



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

MONDAY, 25 MAY 2009

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

LEGISLATION COMMITTEE

Monday, 25 May 2009

Members: Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), Senators Feeney, Fisher, Ludlam and Marshall

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Farrell, Ferguson, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Mason, 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 Abetz, Barnett, Bishop, Boswell, Brandis, Crossin, Feeney, Fielding, Fifield, Fisher, Hanson-Young, Marshall, McGauran and Trood

Committee met at 9.00 am

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Joe Ludwig, Minister for Human Services

Attorney-General's Department

Management and Accountability

Mr Roger Wilkins AO, Secretary

Ms Renee Leon, Deputy Secretary, Strategic Policy and Coordination Group

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

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

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

Program 1.1 - Access to Justice and Social Inclusion

Sub Program 1.1.1 – Access to Justice

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

Sub Program 1.1.2 – Social Inclusion

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division

Dr John Boersig PSM, Assistant Secretary, Human Rights Branch

Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch

Ms Joan Jardine, Acting Assistant Secretary, Indigenous and Community Legal Services Branch

Mr Kym Duggan PSM, Assistant Secretary, Indigenous Policy and Service Delivery Branch

Mr Jeffrey Murphy, Acting Assistant Secretary, Claims and Legislation Branch, Native Title Unit

Ms Amy Elleway, Acting Assistant Secretary, Future Acts and System Coordination Branch, Native Title Unit

Program 1.2 – Legal Services

Sub Program 1.2.1 – Civil Law

Dr James Pople, First Assistant Secretary, Civil Law Division

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

Mr David Bergman, Assistant Secretary, Bankruptcy Policy Branch

Mr Richard Glenn, Assistant Secretary, Personal Property Securities Branch

Sub Program 1.2.2 – Classification and Copyright

Ms Philippa Lynch, First Assistant Secretary, Territories and Information Law Division

Ms Jane Fitzgerald, Assistant Secretary, Classification Operations Branch

Ms Amanda Davies, Assistant Secretary Copyright and Classification Policy Branch

Mr Peter Treyde, Acting Assistant Secretary Copyright and Classification Policy Branch

Sub Program 1.2.3 – Legislative Drafting and Publishing

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

Sub Program 1.2.4 – International Law

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

Sub Program 1.2.5 – Constitutional Policy and Law Reform

Mr Iain Anderson, First Assistant Secretary, Priorities and Coordination Division

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

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

Program 2.1 – National Security

Sub Program 2.1.1 – National Security Resilience Policy

Mr Mike Rothery, Acting First Assistant Secretary, National Security Resilience Policy Division

Mr Michael Jerks, Assistant Secretary, Critical Infrastructure Protection Branch

Mr Alex Webling, Acting Assistant Secretary, Chemical Security Branch

Mr David Prestipino, Acting Assistant Secretary, Emergency Management and Protective Security Branch

Ms Sheridan Evans, Assistant Secretary, Identity Security Branch

Ms Marcella Hawkes, Acting Assistant Secretary, E-Security Policy & Coordination Branch

Sub Program 2.1.2 – Emergency Management

Mr Tony Pearce, Director General, Emergency Management Australia

Mr Mike Rothery, Acting First Assistant Secretary, National Security Resilience Policy Division

Ms Diana Williams, Assistant Secretary, Protective Security Coordination Branch

Mr Mark Sullivan, Acting Assistant Secretary, Crisis Support Branch

Mr David Prestipino, Acting Assistant Secretary, Emergency Management and Protective Security Branch

Mr Kevin Rheese, Director, Relief and Recovery Section

Sub Program 2.1.3 – National Security Capability Development

Mr Martin Studdert, First Assistant Secretary, National Security Capability Development Division

Mr Mike Norris, Assistant Secretary, Counter-Terrorism Capability Development Branch

Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch

Sub Program 2.1.4 – National Security Law and Policy

Mr Geoff McDonald PSM, First Assistant Secretary, National Security Law and Policy Division

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

Ms Belinda Moss, Assistant Secretary, National Security Policy Branch

Ms Annette Willing, Assistant Secretary, Security Law Branch

Dr Karl Alderson, Assistant Secretary, AusCheck Branch

Program 2.2 – Criminal Justice

Sub Program 2.2.1 – Criminal Justice

Ms Elizabeth Kelly, First Assistant Secretary, Criminal Justice Division

Dr Dianne Heriot, Assistant Secretary, Border Management and Crime Prevention Branch

Ms Sarah Chidgey, Assistant Secretary, Criminal Law Branch

Mrs Frances Brown, Assistant Secretary, Law Enforcement Branch

Mr Craig Harris, Assistant Secretary, Organised Crime Task Force

Sub Program 2.2.2 – International Crime Cooperation

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

Ms Belinda Barry, Assistant Secretary, Mutual Assistance and Extradition Branch

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

Outcome 3 – Assisting regions to manage their own futures

Program 3.1 – Services to Territories

Ms Philippa Lynch, First Assistant Secretary, Territories and Information Law Division

Mr Julian Yates, Assistant Secretary, Territories West Branch

Mr Andrew Henderson, Assistant Secretary, Territories East Branch

Strategic Policy and Coordination Group

Priorities and Coordination Division

Mr Iain Anderson, First Assistant Secretary, Priorities and Coordination Division

Mr David Finlayson, Assistant Secretary, Public Affairs Branch

Mr Matt Hall, Assistant Secretary, Cabinet and Ministerial Coordination Branch

People, Information and Technology Division

Ms Sue Chapman, General Manager, People, Information and Technology Division

Ms Michele Kane, Assistant Secretary, Human Rights and Governance Branch

Finance and Property Division

Mr Stephen Lutze, General Manager, Finance & Property Division

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner

Mr Peter Bache, Acting Executive Director

Mr Nicholas Sellars, Acting Director, Policy and Research

Mr Brett Adam, Director, Corporate Services

Australian Crime Commission

Mr John Lawler APM, Chief Executive Officer

Ms Jane Bailey, Executive Director, Organisational Services

Australian Customs and Border Protection Service

Mr Michael Carmody, Chief Executive Officer

Ms Marion Grant, Deputy Chief Executive Officer

Ms Linda Smith, Deputy Chief Executive Officer

Mr Neil Mann, Deputy Chief Executive Officer

Mr Steven Groves, Chief Financial Officer

Ms Jaclyne Fisher, National Director, Cargo

Ms Jan Dorrington, National Director, Passengers

Ms Sue Pitman National Director, Trade

Rear Admiral Allan Du Toit, Commander, Border Protection Command

Ms Roxanne Kelley, National Director, 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

Australian Federal Police

Mr Mick Keelty APM, Commissioner

Mr Tony Negus APM, Deputy Commissioner, Operations

Mr Andrew Colvin APM, performing the duties of Deputy Commissioner, National Security

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

Ms Elizabeth Broderick, Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination

Ms Susan Roberts, Executive Director

Mr David Richards, Manager, Finance and Services

Australian Institute of Criminology and Criminology Research Council

Mr Tony Marks, Acting Director
Dr Judy Putt, General Manager, Research Services
Mr Brian Russell, Senior Financial Officer
Australian Law Reform Commission
Emeritus Professor David Weisbrot AM, President
Ms Sabina Wynn, Executive Director

Australian Security Intelligence Organisation

Mr David Irvine AO, Director-General of Security

Australian Transaction Reports and Analysis Centre

Mr Thomas Story, Acting Chief Executive Officer
Ms Jane Elizabeth Atkins, Acting Executive General Manager
Mr Alf Mazzitelli, General Manager, Corporate and Chief Finance Officer
Classification Board
Mr Donald McDonald, Director
Classification Review Board
The Hon Trevor Griffin, Deputy Convenor

CrimTrac Agency

Mr Jeff Storer, Acting Chief Executive Officer
Ms Nicole McLay, Chief Finance Officer

Family Court of Australia

Mr Richard Foster PSM, Chief Executive Officer
Mr Grahame Harriott, Executive Director, Corporate Services
Ms Angela Filippello, Principal Registrar

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive
Mr Philip Kellow, Deputy Registrar
Mr Peter Bowen, Chief Finance Officer

Federal Magistrates Court of Australia

Mr 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 and Inspector General in Bankruptcy
Mr Peter Lowe, Executive Director
Mr Bob Morison, Chief Finance Officer

National Native Title Tribunal

Ms Stephanie Fryer-Smith, Registrar
Mr Franklin Gaffney, Director, Corporate Services and Public Affairs
Mr Hugh Chevis, Director, Service Delivery

Mr Hardip Bhabra, Chief Financial Officer
Office of the Director of Public Prosecutions

Mr Christopher Craigie SC, Director of Public Prosecutions

Mr Graeme Davidson, Acting First Deputy Director

Ms Stela Walker, Deputy Director, Corporate Management

CHAIR (Senator Crossin)—I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2009-10 and related documents for the Attorney-General's and Immigration and Citizenship portfolios. The committee must report to the Senate on 23 June 2009 and it has set 13 July 2009 as the date by which answers to questions on notice are to be returned. Under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings but, if you need assistance, we certainly have copies of these rules.

I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying a process by which a claim of public interest immunity should be raised, which I will now incorporate into the *Hansard*.

The document read as follows—

Order of the Senate—Public interest immunity claims That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only

from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(Agreed to 13 May 2009.)

(Extract, Journals of the Senate, 13 May 2009, p.1941)

I want to remind officers called upon for the first time over the next four days that, when you first come to answer a question, if you could please state your full name and position it certainly assists Hansard. Witnesses should speak clearly into the microphone not for purposes of being loud but for clarity for Hansard. Please make sure all mobile phones are turned off.

The committee has met and has determined that we will look at interstate agencies to begin with. On the program we have given an indicative time only for the period of questioning. Of course, that will be as flexible as it is needed to be. We are going to begin today's proceedings with the Australian Human Rights Commission and we will then follow the order as set out in the circulated program. It has been brought to my attention that we may need to vary that after lunch and we will have some deliberations about that, Senator Barnett. Proceedings will be suspended for breaks as is indicated in the program. I just want to draw people's attention to the fact that as a committee we have decided to have a dinner break of an hour and a half this week.

I formally welcome Minister, the Hon. Joseph Ludwig representing the Attorney-General and the Minister for Home Affairs. I welcome Ms Branson and the officers from the Australian Human Rights Commission. Minister, do you have an opening statement to begin our proceedings this morning?

Senator Ludwig—No, thank you, Chair, and good morning to the committee.

CHAIR—Thank you. Then we will proceed with questioning.

Senator BARNETT—Thank you very much, Madam Chair. Good morning and welcome Mr Wilkins and your team, the minister and Ms Branson and your team. We have a range of

questions for the Human Rights Commission. I notice that Mr Calma is not here. We wanted to ask the commission and, if possible, Mr Calma some questions about his recent visit to the United Nations Durban antiracism conference in Geneva. Would I be putting those questions to you Ms Branson? We were hoping to talk to Mr Calma as he attended the conference.

Ms Branson—I apologise for Mr Calma's absence as I think he was able to advise you, did he not, when he called on you recently? He is in New York attending the United Nations Permanent Forum on Indigenous Issues. I will take questions on the Durban Review Conference.

Senator BRANDIS—Ms Branson, before my colleague goes on, in relation to Mr Calma's attendance, why is he in New York and not here to respond to estimates questions?

Ms Branson—Senator, as I indicated, Mr Calma is at the United Nations Permanent Forum on Indigenous Issues, which is one of two very significant United Nations meetings that occur annually on Indigenous issues, and there are a number of important features of that conference this year. Mr Calma travelled to New York with approval given by me ahead of my knowing that there was a desire for him to be questioned at the Senate hearings.

Senator BRANDIS—Ahead of you knowing that?

Ms Branson—Ahead of my knowing that. I did not think it appropriate to withdraw the permission.

Senator BRANDIS—Does Mr Calma have a deputy?

Ms Branson—No, he does not.

Senator BRANDIS—Is there nobody in the Human Rights Commission who could have attended this conference other than Mr Calma?

Ms Branson—Mr Calma does have staff with him but he is the social justice commissioner and it was considered appropriate for him to be there.

Senator BRANDIS—I do not want to be unreasonable about this. I think that, in ordinary circumstances, that would be a perfectly appropriate reason for a senior officer not to attend estimates, particularly when that officer is not the most senior officer of the agency. However, I must say, Ms Branson and minister, that in these circumstances when conduct by Mr Calma has been a matter of public controversy and when at least one member of this committee—indeed, the deputy chair, Senator Barnett—has publicly criticised Mr Calma's conduct in a speech in the Senate, of which you and he must have been aware, I question whether, in those particular circumstances, it is appropriate for Mr Calma to have been allowed to absent himself from this hearing.

Ms Branson—I note your remarks. Could I make it clear that the decision for Mr Calma to attend Geneva for the Durban review was a decision of the commission and not a decision of Mr Calma; it was not his decision alone. Additionally, as I have mentioned, Mr Calma called on Senator Barnett ahead of his leaving as a matter of courtesy and I supported his decision to do so, but I apologise that he is not here.

Senator BRANDIS—Thank you, Ms Branson; that is good of you. Senator Barnett and I will persist with questions we had hoped to direct to Mr Calma to you and other officers, but I hope we will not be met with the response: ‘You would have to ask Mr Calma about that.’

Senator BARNETT—Thank you very much, Senator Brandis. I endorse those comments and concerns. The concerns which I held publicly—and, I think, on behalf of many others—at the time of Mr Calma’s presence in Geneva, and which were subsequently expressed in a speech to the Senate, were raised privately with Mr Calma in the private meeting. I do not recall him saying specifically that he would not be here but I stand to be corrected on that. Nevertheless, it raises all sorts of concerns and issues about a taxpayer funded entity sending a representative to an international conference and no doubt liaising and communicating with the department and the Australian government in advance of that conference, and then the Australian government, a day before the conference, boycotting the conference and placing itself—as in the government—in an incredible dilemma, not foreshadowing its intent in advance of a day before the conference. In that sense, there is obviously a dilemma for the government and indeed there is a dilemma for a taxpayer funded entity which is representing, you might say, itself but in the eyes of the world is clearly representing Australia.

Before we go into the detail, I would like to know about the communication regarding the commission and the government, as in the department. I would like to know what communications there were in advance of the conference between the commission and the department—what meetings were held and what communications, letters, correspondence, and emails were exchanged between the government and Mr Calma and/or the commission prior to the conference.

Ms Branson—I am able to tell you that on 25 July 2008 my predecessor, Mr John von Doussa, wrote to the Minister for Foreign Affairs with respect to the Durban Review Conference and pointed out that the Human Rights and Equal Opportunity Commission, as the commission was then known, had committed a great deal of resources to addressing racism within Australia and that the commission had organised the Beyond Tolerance conference in 2002 to follow up from the original Durban conference and sought advice as to the Australian government’s position in regard to the review conference and whether Australia would be involved in either the regional meetings or the review conference itself. A reply was received from the minister, dated 16 December 2008, expressing some concern about the possible tone of the Durban Review Conference and advising that the Australian government had not yet decided whether Australia would participate in the review conference.

Senator BARNETT—Can we have a copy of that letter; in fact, both letters?

Ms Branson—No problem. On 14 January this year—

Senator BRANDIS—When may we have them? May we see them now, please? The secretariat has photocopying facilities if you—

Ms Branson—May I just finish my answer, Senator, before I hand them over? There were three letters. If I perhaps could give my reply about the third then I will provide them to someone to photocopy. On 14 January this year I wrote to the Minister for Foreign Affairs referring to his letter and advising him that the Australian Human Rights Commission had decided that it would participate in the conference. I set out the basis for that decision and

asked if he wished the commission to reconsider its decision. That was the last correspondence with the minister. The commission has a standard practice of advising the Attorney-General of what its senior officers are doing on a week-by-week basis, and it is through that mechanism that the Attorney-General was directly advised. If you wish, I can hand up those three letters for photocopying.

Senator BARNETT—If you could, thank you. While you are doing that and they are being photocopied, could you continue in terms of the other communications between the government and the commission. So far we have three letters. The last letter was on 14 January from you to the foreign affairs minister.

Ms Branson—There is no other correspondence of which I am aware. There would have been some informal discussion.

Senator BARNETT—Can you tell us about the informal discussion.

Ms Branson—I am aware of informal discussion with Australia's permanent representative to the United Nations in Geneva. I am not immediately able to bring to mind any other informal communication.

Senator BRANDIS—Were there no telephone conversations or meetings with the minister or with advisers in the minister's office in relation to this?

Ms Branson—Not that I am aware of.

