terms of reference to me with which practically everyone in this room is well familiar.

Mr Wilkins—They are not being asked to make recommendations to the government. Their terms of reference ask them to explain what options are available. So I am sure that they will consider this issue that you have raised but it will not necessarily be a recommendation.

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The Committee will report to the Australian Government by 31 August 2009 on the issues raised and the options identified for the Government to consider to enhance the protection and promotion of human rights.

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... is to set out the advantages and disadvantages (including social and economic costs and benefits) and an assessment of the level of community support for each option it identifies.

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Senator BRANDIS—Then please don't. With all due respect, you are not the minister and you are not the senator representing the Minister in the Senate. You are here on behalf of Senator Wong because she is elsewhere. We have all read the terms of reference. I am pursuing a line of questioning of the officers who are closely involved in this process because I want to focus on one issue in particular. With all due respect, it does not assist merely to have you read terms of reference to me, when practically everyone in this room is well familiar with them.

Senator Ludwig—It just seems to me that you are asking a question the answer to which is obvious in the terms of reference. It was not a matter that was raised in the terms of reference. I was ensuring that the witnesses did in fact at least—

Senator BRANDIS—Senator Ludwig, I am sure Mr Wilkins can look after himself.

CHAIR—Let us keep making progress here.

Mr Wilkins—The point is well taken, Senator, because it does actually say 'options' rather than 'recommendations'.

Senator BRANDIS—So you are not anticipating that this committee will make recommendations.

Mr Wilkins—They are not being asked to do that.

Senator BRANDIS—What is your understanding of the process?

Mr Wilkins—It says:

The Committee will report to the Australian Government by 31 August 2009 on the issues raised and the options identified for the Government to consider to enhance the protection and promotion of human rights. The Committee is to set out the advantages and disadvantages (including social and economic costs and benefits) and an assessment of the level of community support for each option it identifies.

Senator BRANDIS—Do you think, then, that it would be inappropriate for this committee to make recommendations or to state a preference for one particular model of human rights protection over another?

Mr Wilkins—I would not like to be too legalistic.

Senator BRANDIS—That is not being legalistic.

Mr Wilkins—But if they do say that it would be gratuitous.

Senator BRANDIS—Do you think it would be inappropriate, as you understand the terms of reference?

Mr Wilkins—It would not be strictly speaking in accordance with the terms of reference.

Senator BRANDIS—Nevertheless, however the committee decides to discharge its function, it is uncontroversial that one of the issues that it will have to think about is whether there should be a bill of rights. I see you nodding, Mr Wilkins. I did not think that anybody had any doubt about that—

Senator Ludwig—Having rephrased your question, I think that is right.

Senator BRANDIS—including the three members of the committee who have been kind enough to call upon me to have a discussion about this. Ms Lynch, given the centrality in this debate of the bill of rights issue, were attempts made in selecting the members of this committee to ensure that each of them brought an open mind to that question?

Ms Lynch—I do not think that is something that I can comment on.

Senator BRANDIS—Who was the officer most immediately concerned with the selection and recruitment of these four committee members? Was it you, Mr Wilkins?

Mr Wilkins—The Attorney-General was.

Senator BRANDIS—But in terms of giving support to the Attorney-General's office, was any officer of your department involved in assisting in the identification, selection and determination of the suitability of these members of the consultation?

Mr Wilkins—I think some names were probably put up but in terms of the selection process it was very much a matter for the Attorney-General.

Senator BRANDIS—Were no, what I might loosely call 'due diligence', steps taken to ensure that the members of the committee had an open mind on these matters?

Mr Wilkins—I am sure the Attorney-General was concerned about that question.

Senator BRANDIS—What concerns me, and I do not say this critically of any individual is this: looking, for example, at a number of the statements on the public record that Ms Kostakidis has made, paraphrasing her accurately makes it very clear that she is strongly of the view that there ought to be a bill of rights and if there cannot be a constitutionally entrenched bill of rights there at least ought to be a statutory one. It would seem to me that at least one and perhaps more than one member of this committee has pre-judged this issue. How can we have a community consultation process in which eminent citizens are asked to look at the merit and the arguments for and against a particular proposal when one or more of the people selected by the government has already made up their mind?

Mr Wilkins—I am not aware of what her views might have been.

Senator BRANDIS—I can, if you like, identify a number of public statements made by Ms Kostakidis on this issue. Nevertheless, that is interesting, Mr Wilkins, that you are not aware of what Ms Kostakidis's views may have been. Was any attempt made by any officers

of your department to ascertain what the views of these four individuals were in relation to this issue?

Mr Wilkins—As we have said, it was basically a matter for the Attorney-General.

Senator BRANDIS—Did you know, Ms Lynch, that Ms Kostakidis is strongly in favour of a bill of rights.

Ms Lynch—No, I have not had that discussion with Ms Kostakidis.

Senator BRANDIS—Did you know, though, generally from your familiarity with this issue?

Ms Lynch—I did not know Ms Kostakidis's views.

Senator BRANDIS—What about you, Mr Govey?

Mr Govey—No, I did not either.

Senator BRANDIS—And you have told us, Mr Wilkins, that you did not know.

Mr Wilkins—I have spoken to her since, and I still did not know that.

Senator BRANDIS—Have any officers of the department examined Father Brennan's book on the subject? It is a book called *Legislating Liberty: a bill of rights for Australia?* and it was published in 1998.

Mr Arnaudo—It is not a book I recall having read. I am aware that Father Brennan, in the middle of last year, made a speech on the issue of a bill of rights. During that speech he said that he was a committed fence sitter.

Senator BRANDIS—Yes, I am familiar with that speech but I was asking about an earlier expression of his views.

Mr Arnaudo—I am not familiar with the book you refer to.

Senator BRANDIS—Father Brennan is a person of shining integrity. I am sure that if he said he was a fence sitter in 2008 that was certainly an honest expression of his view. But, like a lot of people, that view seemed to be an evolution of an earlier view that he expressed in 1998. Ms Lynch, are you familiar with the book?

Ms Lynch—I am not familiar with that book.

Senator BRANDIS—Mr Govey?

Mr Govey—No, I am in the same position.

Senator BRANDIS—Mr Wilkins, are you familiar with Father Brennan's 1998 book?

Mr Wilkins—No, I am not.

Senator BRANDIS—Are any of you familiar with Ms Tammy Williams's speech to the United Nations World Conference on Racism, Xenophobia, Discrimination and Other Related Intolerances, in Durban, South Africa in 2001?

Ms Lynch—No, Senator, I am not aware of that speech.

Senator BRANDIS—Mr Govey?

Mr Govey—No.

Senator BRANDIS—Mr Wilkins?

Mr Wilkins—I read avidly, but I am not familiar with that one.

Mr Arnaudo—I am not familiar with that speech but I am aware that she attended that Durbin conference in 2001.

Senator BRANDIS—This is the infamous Durbin conference that did not consider anti-Semitism to be a form of intolerance, you will recall. I see you nodding, Mr Wilkins. As for Commissioner Palmer, or Mr Palmer as he now is—to complete the quartet—had anybody taken any steps to ascertain whether he had an open or a decided mind on this bill of rights issue or other related human rights issues?