Senator BARNETT—Ms Branson, I cannot go into private discussions that I have had with Mr Calma, but if Mr Calma were here he would no doubt provide a more fulsome response. With the greatest respect, this hits on the issue that Senator Brandis raised at the beginning, which is that there have been—that is my understanding—a range of discussions and/or meetings with the commission's representatives. I do not know if one of the office staff who actually attended the Geneva conference was at these meetings and could advise and assist you in answering these questions. Obviously, Mr Calma would be able to provide a more fulsome response. Please be very careful in saying that there have been no further communications, or only informal ones, because I am led to believe that in fact there have been.

Ms Branson—I simply said there were none that I was aware of. I certainly did not assert that there were none.

Senator BARNETT—We are hoping to get a fulsome response on this very important issue.

Senator BRANDIS—Or, if not a fulsome response, a full one. Can I jump in, Senator Barnett? Let's approach it this way: if there were such discussions as Senator Barnett has obviously been led to believe there have been, would it be the practice of the commission to have them minuted or otherwise noted to the relevant files?

Ms Branson—What Mr Calma's practice is is something I am afraid I am not able to tell you. But I am happy to take your question on notice.

Senator BRANDIS—You might not have to do that. Does anyone else know what the practice is in relation to the file-keeping protocols observed by the Race Discrimination

Commissioner in relation to meetings and important telephone conversations? Are they, as a matter of routine, minuted to the file?

Ms Branson—I think we will have to take the question on notice.

Senator BRANDIS—So you are telling the committee nobody here knows the answer to that question.

Ms Branson—That is as I read the language of my colleagues.

Senator BARNETT—To pursue that, in the lead-up to the conference which is at the end of April, are there no records on your files of communications between Mr Calma and the government?

Ms Branson—I have not inspected the totality of the commission's files or indeed any of the commission's files on this issue. I am not able to answer that question. I am happy to take the question on notice.

Senator BRANDIS—Where are the files held? Are they held in Canberra?

Ms Branson—No. The commission's offices are in Sydney.

Senator BRANDIS—Are officers of the commission in Sydney likely to be monitoring this broadcast?

Ms Branson—I do not think so.

Senator BRANDIS—I expect they would be if they are doing their job properly—agencies routinely do. Perhaps in the event that officers at the Sydney office of the commission are observing this broadcast they could locate the file. I ask through you that one of your attendant officers here communicate with the Sydney office to ensure that that is done and that the file is located by between now and morning tea time, please.

Ms Branson—I will certainly ask an officer to call the office.

Senator BRANDIS—Thank you.

Senator BARNETT—To assist you, Ms Branson, in that regard, I understand that a number of other commission representatives attended the conference with Mr Calma, including one of your staff members. Is that correct?

Ms Branson—Two staff members accompanied Mr Calma to Geneva.

Senator BARNETT—Can you identify them, please?

Ms Branson—Yes, Margaret Donaldson, the director of the race discrimination unit, and Mr Ihab Shalbak.

Senator BARNETT—Are they in the room today?

Ms Branson—No, they are not.

Senator BARNETT—Where are they?

Ms Branson—I imagine that they are in Sydney.

Senator BARNETT—I think Senator Brandis's point is well made, because either one of those offices would be able to assist in answering this question in terms of the communication with the government prior to departure.

Ms Branson—I am far from certain that they could. It is possible that they could, but I would be by no means confident that they could.

Senator BRANDIS—Surely Ms Donaldson, who is the director of the racial discrimination division, would have been closely involved in the participation by the commission in the Durban II conference. You would expect that to be so, would you not?

Ms Branson—I would certainly expect that to be so, but whether that meant that she was closely involved in any communications Mr Calma had with staff of the Attorney I am unable to give you an assurance one way or the other about.

Senator BRANDIS—It is to a degree a matter of conjecture, but one would have thought, given in particular the sensitivity of this matter, that the director of racial discrimination of your agency would have a pretty good knowledge of the participation by your agency in a controversial international conference on racial discrimination. That would be a fair surmise, would it not?

Ms Branson—It would be a fair surmise that she would have been closely involved with matters dealing with the attendants in Geneva but not necessarily with Mr Calma's communications with the Attorney-General's staff.

Senator BRANDIS—I understand that, but given that you knew that Mr Calma could not be here, given that you knew that you yourself were not in a position to answer these questions and given that you knew that Ms Donaldson had a level of involvement in this greater than yourself, why wasn't she made available to the committee today?

Ms Branson—It simply did not occur to us to bring more representatives to Canberra than we have brought. We have brought a considerable team of representatives for a small agency.

Senator BRANDIS—You would be familiar with the expression 'the best evidence rule'. Given the absence of Mr Calma today, wouldn't Ms Donaldson be the person in Australia in the best position to give evidence on this topic, since you cannot and none of the other officers at the table evidently can either? That is no criticism of them, of course.

Ms Branson—We have extensive briefing notes prepared by Ms Donaldson. Unfortunately, this was not one that we thought to ask her to prepare a briefing note on.

Senator BRANDIS—We will have the briefing notes, thank you very much. Even though this was one aspect of your agency's activities that had attracted a great deal of political controversy; that you knew had been raised in the last estimates round by Senator Barnett, by me and by others; that you knew had been raised recently in a speech in the Senate by Senator Barnett; that you knew had been the subject of a courtesy call—as you described it—by Mr Calma to Senator Barnett as recently as a week ago, in all of those circumstances, leaving aside the enormous press controversy about this, are you seriously telling the committee that you did not anticipate that you should bring the officer best placed to give evidence about these matters along today?

Ms Branson—Yes.

Senator BARNETT—Ms Branson, perhaps if I can pursue another slightly different angle here, let's get down to tintacks. You have advised who attended the conference. Can you advise when they departed—the exact times—when they returned, how they got there, and the cost of this adventure?

Ms Branson—I have the total cost of the airfares: \$11,625.06.

Senator BARNETT—Can you break that down, please?

Ms Branson—I am able to tell you that the commission paid for the airfares of the commissioner and one staff member—

Senator BARNETT—What was the breakdown?

Ms Branson—I do not have the precise breakdown, but Mr Calma would have travelled business class and the officer would have travelled economy class, despite being entitled by seniority to travel business class.

Senator BARNETT—You will take that down on notice, will you? I want that broken down, so if you are happy to take that on notice, that is okay.

Ms Branson—Yes, of course, Senator, if you wish that.

Senator Ludwig—Could I clarify that: when you say 'broken down' do you mean the cost of each airfare?

Senator BARNETT—The cost of each airfare.

Ms Branson—I am happy to provide that. The cost of the third airfare was met by the office of the High Commissioner for Human Rights. Accommodation and travel allowance of \$14,489.66 was paid; the total cost to the commission was therefore \$26,114.72.

Senator BARNETT—The \$4,800 is per person, is it?

Ms Branson—No, in total: \$14,489.66.

Senator BARNETT—Oh, \$14,000. I thought you said \$4,000. The total cost was—

Ms Branson—It was \$26,114.72.

Senator BARNETT—All right. When did they depart and when did they return?

Ms Branson—When the officer returns he may be able to tell me that, but he is out making the telephone call that you requested be made. My recollection is that they left immediately before the conference started but in time to travel to Geneva, and they came home promptly when it ended.

Senator BARNETT—How long was the conference?

Ms Branson—The conference was between 20 April and 24 April this year.

Senator BARNETT—Okay. So what we do not know at this stage is the consultation or communication that you had, and Mr Calma had—or the officers, Margaret Donaldson or the officer with the department—in advance of the forum.

Ms Branson—I cannot give you details of communications but I am happy to take it on notice.

Senator BARNETT—And we are hoping to get that after morning tea time. Can you tell us about the communication post the forum or at the forum with the department and/or the government?

Ms Branson—I am not aware of there having been any; but that is not to say that there was not. I am just not aware of it.

Senator BRANDIS—The department, of course, includes the embassy, or the Australian representatives present in Geneva.

Ms Branson—Mr Calma was in communication with Australia's permanent representative in Geneva during the course of the conference.

Senator BARNETT—Ms Branson, are you telling us that there is no record on your files of a communication from the Australian government regarding the boycott of the conference?

Ms Branson—The Australian Human Rights Commission, as I think others did, learnt promptly after Australia made its decision not to attend that it was not attending. I have no information at all to suggest and no reason to think that the commission was alert earlier than that announcement that Australia was not to attend the conference.

Senator BARNETT—But how did you find out about that? I am advised—without going into the detail, because I have had a private meeting with Mr Calma—that the conference delegates heard about it through different means, primarily through the media. I am advised that there was no formal advice from the government to the commission, and I am asking you to confirm if that is correct.

Ms Branson—As far as I know, that is correct.

Senator BARNETT—I find it bordering on outrageous that the government could make such an official and public position known—that is, to boycott an international conference—the day before the conference, having had communication with the Human Rights Commission, a taxpayer funded body, and not communicate to them the fact that they were boycotting the conference, knowing full well that this taxpayer funded entity would be, at least in the eyes of many around the world and at the conference, representing an Australian position. It just beggars belief.

Senator BRANDIS—Or misrepresenting the Australia position, in this case.

Senator BARNETT—Indeed—misrepresenting the Australian position. It just beggars belief that the Australian government, through the Minister for Foreign Affairs or his officials, would not communicate to you, the commission. You are the head of the commission, so you would know something as important as that, and you have confirmed on the record that there was no communication, notwithstanding an official boycott publicly made for all and sundry here in Australia so that everybody knows the Australian government position. But they know full well, because we have it in writing; you have tabled three letters, which we will go to shortly, outlining the Australian government's position. So it beggars belief. No doubt further questions can be asked of the Minister for Foreign Affairs as to his view and the government's position as to why they would not communicate with the Australian Human Rights Commission on such a decision that was made, albeit at the eleventh hour.

Ms Branson—I do not understand that to be a question, Senator. Please tell me if I misread you.

Senator BRANDIS—Let us go through the letters, shall we?

Senator Barnett—Yes.

Senator Ludwig—I did not understand it to be a question either.

Senator BRANDIS—As you well know and have observed in your practice when you were in opposition, Senator Ludwig, a degree of comment is acceptable on these committees, a point you have made to me in the past when our roles were reversed.

Senator Ludwig—Thank you for that, Senator Brandis. I was simply drawing—

Senator BRANDIS—I just do not like the smell of hypocrisy in the air, Senator Ludwig.

Senator Ludwig—Oh, I see; that is what you are alleging. I was simply going back to comment on—

CHAIR—Senator Brandis. Minister, did you have something you wanted to say?

Senator BRANDIS—Yes, I do.

CHAIR—No, I am asking the minister if he has something he wants to say.

Senator Ludwig—No, I do not want to add anything further at this point, thank you very much, Chair.

CHAIR—Let us go to questions then.

Senator BRANDIS—Thank you, Madam Chair. Ms Branson, your evidence, as I understand it, is that to the best of your knowledge—allowing for the fact that there may be discussions which you are not in a position to tell us about—the entirety of the communication between your agency and the Australian government in relation to the Durban II conference comprised the three letters you have produced this morning. Is that right?

Ms Branson—The formal written communications comprised those three letters and the written advice that the commission provides to the Attorney-General's office about what its senior staff are doing on a week-by-week basis.

Senator BRANDIS—I see. You did not mention that before, unless I misheard you.

Ms Branson—I am sorry; I think I did.

Senator BRANDIS—In relation to the latter of those, is that merely the routine advice that ministers invariably get from departments and agencies as to which senior officers are travelling, where and when?

Ms Branson—And what they are doing, yes.

Senator BRANDIS—That is fine. So one would not expect to find in that category of document any expression of opinion, of the government view or of the commission view.

Ms Branson—No.

Senator BRANDIS—All right. I think we can safely leave those aside. Coming then to the three letters: the first from your predecessor, Mr von Doussa, on 25 July 2008—do you have copies?

Ms Branson—Yes, I do.

Senator BRANDIS—In the penultimate sentence of the letter, Mr von Doussa says to the minister:

... I would be most grateful if you could inform me of the Austrian Government's position in regards to the Review Conference and whether Australia will be involved in either the regional meetings of the Review Conference itself.'

Do you see that?

Ms Branson—Yes.

Senator BRANDIS—Is it fair to characterise this as a request for information?

Ms Branson—Yes.

Senator BRANDIS—Then, in a not very prompt fashion, on 16 December, five months later, Mr Smith writes back to Mr von Doussa and he expresses the government's views and he says, among other things:

I am concerned that the Durban Review Conference could mirror the tone of the 2001 Durban World Conference against Racism ... and become a forum for the dissemination and expression of anti-Semitic sentiment.

He goes on in the next paragraph to say:

... the Government has not yet decided whether Australia will participate in the Review Conference.

He says that that government has not yet decided whether Australia will participate—not his department, not the Australian government but whether Australia will participate—in the review conference. In the final sentence of the letter, he goes on to tell Mr von Doussa that he has asked DFAT to:

... contact the Commission as soon as possible once a decision on this issue is made by the Government.

You will see in the handwritten notes at the top of the letter that copies were sent to two people, including somebody described as executive director. Would that be Margaret Donaldson?

Ms Branson—No, that would be Ms Roberts, who is sitting beside me.

Senator BRANDIS—Oh, I am sorry. That is helpful. We can ask you. So you received this letter. It was on-forwarded to you, according to this handwritten note, on the 19th.

Ms Branson—The handwritten note is mine. It came to me as Mr von Doussa's successor in office.

Senator BRANDIS—I see. I want to find out what happened to the letter then.

Ms Branson—I received it and I sent a copy to all commissioners and to the executive director, Ms Roberts.

Senator BRANDIS—Would Ms Donaldson have got a copy?

Ms Branson—I would not have sent it to her. It would be a matter entirely for Mr Calma; whether he sent it to his director.

Senator BRANDIS—What happened to the letter then? In particular, I want to know whether it was tabled at the next regular meeting of the commission.

Ms Branson—Yes, it was.

Senator BRANDIS—Was it discussed?

Ms Branson—It was.

Senator BRANDIS—Can you tell me about that discussion?

Ms Branson—I cannot remember the details of the discussion.

Senator BRANDIS—As well as you can remember, please.

Ms Branson—We considered it. We noted the concern.

Senator BRANDIS—Did you note that the government had yet to decide whether Australia would participate?

Ms Branson—Certainly.

Senator BRANDIS—Go on.

Ms Branson—At that meeting a decision was taken by the commission that the commission would attend and the letter, which you see dated 14 January, was sent by me to the minister as a result of that decision.

Senator BRANDIS—What was the date of that meeting please?

Ms Branson—I am happy to check the exact date and provide you with that advice when I can.

Senator BRANDIS—Do you have a copy of the minute of the meeting to which you have referred?

Ms Branson—No, I do not.

Senator BRANDIS—Where would that be?

Ms Branson—It would be with the records of the commission itself. We have a record of all commission meeting minutes and it will be there.

Senator BRANDIS—The date is not all that critical. We know that it was after the 19th and before the letter of 14 January was written.

Ms Branson—I am sorry; I am not sure that that is accurate. Our decision was made shortly ahead of receipt of the decision of 16 December and I then sent the letter when it came in. It was some time, as you have observed, from the date of Mr von Doussa's letter and the response. My recollection is that with the December commission meeting we had received no response. We took a decision to attend and I advised the minister of that in January. His letter having come in after the commission meeting, I then sent it out to all commissioners and the executive director. So I take back that it was at the meeting; it was not at the meeting.

Senator BRANDIS—That is fine; that is very helpful, Ms Branson. Just to summarise—am I getting this right? The sequence of events then is: your predecessor writes to the minister on 25 July, and, some months after 25 July but before 16 December, having not received any response to your 25 July letter from the government, the commission has a meeting and decides to attend—

Ms Branson—If I could interrupt: my recollection is that that meeting was approximately 16 December. I may have seen the letter immediately after the meeting but it had not come to my attention before I went into the meeting. I then sent it to the people indicated in my note.

Senator BRANDIS—So is it purely a coincidence that the meeting at which the decision was made that the commission would attend Durban II took place on the same day here in Canberra that Mr Smith was writing you a letter saying what I read to you?

Ms Branson—That was entirely coincidental.

Senator BRANDIS—Sure.

Ms Branson—The day may be one or two days out but it was approximately the same time—

Senator BRANDIS—I understand. Was this the regular monthly or—

Ms Branson—Bimonthly meeting.

Senator BRANDIS—of the commission. And other matters were discussed at that meeting, no doubt?

Ms Branson—Yes, many other matters.

Senator BRANDIS—About how much time was devoted to the discussion of the Durban II issue?

Ms Branson—That is testing my memory a little, but it was not a long period of time.

Senator BRANDIS—Less than half and half?

Ms Branson—Yes.

Senator BRANDIS—Less than 15 minutes?

Ms Branson—It could have been approximately 15 minutes.

Senator BRANDIS—Up to 15 minutes?

Ms Branson—Yes.

Senator BRANDIS—All right. Was Mr Calma at that meeting?

Ms Branson—Yes.

Senator BRANDIS—All right. Is it the custom, in your minutes—as some people do—to record action points following decisions?

Ms Branson—Yes.

Senator BRANDIS—I surmise that one of the action points that would have been recorded if that decision had been made would have been to write to the Australian government to advise it of the commission's decision, which was what was done on 14 January.

Ms Branson—I think that is likely.

Senator BRANDIS—Roughly how many pages long are the minutes of a typical bimonthly board meeting?

Ms Branson—I think about six to eight pages.

Senator BRANDIS—And they are available in Sydney, are they?

Ms Branson—They are.

Senator BRANDIS—Could they be faxed here now, please? I am sure the officers of the secretariat will advise your officers of a fax number to which the minutes could be conveniently sent.

Ms Branson—Mr Robinson will attend to that.

Senator BRANDIS—Thank you very much, Ms Branson; that is very helpful. We will have a look at those when they come in and, of course, if there is material that is confidential and should not be before this committee, I am sure there will be time to look at it and mask it, but presumably there would not be much. But we will restrict ourselves to that item in the minutes. So you make this decision and the next thing that happens is that the minister's letter comes in and you arrange for it to be circulated to the two officers in your handwritten note at the top of the letter. When you receive this letter dated 16 December—nothing turns on this but I am guessing that you received it on the date you noted it, on the 19th or perhaps the day before?

Ms Branson—I expect that is the day I first saw it. It is my practice to note things at once.

Senator BRANDIS—The 16th was a Tuesday so the 19th was a Friday. So, when you read this letter, surely you must have thought, 'We potentially have a problem here because we have just decided to commit to attending a conference and now we have been told by the Australian government that the Australian government has concerns about the conference.' The words of the minister, Mr Smith, whom I know very well is a very careful man, were: 'The government has not yet decided whether Australia will participate in the review conference.' When you became aware of that fact, what did you decide to do about it?

Ms Branson—I cannot recall thinking of anything to do about it other than circulating the letter, as my note indicates.

Senator BRANDIS—So you did nothing other than write to the minister the following month.

Ms Branson—I circulated the letter and then I wrote to the minister.

Senator BRANDIS—Your agency had just decided to commit to attending an international conference and, lo and behold, you heard from the Minister for Foreign Affairs (a) that the Australian government had certain concerns about the conference, which he specified in the letter in summary form, and (b) that the Australian government had not yet decided whether Australia would participate in the conference. Didn't that strike you as problematic?

Ms Branson—It did not strike me as problematic.

Senator BRANDIS—You are an agency of the Australian government. I understand that you have some statutory autonomy, but it did not even occur to you that by allowing that status quo to endure and proceeding to do an act—in this case, attending a conference—when you had been advised by the foreign minister the government had yet to make a decision whether Australia would participate, you were potentially putting your agency in a false position?

Ms Branson—I did not see it that way at all. I did, however, invite the minister to let me know if he wished the commission to reconsider its decision.

Senator BRANDIS—This is in the letter of 14 January.

Ms Branson—That is in the letter of 14 January.

Senator BRANDIS—I am going to come to that in a moment. Did you consider it necessary or appropriate to raise a concern with any other members of the commission, in particular Mr Calma, who was the relevant commissioner?

Ms Branson—I circulated the letter to them. They were all free to speak to me about it if they wished. I did not think it necessary to do anything further.

Senator BRANDIS—You did not?

Ms Branson—I did circulate to them a draft of the letter I sent to the minister.

Senator BRANDIS—I am coming to that. On 19 December 2008 you had just chaired a meeting which made a decision and, lo and behold, you found the minister to be saying, ‘The Australian government is yet to make a decision in relation to this, but we have certain grave concerns,’ which he specifies. You did not think it was a problem for the commission to go ahead with its decision of the 16th?

Ms Branson—I did not.

Senator BRANDIS—Turning to the letter of 14 January 2009, who drafted the letter?

Ms Branson—It is possible that a first draft was done by my associate, but I altered it and I take full responsibility for its present form.

Senator BRANDIS—I am sure you do, and I am not for a moment suggesting that you are not fully responsible for it. I am merely interested in the quotidian business of how this letter came into being and what steps were made to consult with other members of the commission in relation to its final form. Who drafted the first draft of the letter, please?

Ms Branson—The first draft was done by my associate.

Senator BRANDIS—Are you able to say when would that have been?

Ms Branson—I expect early in January, but I am not able to say with certainty.

Senator BRANDIS—Was the document that you have just told us was circulated to other commissioners the first draft?

Ms Branson—No.

Senator BRANDIS—How many iterations had the draft proceeded through by the time it was circulated?

Ms Branson—A draft came to me and I varied it to read as you now see. It was that version you now see that went to commissioners.

Senator BRANDIS—The letter that was finally sent was sent on the 14th, apparently. That letter, if I understand you correctly, was identical to your final draft. Is that right?

Ms Branson—Yes.

Senator BRANDIS—So none of the commissioners had any proposed changes to the language of your final draft.

Senator BRANDIS—The letter that was finally sent was sent on the 14th apparently. That letter, if I understand you correctly, was identical to your final draft. Is that right?

Ms Branson—Yes.

Senator BRANDIS—So none of the commissioners had any proposed changes to the language of your final draft?

Ms Branson—Mr Calma expressed concern with the final paragraph. He thought it possibly indicated willingness to compromise the independence of the commission. I decided, nonetheless, to include it.

Senator BRANDIS—Could you say that again? It indicated ‘willingness to compromise’.

Ms Branson—He thought it might compromise the independence of the commission. I decided, nonetheless, to include it.

Senator BRANDIS—All right. So you had a conversation with Mr Calma about that matter and you got your way!

Ms Branson—It was my letter; it was for me to decide, but I take the advice of commissioners on a number of matters that I nonetheless decide.

Senator BRANDIS—You circulated a draft to take their views into account.

Ms Branson—Yes. I cannot recall whether I spoke with Mr Calma or if he sent me an email.

Senator BRANDIS—The email, if there was one, will appear on the file. Other than Mr Calma, how many other commissioners got back to you with their input into your circulated draft?

Ms Branson—No other commissioner to my recollection expressed any views about the draft.

Senator BRANDIS—So your associate prepares a draft, you make some amendments to it and you circulate the amended draft with an invitation to commissioners for feedback. You only get feedback from one, Mr Calma. Mr Calma has a concern about the final paragraph. You have a discussion with Mr Calma about the final paragraph and the outcome of that discussion is that the final paragraph stays in its original form and the letter is then sent on 14 January as it has been tabled today.

Ms Branson—Sorry, Senator. It is not true that I had a discussion with Mr Calma. My recollection is that Mr Calma was on leave. We were communicating through my associate. I

took his comment into account and without reverting to him, as I recall, I decided to leave the letter in the form that I had drafted it.

Senator BRANDIS—All right. If Mr Calma were here he could tell us what he thought but he is not, so he can not. Ms Branson, you know don't you that in making the statement you make in the second sentence of the letter, 'I would like to inform you that the Australian Human Rights Commission has decided that it will participate in the conference', you are really pre-empting a decision of the Australian government which has told you in its letter of 16 December that it has not decided whether Australia will participate in the conference.

Ms Branson—That was not my understanding, Senator.

Senator BRANDIS—Perhaps for the record you should state your understanding.

Ms Branson—I understood that, when the minister spoke of what Australia was doing, he meant what the Australian government was doing—that is, relevantly, the executive branch of the Australian government.

Senator BRANDIS—I understand of course, Ms Branson, that your commission has its own statute and its own statutory charter and you have a degree of independence of the executive branch. But it is not as if you are a court. Surely, you accept, don't you, that you have some responsibility to reflect the views or be at least guided by the views of the Australian government?

Ms Branson—I accept that I should take the views of the Australian government into account. We had done so. We had made a decision. We advised the government what it was. We invited response from the government. I considered that an appropriate course to follow.

Senator BRANDIS—Pausing there, Ms Branson, that is not quite right is it? When you say 'We had done so'—that is, take the views of the Australian government into account—in fact, when you made the decision, you had not taken the views of the Australian government into account. That is through no fault of your own but because at that stage—that is, on 16 December as you have told us—the views of the Australian government, even the neutral view of the government having a holding position, had not yet been communicated to you.

Ms Branson—That is correct, but we did take into account the concerns expressed by the minister in his letter and we had taken into account that the Australian government itself had made no decision whether to attend or not.

Senator BRANDIS—When you say 'we' there was no meeting of the commission was there between the time you receive the minister's letter of the 16th, which we may assume to be the 19th of December, and when you sent the letter of the 14th January?

Ms Branson—Could you ask me that again?

Senator BRANDIS—There was no meeting of the commission between the date on which you received the letter, on 19 December, and the date on which you sent your letter of 14 January 2009, was there?

Ms Branson—No, there was no meeting, but at the date that the commission did meet it was known that the Australian government had made no decision and it was known, I think from public reports, that a reason for the government giving anxious consideration as to

whether or not to attend was because of concerns being expressed about what might happen at the Durban Review Conference.

Senator BRANDIS—How did the commission know that—from media reports and talk in the general media about Durban II?

Ms Branson—Yes.

Senator BRANDIS—With all due respect, if your predecessor, in this case, had actually gone to the trouble of writing to the Australian government, as he did on 25 July 2008, to ask the Australian government to state a position, and if at the time your agency decided to commit to a final decision on this matter—and you know that the letter of 25 July has not yet been responded to—would it not have been surely more appropriate to write another letter to the minister or otherwise to communicate with the minister's office to give the minister a hurry along so that you would have before you at the time you made this decision an actual expression of the Australian government's views over the hand of the relevant minister, which you yourself had sought, than to make this decision on the basis of press talk?

Ms Branson—We had sought advice from the minister; we had not received it. We considered it appropriate to make a decision to enable the affairs of the commission to be managed. As you will see, I envisaged the possibility that the minister would ask us to reconsider.

Senator BRANDIS—You might have envisaged it on the basis of conjecture in the press, but, if that was the way in which the commission was going to go about its business, why was the letter of 25 July ever written in the first place? If the commission felt free to make these decisions, taking into account the Australian government's views on the basis of conjecture in the press, why did you formally seek the Australian government's view with a view, as your predecessor clearly indicates, to better informing yourself in advance of making this decision?

Ms Branson—I cannot speak for my predecessor but it is common for the commission to seek a wide range of views, and in this case the views of the minister would have been important views if they were able to be considered by us. They were not made available to us and we made the decision which we thought appropriate in the circumstances.

Senator BRANDIS—With respect, it is not for me to be a defender of the Rudd government here but, with respect, that strikes me as an extraordinarily condescending view of the Australian government. The Australian government is not merely one of a number of entities that hold a wide range of views. The Australian government is ultimately the conductor of Australian foreign policy. Surely you would acknowledge that the views of the Australian government stand on a different footing from the views of other interested participants in this discussion.

Ms Branson—In this discussion, yes; that is why we wrote to the minister.

Senator BRANDIS—And yet you made the decision before you got a reply on the basis of conjecture alone about what the minister might think.

Ms Branson—That is right.

Senator BARNETT—Re this letter of 14 January, Ms Branson, the second last paragraph reads:

... the Commission will continue to consult with your Department ...

You have put on the record there that consultations will continue. You have tabled three letters. You are not at this stage able to table any further communications between the commission and the department, but research is being undertaken as we speak to get copies of any emails, letters, meeting notes or briefing notes that you may have in relation to communications that you have had with the department in the lead-up to—

Ms Branson—Did you mean the department of foreign affairs, Senator, or did you mean the Attorney-General's Department?

Senator BARNETT—You have written to the Minister for Foreign Affairs. It is your letter. It is in the second last paragraph in which you say:

... The Commission will continue to consult with your Department ...

Ms Branson—That is a reference to the department of foreign affairs.

Senator BARNETT—Indeed. That is why I am asking. You are sitting here telling us that you were not aware of any other consultation that has occurred since January until the conference at this stage. You are not aware of any consultations. Is that correct?

Ms Branson—Apart from in formal consultation with the permanent representative in Geneva, I am not aware of any others.

Senator BARNETT—So you, as president of the commission, have had this correspondence on a subject which was obviously important enough for the commission to write to the minister. The minister has written back. You have written back to the minister. It is obviously an important matter. The conference is coming up in April, you wrote in January and you personally have not had any communication with the department or any further feedback. I do find that very, very odd.

Senator BRANDIS—It is not quite as simple as that, Ms Branson, because you, against Mr Calma's wishes, did at least go so far as to acknowledge that the Australian government had some rights here by including that last paragraph in your 14 January letter opening the door to really inviting the government to request the commission to reconsider its decision.

Ms Branson—That is accurate.

Senator BRANDIS—That is the reason for which that last paragraph was included by you and it is interesting that you felt sufficiently strongly about it that you insisted on including it notwithstanding the different view about it of Mr Calma himself.

Ms Branson—I did not regard it as undermining the independence of the commission to invite the minister to put material to me if he wished.

Senator BRANDIS—No, indeed, you have a very robust view of what the independence of the commission means, clearly. You never heard from the Australian government in response to your invitation expressed in the last paragraph of the 14 January letter.

Ms Branson—No, I did not.

Senator BARNETT—Ms Branson, this is really my key point that I expressed earlier of amazement, of astonishment, that there had been no communication with the Australian government, notwithstanding an official boycott that had been made publicly by the minister

Stephen Smith here in Australia. There had been no indication between the department or him and you. You have personally written to him, it is a personal letter signed by you, to Minister Stephen Smith on 14 January. You specifically say:

Of course, should you wish the Commission to reconsider its decision, I will arrange for the issue to come before the Commission again ...

So you have put them on notice. There are two sides to the coin. So far we have pursued the coin in terms of the commission's side, but in terms of the government's side and Mr Smith, no doubt there will be further questions put in the foreign affairs estimates committee as to what communications they had with the commission and to find out what emails they had. I would like to ask if there were any communications with the Attorney-General's Department. Perhaps, Mr Wilkins, you could advise whether you had received any communication from either the commission or the Minister for Foreign Affairs or the department of foreign affairs regarding the government's views.

Mr Wilkins—Sorry, from the minister?

Senator BARNETT—From either the Minister for Foreign Affairs or the department of foreign affairs to your department regarding its position, or non-position, or its unwillingness to confirm one way or the other as to whether it is attending the Geneva conference and, secondly, whether there was any communication between the Human Rights Commission and the department regarding the same.

Mr Wilkins—I am just finding out what communications there might have been, so I will come back to that shortly.

Senator BARNETT—That is fine. Could the minister likewise take the question on notice as to what communication there may have been. There may have been none, but could you please advise if there was any communication likewise with the commission or indeed the Minister for Foreign Affairs regarding attendance or otherwise at the Geneva conference or related matters thereto.

Senator Ludwig—Is that only in respect of the Australian Human Rights Commission?

Senator BARNETT—It is in respect of any communication between the Australian Human Rights Commission—

Senator Ludwig—That is the only point I wanted to clarify—that it was in relation to the Australian Human Rights Commission.

Senator BARNETT—and the view of Minister for Foreign Affairs as to whether he had communicated with the commission directly or the department.

Senator Ludwig—We are only too happy to take it on notice.

Senator BARNETT—Thank you.

Senator BRANDIS—Ms Branson, in January and February you would have been aware from media reports that the Australian government had in fact decided to participate in the preparatory committee in advance of the Durban II conference. I do not want to oversimplify, but as I understand it the main task of that committee was to seek to negotiate and develop a draft communique. You were aware of the Australian government's participation at that level.

Ms Branson—I believe I was.

Senator BRANDIS—You would have been aware, surely, that the decision for the Australian government to participate even at that level was politically controversial.

Ms Branson—I expect that I was, but I cannot now bring the details to mind.

Senator BRANDIS—I assume that your agency pays attention to what is said about it both in parliament and at Senate estimates committee hearings, so you must have been aware that this matter was raised right here in the February estimates both by Senator Barnett and by me.

Ms Branson—I expect that I was.

Senator BRANDIS—If you were, as you expect you were, you would have been aware of Senator Faulkner's statement in his capacity as the Minister representing the Minister for Foreign Affairs in the Senate. The *Hansard* reference is page 87 of the foreign affairs estimates on 26 February 2009. In response to some questions from me, he affirmed that the question of whether Australia would participate in the Durban II conference was still under consideration, and he concurred with comments I made in my questions to him about the anti-Semitic tone which many people in Australia feared would be an outcome of the Durban II conference, as it was of the Durban I conference, and about the fact that a number of Western democracies had already decided to pull out. You would have been aware of that most recent restatement of the Australian government's position on 26 February by the responsible minister.

Ms Branson—I expect that I would have heard of it on or about that day.