Mr Wilkins—Nobody at this table, is probably more accurate.

Senator BRANDIS—Yes. Mr Wilkins, does it not strike you as a little surprising that a body, albeit a slightly unusual body, set up to address an important question in public controversy should approach the issue in other than a neutral and not predetermined way?

Mr Wilkins—I do not agree with the implied premise in that question. Nobody at this table actually made the selection; the Attorney-General made the selection.

Senator BRANDIS—I accept that.

Mr Wilkins—I assume that the Attorney was concerned to make sure that the group of people he selected did come at this with an objective and neutral mind. So, notwithstanding that they made speeches at this conference or whatever, I am sure he took steps to ascertain they were the right people to—

Senator BRANDIS—Nobody, certainly not me at least, questions the intellectual integrity of these people. But you would think, wouldn't you, that the most suitable people to test public opinion on an issue like this and to present options to government would be people with an open mind rather than people who have already made up their mind on the question before they heard the first witness. Wouldn't you?

Mr Wilkins—They would be people who can be objective and neutral, I agree. That does not necessarily mean that you want people who are uninterested.

Senator BRANDIS—You would have to have people who are interested in the issue and who, like Father Brennan, were committed fence sitters in the sense of being people who had not made up their mind. Thank you. And you will try to get the answer to that earlier question by 11 p.m.?

Mr Wilkins—Yes.

[10.12 pm]

CHAIR—As there are no more questions on this and no questions on outcome 1.1 we will move to output 1.2.

Senator BARNETT—I have some questions relating to personal insolvency. Could the relevant officer advise the committee of the most recent data received?

Senator Ludwig—Wouldn't that generally come from the Insolvency and Trustee Service?

Senator BARNETT—Possibly. But under outcome 1.2 it says ‘personal insolvency’ and there is an officer in the department who is focused on that. If he cannot answer the question, that is fine; if he can, that would be great.

Dr Popple—My division in the department has policy responsibility for bankruptcy but I think you would need to put that question to ITSA.

Senator BARNETT—Do you know the answer to the question?

Dr Popple—I do not have it with me but I guess I would be able to provide it to you later today.

Senator Ludwig—They provide that on a quarterly basis.

Senator BARNETT—Thank you. The role of the Australian Government Solicitor in working on a revised preamble to the Constitution—can an officer at the table respond to questions on that? I know we have AGS later, and we can ask them that.

Mr Govey—I am not aware of any work they are doing on that topic.

Senator BARNETT—Are you aware of any work that they are doing on any constitutional amendments?

Mr Govey—I am not aware of any.

Senator BARNETT—What is the department currently doing in relation to the implementation of the Attorney-General’s move towards a nationally regulated legal profession?

Mr Wilkins—We are preparing advice for the government on that issue in light of the recent statement that was made by the Prime Minister as part of the stimulus package. That refers to it as being a matter for COAG.

Senator BARNETT—What has it got to do with the stimulus package?

Mr Wilkins—It was one of the areas of microeconomic reform that was identified at the end of that statement.

Senator BARNETT—And the advice was that that would go to COAG?

Mr Wilkins—That is correct.

Senator BARNETT—When is that meeting?

Mr Wilkins—The meeting was to be 20 March but with the Queensland elections I think some consideration will be given to moving it around a bit.

Senator BARNETT—So it may be changed?

Mr Wilkins—It may be.

Senator BARNETT—Has the government come up with a figure with respect to the cost savings from the reforms?

Mr Govey—No.

Senator BARNETT—Are you during any analysis of the cost savings of the reforms?

Mr Govey—We are doing an analysis in general terms of the sorts of areas where if there were reforms they would result in savings.

Senator BARNETT—Can you advise the committee on the merits of any reform?

Mr Govey—I think it is implicit in the statement that was made that there would be benefits but those benefits have not been formulated in specific dollar terms.

Senator BARNETT—Have you prepared any papers or notes relevant to that?

Mr Govey—We are in the process of doing that right now—for the purposes of allowing COAG to consider the matter and to provide briefings for ministers and so on.

Senator BARNETT—So there is nothing you can provide us tonight with respect to that?

Mr Govey—No, there are no documents that would be appropriate to provide at this point.

Senator BARNETT—What constitutional head of power will the government use to implement this reform?

Mr Govey—I do not think it would be appropriate to speculate on the legal advice that we have got in relation to this matter, nor would I want to assume that we would be relying ultimately on any particular head of Commonwealth power. There is a range of options for the way in which such a scheme might be implemented.

Senator BARNETT—But you are confident that it can happen?

Mr Govey—I am confident that governments will have a range of options available to them to implement this reform successfully.

[10.17 pm]

CHAIR—We will now move to output 1.3 Information law and human rights.

Senator BARNETT—How does Australia rank globally with respect to human rights?

Mr Wilkins—This is a question that came up earlier—league tables et cetera. I do not think there are any authorised league tables; we could not think of any. The most you will get is some commentary on the performance of different states based on inquiries by the United Nations—

Senator BARNETT—That is right. I was hoping that since earlier today you or your officers—

Mr Wilkins—but they do not give you anything like a comparative league table.

Mr Arnaudo—There is not a broad-based league table that compares countries on human rights issues broadly. I think that is something that the President of the Human Rights Commission earlier this morning explained. In certain specific areas there might be documents that compare a country's performance in particular areas—

Senator BARNETT—Let us be specific: we asked earlier today of the Human Rights Commission general questions and specific questions. The general questions related to how Australia relates generally with respect to human rights and the protection of human rights with comparable countries throughout the globe. The second questions related to specific aspects of human rights—the protection of women, the protection of children, the protection

of the unborn and so on and so forth. She took that on notice—you heard her take that on notice. That was accepted gratefully. Do you want to take the question on notice?

Mr Wilkins—No. I do not think the type of information that you are after is available. If they can find it why would we duplicate the effort?

Senator BARNETT—You are the Attorney-General's Department; I thought you might know.

Mr Wilkins—We have made some preliminary inquiries. There does not seem to be any such table of the sort that you after or a systematic comparison.

Senator BARNETT—Okay.

Senator Ludwig—Senator Barnett, are you aware of any table?

Senator BARNETT—Yes, one came up in the Sex Discrimination Act inquiry by the Senate with respect to women. Australia was running second in the world. I referred to that particular report this morning, so that is already on the record.

Mr Wilkins—Maybe we could ask you where that came from.

Mr Arnaudo—It is obviously in the Senate report. We can look at it.

Senator BARNETT—Read our report.

Senator Ludwig—I think they will.

Senator BARNETT—I have finished on that topic. What are the current arrangements for the sale of intellectual property owned by the government? What is the government policy with respect to that?

Ms Lynch—There is a government policy on the use of government IP. Ms Daniels might be best placed to tell you what the current statement of IP principles is.

Mr Wilkins—What was the question again, Senator?

Senator BARNETT—What is the government policy with respect to the sale of intellectual property owned by the government?