Senator BRANDIS—I believe I am right in saying—though I am not in a position to give you the date—that there were actually questions in the House of Representatives to Mr Smith on this very point as well at about that time.

Ms Branson—If there were, I expect I learnt of them.

Senator BRANDIS—On what date were the bookings for this travel made?

Ms Branson—We will have to take that on notice.

Senator BRANDIS—Would they have been made before the end of February? The conference started on 20 April.

Ms Branson—I think it likely that they would have been, but I will have to take on notice when they were made.

Senator BRANDIS—Senator Barnett has already solicited the cost of this. Given your decision on 16 December to participate, much as I am critical of it for other reasons, and given that, as far as you could tell, the Australian government, although not having committed to participating, was at least doing the things preliminary to participating, in particular by engaging in the negotiation of a protocol, I do not think it is unreasonable that you would have put yourself in a position, through the appropriate officials, to attend at that stage. But here is my concern: you seem to keep a lively eye on the media, so I presume that a report in the newspapers on Tuesday, 14 April of a press conference by Mr Smith the previous day in which he said that it was unlikely that Australia would participate in Durban II would have come to your notice not later than the day on which it was reported in the paper.

Ms Branson—It is likely that it would have come to my attention on that day.

Senator BRANDIS—Certainly the decision of the Australian government, announced in a press release by Mr Smith on 19 April 2009, came to your attention.

Ms Branson—Yes.

Senator BRANDIS—Have you seen the actual press release before, or did you rely on media reports?

Ms Branson—I think it likely that I would have seen it, but I cannot be certain that I saw it.

Senator BRANDIS—It would have come to your notice pretty much as soon as it was announced by Mr Smith, would it not?

Ms Branson—Each morning I receive a summary of press articles of interest and I expect I saw this one in that way.

Senator BRANDIS—I was going to ask whether you have a clipping service, and obviously you do. Albeit not directed to you, this is the ultimate answer to your predecessor's inquiry of 28 July 2008 about the Australian government's attitude to participation at the Durban II conference. There had been equivocation for nearly a year. We can criticise the government for that in a political forum, but this is an information-gathering forum, not a political forum. What I would like to know is: seeing as you knew for sure not later than 19 April—and had a pretty good idea from something Mr Smith had said a few days earlier in his press conference on 14 April—that the Australian government was not participating, did you turn your mind to the question of whether, in view of that development, the commission should reconsider its position in relation to attending?

Ms Branson—I have been advised that 19 April was a Sunday, so it is likely I would have learnt of this on Monday the 20th.

Senator BRANDIS—Are you based in Sydney?

Ms Branson—I spend most of my working time in Sydney but some of it in Adelaide.

Senator BRANDIS—In any event, you may not have become aware of this until the morning of the 20th, which is still the 19th in Geneva. Coming to my question, when you became aware of this important development, did you consider whether the commission should review its attitude to participating in the conference?

Ms Branson—I do not believe I gave serious consideration to it. I had not regarded the commission's decision to attend to be dependent on an Australian government decision to attend. By this stage I think Mr Calma was in Geneva, but I do not suggest that that was the principal motivating factor. We did not regard our decision as being dependent upon the government's decision.

Senator BRANDIS—We in the opposition say, I think fairly, that the government equivocated and delayed for a long time but eventually made the right decision. It was as clear as day—as expressed by a number of senior members of the opposition, including our foreign affairs spokesman and me—what the opposition's position was, so you would have been aware when the government at last announced its position on 19 April that both sides of

the Australian parliament had a common view of this: that Australia should not be there. You knew that? You will have to speak rather than nod; otherwise Hansard will not pick it up. You are not like Mr Rudd being interviewed by Tony Jones!

Ms Branson—I understood that the Australian government did not wish to be officially represented at the conference. I assume I knew that the opposition supported that decision.

Senator BRANDIS—I think it might be the other way round, but we will not quibble about that. It is more than that, though, isn't it? We can dance around this with polite questions, but when it cuts to the chase you knew that this had been a deeply politically controversial matter. You knew that the Australian Jewish community in particular was appalled at the thought that Australia would participate in what it and many other respectable people thought to be a racist conference dressed up as an antiracism conference. When you read Mr Smith's press release, as you would have done not later than the morning of 20 December, you would have realised this was more than just an administrative decision. In his press release Mr Smith justifies and explains the Australian government's decision on the basis of its deep concern about this conference. This is a matter that the Australian government concluded was so seriously offensive to the values and standards of Australia—

Senator FEENEY—Hear, hear!

Senator BRANDIS—Thank you, Senator Feeney—and to important elements of the Australian community, particularly but not exclusively the Jewish community, that Australia should not have anything to do with it. That comes through loud and clear from Mr Smith's press release, doesn't it?

Ms Branson—I understood Mr Smith to be saying that he did not wish the government to be a party to the conference.

Senator BRANDIS—With respect, you cannot wrap this up in antiseptic. You really cannot try and characterise this as purely an administrative decision—that the Australian government did not wish to participate. You knew, didn't you, that the Australian government decided not to participate for a reason? The reason was its deep concern at and, in its view, the offensive nature of this conference. You knew that, didn't you?

Ms Branson—I understood the minister to mean what he said in his press release.

Senator BRANDIS—He could not have been more unequivocal. You have told us you noted, in effect, the Australian government's decision. Did you have regard to or take into account the reasons for that decision, as expressed in the press release?

Ms Branson—Of course I considered what the minister said, but I was not faced with the decision of whether Australia should be represented at the Durban Review Conference. The Australian Human Rights Commission had observer status there only. It was there with 38 other national human rights institutions, at least two of which were also there despite the fact that their governments were not parties. I regarded as entirely separate the questions of whether Australia should attend the conference represented as a nation and whether its national human rights institution should be an observer at the conference.

Senator BRANDIS—You do not think you are being a bit too much of a lawyer about this, do you? What you say is of course from a legal point of view. Technically, it is absolutely

right; but surely you appreciate that there were public policy issues, issues of community standards and issues of community expectations concerning Australia's participation in Durban II that transcend merely the technical character of your agency's attendance at this conference?

Ms Branson—I did not understand that.

Senator BRANDIS—You did not. If I may say so, with respect, you ought to have done. I understand and support the proposition that the Human Rights Commission should have a degree of independence from government and that it should be able to maintain a view which is not necessarily the view of the government of the day in relation to issues within its statutory charter. But do you not see that where one is dealing with an international conference the situation is a little different from that? That adds an extra dimension to the mix so that in the eyes of the other participant nations, and also in the eyes of those nations that decided not to participate at Durban II, the presence of an Australian government agency sends a message of Australia's support for that conference which is directly at variance from a decision of the Australian government, of which you had recently become aware. Do you not appreciate that it is different? It is an international conference and you go along representing the Australian Human Rights Commission in circumstances in which the Australian government has said 'Australia is not to be represented'. You give the impression to other participants that Australia in fact does support the process.

Ms Branson—I am not sure how to answer that additionally to how I have already done so. You may be aware that our decision to participate followed a discussion among national human rights institutions which took place in Nairobi in October 2008.

Senator BRANDIS—What about discussions of the elected representatives of the Australian people on both sides of politics that took place in this building throughout the early months of 2009?

Ms Branson—As I understood it those discussions concerned whether the Australian nation would be represented through its government. The Australian Human Rights Commission went to what we saw as an important international conference dealing with racism, xenophobia and related intolerance, which we see as very important issues not only internationally but also in this country.

Senator BRANDIS—Applauding anti-Semitism.

Ms Branson—I beg your pardon?

Senator BRANDIS—That conference was applauding anti-Semitism.

Ms Branson—Could you draw my attention to the record of the conference that so does that?

Senator BRANDIS—The communiqué from Durban I.

Ms Branson—Can you draw my attention to the paragraph?

Senator BRANDIS—Yes I am able to.

Ms Branson—I have read carefully the review and in particular the outcomes document from the more recent review. Each of them deplores anti-Semitism. They stress that the Holocaust is not to be forgotten and—

Senator BRANDIS—Well, thank goodness for that, Ms Branson! The Holocaust is not to be forgotten. Thank goodness.

CHAIR—Senator Brandis, just let Ms Branson answer her question and then make some comments.

Ms Branson—I think the outcomes document from the Durban review does not mention the Middle East at all, but does deplore anti-Semitism and Islamophobia.

Senator BRANDIS—I put it to you that, by its decision ensuring that Australia was represented at the Durban II conference through the relevant human rights agency—yours—entirely in the face of a decision of the Australian government that Australia was not to be represented at the Durban II conference, the Australian Human Rights Commission showed utter contempt for the Australian government and had no regard whatsoever to the appropriate conduct of Australia's foreign policy.

Ms Branson—I do not accept that that is the case.

Senator BRANDIS—You obviously do not but I invite you to reflect carefully on it.

Senator BARNETT—I have two other areas of questions flowing, firstly, from your letter of 14 January. The first is the last paragraph that I touched on before, where you invited the government to respond to you if they had a view that you should reconsider your decision about attending the conference. You wrote that on 14 January and then you became aware on 19 April or 20 April of the minister's position by way of a media clipping or media release that you may have read. What entered your mind when you became aware of the government's position?

Ms Branson—I became aware of the government's position and I was aware that Australia would not be formally represented at the conference.

Senator BARNETT—And it did not occur to you at the time to reconsider your position as a commission?

Ms Branson—Not seriously, no.

Senator BARNETT—When you say 'not seriously', what does that mean?

Ms Branson—I cannot rule out the possibility—

Senator BARNETT—Wouldn't you take the views of the Australian government and Minister for Foreign Affairs seriously?

Ms Branson—I regarded them as entirely separate questions—whether the government should be a party to the conference or whether we should be there in an observer status.

Senator BARNETT—Surely you would show some respect—I will not say for your masters—for the Minister for Foreign Affairs and the government and the entity which funds your organisation.

Ms Branson—I hope at all times that I treat the government with great respect. It is my intention to do so.

Senator BARNETT—They expressed a view that they wished to boycott the conference in the terms described by Senator Brandis and in the terms set out in the media release by Mr Smith.

Ms Branson—I did not understand it as reaching to the Australian Human Rights Commission.

Senator BRANDIS—Ms Branson! Who do you think you were representing at this conference?

Ms Branson—We were not represented at the conference; we observed at the conference.

Senator BRANDIS—On whose behalf were you observing?

Ms Branson—We were observing on our own behalf as one of 38 national human rights institutions present in Geneva.

Senator BRANDIS—It is more than implicit, it seems to me, in what you have to say that your attitude was that you were not representing or observing on behalf of Australia.

Ms Branson—That was my view.

Senator BRANDIS—So who were you representing?

Ms Branson—I was representing the Australian Human Rights Commission.

Senator BRANDIS—You were representing yourselves?

Ms Branson—Yes.

Senator BRANDIS—But you are an Australian government, Australian taxpayer funded agency. The view of the entire parliament was supportive of the position at which the Australian government ultimately arrived that Australia, not the Australian government, in the words of Mr Smith's letter, should not be represented at this conference—and yet you went along at taxpayer's expense to represent who? Yourself. Is that satisfactory?

Ms Branson—I regard it as so. I understood the minister to be speaking about Australia the nation.

Senator BRANDIS—So you were not representing Australia?

Ms Branson—No.

Senator BARNETT—It does build on a view that I have expressed before—and some people may express it—that there is a trend growing that you are a law unto yourselves at the commission, that you decide things in and of yourself based on your own views and not taking into account the views of the government, albeit a very strong view that has been expressed by the Minister for Foreign Affairs about boycotting the conference.

Ms Branson—All I can say is that I have read the minister's communique differently, obviously, from what you have done.

Senator BARNETT—When you read that communique from the minister and read the clippings, were you expecting an email or an urgent letter faxed to you setting out the

government's position? You have advised, on the record, that you have received no correspondence, no communication from the Minister for Foreign Affairs that the conference was boycotted and to express a view, perhaps in response to your letter of 14 January—there has been no letter, there has been nothing coming from the government regarding the conference and regarding the boycott of the conference? That is what you have said. Is that correct?

Ms Branson—Yes, I did not hear from the minister or his office, nor did I expect to.

Senator BARNETT—I find that absolutely astonishing and whether it is a level of dilatory behaviour, negligence or gross mismanagement of how the government is operating is another matter which will be determined perhaps in another committee, but it raises all those questions.

The other question I have relates to the commission. In your letter of 14 January you said:
... the Commission will continue to consult with your Department ...

You also said:

The Commission will take care to distance itself from such views.

I presume these are views regarding anti-Semitic, anti-Jewish rhetoric, which was pronounced loudly and clearly by the President of Iran at that conference and was no doubt one of the reasons the government boycotted the conference. What position and what statement have been made by the commission, if any, regarding distancing yourself from such views?

Ms Branson—Could I say first that Mr Calma was not in the chamber at the time that the President of Iran spoke. Nothing of any kind identifying the Australian Human Rights Commission with views of that kind has ever been made.

Senator BARNETT—With respect, Ms Branson, you were present at the conference. You cannot expect us to believe that the taxpayer funded Australian Human Rights Commission being present at the conference is not representing an Australian position, if that is the view you are putting to us.

Senator BRANDIS—That is exactly what she said.

Ms Branson—I have put my view about that; I do not think it will sound any better if I put it again. But we have not regarded it as appropriate to issue a statement of the kind that only Foreign Affairs should make on behalf of Australia, commenting on the conduct—

Senator BARNETT—But you were just saying that you were acting on your own behalf, on behalf of the commission. So what is the commission's position with regard to the President of Iran and his anti-Semitic rhetoric, which was pronounced at the conference you attended?

Ms Branson—The commission deplores all anti-Semitic rhetoric—indeed, all racist or xenophobic rhetoric—but commenting on the conduct of the leader of another state we do not think is an appropriate course of conduct for the Australian Human Rights Commission.

Senator BRANDIS—Going back to your last answer: don't you understand that merely by your presence at the conference you were making a statement? You cannot credibly say, 'Well, it is for the Minister for Foreign Affairs to make a statement condemning President

Ahmadinejad or dealing with certain foreign affairs implications of this conference; that is not for us,' when you, by your very presence, were, in the eyes of other participant nations, making a statement. You did not consider you were representing Australia but you were an Australian presence at that conference—you surely appreciate that.

Ms Branson—I did not understand that and it is not my appreciation.

Senator BRANDIS—As I said before, you cannot hide behind these technical legal distinctions when you are dealing with public policy and the way Australia represents itself to the world in the eyes of other nations. One other thing: you said much earlier that the only other document of which you were aware, other than these three letters, was the routine circular that goes to the minister asking for authorisation for foreign travel.

Ms Branson—I did not say that.

Senator BRANDIS—Sorry; that is what I understood you to say. We talked about some routine documents notifying the minister of—

Ms Branson—We routinely advise the Attorney-General's office of what senior staff of the commission are doing on a week-by-week basis.

Senator BRANDIS—I am sorry. Minister is it not still the practice of the government—I remember from my days in the Howard government that it was the practice of that government—that when senior officers of either a department or an agency wish to travel overseas for business related to their work they seek the authorisation of the minister?

Ms Branson—I can answer that. Mr Calma's authorisation to travel overseas was given by me.

Senator BRANDIS—Do you seek the authorisation of your minister in relation to your travel or the travel of other officers of the commission?

Ms Branson—I do for my own travel but not for the travel of the commissioners. It is not required for the commissioners.

Senator BRANDIS—It is required for you, though?

Ms Branson—It is required for me.

Senator BARNETT—Do you notify the department?

Ms Branson—I write a letter to the Attorney-General seeking approval to travel out of the country if I wish to travel out of the country.

Senator BARNETT—Would the department become aware of commissioners' travel overseas? Do you advise the department accordingly?

Ms Branson—They would ordinarily be advised. In this case, I think, the only advice to the Attorney-General's Department was via the weekly circular.

Senator BRANDIS—So it amounts to this: if you, rather than Mr Calma, were the intended representative of the commission at the Durban II conference, you would have needed the minister's permission. In view of the government's decision on 19 April, that permission would undoubtedly have been withdrawn, yet you condone Mr Calma's presence

there under another technicality—that is, that he did not need the permission of the minister; only you did.

Ms Branson—I do not accept the premise that you have based your question on.

Senator BRANDIS—Read carefully Mr Smith's press release. It was the clearly and strongly expressed view of the Australian government that Australia would not participate, and you facilitated a circumstance in which that clear decision of the Australian government was violated by the relevant Australian agency.

Ms Branson—I can only repeat that I read it otherwise.

Proceedings suspended from 10.30 am to 10.45 am

Senator FEENEY—I have a question concerning your letter of 14 January. I am, of course, referring to your letter to the foreign minister, to about point 5 of the page, where you wrote:

The Commission will take care to distance itself from such views.