Mr Wilkins—We might be able to answer a part of it, but I suspect it is a question for the departments that own the information and for the Department of Finance and Deregulation. I will let Ms Daniels respond.

Ms Daniels—The department over the last few years has developed something called the *Statement of IP principles*, which is a set of 15 principles at a high level for all FMA Act agencies to live by. It sets out a range of principles for how to deal with intellectual property, but it goes beyond sales; it deals with management issues generally.

Senator BARNETT—What about sales?

Ms Daniels—Sales is a part of it. We do not have any data on sales, but our role—

Senator BARNETT—What is the policy with respect to the sale of copyright owned by the government?

Ms Daniels—There is no fixed policy. The policy derives from these principles. The essence of the policy is for agencies to take a flexible approach in making decisions about

whether they should own intellectual property in a particular instance. There are no hard and fast rules.

Senator BARNETT—There must be some underlying principles as to whether the government simply gives away its copyright or whether it retains it. What are the principles that apply?

Ms Daniels—I could probably table the principles.

Senator BARNETT—Thank you. While you are doing that, I draw your attention to the Garnaut report and note that the government was forced to pay \$65,000 to allow the Department of Climate Change to buy copies of the Garnaut report, for which taxpayers committed some \$2.3 million of public money. Does that go against those principles that you have tabled?

Ms Daniels—The principles, as I mentioned earlier, are for agencies to take a flexible approach on decisions in relation to any contract that is dealing with intellectual property. So there is no fixed rule about it.

Senator BARNETT—It is certainly flexible where the department has actually expended \$65,000 of our money to obtain that report.

Mr Wilkins—I think you would have to address that question to the Department of Climate Change to understand the logic and reasoning in how they apply the principles. I do not think we can give you an answer on that.

Senator BARNETT—All right. You have tabled the principles. I will ask further questions on notice about that. Finally, what arrangements currently exist to protect users of social networking sites—for example, Facebook and MySpace—from losing control of pictures and information posted on these sites?

Ms Daniels—Losing control in a copyright sense?

Senator BARNETT—Yes.

Ms Daniels—They still have copyright in their material. It is about how that copyright is exercised.

Senator BARNETT—But Facebook recently advised their customers that they did not own it. They used different words, but they said that that property would remain with them. It caused a furore and they changed their policy or their decision. So I was wondering if you had a view on the appropriateness or otherwise of that.

Ms Daniels—Under the normal rules of copyright, the creator would be the first owner in their copyright, whether it is an artwork or a written piece of work, unless there is an agreement to the contrary.

Senator BARNETT—So either they would be acting illegally or they would have to have an agreement with the customer where the customer would sign up and say that they would give up their ownership of that copyright?

Ms Daniels—That is correct.

Senator BARNETT—Finally, is the government considering reviewing the one per cent cap on fees that radio stations are forced to pay to the record industry for promoting their music?

Ms Daniels—That is a longstanding issue between the radio industry and the sound recording industry. The matter is still before government.

Senator BARNETT—Can you advise us on the view of government at this time, either through Mr Wilkins or the minister?

Mr Wilkins—It is a matter of high policy being considered by government. We are not in a position to give you that information.

Senator BARNETT—Does that mean that the government's position has not changed?

Mr Wilkins—Do you mean the previous government's position has not changed?

Senator BARNETT—No, the current government's position.

Mr Wilkins—The current government has not enunciated a position, as far as I know.

Senator BARNETT—Is the minister aware of any further developments?

Senator Ludwig—I think I will take the Senator Brandis defence that I am only representing Senator Wong in respect of this matter.

Senator BARNETT—It is not unfair to ask the question: what is the government's position with respect to a one per cent cap.

Senator Ludwig—I do not think the government's position has changed. I certainly cannot recall it. But I am not sure whether the Attorney-General has enunciated a position.

Senator BARNETT—Whatever the position is of the government, could you take it on notice and advise the committee?

Senator Ludwig—I will certainly try to find out what I can to assist the committee.

[10.27 pm]

CHAIR—That concludes 1.3. We will move to 1.4, International law.

Senator BARNETT—I have a question in 1.4. What steps are currently in place for the implementation of the CEDAW protocol?

Mr Skillen—The government deposited its instrument of accession to the Optional Protocol to the Convention of the Elimination of All Forms of Discrimination against Women in early December of last year. The optional protocol will enter into force for Australia in early March this year.

Senator BARNETT—Is there a fixed date when it comes into effect?

Mr Skillen—Yes. I am afraid I do not have that exact date, but I can certainly provide it to you.

Senator BARNETT—Thank you.

Mr Campbell—Senator, the notes that I have say that it will enter into force for Australia on 4 March 2009.

Senator BARNETT—You are most helpful, Mr Campbell. Thank you for being here today.

Mr Campbell—My pleasure, Senator.

Senator Ludwig—That is not the same answer you gave to me in the last six or seven years!

[10.29 pm]

CHAIR—We will move to output 1.5, Legislative instruments. Do we have questions for this area? No, we do not. We will move to 1.6, Native Title. No questions? Okay. 1.7, Indigenous law and justice and legal assistance, and the administration of related government programs.

Senator BARNETT—Yes, I have a question on that. I refer to the answer to question on notice No. 6 from 20 October 2008. Under the heading ‘Review of customary law (bail and sentencing amendments)’ it states:

The Department is reviewing the 2006 and 2007 amendments to Commonwealth and Northern Territory laws which limit consideration of customary law and cultural practice in bail and sentencing matters. It is anticipated the review will be completed in early February 2009.

Could you provide a status update of that review? Could we have a copy of the review if possible?

Ms Kelly—I can assist with that matter. The review is in progress. There was extensive consultation in order to seek views from a wide range of parties. Input has been received from the Northern Territory Attorney-General, which incorporated feedback from the Northern Territory Chief Justice, Chief Magistrate, the Law Society and the DPP; the Commonwealth DPP; the Law Society of the Northern Territory; the Law Council; and Aboriginal and Torres Strait Islander Legal Service providers. That information has been received over the last few months in response to letters that went out in August last year. It is currently being compiled and we expect the review to be completed within the next month.

Senator BARNETT—Will that be presented to the minister?

Ms Kelly—That is correct.

Senator BARNETT—And made public?

Ms Kelly—It will be presented to the minister.

Senator BARNETT—And then we await the response from the minister, I assume.

Ms Kelly—That will be a matter for the minister.

Senator BARNETT—All-right. I do not have any further questions on that particular review, so thank you for that. If I go back one step, I do have a question on the review of the Legislative Instruments Act. Mr Govey, I think you were part of that review. That was to report by 31 March 2009.

Mr Govey—That is correct.

Senator BARNETT—Is that on-track for report at that time?

Mr Govey—Yes, it is.

Senator BARNETT—And that will be presented to the minister?

Mr Govey—To the Attorney-General, that is correct.

Senator BARNETT—Thank you.

[10.32 pm]

CHAIR—We will move to output 1.8, Personal property and securities law. I have to say, haven't we had enough of this!

Senator BARNETT—This is a very important area. Where are all our PPS experts? Come on down!

CHAIR—You get frequent flyer points this year for this committee, I think—apart from Mr Campbell, I guess!

Senator BARNETT—It is good to see you all again. Firstly, can I ask about the review by WD Scott Asia Pty Ltd: 'Provision of business analyst services for the personal property securities register project contact centre'. Can you provide further and better particulars of that project, which cost \$86,108 and was completed in September last year?

Mr Glenn—That particular project was to develop the business requirements for a procurement process to procure a contact centre—that is, a call centre plus a document fulfilment centre—which would support the PPS register once established

Senator BARNETT—All-right. Can you please advise the cost to the department in this financial year and the last financial year of preparing for the new personal property and securities legislative regime. I would then like a breakdown of those costs and a list of consultancies, reviews and other outsourcing arrangements that have been undertaken this financial year and last financial year.

Dr Popple—We can take that on notice.

Senator BARNETT—Do you have a total cost figure with you?

Dr Popple—In response to a question you asked us last time we appeared in your review of the PPS Bill we answered some of those questions by letter. I am happy to read those out again, but the committee should have those figures.

Senator BARNETT—No, that is fine. We will have a look at those and if you can take that, that would be great.

[10.35 pm]

CHAIR—We will now move to outcome 2.1, Criminal justice and crime prevention—there are no questions for this area. Output 2.2, International criminal justice issues—there are no questions for this area. Questions for output 2.3.

Senator LUDLAM—I have a couple of questions, one of which may have to go through to the minister, but I will put them to the department. I am wondering whether you can tell us to what degree you are involved in the government's comprehensive approach to the review of the antiterror laws, including the establishment of an independent reviewer of the terror laws that are on the books?

Mr Wilkins—We are discussing what you are referring to by a 'comprehensive' review.

Senator LUDLAM—I can be a little clearer. Last year the Senate passed and sent to the House of Representatives a proposal from the opposition and the crossbenches for an independent reviewer of the terror laws, as has been proposed a number of times over the last couple of years, but it was left out of the original legislation—a standing review committee to establish whether the terror laws are functioning as intended. It was said at the time that the government would not be passing that legislation because they were undertaking to do such a thing themselves and that we would see legislation in the first half of the year. I am wondering whether that is a process you are aware of and, if so, how you are inputting into it.

Ms Willing—The Attorney did announce on 23 December that the government would be establishing a national security legislation monitor. That is being progressed. The government said it would progress that as a matter of priority. The legislation is being developed by the Department of the Prime Minister and Cabinet and they are consulting us on that. The timing will be a matter for the government but they have said that it will be a matter of priority.

Senator LUDLAM—But it is being led by Department of the Prime Minister and Cabinet. Can you give us an idea of the degree to which you are being consulted?

Ms Willing—Quite heavily. It was something that the Attorney announced and the legislation is being developed in close consultation with the Attorney-General's Department.

Senator LUDLAM—What form has your advice to the Department of the Prime Minister and Cabinet taken?

Ms Willing—It has partly been being involved in the drafting instructions to the Office of Parliamentary Counsel.

Senator LUDLAM—Have you advised on specific areas of law that you would see as priorities or is it simply the establishment of a mechanism to review overall?

Ms Willing—Yes, simply the establishment of a mechanism.

Senator LUDLAM—Are there particular areas of the legislation that we collectively call 'terror laws' that you are more or less concerned about or have directed the drafting toward?

Ms Willing—Yes. The government, I think, indicated that the focus should be on those terrorism laws that have been established above and beyond the criminal law. So they are primarily the laws that were part of that 2002 package—part 5.3 of the Criminal Code, primarily, and part IC of the Crimes Act and a range of other legislation as well.

Senator LUDLAM—That is quite helpful, just giving us those, but are you able to inform us a bit more broadly and perhaps take on notice if need be the particular areas that you are looking at?

Ms Willing—They are some of the areas, but I think in terms of the detail that would be a matter for government.

Senator LUDLAM—Okay. Is your involvement ongoing?

Ms Willing—Yes, it is.

Senator LUDLAM—When do you anticipate that your role would be concluded in that process?

Ms Willing—I suspect when the legislation is through parliament.

Senator LUDLAM—That is fair enough. Do you have an expectation of when the drafting instructions would be complete and we would see something in the parliament?

Ms Willing—The timing will be a matter for the government. It is being worked on at the moment, but I really cannot give any indication of that.

Mr Wilkins—It is probably not appropriate to give that sort of information, which is part of the work of cabinet. To elucidate, it is sitting in the Prime Minister's department so that it has some objectivity and distance from the Attorney's portfolio and administration, because that is where the laws will be administered—so it is to give it some distance and objectivity.

Senator LUDLAM—Sorry?

Mr Wilkins—To give it some distance from the Attorney-General's Department when it actually comes to operate, because we administer these laws.

Senator LUDLAM—Is it not normal, though, that the departments or the ministers with carriage of the laws would be the originators of reform proposals such as these? Why do you think there is the need for some distance in this respect?

Mr Wilkins—I think it is partly a question of perception; otherwise, you get a poacher-gamekeeper problem.

Senator LUDLAM—Okay. In response to a question on notice, you indicated that the department spent approximately \$45 million overall on counterterrorism measures in 2007-08. My question goes to whether this includes the costs of the department's prosecutions of particular cases. For example, does this include the cost of prosecuting the Hicks, Habib and Haneef cases?

Ms Willing—The department itself is not involved in prosecutions. That figure of \$45 million was compiled over various areas within the department that are involved in counterterrorism measures.

Senator LUDLAM—So you are not involved in prosecution but you are involved in monitoring those cases and bringing them before the courts, to a degree.

Ms Willing—Yes.

Senator LUDLAM—So would those funds include expenditure related to the three cases I listed?

Ms Willing—There would be a percentage of that figure that would be covered by those things, yes.

Senator LUDLAM—That is included. That is all I was trying to find out; thank you. As you are no doubt aware, the resources available to the prosecutions and the defence teams in these terror cases heard in Australia to date are quite asymmetrical. Significant effort is required to secure legal aid for a solicitor to accompany a barrister for the defence, whereas quite extensive teams of QCs are available for the prosecution. I would just like to know how much the department has spent in relation to the Jack Thomas case.

Mr Wilkins—Presumably you are asking about costs incurred by the DPP?

Senator LUDLAM—Or by your department specifically.

Mr Wilkins—Are you talking about legal assistance for someone? I do not quite understand the import of the question, Senator.

Senator LUDLAM—I will try and flesh it out. I am trying to establish to what degree the department is involved in expending resources in pursuing particular terrorism related cases, such as that of Jack Thomas.

Senator Ludwig—The confusion, I think, is over the word ‘pursue’. The usual case is that the AFP will investigate the matter and will then refer the prosecution to the Commonwealth Director of Public Prosecutions, who will make a decision to prosecute or not to prosecute. So I think the confusion comes from the role. I would like to provide assistance to you in this instance, but you can see the difficulty the question that you are asking is presenting to the Attorney-General’s Department, which has policy responsibility for this area.