You said in an earlier answer that you understood such views were obviously contextualised by the media and the letter of the foreign minister. By those views you were going to distance yourself from, you were referring to anti-Semitism?

Ms Branson—Yes.

Senator FEENEY—Right. I was interested in the sentence that reads:

The Commission is aware that some may wish to use the Conference to express contentious, if not wholly unacceptable, points of view.

I was wondering if you could explain to me how it is that you imagine those views are anything other than wholly unacceptable.

Ms Branson—Anti-Semitism, of course, is wholly unacceptable. There are views about an appropriate solution to the problems of the Middle East, upon which people have adopted different views: for example, whether there should be a two-state solution to the Palestinian issue. I regard those issues as ones on which it is not appropriate for the commission to hold a view, but we deplore, of course, every kind of anti-Semitic remark.

Senator FEENEY—What sort of policy are you articulating, or what sort of view are you intimating, with your phraseology 'not wholly unacceptable'? Are they your own views or the views of the commission? Can you clarify this point for me?

Ms Branson—The expression 'if not wholly unacceptable' was intended to characterise anti-Semitic remarks as wholly unacceptable.

Senator FEENEY—Perhaps you can appreciate my problem in comprehension here. It does not seem clear to me that you are characterising those extremist views as wholly unacceptable. I find that unacceptable.

Ms Branson—I wished to describe some of the views as contentious. I went on 'if not wholly unacceptable', so there were meant to be increasing gradations from 'contentious' to 'wholly unacceptable'. Anti-Semitism is wholly unacceptable.

Senator FEENEY—I see. Thank you.

CHAIR—Do you have further questions of the Human Rights Commission, Senator Brandis?

Senator BRANDIS—Senator Barnett is going to ask all our questions, but I just have two. First of all, have we got the minute?

Ms Branson—It is here, and it is being prepared so it can come forward.

Senator BRANDIS—Fantastic. Thank you very much for that, Ms Branson, and thank you through you to your officers for being so prompt and responsive.

Senator BARNETT—On that matter, have we got the correspondence or communications vis-a-vis the department and/or the minister? Are they able to respond as yet?

Senator Ludwig—No.

Mr Wilkins—I was just going to say it was the standard response—the standard schedule or letter. As I think you anticipated, Senator Brandis, it simply says that such and such people are going. It was that sort of correspondence, I think.

Senator BARNETT—If there is a standard. You are talking about the circular?

Mr Wilkins—To the Attorney.

Senator BARNETT—Could we get a copy of it?

Mr Wilkins—I would have to ask the Attorney about that.

Senator BRANDIS—Sure. I do not want to chase up any dry gullies here, Mr Wilkins. What I am referring to is the sort of letter that was a routine in the previous government. I remember from when I was a minister in the previous government that, when officers of my department or senior members of agencies within my department proposed to travel overseas, there would be a minute of some description sent to me as the minister and I would have to authorise the travel. It was invariably a routine thing. I do not know whether such a custom has been continued by the new government or whether it continues in a somewhat different form. Perhaps, Minister Ludwig, you would be in a position to comment.

Senator Ludwig—I can only refer to what occurs within my portfolio. My recollection is—and I will get it confirmed—the practice generally continues. I am not sure if across the board everyone has the same practice. My portfolio has two agencies plus a department, so the practice varies depending on whether you are referring to an agency or a department.

Senator BRANDIS—I rather had their feeling—though I could be wrong about this—that the practice as I have described it was a uniform practice across the Howard government. There may have been exceptions—the ADF may have been one. On notice, in view of Ms Branson's answer to my earlier question—that is, that Mr Calma's travel to this conference was authorised by her but did not need to be authorised by the minister—will the government consider requiring all overseas travel by senior officers and members of the Human Rights Commission to be authorised in future by the minister rather than by Ms Branson?

Senator Ludwig—I will take that notice.

Senator BARNETT—Ms Branson, you indicated in your opening remarks that Mr Calma could not be here today. You have also indicated that it was your view that, in the private

meeting he had with me, he advised me as such. However, he never advised me of that. In fact, I got the distinct impression that he would be here. Although the division bells were ringing, my last comments to him were, 'See you in a couple of weeks,' as in at Senate estimates. That was my parting comment, so it was my clear impression that he would be here today. I have checked with members of the secretariat and they were not advised in advance that Mr Calma would not be attending. According to their files and according to their records, there was no advice provided to the secretariat in that regard, which I find disappointing and disturbing. This has been a high-profile political issue of some concern, highlighting a range of concerns and controversies. It has been raised in the parliament; I had that private meeting; Senator Brandis has put concerns on the public record, as have I and many others; and Mr Smith put out his public statement. It is clearly a matter of concern, yet we did not receive any advice in advance that Mr Calma was not to attend. We roll up today and have to ask you rather than Mr Calma questions, and I express my sincere and deep disappointment in that regard.

Ms Branson—I apologise. I accept that is a quite unsatisfactory position. I had assumed, but without any specific knowledge, that when Mr Calma met with you he would have advised that one of the reasons he was doing that was because he could not be here. If that did not happen of course I am sorry about that. I would have expected that advice would have been provided that he would not be here today. If it was not, I apologise for that as well. I will check that procedures are better followed in the future.

Senator BRANDIS—There will be more estimates in November or December, I think, and I will require both you and Mr Calma to be here for those estimates.

Ms Branson—I will note that, but it is not expected that Mr Calma will still be the social justice commissioner at that date.

Senator BRANDIS—If he is no longer the social justice commissioner then obviously he is not within the jurisdiction of the committee.

Senator BARNETT—Chair, we do not have any further questions, subject to seeing those minutes and any responses to the questions that we asked earlier. Ms Branson, will you also table for the committee the weekly brief or minute that went to the Attorney's department?

Ms Branson—I have the minutes here, Senator.

Senator BRANDIS—Let's have a look.

Ms Branson—I can provide them.

Senator BARNETT—You indicated earlier that authorisation for Mr Calma's visit overseas was noted in a weekly minute. I would like a copy of that.

Ms Branson—No, I gave approval to Mr Calma in response to an email that he sent to me. That is the record of the approval.

Senator BARNETT—Can we have a copy of that and a copy of the email?

Ms Branson—We will obtain those for you—that is, his request for approval and my response, is that right?

Senator BARNETT—That is right. If there is any other written communication between you and Mr Calma regarding this particular matter, could you take that on notice?

Ms Branson—There was not. What we have done is extracted from all of the minutes that refer to the Durban Review Conference and you will see they date from the time of my predecessor through to the final decision.

Senator BARNETT—We will need time to look at the minutes.

Senator BRANDIS—I think the minutes are being copied now, Senator Barnett. While we are just filling in time, and I do not want to belabour this point too much, is it a matter of complete indifference to the commission that both sides of Australian politics had a strong view that Australia should not be represented at the Durban II conference. Is that a matter of complete indifference to the commission in making this decision that it would nevertheless ensure that Australia, through its agency, was represented?

Ms Branson—Senator, If I could again say that I do not accept the premise. It was a matter of interest to the commission and a matter we took into account that the government did not propose that Australia as a nation would be represented at the conference. But we did not understand the minister to have taken the position that the Australian Human Rights Commission should not attend or that, if it did attend as an observer, it would be representing Australia at the conference.

Senator BRANDIS—You have made that very clear, Ms Branson, but that is really not a response to the question that I asked you. In making your decision to go ahead and be represented, was it a matter of complete indifference to you that both sides of Australian politics were strongly of the view that Australia should not be represented.

Ms Branson—No, it was not a matter of complete indifference.

Senator BRANDIS—So having regard to that you decided to go ahead anyway?

Ms Branson—Yes.

Senator BRANDIS—Thank you.

Senator BARNETT—Ms Branson, I know these minutes are coming but has Mr Calma presented a report or a brief or have any of the officers, Margaret Donaldson or Ihab Shalbak presented or provided a brief or debrief on the conference? If so, may we have it?

Ms Branson—There would have been a report at the commission meeting and I will find such material as I can.

Senator BARNETT—When was the meeting?

Ms Branson—At the commission meeting immediately following their return there would have been a presentation.

Senator BARNETT—Have you had a meeting since the return? That was at the end of April.

Ms Branson—We will have to check whether there was a formal report. If there was, we will find the record of it.

Senator BARNETT—I would like a formal or informal report. Mr Calma, together with Margaret Donaldson and officer Ihab Shalbak have attended this conference at some \$26,000-odd of cost and considerable time. Surely, you have been personally briefed on the outcomes of the conference.

Ms Branson—Yes, I have.

Senator BARNETT—You have not been given a document to that effect.

Ms Branson—I have with me some notes about it but I have certainly received an oral report—

Senator BARNETT—Who prepared the notes? When were they prepared?

Ms Branson—They were prepared to assist me in preparing for this attendance, on 5 May.

Senator BARNETT—May we have them?

Senator Ludwig—It might be better to ask a question and then listen to the response. It is unusual, I have to say, for you simply to request all briefing notes and documents of that kind. People come here with a whole range of information to assist in answering your questions, but my view would be that if you ask your question we will try to elicit a response for you.

Senator BARNETT—There is a document in front of Ms Branson, Minister.

Senator Ludwig—We all have documents in front of us, Senator, just like you have.

Senator BARNETT—She has referred to a document from Ms Donaldson to her.

Senator Ludwig—And the nature of the document is?

Senator BARNETT—Relating to the conference. It is a debriefing note in advance of estimates today that relates to the conference. That is what we are here for—to find out about these things.

Senator Ludwig—And that is the point I am making, but it is a briefing note. It might have been prepared by officials from the Australian Human Rights Commission to assist the President in answering questions here at estimates. If we are to do that, I suspect you could ask for the whole folder in this instance. What was the nature of the question you are seeking to ask, rather than just making a broader request that the briefing note be handed over. I think I have tried that in estimates from opposition in the past and have been met with far less courteous remarks than I am now making.

Senator BRANDIS—But you are a member of a government that has a pro-disclosure culture, Sen Ludwig. Senator Faulkner gave a speech to that effect only the other day.

Senator Ludwig—That is why I am trying to assist the estimates committee, rather than, as you did when you were in government, make derisive comments about the process.

Senator BARNETT—We will have had two hours of discussion about the reason that the Human Rights Commission attended the conference and so on. We have had tabled three letters of communication regarding conference attendance. I want to know what the commission's view is of the conference. Ms Branson has said that there are some briefing note in front of her from Margaret Donaldson, who attended the conference, about the conference. I would like a copy of the briefing notes.

CHAIR—I think what Minister Ludwig is saying is that that might not be appropriate. If you are asking a question just as to what was the view on the conference, I am sure Ms Branson—

Senator BARNETT—On a point of order, with respect, I have put a question—

CHAIR—Senator Barnett; I am the chair so you will wait till I have finished.

Senator BRANDIS—You cannot take points of order, you know!

CHAIR—When I have finished my sentence I will take it, Senator Brandis, but I think Ms Branson may well be able to answer the question using those briefing notes and I think she should be given the opportunity to do that. Senator Barnett, I am assuming, then, that your question is what is the report on the conference?

Senator BARNETT—Ms Branson knows my question, but I am happy to repeat it.

Ms Branson—I think it would be helpful, Senator Barnett, if you could repeat the question.

Senator BARNETT—You have had the commissioner and three officers of the commission attend the conference.

Ms Branson—The commissioner and two officers.

Senator BARNETT—That is right, at the considerable cost of some \$26,000 of taxpayers' funds. I am interested to know what communications there had been between those three officers and the commission in Canberra and you or other members of the commission, and I would like a copy of those briefing notes, or debriefing notes.

Ms Branson—I will take the direction of the chair as to whether my briefing notes should be handed to you.

Senator BARNETT—Have you received any briefing notes from the conference?

Ms Branson—I have received oral briefings. I am not aware of having received at this stage a briefing note but I am aware that Commissioner Calma and the officers considered that it had been a fruitful and valuable experience for them. They spent much of their time at side events with other national human rights institutions.

Senator BRANDIS—How was it fruitful and valuable, by the way, for the taxpayer? Do the briefing notes go so far as to address that issue, or was it just fruitful and valuable for Mr Calma and the other attendees?

Ms Branson—It was a fruitful and valuable because they were able to share their experience with other national human rights institutions on strategies and mechanisms for combating racism and xenophobia in their countries.

Senator BRANDIS—Which were those countries?

Ms Branson—In particular, Ireland had a strategic plan which was of considerable interest to our commission. They were also involved in side events touching on indigenous issues in particular as a subset of racism, and the outcomes document of the conference is a document which we have applauded the contents of.

Senator BRANDIS—Although the Australian government did not want to be part of it. If Mr Calma and Ms Donaldson and Mr Shalbak found the experience of going to this conference so fruitful and useful to the commission's work, surely the fruit of their experience would have been reduced to a document for which the commission could then have taken steps to assess and, where appropriate, action?

Ms Branson—We are proposing to hold an open seminar to explore with interested attendees—

Senator BRANDIS—No, that will not get you there, Ms Branson. This conference was in the third week of April and it is now the last week of May. If these people were serious about reporting obligations and enabling the commission and, through them, the Australian taxpayer to enjoy the fruit of their experience, surely they would have got around to producing a report by now.

Ms Branson—Perhaps I could tell you some of the things that Commissioner Calma did while he was at the conference.

Senator BRANDIS—Please do not. Please answer my questions. I want to know whether there is a written report.

Ms Branson—I have written notes about it, prepared for me for this interview.

Senator BRANDIS—If you had a witness in one of your courts in days gone by, Ms Branson, and they evaded a question as egregiously as you have just evaded mine, you would pull them up sharply. I want to know whether there was a written report prepared by Mr Calma or Ms Donaldson or Mr Shalbak.

Ms Branson—I am not yet in possession of a written report, other than—

Senator BRANDIS—So the answer to my question is no.

Ms Branson—I am trying to give you a comprehensive answer.

Senator BRANDIS—I do not want a comprehensive response. I want a specific response to a specific question. I want to know whether or not a written report has been prepared by any of the three attendees—yes or no?

Ms Branson—I have in front of me briefing notes on the conference.

Senator BRANDIS—You are sounding like Kevin Rudd and Tony Jones again, Ms Branson. Has a written report been prepared by Mr Shalbak or Ms Donaldson or Mr Calma—yes or no?

Ms Branson—I am uncertain as to your definition—

Senator BRANDIS—My definition of a written report is a report that is in writing, prepared by one of the three people who attended the conference. Has such a document come into existence to the best of your knowledge—yes or no?

Ms Branson—Yes, it is in front of me as a briefing note for today's Senate estimates.

Senator BRANDIS—Let us have a look at it, please.

Ms Branson—I need the guidance of the chair as to whether I should give you briefing notes prepared for me for the Senate estimates.

Senator BRANDIS—If I may speak on a point of order, Madam Chair. You have not ruled, but before you do I wish to say something. When you indicated earlier to Senator Barnett that the document which Ms Branson had before her was not a document that you would require her to produce, the document at that stage was characterised by the witness as briefing notes for herself. In response to my question, ‘Is there a written report?’, she has now characterised it as the report. When I asked, as you will have heard, Madam Chair, ‘Has such a report been produced, yes or no?’, the witness said, ‘Yes, it takes the form of the briefing notes that I have before me.’ The briefing notes therefore, the witness tells us, are the report. The committee is certainly entitled to see the report.

CHAIR—Ms Branson, let me say a number of things. There is nothing in the standing orders that prevents senators from asking for briefing notes. However, there may well be context of your briefing note that would not be within the public interest to be disclosed, and that is a matter for your judgement because you have it before you and we do not. A question I might ask you is whether there is a formal, written brief or a written report on the conference which you may not yet have that is still being undertaken by Commissioner Calma.

Ms Branson—I would expect to receive a formal report for the next commission’s meeting. As far as I am aware, that report has not yet been prepared. It is likely to be prepared by the staff of the Race Discrimination Unit and then settled by Commissioner Calma. I do not yet have that report. I do have briefing notes prepared for me to enable me to prepare myself to attend the Senate estimates this morning. If you direct that they should be provided, they will of course be provided.

CHAIR—I cannot direct you to do that. I can just advise you that there is nothing in the Senate standing orders that says that, as senators—we cannot ask for that; we can ask for briefs. What you now need to do, in your judgment, is decide whether or not we can have those or whether there are contents of that brief which are not in the public interest to be disclosed, in which case either you or the minister would need to provide us with the reason why.

Senator BRANDIS—Can I make a helpful suggestion, Madam Chair?

CHAIR—Yes.

Senator BRANDIS—Why don’t we suspend the hearing for just three or four minutes so that Ms Branson, perhaps in consultation with the minister, can consider the matter with appropriate care.

CHAIR—If that is going to assist, we shall do that. If that is going to be helpful, we could suspend until 11.15 am, perhaps.

Proceedings suspended from 11.11 am to 11.15 am

CHAIR—Are we ready to proceed?

Ms Branson—I refer the request to Senator Ludwig.

Senator Ludwig—The question has been asked of the president of the commission to provide a briefing note that has been prepared by her office to assist her in answering estimates questions. I do not think it is appropriate to provide that briefing booklet; I am happy for the question to be asked. What would otherwise occur is that, at every turn, you

would be in a position where estimates committees would ask for briefing booklets to be provided. The question as to whether or not public officials would provide information into the future to assist estimates committees would be of grave concern of all us I suspect. I have not had a look at what is in the documents. I am sure they range across a whole gamut of issues. In this instance, I think we should proceed by question and answer as has usually been the case. I think to open this up to a broad question of providing a briefing note is not appropriate in these instances. Questioning of course can be detailed and the witness should provide answers to those questions. If they are difficult questions, the president of the commission can either take them on notice or provide full answers here. I think that is the appropriate way to proceed.

Senator BRANDIS—Thank you, Senator Ludwig. Incidentally, I do not demur from that view. Briefing notes prepared for estimates would not ordinarily be provided. Senator Ludwig, you described the document we have been discussing, which I wrote down as you said it, as, ‘a briefing note that has been prepared to assist in answering estimates questions’. Those were your words. Was that the description of this document that you have been given by Ms Branson?

Senator Ludwig—That is correct.

Senator BRANDIS—You see, I pressed the issue because Ms Branson attempted albeit, I think it is fair to say, with very little success to characterise these briefing notes as a report from Mr Calma, Ms Donaldson or Mr Shalbak. But you do not now still maintain that these documents—what you have described to the minister as briefing notes that have been prepared to assist you in answering estimates questions—are in any reasonable sense of the word, a ‘report’ by Mr Calma, Ms Donaldson or Mr Shalbak of the conference, do you?

Ms Branson—No, Senator Brandis and could I make it clear that in referring to it before, in response to your question, I was anxious to avoid the criticism that I was not frank with you. I do have something in writing from Ms Donaldson. I did not wish to suggest that I did not. That was why I drew attention to it not because I wished to characterise it as a formal report. It is not.

Senator BRANDIS—The transcript can speak for itself. Thanks, Ms Branson. Can we come to these minutes? First of all may we take it that the extracts from each of the three commission meetings—that is, those of 3 June 2008—

Senator Ludwig—I think the president does not have those minutes, so I did not want you to proceed and then find that—

Senator BRANDIS—I am sorry. I assumed that she did.

Senator Ludwig—I did too.

Ms Branson—We gave the minutes to your staff.

Senator BRANDIS—Here we are. There are plenty of copies here. They will be raining down on you like confetti in a matter of moments!

Senator Ludwig—I did not want to put you in the position of having to re-ask the question.

CHAIR—You can proceed, Senator Brandis.

Senator BRANDIS—May we take it that for these minutes of the commission meetings of respectively 3 June 2008, 11 November 2008 and 17 December 2008—which in each case reproduce items of the discussion concerning the Durban II conference—there is nothing recorded in the minutes concerning the Durban Review Conference that has not been reproduced or, as Americans like to say, that has been redacted?

Ms Branson—Nothing was taken out that concerned Durban.

Senator BRANDIS—Dealing with this in sequence, in the minutes of the first meeting, which happened on President von Doussa's watch, we read:

President von Doussa commented that some western states had raised concerns about the conference and thought that it was important to find out the Australian government's position [Action Item 19].

That is all that was said. May we take it that it has been minuted in those terms? I know you were not there, Ms Branson—or, as I should perhaps call you, President Branson—but Mr Innes was. May we take it that that summarises the view of the commissioners and is not merely a statement made by Mr von Doussa at the time? Mr Innes, you were there, according to the minutes.

Mr Innes—Just excuse me for a minute.

Senator BRANDIS—Do you want me to reread it to you?

Mr Innes—No. I have not looked at these minutes, but I will just consult for one minute.

Senator BRANDIS—Certainly.

Mr Innes—That was President von Doussa's comment but it would be usual in minutes of the commission if there were disagreement with that comment for that disagreement to be noted. So, in that sense, I think it is fair to say that it was a view generally accepted by the commission.

Senator BRANDIS—It is recorded after that comment in square brackets 'Action Item 19'. It is not perfectly clear from that what the action would be, although I assume that the action was to find out the Australian government's position.

Ms Branson—I assume that the item action was the writing of the letter that we have seen.

Senator BRANDIS—Does anyone know why it took from 3 June 2008, when it was decided to write a letter to the Australian government, to 25 July 2008 to write the letter?

Ms Branson—I assume it reflects the workload of the president's staff.

Senator BRANDIS—With all due respect to Mr von Doussa, it seems a long time to wait for a two-paragraph letter to be written. But, anyway, there we are. Perhaps Mr Smith is not the only slowcoach here. The next meeting was on 11 November. By then, Ms Branson, you were the President of the Commission.

Ms Branson—Yes.

Senator BRANDIS—In the second of the items that you have reproduced here, these words appear:

Review preparatory meetings have commenced. Some countries are strong supporters of the process while others are strongly opposed. Caroline Millar—

Caroline Miller is?

Ms Branson—Australia's permanent representative to the UN in Geneva.

Senator BRANDIS—I see. The sentence continues:

... feels that there are some countries who are now supportive. She would like to promote Australian Indigenous rights internationally.

The next sentence is the one that particularly troubles me. It says:

The Australian government has not yet indicated whether it will attend in 2009. The Commission should not pull back on participation just because there is a risk that Islam will become a major issue.

What does 'just because there is a risk that Islam will become a major issue' mean? Can you expand please, because it is not perfectly clear to me what that means.

Ms Branson—Yes. With my memory refreshed with the assistance of my colleagues, I think it was that issues around the Muslim religion might become a serious issue at the conference.

Senator BRANDIS—Is that intended to include the attitude of certain Islamic states to the state of Israel?

Ms Branson—I think that is a difficult question to answer. The commission is not supportive of any form of anti-Semitism, but on the other hand it is—

Senator BRANDIS—I accept that. I am asking, again, a narrow and specific question. I want you, as well as you can as the person who presided over this meeting, to tell this committee and the parliament what those participating in this meeting had in mind and said which is very briefly acknowledged in the note 'just because there is a risk that Islam will become a major issue'.

Ms Branson—Certainly Islamophobia was much talked of at the time, and we expected that it would be an issue. We were, as the note indicated, of the view that that was a legitimate topic for conversation. I am not sure that this is to summarise the position of the commission at that time, but the commission would not have wished to attend a conference that essentially became a vehicle solely for anti-Semitism.

Senator BRANDIS—'Solely' for anti-Semitism?

Ms Branson—Or even to a dominant extent.

Senator BRANDIS—Even to a dominant extent?

Ms Branson—Yes.

Senator BRANDIS—You would not have minded if it were anti-Semitic to a non-dominant extent?

Ms Branson—At every conference there will be a wide range of views. That is the nature of international conferences. But I think the language was 'hijacked'. If we had thought the conference would be hijacked by issues touching on anti-Semitism, we would not have wished to attend.

Senator BRANDIS—You have really answered my question, I think, Ms Branson. May we take it, then, that ‘Islam’ is used here as an omnibus expression to address Islamophobia and anti-Semitism?

Ms Branson—No.

Senator BRANDIS—No? Then why did you start talking about anti-Semitism?

Ms Branson—I understand it to be a particular interest of yours, Senator.

Senator BRANDIS—Yes, but that was not the question I asked. I asked what was meant by that note. The noun ‘Islam’ can mean any one of a number of things. Obviously this is a deliberately brief note. Did the commission at that meeting turn its mind collectively, among other things, to the question of whether or not this conference might, as you said a moment ago, be solely or as its dominant purpose a vehicle for anti-Semitism?

Ms Branson—I assume we would have, because we would not have had any interest in attending a conference that would have been hijacked, to use that expression, by anti-Semitic views.

Senator BRANDIS—All right. If, as you seem to recall, that was a part of the discussion, and since there is nothing missing from these minutes, is not the sentence to which I have directed your attention the only part of the minute which addresses this issue, albeit in the most abbreviated and almost coded language?

Ms Branson—These are the complete minutes.

Senator BRANDIS—So it is. The conclusion is that the commission, having turned its collective mind to the matters which you have recited to us, including anti-Semitism, produces as the epitome or brief summary of the conclusion of that discussion:

The Commission should not pull back on participation just because there is a risk that Islam will become a major issue.

In other words, the conclusion of the commission is that, just because all of the issues related to Islam which you have just recited, including anti-Semitism, may become a major issue, that is not a reason for the commission to pull back from participation. That is what that means, isn’t it?

Ms Branson—This meeting was held after I had attended, with the executive director, ICC 22—that is, the meeting of the international coordinating committee of National human rights institutions—in Nairobi. Whether or not our national human rights institutions should attend the Durban conference was discussed at that meeting. We listened to a number of Islamic countries address that meeting, urging that states not stay away simply because discrimination against them and their peoples would be likely to be a subject matter of debate. We found that persuasive as a commission.

Senator BRANDIS—Discrimination by whom against Islamic peoples?

Ms Branson—I do not think anyone spoke of particular countries, but Islamophobia is a concern in the international community, and nations whose population is largely Islamic are interested in discrimination and prejudice against those who adhere to the Islamic faith.

Senator BRANDIS—Although they are closely related and largely overlapping, surely Islamophobia—fear of aspects of Islam—and alleged discrimination against Islamic people are not quite the same thing. A person could be fearful, for example, of Islamic extremism without doing anything to discriminate against Muslim people. Surely you accept that.

Ms Branson—Of course that is right.

Senator BRANDIS—You have run together the language in a way that perhaps was not intentional. You have identified Islamophobia as discrimination against Islamic people. I want to deal with the latter of the two, discrimination against Islamic people. You have told us that you had been to the conference in Nairobi, in which a number of Islamic nations had expressed their concern about discrimination against Islamic people. My question to you is: who did they say was doing the discriminating against Islamic people?

Ms Branson—The direct answer to your question is that they did not say. But, to make it clear, what was broadly being discussed was that Durban would be an opportunity for the international community to address, amongst other forms of intolerance, Islamophobia and that it would be a pity if there was not wide representation of national human rights institutions at such a conference.

Senator BRANDIS—One of the keynote speakers, as we know, at the Durban II conference was the President of Iran. In his speech he was so concerned about what he alleged to be discrimination against Islamic people—that is, Palestinians—by the Israeli state that he called for the Israeli state to be eliminated, which one might have thought was a rather extreme form of discrimination against Jewish people. My point is that it is artificial in the extreme to talk about discrimination against Islamic people and pretend to ignore that this debate about Islam in the Middle East—at a conference at which the keynote speaker was the President of Iran—was intimately bound up with discrimination against Jewish people too. Do you accept that?

Ms Branson—There is nothing I can say other than that the observations made by the president to which you have referred are abhorred by everybody at the commission.

Senator BRANDIS—Of course they were deplored, but at least Mr Smith, the relevant minister of the Australian government, had the political common sense to anticipate that something like this might very well happen, which is why Australia should not be there in the first place.

Ms Branson—No doubt that is a matter for each person to make a judgement upon, but there was a very real concern that if all moderate nations stayed away the conference might take on a very unattractive character which, as was reported to me, it did not do in the event. In my judgement the outcomes document is a very positive document and as I understand it, apart from the words of the President of Iran, nothing of any substance of that character happened thereafter during the entire course of the conference.

Senator BRANDIS—In trying to deconstruct this minute, and allowing for the fact that it is in the most abbreviated form, I suggest that the careful choice by the author of the minute of the word ‘Islam’ is really code for anti-Semitism and the dispute between Islamic and Jewish peoples. What this minute really says is that the commission should not pull back from

participation just because there is a risk that Islamic attacks on the Jewish people and the Jewish state will become a major issue.

Ms Branson—I do not accept that, Senator.

Senator BRANDIS—It was not on your mind? Particularly having regard to all the controversy about the original Durban conference—whether you think it was fair or unfair; having regard to all the public discussion and having regard to the decision of a number of nations not to participate—including Canada, which had announced at that stage that they would not participate in Durban II because of fear that it would turn into an anti-Semitic jamboree? Notwithstanding the fact that this had been an issue of acute controversy in Australia at the time—the opposition was saying that Australia should not go there and the government ultimately, though at a rather late stage, agreed with the opposition? You say that notwithstanding all that controversy, which was all about the risk that Durban II—like Durban I—might become a vehicle for the expression of anti-Semitic views, that was not considered or regarded by the commission when it had the discussion reflected in this minute?

Ms Branson—I am sure we did consider it, but we did not think—

Senator BRANDIS—Where is the reference to it?

Ms Branson—It is not there.

Senator BRANDIS—The only reference to it is ‘Islam’ and the conclusion is—because, thank you, you have told us a little more fully now about this meeting—that this risk of anti-Semitism was on the mind of the commission but, notwithstanding that, the commission should not pull back. That was a conclusion of the commission having regard to—among other things—the considerations I have just recited and which you have agreed with me was on the mind of the commission.

Ms Branson—I have some difficulty in following the precise tenor of your question, but was the commission conscious—

Senator BRANDIS—You did not a moment ago, when you said you were sure that was on the mind of the commission.

Ms Branson—Let me try and make the commission’s position clear. It was of course known to us that people feared this would become an anti-Semitic conference; that is, a conference hijacked by those who wish to express anti-Semitic views—

Senator BRANDIS—As it became, and as President Ahmadinejad could not have made more clear.

Ms Branson—With great respect, I disagree with that assessment. President Ahmadinejad made inflammatory and wholly unacceptable comments about Israel. The rest of the conference, as it was reported to me, was balanced and sensible and led to a very positive outcomes document which does not even mention the Middle East. It deplores anti-Semitism and deplores the Holocaust.

Senator BRANDIS—But what everybody found out about the conference—the only thing that registered on the consciousness of the international community—was President Ahmadinejad’s speech. So President Ahmadinejad was able to use this conference as a

vehicle—to use your words—for the very thing you wished it not to be: a vehicle for anti-Semitism. And that was on your mind because you discussed it in this meeting in November.

Ms Branson—In my view, what the president of one nation state says does not characterise the entire conference. It did bring great criticism on the president and alerted many people who might not otherwise be thinking of it to the evils of anti-Semitism. The rest of the conference was a very positive exercise in which the Australian Human Rights Commission, working with other national human rights institutions, found very valuable.

Senator BRANDIS—Ms Branson, I know of your background and I know of your illustrious reputation as a lawyer but, with respect, it seems to me that maybe—given what are plainly the international political sensitivities of this and given you were aware of them and discussed them, as is apparent from your own minutes—it would have been more prudent to leave judgments about international relations and politics and Australia’s position in relation to those matters to the diplomats and the Minister for Foreign Affairs, who at least had an understanding of the nuances of international politics, rather than to characterise your decision to participate in a technical, lawyerly way, which shows scant respect for the foreign policy implications for Australia of the decision you were determined to make.

Senator BARNETT—Ms Branson, the fears expressed by Senator Brandis and the concerns that he has expressed to you were, I understand, noted by the UN Secretary-General, Ban Ki-moon when, prior to the President of Iran speaking—I think it was a day or two before—there were reports in the public arena noting that he actually counselled the President of Iran not to use the conference as a launching pad for anti-Semitic rhetoric. Obviously, that counselling effort was not successful. But those fears were expressed at the highest level and they were well known in the public arena well in advance. I think the view is put that the commission has acted of its own volition and gone into this adventure—perhaps you would not say unwittingly—but with the full knowledge of the concerns and the fears that have been expressed very broadly, even to the highest entity within the UN. So I share that as an observation with you. I wonder whether we should now turn to the minutes of 17 December. Senator Brandis, do you wish to pursue that?

Senator BRANDIS—I just wanted to say something in relation to that. Ms Branson, you have told us that you did not have the minister’s letter of 16 December before you at the time of this discussion. I notice that the meeting commenced at 9.40 am. I think it was in Sydney, wasn’t it?

Ms Branson—It was, yes.

Senator BRANDIS—So, if the letter arrived on the 17th, in the ordinary course of events it obviously would not have come to your attention before the meeting.

Ms Branson—No, I had not seen it.