Mr Wilkins—The strict answer to your question is nothing, actually—zero. But I suspect what you are wanting to know is how much the Crown spent on investigations and prosecutions, which are questions that should be directed to the DPP and, presumably, the police.

Senator LUDLAM—All right, I will leave that there. Lastly, we have information that in one particular case a jury had brought a dictionary into their deliberations to ascertain the definition of the word ‘fostering’ when it comes to the doing of a terrorist act. Is that something that has been brought to your attention? How does the Attorney-General interpret the word ‘fostering’?

Mr Wilkins—The answer to the first part of your question is: we are not aware of that. I can try and give you a definition of fostering, but I do not know if that is the point of your question.

Senator LUDLAM—I guess it is in two parts. Firstly, you are not aware that a jury had actually taken recourse to a dictionary to ascertain whether an act had fostered a terrorist act or not.

Mr Wilkins—No, not aware of that.

Senator LUDLAM—I just wondered whether that might have fed into your drafting instructions or if it is something that you might like to take away.

Ms Willing—We can certainly look at that.

Mr Wilkins—We can look at that, yes.

Senator LUDLAM—Thanks. I have no other questions.

[10.46 pm]

CHAIR—Let’s move on to outcome 2.4, National emergency management. Senator Humphries has some questions.

Mr Wilkins—Madam Chair, we have made some inquiries for Senator Brandis apropos the question of disclosing fees. There does not seem to be any impediment.

Senator BRANDIS—Thank you for making those inquiries.

Mr Wilkins—Just being careful. Peter Arnaudo could give you this information now.

Mr Arnaudo—The chair is entitled to \$1,500 per day, members \$731 per day—

Senator BRANDIS—\$731 per day?

Mr Arnaudo—Those figures are inclusive of GST. We were also asked for the total expenditure.

Senator BRANDIS—Pausing there, I assume that those are their fees. Then, in addition to that, they would be perfectly entitled to the appropriate allowance for accommodation and meals. That is not inclusive of that kind of stipendiary payment.

Mr Arnaudo—Without referring to the actual contracts, I expect that the entitlements are similar to entitlements of senior public servants in the Attorney-General's Department.

Senator BRANDIS—That is fine. You will need to take this notice, but I would like to know, please, for how many days so far—that is, up to today, 23 February 2009—each of the four members of the panel has earned that fee, because I assume that the fee includes not just time taken with hearings but also preparation time and so on. So would you please tell me for how many days Father Brennan and each of the three other panellists has earned this fee up to today.

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

Senator BRANDIS—Thanks. You were going to tell me something else about the budget.

Mr Arnaudo—You also asked for the total expenditure on the consultation. For the calendar year 1 January 2008 to 31 December 2008 it was a total of \$267,130.

Senator BRANDIS—Does that include the payment of the fees to the four—

Mr Arnaudo—Yes, that is a complete total.

Senator BRANDIS—That is of all outlays?

Mr Arnaudo—Yes, to 31 December 2008.

Senator BRANDIS—Perhaps you are not in a position to provide this yet, but I also asked about the budget.

Mr Arnaudo—Yes. I will probably have to take that on notice. I am not able to provide that to you tonight.

Senator BRANDIS—That is fine. Thank you, Mr Arnaudo, that is very helpful.

Senator BARNETT—Mr Wilkins, did you make that assessment or is that still under review?

Mr Wilkins—We will take that on notice.

Senator HUMPHRIES—Could I start by checking the current status of Emergency Management Australia. It has been put to me that EMA is in the process of being abolished or has actually been abolished. Is that true?

Mr Wilkins—No.

Senator HUMPHRIES—It is still a fully functioning arm of government?

Mr Wilkins—Yes.

Senator HUMPHRIES—That is reassuring. There are no plans to abolish—

Mr Wilkins—The director is sitting on my right.

Senator HUMPHRIES—And he is still the director of EMA?

Mr Wilkins—Yes.

Senator HUMPHRIES—There are no plans to abolish your agency, Mr Pearce?

Mr Pearce—Not as far as I am aware, Senator. I think I will just be reassured. No, there are no plans.

CHAIR—Mr Pearce, perhaps you should identify yourself for the *Hansard* record.

Mr Pearce—Tony Pearce, Director General, Emergency Management Australia—still.

Senator HUMPHRIES—I think Mark Twain would have something to say about news of a death being exaggerated, so I am pleased to hear that. Some questions that I put on notice after the October hearings asked for details of particularly Emergency Management Australia catastrophic plans—plans to deal with a major natural or man-made disaster which is large in scale or which crosses the boundaries of jurisdictions in Australia. I particularly want to understand the basis on which it was asserted that an agency, an agent or an officer of the Commonwealth would have the right to exercise a leadership role in the management of such a crisis. I have been given a number of pieces of information in those answers about processes that might be used—for example, the COMDISPLAN and the Ministerial Council for Police and Emergency Management—Emergency Management, or MCPPEM-EM, and so forth. With great respect, none of those documents seem to demonstrate a right by the Commonwealth to step in and say: ‘We are leading this response. Here is what’s going to happen to deal with this major across-the-nation disaster.’ Am I correct in that assumption?

Mr Wilkins—That is correct. There is no legal or coercive power that can be brought to bear to say, ‘We’re taking you over this.’ It is done through a process of agreement with the states and territories, and the states have primary responsibility for emergencies. When you get things across borders, you need do it through a process of agreement. There are agreed national plans that deal with different disasters. But if your question is whether there is some sort of legal right or capacity to coerce and to stand in, the answer is probably no. You are talking about natural disasters here; you are not talking about issues relating to counterterrorism or things like that. It might be slightly different if the defence power or the Defence Act were concerned in that sense.

Senator HUMPHRIES—Let us constrain ourselves to natural disasters for the moment. In those earlier answers, the processes described are ones that work through meetings and consultations. In some cases, they are meetings of Prime Minister, premiers and chief ministers to establish a trigger for a mechanism which eventually leads to certain decisions. It seems to me that that process necessarily takes time and is complex and so it may not be very swift or timely in the event of a major disaster which requires immediate national coordination. I make that as a statement, and you can respond to it. I note in one of your answers that a national catastrophic disaster plan is being developed. It was discussed at the

police and emergency services meeting in November. Is that document envisaged to create the kind of national leadership framework that I have just referred to?

Mr Pearce—It certainly will go a long way to doing that. Whether it eventually identifies an individual I could not say. What it will do is clearly articulate how the Commonwealth, the states and the territories work together with regard to a catastrophic event. The other thing that already exists underneath that, which I think was also provided in the questions on notice last time, was the current model arrangements for leadership in relation to catastrophic events, which shows how the Prime Minister, premiers and chief ministers converse in relation to a disaster to agree, in the absence of a national plan, on exactly what the relationship will be.

If you take the Victorian fires at the moment, for example, that is the most extreme event we have suffered for quite some time. Those arrangements have been activated and put in place. I suggest there has certainly been no loss of capacity of the Commonwealth or the states and territories—or agencies of them—to respond in a timely fashion to that, even in the absence of a clear mandate for any individual at a Commonwealth level.