Senator BRANDIS—I am not suggesting you did. I must say, once again, looking at the second paragraph of those minutes, which record a recommendation by Caroline Miller that Australia attend the conference and take a soft approach, making only strategic interventions, which comes after a very brief summary of what the commission understood to be the position of other major nations: this is a foreign policy decision. It is plain as can be from what you have recorded in this minute that the commission, guided by Caroline Miller, is

discussing foreign policy and international politics. Nobody doubts your good faith in wanting to see Australia represented at a conference if you think it would be serviceable to the elimination of racism. Do not get me wrong. Nobody doubts your good faith in this. What we doubt is your judgment—and by ‘you’ I mean collectively the commissioners. Because the way you approach this, both in the previous minute, the November minute, and in the December minute, makes it as plain as can be that the considerations to which you are having regard are not considerations about how serviceable this will be to enhance the work of the Human Rights and Equal Opportunity Commission; the considerations to which you are having regard are the international political dimensions of this decision.

The point I made to you before is: do you not think it would be prudent and, in fact, modest for an agency which is not a foreign policy agency to leave considerations like that to the people who know what they are talking about—that is, the foreign affairs professionals represented by the voice of the foreign affairs minister reflecting the position of the Australian government?

Ms Branson—It is difficult for me to answer your question because there is again a premise in it that I do not accept. We did not debate at length the value of national human rights institutions getting together to discuss the best ways of dealing with racism and xenophobia and things of that kind. That we took for granted. We were discussing whether there were any issues superimposed upon those which were, as you have rightly identified, political in character that should mean we should stay away, notwithstanding that we took for granted there was great benefit to Australia in having its national human rights institutions there working with other national human rights institutions on issues such as racism and xenophobia.

Senator BRANDIS—I do not think we are at cross-purposes, Ms Branson.

Ms Branson—We thought it appropriate to consider issues of political character and to seek direction or input from the Australian government but ultimately to make our own decision. I accept that you think we made the wrong decision. We believed we made the right one.

Senator BRANDIS—I think two things. I certainly think that, but I think something more fundamental. I think this was an occasion when an Australian government agency should have shown sufficient respect for the Australian government and a sufficient humility about its own lack of expertise in international diplomacy to defer decisions of a political character to the political arm of government. I am completely in agreement with you, Ms Branson, that *prima facie* you would expect the Australian Human Rights Commission to attend an international conference on human rights. It would be surprising if you did not. That much is common ground.

But what we all know and what speaks very clearly from these minutes, and as you have just said, is that there was a peculiarity about this particular conference having regard to what had happened at the original Durban conference, having regard to the international controversy and domestic controversy about it, having regard to the fact that a number of very respectable Western democracies, including Canada, had at that stage already announced they were pulling out, which made the question of Australia being represented there by an

agency—you say it was only observer status but I think that is a technical distinction—for all practical purposes a political question, a question of international politics. And your agency, with respect, should at the very least have had the humility to accept that it was not competent to make judgements about international politics, about Australia's disposition in the eyes of the international community in the face of a conference like this which had potentially profound implications for Middle Eastern politics. You should have followed the lead of the Australian government, which is the course Mr von Doussa, when he was your predecessor, indicated a preference for as early as June 2008.

Ms Branson—I note your view. I do not think I can advance the debate any further.

Senator FEENEY—It is your evidence that Caroline Miller advised you to attend the conference—is that correct?

Ms Branson—I feel concerned about these minutes being public. It was an entirely unofficial and informal conversation, which I reported to commissioners in confidence. The minutes are accurate in that respect.

Senator FEENEY—Thank you.

Senator BARNETT—Has the commission had a meeting since the Durban II conference?

Ms Branson—Yes, there was a meeting on 11 May.

Senator BARNETT—What was discussed at the meeting? Can you table the minutes of that meeting with respect to the matters pertaining to the Durban II conference?

Ms Branson—If there is anything in those minutes touching on the Durban Review Conference, it will be provided.

Senator BARNETT—Did you receive a report about the conference at your May board meeting?

Ms Branson—No written report has as yet been provided.

Senator BARNETT—Did you receive a verbal report?

Ms Branson—I am sure that there was informal discussion amongst the commissioners.

Senator BARNETT—Did Mr Calma attend the council meeting?

Ms Branson—Yes, he did

Senator BARNETT—Did he provide a verbal report and, if so, how extensive was it and what do you recall from the briefing?

Ms Branson—I cannot recall whether there was a formal report as part of the meeting or whether there was simply informal chat. I will have the minutes checked.

Senator BARNETT—Could your executive director please advise if a formal report was presented to the meeting. Surely you would know; you have just had the meeting—it is only two weeks ago.

Ms Roberts—Senator, I am in the same position as the President—I would have to check that. My recollection of it is that there was no formal written report but Mr Calma reported back verbally as to how the conference went.

Senator BRANDIS—When Mr Calma gave that report, was there any discussion then or in the course of that meeting about the absence of the Australian observers during President Ahmadinejad's speech? In other words, did the Australian observers absent themselves in advance of President Ahmadinejad's speech, or were they among the people who walked out?

Ms Branson—Mr Calma and the staff were at a side event at that time. I am certain that Mr Calma was; I am uncertain about whether his staff were with him but I think they probably were.

Senator BRANDIS—Could you take this on notice for me please: I would like to know whether any staff of your agency were present during any part of President Ahmadinejad's speech and, if any of them were present at the start, whether any of them absented themselves during the course of it.

Senator BARNETT—Ms Branson, you are telling me that you had a council meeting of the commission on 11 May, in Sydney, and you have had a verbal report from Mr Calma, but not a written report, regarding the conference.

Ms Branson—I do not think 'verbal report' is right. We had discussed his being there; there has been talk between us about his experiences.

Senator BARNETT—Was it on the agenda?

Ms Branson—I do not believe it was but we will check that.

Senator BARNETT—Ms Roberts?

Ms Roberts—I do not believe it was on the agenda, Senator.

Senator BARNETT—So here we have a conference of enormous significance, a conference which the Australian government has boycotted and the commission has attended, and it was not even on the agenda on 11 May, some three weeks after the conference was held and some two weeks ago, and you are having trouble recalling whether it was even on the agenda. The responses that we are receiving are staggering. Nevertheless, let us go on. You are going to take on notice the request to provide the minutes of the commission meeting—

Ms Branson—So far as they touch on the Durban review, if they do.

Senator BARNETT—Yes, if they do, and you will also advise, or can you now confirm, that there was no formal report.

Ms Branson—And I can confirm that there has been no formal report yet received by the commission. My expectation is that there will be one.

Senator BARNETT—And it was not an agenda item on 11 May.

Ms Branson—I do not recall that it was.

Senator BARNETT—And Ms Roberts, the executive director, cannot recall that it was on the agenda.

Ms Roberts—I believe it was not, but I cannot recall without seeing the agenda again.

Senator BARNETT—You said in response to Senator Brandis that Islamic phobia was a concern in the international community. Is it a concern in Australia?

Ms Branson—Yes

Senator BARNETT—And is anti-Semitism a concern for you, and the rhetoric flowing from that, in Australia and at the international level?

Ms Branson—Yes, of course.

Senator BARNETT—We will move on to some other questions, and I will try and be as brief as possible; we have had an extensive discussion this morning. Firstly, the Australian Human Rights Commission has been conducting an inquiry into freedom of religion and belief. You have answered a question on notice from me—No. 4, on 23 February—for which I thank you. You have advised:

... the Commission has contracted one organisation to undertake the consultancy (the Australian Multicultural Foundation).

Firstly, on what basis was the Australian Multicultural Foundation selected and appointed? Can you tell us more about this foundation?

Ms Branson—The executive director will answer questions on this topic.

Senator BARNETT—Thank you.

Ms Roberts—A decision was made to direct-source the services of the Australian Multicultural Foundation based on the rationale that appears in section 8.65 of the Commonwealth mandatory procurement procedures—that is, that there is:

... no reasonable alternative or substitute ... due to an absence of competition for technical reasons ...

Senator BARNETT—We have the technical answer. Can you give us the answer in more comprehensive form? Why were the Australian Multicultural Foundation selected? To kick it off, tell us who the Australian Multicultural Foundation are and why they were the only ones selected.

Ms Roberts—The AMF is a body on whose constitution or basis I do not have a great deal of information. I can give that to you on notice.

Senator BARNETT—What are its objectives?

Ms Roberts—Its objectives are to pursue multicultural policy, theory and practice within Australia.

Senator BARNETT—But you do not know much more about it. You have just awarded them a four-year contract worth \$190,000 over a four-year period, according to an answer to my question on notice. Is that right?

Ms Roberts—I am sure that the organisation knows a lot more about them—the staff do—and I would have to provide that on notice.

Senator BARNETT—But you do not know. You are the executive director and you do not know. What is the status of the inquiry into freedom of religion and belief at the moment?

Ms Roberts—The current status of the inquiry is that at the end of April, when submissions closed, we had received 2,025 submissions. We have also completed the consultation meetings and interviews that were occurring around Australia. We have held general consultations in the capital city of every state and territory. We have also held

consultation interviews with key leaders and stakeholders in each state and territory. We have also, at the request of certain groups, held additional group meetings because we were approached by organisations that had participated in the general consultation but felt that they would like further time to discuss complex issues that specifically related to them. Those additional group meetings occurred in Brisbane, Canberra, Melbourne and Sydney.

Senator BARNETT—Does the commission now have a view with respect to freedom of religion and belief in Australia that you could share with the committee?

Ms Roberts—No, it does not. The next stage that will now occur in relation to the project is an analysis and synthesis of the information that has been received in the submissions and from the group meetings and the interview transcripts. That analysis will occur between June and August, and then a synthesis of what, from a policy point of view, that material means will be done by the AMF and the researchers that they have engaged. The final report of that group will be submitted to the commission between January and March next year, and it will then be a matter for the commission to decide what if any recommendations it may develop out of that material and what form the material that may be made publicly available will take.

Senator BARNETT—All right. Do you know the names and identities of the researchers engaged by the AMF?

Ms Roberts—Yes, the names are Hass Dellal, Gary Bouma and Des Cahill.

Senator BARNETT—Can you advise the terms and conditions of their appointment? I am happy for you to take it on notice.

Ms Roberts—I would need to take that on notice.

Senator BARNETT—Are you happy to take on notice their term of appointment, the nature of the appointment, the description of the appointment and the cost of the appointment?

Ms Roberts—I am happy to take that notice.

Senator BARNETT—Thank you. Going back to the AMF, I am still puzzled as to why they are the only entity in the commission's view that was able to undertake this research to assist the commission in regard to the inquiry.

Ms Roberts—I think it was based upon the commission's previous dealings with the AMF and the knowledge of what their expertise was. It was also known that, if the AMF were engaged to do this, Professor Bouma and Professor Cahill would be engaged by them as researchers. It was felt that the collection of skills and expertise that those people brought to the project were such that it justified direct-sourcing the contract.

Senator BARNETT—Can you provide the terms of reference for the AMF and any stated reasons, in addition to what you have just said, for the appointment? It is puzzling, as I say, as to why they are the only entity to undertake that. Could you also provide a copy of their constitution? You have indicated in broad terms their objective but we would like to know more about the AMF, so could you assist the committee by providing that on notice?

Ms Roberts—Certainly. In answer to a previous question you asked, I indicate that the AMF is a peak non-government multicultural body established through seed funding from the

government. Members of the foundation include Prime Minister Kevin Rudd. The AMF has a history of undertaking work such as this with other areas of government, under the present government and under the previous government.

Senator BARNETT—I will move on to some other areas. You launched a report in March 2009, *Sex files: the legal recognition of sex in documents and government records*, which recommended anyone over the age of 18 should have the option of ‘unspecified’ when gender is requested in documents and, where possible, gender should be removed from government documents. What prompted the commission to undertake the report?

Mr Innes—As I advised you at previous estimates, the undertaking of this report was drawn from consultation which occurred around the *Same-sex: same entitlements* report, where a number of people of diverse gender indicated to us specific concerns that they were experiencing in Australian society. We conducted some consultations around a number of issues—health issues, identity documents issues, education and vilification issues—of people of diverse gender, and the issue which we decided to look into more carefully was the identification of people in documents and the difficulties people who have changed gender experience in obtaining appropriate birth certificate and related document identification. As you would appreciate, over the last decade or so identification documents have become far more prevalent in day-to-day life for all of us, so that was the issue on which I decided to focus some work and the report is the result of that. I should not call it a report, in the sense that it was not an ‘inquiry’ of the commission in the formal sense that that term has under our act. It was research which was carried out, and we released this paper as a result of that research.

Senator BARNETT—Who did the research?

Mr Innes—Let me take a step back. It was more consultation than research. It was consultation with the gender diverse community in Australia and with relevant areas of government, and my staff and I carried out the consultation.

Senator BARNETT—Did you outsource any of the work or was it all undertaken in-house?

Mr Innes—No. From my recollection, it was all undertaken in-house. I think at the last estimates you asked us a question which we took on notice about detailing some of the costs but they were costs of money spent by the commission. There were not separate—

Senator BARNETT—Did you consult with churches and Christian organisations about the importance of gender and acknowledging the role of gender in understanding the role and importance of caring for kids—boys and girls—and are you aware, for example, of the views of the Australian Family Association? They have described it as a crazy ideological agenda behind getting rid of gender.

Mr Innes—Our consultation was open to everyone. I cannot recall whether the Australian Family Association made a submission to the investigation. I would be happy to take that on notice. But I am aware of their comments.

Senator BARNETT—You have obviously proactively engaged, as you say, with the gender diverse community. Did you proactively engage with any church groups, Christian

organisations, the Australian Family Association, the Australian Christian Lobby or like organisations who have a view different to your own?

Mr Innes—At the time we were conducting the consultation, of course, we did not have a view. That is why we were consulting: to assess the impact of these issues on people in the—

Senator BARNETT—It is hard to believe that you did not have a view, Mr Innes.

Mr Innes—I am sorry that it is hard to believe; it is the reality. We would not formulate views before we consulted. We were seeking to draw in views from the community as to the impact that these issues had had on people of diverse gender. We invited consultation across the board and we received a broad range of views which we took into account in the recommendations which we made to government.

Senator BARNETT—I will move on because of the time limitations we have. I thank you for the answers to the questions on notice. In regard to the first question, Professor Richard Harding and Professor Neil Morgan are undertaking research into the implementation in Australia of the optional protocol to the convention against torture.

Mr Innes—Yes. That research is now complete.

Senator BARNETT—Is that available?

Mr Innes—Yes. It is on our website.

Senator BARNETT—The cost of it was \$22,000 and that was a select tender. That is on your website, is it?

Mr Innes—Yes.

Senator BARNETT—If it is not, if you could make it available—

Mr Innes—I am certainly happy to make it available, but I am fairly confident that it is on the website. We can make it available anyway. We chose those two people to do that work because Richard Harding was the former inspector of custodial facilities in Western Australia and Neil Morgan is the current inspector. They also both have academic roles in Western Australia and they are the pre-eminent experts in Australia on those issues.

Senator BARNETT—In respect of the other ones, SW Consulting are undertaking a project to develop and coordinate the community partnership for the human rights evaluation project. That was \$23,000 and was due for completion on 30 June this year. Is that complete or is it still underway?

Ms Roberts—My understanding is that it is still on foot in terms of that work being delivered.

Senator BARNETT—Could you provide us with the terms of reference and any other material information regarding the consultancy?

Ms Roberts—Yes.

Senator BARNETT—And some details regarding SW Consulting, who are undertaking the project. Likewise, the same question for the Australian National University research project on creating a representative Indigenous body.: is that complete?

Ms Roberts—No, it is not. I understand it is part of the representative body consultations that are still ongoing.

Senator BARNETT—Likewise, can you provide the terms of reference and further details including regarding the ANU and who is actually undertaking the report?

Ms Roberts—Certainly.

Senator BARNETT—In the answer to the question it says, ‘The cost is \$2,200’, but I assume you mean it is \$22,000. Perhaps you can clarify that in your answer.

Ms Roberts—Yes, it is supposed to be \$22,000.

Senator BARNETT—Thanks. I picked up a typo. There is another one: ‘research and community consultations to explore issues and barriers to integration and settlement of African Australians within the Australian community’.

Ms Roberts—Yes, that project is still on foot, and I can provide additional information about it on notice.

Senator BARNETT—Thank you very much. Number 62, ‘research and community consultations relating to Indigenous freedom of belief and spirituality’—\$33,000. Where is that at?

Ms Roberts—That is in the process of being prepared as one of the supplementary papers under the freedom of religion and belief project.

Senator BARNETT—Thanks for that. I will go back to your role in the Sydney Gay and Lesbian Mardi Gras in March this year. You had a float in this year’s Mardi Gras. What was the cost and did members of the commission attend? I understand you participated in previous Mardi Gras as well. Can you clarify that?

Mr Innes—Yes. This is the second Mardi Gras in which I have participated as the Human Rights Commissioner. I would need to take the question of cost on notice. Certainly, some members of staff of the commission attended on a voluntary basis.

Senator BARNETT—Is that a decision by the commission or by you as to your participation?

Mr Innes—As I recollect, it was a decision by me which I reported to the commission. I would be happy to clarify that on notice.