Senator HUMPHRIES—I agree, but that is not a disaster that crosses borders. It is particularly a Victorian disaster.

Mr Pearce—It is.

Senator HUMPHRIES—The lines of authority are much clearer in those circumstances.

Mr Pearce—Certainly.

Senator HUMPHRIES—What stage has the national catastrophic plan's development reached?

Mr Pearce—There is a task force of the Australian Emergency Management Committee, under the ministerial council, that is working on that, along with a number of other things, at the moment. That plan is being developed as we speak.

Senator HUMPHRIES—Do we have an expected time frame for its completion?

Mr Pearce—I would have to take that on notice but it is in line with the AEMC's meeting schedule for this year and the ministerial council schedule.

Senator HUMPHRIES—We were told at earlier estimates about the report that you prepared, *Review of Australia's ability to respond to and recover from catastrophic disasters*, and we were told that we were not able to view that document. I take it that that is still the case.

Mr Pearce—That has not changed.

Senator HUMPHRIES—I have raised previously my concern about not being able to view the document and see what issues are raised in it with respect to planning for major national disasters. Can I ask you—perhaps this is a question for the minister rather than for you, Mr Pearce—whether the government would consider briefing this committee in camera on the terms of that report?

Mr Pearce—I think that is probably one that the minister would have to answer or take on notice.

Senator Ludwig—I am happy to take that on notice.

Senator HUMPHRIES—I have one last question. In Mr Ric Smith's review of Australia's homeland security arrangements on page 3 of his conclusions he says:

A more integrated national approach to emergency management would optimise efforts and address fundamental gaps such as the lack of effective arrangements to deliver community warnings and of a national emergency plan to deal with catastrophic disasters.

Does the government accept the sentiment of that concern raised by Mr Smith, and is that underpinning the approach being taken in the national disaster plan that I referred to before?

Mr Wilkins—I think the answer to the second part of the proposition, about the national catastrophic planning, is yes. We do share the need to get clearer about that. You will appreciate that one of the big issues is that the types of services that you would need in a catastrophic disaster are actually not owned by the Commonwealth. So if something really disastrous happened, and wiped out Sydney or something like that, you would be requiring Queensland and Victoria to cooperate with the Commonwealth to sort it out. Planning for that, and getting clear about what can be done under those circumstances, is very important.

In terms of warning, you are probably aware that the Attorney issued a statement today about what the Commonwealth is doing in relation to a telephone based emergency warning system in the wake of the agreement with COAG last year. I can certainly make that available to the committee and you can have a look at his statement today. We are currently working with the states and territories to put in place the fundamental infrastructure that is required to run a system like that, but once again you will understand that it is fundamentally part of the emergency management system, which is state based. So, whilst the Commonwealth can help, you need a cooperative system in a system of federalism like this, where a lot of the health capacity, the community services and policing are all run by state governments. So you cannot really have a plan that says the Commonwealth is just going to come in over the top because, apart from the defence forces, the AFP and some people like that, you do not have troops on the ground to actually do the services.

Senator HUMPHRIES—But you can if the states and territories and the Commonwealth agree on such a plan.

Mr Wilkins—Yes, absolutely.

Senator HUMPHRIES—The absence of such a plan at the moment is what is concerning.

Mr Wilkins—That is what we are looking at, yes.

Senator BARNETT—I think you were assessing during the cross-portfolio discussion an answer to my question regarding this overspend to 30 January of \$57 million. I asked what the prognosis/estimate was through to the end of this financial year and for the next financial year.

Mr Pearce—At this stage it is very difficult to even predict what the final figure will be in relation to the run of natural disasters we have had, particularly since October last year, starting with the South-East Queensland storms. The way the natural disaster relief and recovery arrangements work is that expenditure can be claimed by a jurisdiction for as long as two years after the actual event impact itself, and then after that the time frame in which they

need to be able to claim that back is not capped to a time. Therefore, they have time to work out exactly what their costs have been and then claim that back. To give you some idea of the costs, our current average is around about \$65 million for an average year of NDRRA payments back to jurisdictions. We would anticipate this year and for the next couple of years we are going to far exceeded that, when you look at the Victorian—

Senator BARNETT—Can you provide an estimate?

Mr Pearce—No, not at the moment. As I said, it is very difficult to do that.

Senator BARNETT—Just a ballpark?

Mr Pearce—No. I would not want to do it.

Senator BARNETT—Is it double?

Mr Pearce—I would say you are going to be looking at double.

Senator BARNETT—At least double?

Mr Pearce—I would think double.

Senator BARNETT—Triple?

Mr Pearce—No, I am not going to go that far, but my guess is—

Senator BARNETT—But at least double.

CHAIR—I think he said he cannot provide an estimate.

Senator BARNETT—Is that for this financial year?

Mr Pearce—This financial year? It depends on what the claims are. We still have not had claims for the South-East Queensland storms yet. They are still being assessed, so I doubt it will go to that this financial year, but certainly in the next couple I have no doubt it will.

Senator BARNETT—To clarify, is it dollar for dollar with the state?

Mr Pearce—It is at the moment. It is a fifty-fifty split for all costs, particularly with the Victorian bushfires.

Senator BARNETT—So in the last two or three years it has been in and around \$65 million a year.

Mr Rheese—The appropriation is \$89.5 million for grants under the NDRRA—that is, the natural disaster relief and recovery arrangements. So far in 2008-09 we have reimbursed \$57 million, but as Tony has outlined we expect to exceed the appropriation this financial year and next financial year as well. In 2006-07 over \$150 million was reimbursed, primarily relating to Queensland expenditure following tropical Cyclone Larry. However, in the intervening year, 2007-08, over \$17.5 million was reimbursed during the financial year. It indicates that payments under the NDRRA are very lumpy. They can be quite sizeable. In the current financial year, the \$57 million includes a single payment of \$50 million to Victoria for previous bushfires.

Senator BARNETT—Have any funds been paid for the current bushfire?

Mr Rheese—Not at this stage, no.

Senator BARNETT—We have got to be quick, so I will go to another question. The Gibson Quai-AAS Pty Ltd report delivered on 3 November 2008: do you have a copy of that report and can you table it?

Mr Pearce—No, I have never even heard of it.

Senator BARNETT—I will read it to you: ‘The purpose of the report is to analyse an analysis of the potential impact of an emergency warning system on the capacity of the national telecommunications network.’ This is in response to my question on notice No. 10 on 20 October, where you set out the list of consultancies by the department. That was one of those consultancies.

Mr Pearce—I will have to take that on notice, because it is not a report that I have actually heard of. We will chase it up and find out exactly—

Senator BARNETT—You or the department may need to take it on notice.

Mr Pearce—Between us we will find out.

Senator BARNETT—With the greatest respect, it is entirely relevant to the portfolio, Emergency Management Australia, relating to the telecommunications system. If you could take that on notice and provide a copy of the report, it would be appreciated.

Mr Wilkins—Senator, Mike Rothery could probably enlighten you a little about the nature of the report.

Senator BARNETT—I do not want to delay the committee, but thank you for being here. If it is possible to table the report, that would be appreciated.

Mr Rothery—The report relates to information that was sought by the department to inform the discussions that took place at COAG last year about whether an emergency warning system that operated over the telephone network posed any risk to overloading the network, particularly issues around triple 0 calls that might be happening simultaneously with the type of emergency that government agencies might want to send an alert on. It was a preliminary report and it has been used to inform the policy. I do not have a copy of the report with me and I am not aware as to whether there were any confidentiality issues. We are happy to take that question on notice and see whether there were any issues of sensitivity around that report.

Senator BARNETT—Hopefully, if it is not confidential, in accordance with usual practice you will be able to table the report.

Mr Wilkins—We will take it on notice.

Mr Rothery—I am happy to take it on notice.

CHAIR—Mr Rothery, while you are here, can I ask you some questions about this. This will apply right around the country, so in case of floods or cyclones in northern Queensland or the Northern Territory it would be able to apply?

Mr Rothery—The announcement that ministers made today relates to a number of measures that the government is taking to provide the states and territories with information for them to be able to set up systems themselves. So the actual outcome of the work that was announced today does not in itself produce a system that will deliver emergency calls, but

what it does do is give any states that have set up a system or that intend to set up a system access to current, up-to-date telephone numbers but in a way such as to protect the privacy of the telephone subscribers, and to do it in a reliable way. At this stage we understand that the Western Australian government has a system that may be able to use these measures in very short order, so there is a combination here of issues around modification as to the Telecommunications Act as well some physical infrastructure that the Commonwealth was undertaking to build that will allow and enable the states and territories to deploy these systems if they so wish.

CHAIR—So this has actually been the subject of discussions since 2004; is that correct?

Mr Wilkins—It has been around since 2004, that is right.

CHAIR—Has it been on the COAG agenda since 2004?

Mr Wilkins—That I do not know the exact answer to. It has certainly been kicked around between the Commonwealth and the states for a considerable amount of time. It has been on the COAG agenda since 2008.

CHAIR—Why was there no agreement reached between 2004 and 2008? Do we know the history of that?

Mr Wilkins—We could try and piece it together, but it is very difficult. It simply seems that there was a failure of people to reach a decision for one reason or another. There were some technical reasons, there were some legal reasons, and I guess it might have been relationships between the different states and the Commonwealth as well. I do not want to write a history of this issue, but clearly it needed to be driven through COAG and probably it did not get that sort of attention.

CHAIR—Thank you for that information. If no other senators have questions, that concludes our consideration of outcome 2.

[11.13 pm]

High Court of Australia

CHAIR—We will now deal with the High Court. Mr Phelan, being an agency, did you want to start with an opening statement?

Mr Phelan—No.

Senator BRANDIS—Mr Phelan, I would like to ask you some questions about the High Court's annual report, which was sent by you under a letter of transmittal on 24 November 2008. As you say in your letter of transmittal, the report was submitted on behalf of the court and with its approval. So when you sign off on this report you really speak on behalf of the judges, don't you?

Mr Phelan—Yes.

Senator BRANDIS—What caught my eye, Mr Phelan, were pages 16 and 17 of the report where you report that in 2007-08 the court had an operating loss of \$912,968 and that in the current year, 2008-09, you have obtained the approval of the Attorney to have an operating loss as well. What will the loss be this year?

Mr Phelan—About \$1.2 to \$1.3 million.

Senator BRANDIS—You go on to say:

The Court will face increasing deficits in future unless there are material changes to the Court's revenue base or undesirable curtailments of the Court's operations.

Given that, as we learn from the annexed financial statements, almost all of the court's revenue base is funds provided from government—

Mr Phelan—Yes.

Senator BRANDIS—what you are really saying is that the government needs to give the High Court a little bit more money or it will remain in a financially impossible position into the future.

Mr Phelan—That is correct.

Senator BRANDIS—You go on to say that you need about a million dollars a year in extra funding on top of your existing funding. Revenue from government in 2008, according to the statement of income and expenditure, was \$13,787,000, so it is about \$14 million. You say you need about another million dollars from the government to correct this position.

Mr Phelan—Yes. We are working with the government to try and come up with some longer term solution to the base funding needs of the court.

Senator BRANDIS—I am very alarmed, Mr Phelan, that you feel constrained to say on behalf of their honours that during the year there was deterioration in the forecourt area and that a review had:

... identified significant public safety and other problems in the forecourt, some requiring immediate measures including fencing off large parts of it. Additional funding will be required to effect forecourt remediation and improvements consistent with the precinct's heritage values ...

But this is a safety issue as well as a heritage issue, isn't it?

Mr Phelan—That is correct.

Senator BRANDIS—Does the amount of money you need from the government—the \$1.2 million you have identified as the deficit for the current year—include the cost of these remediation works?

Mr Phelan—No.

Senator BRANDIS—Have you got an estimate of what the cost of those remediation works will be?

Mr Phelan—No, not at this stage. I am about to let an engineering consultancy to try and get some analysis of the understructure of the forecourt to get some realistic estimates prepared.

Senator BRANDIS—Can you afford this consultancy?

Mr Phelan—We have approval to run at a deficit this year, as you have said.

Senator BRANDIS—Yes.

Mr Phelan—I think we have to do it—obviously, as you say, because of the safety issues—

Senator BRANDIS—Yes, and the heritage issues, which are not unimportant.

Mr Phelan—That is correct.

Senator BRANDIS—It is my understanding that, because of the geological substructure on which the court is constructed, this is an endemic problem. At least the forecourt area of the building is gradually sinking. Is that right?

Mr Phelan—One of the anecdotal pieces of information is that there are some limestone caves under there, but there are other causes, such as root damage from trees. There has been a lot of construction since the High Court forecourt was originally constructed, of course, to do with the National Portrait Gallery, so there could be a whole range of other reasons for the forecourt's damage, not just what we believe to be some caves or something deep underneath. There are also issues about services passing underneath the forecourt—pipes and things that seem to have broken—and there has been some irruption, we believe, of water under the forecourt.

Senator BRANDIS—Most bizarrely of all, Mr Phelan, you say on page 17:

The Court received specific funding in 2007-08 to fix leaks in the High Court Building's roof, windows and ... (balconies). Following an exhaustive approval process and subsequent tendering, repairs are anticipated to commence in late 2008, for completion in 2009.

Mr Phelan—Yes.

Senator BRANDIS—When were these leaks first identified?

Mr Phelan—It was before my time, Senator, but I understand that decades ago they first manifested.

Senator BRANDIS—All right, and they have become so acute that you had to seek specific funding in 2007-08.

Mr Phelan—It was 2006-07—

Senator BRANDIS—You said:

The Court received specific funding in 2007-08—

Mr Phelan—I think that it was appropriated the previous year.

Senator BRANDIS—How much money was that?

Mr Phelan—I think that it was about \$3½ million approximately—I just do not have—

Senator BRANDIS—Have those repairs been made?

Mr Phelan—They are underway as we speak. It is a very complex job and we have tried to leave the repairs between the operations of the court to minimise the disruption of the court. Late last year we had to decant the court to Adelaide and Melbourne for the last two sittings of the year—

Senator BRANDIS—By that you mean that the judges had to sit in interstate capitals because they could not use the building because the roof was leaking?

Mr Phelan—That is correct, Senator, because of the repairs. The day we removed the waterproof membrane I think we broke the drought in Canberra. There were a few issues around that time. The contractors have since finished the membrane replacement. They are now working through the pavement replacement on the roof and the next stage will be the windows, the glazing repairs. We are now identifying some further issues with the concrete and some of the pipes flowing through the building itself. So I think that this project will ultimately be completed sometime towards the middle of this year.

Senator BRANDIS—Has the government given you enough money in the \$3½ million appropriation to deal with all of these problems or only to deal with the most acute of these problems?

Mr Phelan—In relation to the roof, the actual cost will exceed the amount appropriated.

Senator BRANDIS—By how much?

Mr Phelan—Potentially \$1 million. At this stage we will draw on some cash reserves—

Senator BRANDIS—Are you serious? Are you telling me that the government cannot give the High Court an extra \$1million to fix the leaks in the roof?

Mr Phelan—We have not asked yet, Senator. At this stage two contracts have been let and once we have the final cost we will be looking to the sources. But at this stage we identify that the million dollars or so that we will need to cover of the additional cost, we could probably meet from within our depreciation funds that we currently hold.

Senator BRANDIS—If the court had not been forced to run at a deficit budget these funds could have been found within your operating budget, could they not?

Mr Phelan—Possibly.

Senator BRANDIS—What do you think about this, Minister? You are a practitioner of the High Court yourself—what do you think about this?

Senator Ludwig—On reflection, it sounds like it is a matter that has gone on for sometime under both your government previously and this government. It appears that there was an appropriation to deal with it and it does appear from the evidence that of course the problem was much worse when it was looked at in detail, and sometimes that is the case. I am sure you have done building construction work yourself, or at least commissioned work, and you understand sometimes that costs might escalate. But as you also heard, the question about seeking additional funds has not been asked at this point. So at this point I think it is a matter that the High Court has well in hand, or it certainly sounds like it—

Senator BRANDIS—But in the 2008-09 year the court is \$1 million short.

Senator Ludwig—Let me finish. It seems like the High Court does have it well in hand and are proceeding to deal with it in a way that would be sensible: to identify the problem and rectify what can be done immediately. Then of course if there is additional work discovered that needs to be done they will then cost that and provide a report to government. It seems to be what the evidence suggests to date, that that is an appropriate way of dealing with it.

CHAIR—Did the roof start leaking just last year or has this been a problem that has been going on for many years?

Mr Phelan—A long time, Senator.

CHAIR—So during the last 10 years problems emerged?

Mr Phelan—Yes.

Senator BRANDIS—Has it been becoming more acute with the passage of time?

Mr Phelan—Definitely.

Senator BRANDIS—It strikes me as bizarre passing description that the Rudd government can find \$3 billion to spend on pink insulation batts that people do not want but cannot find \$1 million to repair the leaky roof of the High Court of Australia.

Senator Ludwig—That is not the evidence to date, and I do not think that you should be putting that position—

Senator BRANDIS—I am putting that proposition to you because Mr Phelan has said that the High Court is \$1 million in the red because it is not getting as much money—

CHAIR—Order! Senator Brandis, just let Senator Ludwig finish.

Senator Ludwig—As interesting and as colourful as your question is, the point we have reached to date—and I think that from the evidence you would agree—is that there is additional work being looked at. There are reports and of course engineers' assessments made of the extent of the damage and what is required to be done, and no question has been put to government about covering those costs to date. So when that position is reached I am sure that the government will respond accordingly.

Senator BRANDIS—I take you back to Mr Phelan's answer to my second or third question when he indicated that the circumstance which has forced the court to seek approval for a deficit budget in each of the last two financial years—2007-08 and 2008-09 and, he anticipates, into the future—is because the revenue stream from government is inadequate. What is your government going to do about this, Senator Ludwig? Is it going to give the High Court enough money to fix the leaky roof?

Senator Ludwig—It seems to be that this is a matter that has been shared across governments. It is also a matter that the current Attorney-General, I am sure when the question about the building work is addressed, will provide an answer to. But coming back to another matter that you raised, we do expect agencies to work within their existing budgets and, as I understood the evidence earlier, the government is working with the High Court to work within its available budget, as you would expect.

Senator BRANDIS—The functions of the High Court are essential functions. Nobody is suggesting any extravagance. The opposition is not suggesting any extravagance. But it strikes me as extraordinary beyond words that for such a relatively small amount of money in the Commonwealth budget, particularly given the extravagant recent expenditure of the Commonwealth, fixing a leaky roof on the High Court is not a priority or presents a problem for you.

Senator Ludwig—Again, with the colourful question you have put, the response is—and the evidence pointed to it, and I am sure that you heard it as well as I did—that in terms of the

remediation work to the roof there has been and there was appropriated \$3 million for that, with the—

Senator BRANDIS—But Mr Phelan says that it is not enough.

Senator Ludwig—Let me finish my answer to your question. In response to that, during the work itself further work was identified that needed to be done and as yet the High Court has not requested additional funds for that. I am sure that the High Court is examining the position, including its current budget and its operating costs.

Senator BRANDIS—You are not in a position to assure this committee that the appropriation to the High Court in the coming year will be increased sufficiently to enable them to operate to get out of the deficit position, which in High Court's annual report was expressed as continuing 'into the future'?

Senator Ludwig—That is a matter for government. As you can appreciate that will be a matter for the Attorney-General and budget and a whole range of considerations that the Attorney-General will have to make in relation to his portfolio, and I am sure that it will be revealed in due course.

CHAIR—Mr Phelan, thank you very much.

[11.29 pm]

Insolvency and Trustee Service Australia

CHAIR—We have about a minute to go, probably even less. Senator Barnett, you are going to have to be quick or you will need to put questions on notice to these people and to CrimTrac.

Senator BARNETT—I will put questions on notice to CrimTrac. I have a question concerning the latest figures in terms of personal bankruptcies, debt agreements and personal insolvency. Last year it was 32,865. Can you provide an update in terms of the latest stats?

Mr Lowe—As was mentioned by the minister at the table here earlier, we do put out statistics every quarter. The December quarter statistics—if I can just talk about total activity—reported an increase against the previous December of 11.7 per cent. But it may assist the committee to know that for the full six months, July to December of 2008, the total activity was 17,720 matters, which is 12.2 per cent above the comparable July to December period 2007.

CHAIR—Senator Barnett, it is 11.30 pm so that actually concludes our consideration of Senate estimates. You will need to put the questions that you have remaining on notice. I thank the officers for their attendance today. Tomorrow the Senate's Legal and Constitutional Committee will examine the Immigration and Citizenship portfolio.

Committee adjourned at 11.31 pm