Senator BARNETT—Thank you. Has the commission considered the merit of participating in perhaps any church activities—the national day of thanksgiving, Christmas, Easter or any other Christian organisations or is it only focused on other matters, like the Sydney Gay and Lesbian Mardi Gras?

Mr Innes—My colleague, Commissioner Calma regularly participates in multifaith, church and Christian activities, as do I, and as, I assume, do a number of my colleagues on an individual basis. I have certainly participated in activities as commissioner of that nature during the time that I have been commissioner.

Senator BARNETT—Thank you. Could you take on notice for Mr Calma to advise us about the events, activities and conferences in which he has participated on behalf of the commission regarding those matters that you have referred to.

Mr Innes—Yes.

Senator BARNETT—For the last 12 months.

Mr Innes—Okay.

Senator BARNETT—Could we move now to the issue of the human rights charter. Ms Branson, I think these are probably questions for you. Let us kick it off by asking whether you have concluded your submission to the human rights consultation panel and, if so, whether a copy would be available.

Ms Branson—It is not yet in final form. As soon as a copy is available, it will go on to our website. But if you would like a copy we would be happy to provide it.

Senator BARNETT—When will it be completed? At this stage, do you have an anticipated conclusion date?

Ms Branson—We hope it will be by the end of next week or early the following week.

Senator BARNETT—Can you outline the views of the commission more particularly to this committee, with respect to your views. You are obviously a strong supporter of the human rights act and a human rights charter. I would like you to outline for the committee for the record the model that you support. From what I have read, there is a view that you support a model similar to that that exists in the ACT and/or Victoria. Could you give us further particulars as to the view that the commission holds?

Ms Branson—Yes. All commissioners will have an opportunity to review the final draft, but the commission has indicated in broad terms its support for what is ordinarily known as a dialogue model of a human rights act—broadly of the kind that exists in the United Kingdom, Victoria and the ACT. It would identify the particular rights that Australia wishes to have protected by its overarching human rights institution. It would have an impact on each of the three branches of government. It would require the parliament to consider the impact of proposed legislation on human rights and very likely by the provision of a statement of compatibility with the human rights act to accompany bills that come into the parliament. It would not restrict the parliament's capacity to make any law that it chose, because we are not advocating for a constitutional model but only for a legislative model. It would require the executive branch of government to formulate policy and make decisions under federal laws consistently with human rights, unless the law required them to do otherwise. And it would provide an interpretive provision to guide the judiciary, giving them the guidance that the laws of the Australian parliament should be construed consistently with the human rights act, provided that to do so is consistent with the intention of the legislature.

Senator BARNETT—Who would provide that interpretation?

Ms Branson—This is guidance to the judiciary. It would be—

Senator BARNETT—So the commission would provide guidance to the judiciary.

Ms Branson—No, not at all. The judiciary already operates with a number of guides to interpretation that are contained in the Acts Interpretation Act, and it would simply be a provision of this kind guiding them as to the intention of the parliament with respect to the laws that it makes. It would be expected that the Human Rights Commission might either exercise a right to be heard or obtain leave to be heard when significant issues touching on the human rights act came before the courts, but that would not be to alter its present role.

Senator BARNETT—So you would seek legal entitlement to be heard if a matter were brought before the court. That is what you are saying, as a commission.

Ms Branson—I think our submission is likely to be that we would seek the right to intervene in any matter in which the human rights act becomes an issue to provide submissions to the court—touching on the human rights act.

Senator BARNETT—I am interested in this particular aspect and your view of your role—as in the commission’s role—in advising the government on legislation that may come before the parliament. Did I understand you correctly earlier when you said that the commission would provide advice or an opinion to the government and/or the parliament—I assume—as to whether a particular bill contravened the charter of rights?

Ms Branson—I did not say that, Senator, but I did say that we envisaged that this act could contain a provision requiring a statement of compatibility to accompany bills that came into the parliament. That statement of compatibility one would expect to be produced either by the Attorney-General or, if it were a private member’s bill, by the member introducing the bill.

Senator BARNETT—What role would the commission have, if any, with respect to the statement of compatibility?

Ms Branson—I do not think we envisaged that the act would give us any role. But you will be aware that we already can, at the request of the Attorney-General, provide advice on proposed enacts as to their compatibility with human rights.

Senator BARNETT—Would you envisage that you would be proactive in advising the minister or the government with respect to relevant bills that may come before the parliament?

Senator Ludwig—The difficulty with some of these questions is that they are hypothetical in the sense that I think the commission has outlined what its responsibilities are to date. We do not know what the results will be. We do not know what model may or may not be recommended. We do not know what legislation will come forward at this point in time. We expect that the commission would do what it is required to do, and what it currently does, under any future legislation. But there we have it. We are now referring to future events that we do not have before us.

I am very happy for the commission to deal more broadly with all of the things that it does do and it can do. What I am concerned about is that it may be making statements that are in advance of any government report or recommendation.

Senator BARNETT—Minister, your intervention is wholly welcome, because it highlights the point—in fact, the predicament, in my view—that we are now in. The government have authorised and encouraged this public consultation to take place over a period of time and

have said they do not have a final view. In fact, they do not have a fixed view, and they are waiting for the outcomes and the report of the consultation process. But, on the other hand, we have the Australian Human Rights Commission, which has a view. In fact, it not only has a view but is proactively promoting that view—not only here in Senate estimates or on the public record in a submission to the inquiry but by proactively participating in the public debate. I have articles, stories and newspaper opinion pieces, including a huge story in my home newspaper, the *Examiner*, on 28 April—I cannot read the page number—entitled ‘Protecting human rights should matter’ and written by Ms Branson. You would be aware of this. So this is the predicament we have: the government do not officially have a position but we have the Australian Human Rights Commission not only expressing a view via a submission but actually out there proactively arguing for a particular model, as you have espoused in your evidence to us this morning. That is the concern, frankly, that I have. That intervention, Minister, simply highlights the point and the concerns.

Senator Ludwig—I am not sure of the question, but if you are concerned about the independence of the commission then I think they have ably demonstrated their independence.

Senator BARNETT—Some would say they are a law unto themselves.

Senator Ludwig—They are a statutory agency and they do have independence. They are entitled to their view.

CHAIR—I think they have been trying to prove that for the last three hours.

Senator BARNETT—Ms Branson, are you an apolitical organisation?

Ms Branson—Are we apolitical? Yes. We are charged with promoting and protecting human rights in Australia. We regard the possibility of having a human rights act for Australia as the most significant way in which human rights in Australia could be advanced and protected in the current environment.

Senator BARNETT—Two High Court judges have expressed concern about constitutionality regarding, I think, the model that you have espoused. How do you overcome their concerns and the views that they have expressed?

Ms Branson—I am not sure to whom you refer, Senator Barnett, but if you are speaking of, for example, Mr Michael McHugh, who is a former High Court judge, or Sir Anthony Mason, a former Chief Justice of Australia, then they have both indicated their approval through a statement to which other prominent constitutional and human rights lawyers lent their names, saying that they do not believe a constitutional difficulty would attend a human rights act of the kind that we envisage.

Senator BARNETT—So in your view, in terms of the High Court providing an opinion, that is not the case? You are of the view that there is not a constitutional issue under the model that you are putting forward; that is what you are advising. Is that correct?

Ms Branson—What I am saying is that there is no constitutional difficulty in drafting a model of a human rights act that would lead to a workable dialogue model. That is because it is easy to draft a dialogue model, as commonly understood, that does not call for courts to give advisory opinions.

Senator BARNETT—I want to go back to the role of the Human Rights Commission in this whole process. You have outlined in part some of the role. Is there any further involvement that the commission would have in making assessments or observations or advising the government or the parliament with respect to what is in breach of the act and what is not?

Ms Branson—What role is given to the Australian Human Rights Commission by any human rights act would be entirely a matter for the parliament.

Senator BARNETT—But what is your view, Ms Branson? You are putting a submission in in a week or two, you have advised. What is the view of the commission?

Ms Branson—We will express the view that it would be desirable for the Human Rights Commission to be able to intervene in proceedings where the human rights act is an issue and to assist the court by submissions touching on the human rights act. We have indicated that we could, if wished, perform the role of advising the Attorney-General of court decisions where judges have indicated that they cannot construe Commonwealth legislation consistently with the human rights act. I think they are the two possible roles that we have identified for the Human Rights Commission.

Senator BARNETT—Did you have an involvement in hosting or holding a roundtable of judges and lawyers to navigate those constitutional issues?

Ms Branson—I hosted at the commission a constitutional law expert roundtable. It involved the two former High Court judges that I have mentioned and a number of other human rights and constitutional lawyers. We did discuss whether there was a constitutional impediment in the way of drafting a human rights act for Australia, and those present were unanimously of the view that there was not. I would add that it seemed to us a helpful thing to do to facilitate proper consideration of the issues before the national consultation committee to put an end to what seemed to us to be ill-informed speculation about constitutional difficulties, flowing from a misunderstanding of what Mr McHugh had said at a seminar held at the Human Rights Commission.

Senator BARNETT—I guess it depends on the model that is put forward and the act that is finally passed, if it is ever passed. I hope to goodness it is not but, if it is ever passed, it would depend on how that act is structured.

Ms Branson—Of course. Constitutional validity always depends on the drafting of the particular bill in question.

Senator BARNETT—One of the reasons I am concerned is that here we have a government that has not expressed a view but, on the other hand, we have a commission that not only is expressing a view but also is proactively pushing for a human rights charter, a human rights act, in Australia—very proactive with opinion pieces and hosting and holding forums and roundtables and the like and now you are putting in a submission, which you are of course entitled to do. I think in terms of legal entitlement, it would seem you are acting within the law—in accordance with your act. So I am not suggesting that at all. But the dilemma we have is where you have a taxpayer funded entity, as in the commission, promoting at least one side of the argument. Would you accept that there is a strong

argument—which is perhaps similar to my own—in terms of an opposition to the merit of a charter or a bill of rights in Australia?

Ms Branson—Yes. I accept that there are many people like you, Senator, who oppose a human rights act for Australia.

Senator BARNETT—Do you think there is merit in your commission having a more balanced approach? Can you see that there would be merit in you actually preparing both sides of the argument?

Ms Branson—I have not noticed any absence of argument being advanced in opposition to an Australian human rights act. It does not seem to me that the commission is needed to balance the argument. We are charged with protecting and promoting human rights in Australia, and it is our judgment that this would be a very positive measure.

Senator BARNETT—With the greatest respect, do you think that I have a view that is not similar to yours with respect to the importance of protecting and promoting human rights?

Ms Branson—Not at all.

Senator BARNETT—Indeed, in my view, all those participating in the debate want that as an outcome. I would say, as has been said before, that the road to hell is often paved with good intentions. We all have good intentions here, but which way are we going, which route are we going to take? I think we are all on the same page in getting good outcomes in terms of human rights; it is just that I think that Australia has an exemplary record. Sure it can always be improved but, around the globe, I think it is a good record. Nevertheless, we have a taxpayer funded entity, as in your commission, promoting just one side of the coin. Frankly, I feel that is unbalanced and unfair.

CHAIR—Senator Barnett, do you have a question; rather than a lecture?

Senator BARNETT—I am asking for a response from Ms Branson.

CHAIR—The Human Rights Commission has been pretty much lectured at for nearly 3½ hours now, so I am wondering if you have a question.

Senator BARNETT—Chair, with the greatest respect, it is nearly 12.30 and I think that interjection from you was uncalled for.

CHAIR—That may well be your opinion. Do you have a question, Senator Barnett?

Senator BARNETT—Ms Branson, I will ask the question again: do you think there is merit in you preparing a view that could cover both sides of the argument?

Ms Branson—No, Senator. The judgment of the commission is that the best way to advance the protection of human rights in Australia at the moment is by the enactment of a human rights act for Australia. That is the view that we are advocating and it will be at the heart of our submission to the national consultation.

Senator BRANDIS—Have you seen Professor John Uhr's recent contribution to this debate which was, among other things, in an opinion piece he wrote in the *Canberra Times* two weeks ago?

Ms Branson—I have not seen it.

Senator BRANDIS—Can I just acquaint you with the fact that Professor Uhr, who is famously acknowledged to be a very strong advocate for protecting human rights and who has been regarded rather sympathetic to the idea of a human rights charter, now says—in part as a consequence of some deliberations in this very room a few weeks ago—that he has come around to the view consistent with that of Father Michael Tate and others that Australia could lead the world in human rights protection not through adopting a charter but through significantly expanding the opportunities for parliamentary scrutiny of legislation against the international human rights instruments to which Australia is already a signatory.

I am sorry you have not seen that because it seems to me to be an influential contribution to this debate. It does rather illustrate, surely you will agree, that to say that the protection of human rights should be enhanced is one thing with which we all agree. To say that the best way of doing that is through a charter is a controversial proposition among human rights advocates themselves and for the Human Rights Commission—whose statutory charter is to advance the cause of human rights—to advance particular mechanisms for human rights protection over other mechanisms of human right protection is—as Senator Barnett has suggested—not only to look at one side of the argument only but in fact a conceit.

Ms Branson—A conceit? We have not—

Senator BRANDIS—It treats without respect the views of the human rights advocates who favour other mechanisms.

CHAIR—Ms Branson, if you want to respond I ask you to do it very briefly because we are over the time for our lunch break and we need to conclude.

Ms Branson—I am aware, as I am sure the senators are aware, that there is a very wide range of views held by academics. Very many prominent academics and other lawyers support a human rights act for Australia. The commission regarded itself as entitled—and indeed, obliged—to make a judgment as to the appropriate course for it to take during the national consultation. We have adopted that course which we believe to be in the interests of the protection and promotion of the human rights of everyone in Australia.

Senator BRANDIS—That is a political opinion.

CHAIR—We can put further questions for the commission on notice. Thank you Ms Branson and your colleagues for your attendance this morning. The committee is adjourned for lunch.

Proceedings suspended from 12.32 pm to 1.33 pm

CHAIR—Before I proceed to the Australian Law Reform Commission, I advise the department and officers who are here and listening that at a private meeting at 12.30 pm we agreed to vary the program, Mr Wilkins, to accommodate Emergency Management Australia, which is, as I understand it, in outcome 2 and subprogram 2.1.2 to ensure that we can hear from those officers prior to their departure this evening.

Mr Wilkins—Thank you very much, Madam Chair.

CHAIR—That will be at five o'clock.

Mr Wilkins—Okay.

CHAIR—It must and will conclude by no later than the dinner break at 6.30.

Mr Wilkins—Okay, thank you.

[1.34 pm]

Australian Law Reform Commission

CHAIR—I now welcome officers from the Australian Law Reform Commission. Professor, do you have an opening statement to begin with?

Prof. Weisbrot—I do not, no, but I am very happy to answer questions from senators.

CHAIR—We will go straight to questions then.

Senator FISHER—I want to ask a couple of questions around the inquiries that you are working on—inquiries or references, whatever you call them. On average, what is the number of references that your organisation would conduct a year?

Prof. Weisbrot—We normally handle two at a time, and that is purely determined with regard to resources. That is what we can handle with the number of staff and commissioners that we have.

Senator FISHER—How does that work when I understand that your priorities are set according to your portfolio budget statements? Your priorities are set according to the Attorney-General's references to you.

Prof. Weisbrot—That is right, but we time those in order to operate two at a time, and as we are most of the way through existing references, we start talking about ones that will slide in at the conclusion of existing ones. We try to keep that two at a time going.

Senator FISHER—So do you get to a scenario where, if your resources are relatively static, an Attorney-General might make a reference to your organisation but then you decide you are unable to cope with because of the resources? Do you get to that scenario?

Prof. Weisbrot—Happily, we have not got to that scenario. Again, because we do talk these things through with the Attorney and the department, we try to have time lines that are sympathetic to our resources. Also, the projects are not of a uniform type. Some of them are relatively short and simple to do—for example, the inquiry into sedition laws; we turned it over in about four or five months—whereas something as massive as the inquiry into privacy laws took two years. So it is just keeping those things in balance.

Senator FISHER—Okay. I guess you have some input at the input end to the Attorney-General's office, which might then result in the output, I suppose, of his references to you.

Prof. Weisbrot—Yes, that is right.

Senator FISHER—Thank you. On that basis I understand that in 2007-08 you had three references underway and the Attorney-General, upon this government coming to office, revoked one of the references. Is that right?

Prof. Weisbrot—The reference we had on review of freedom of information laws was revoked or deferred, depending on one's point of view, but the view, with which I concurred, was that the government was going to implement the preponderance of the recommendations that the ALRC had made in an earlier report—about 12 years ago, I think—and that therefore

it was probably not worth the ALRC putting a lot of energy into a new inquiry while the government was developing its own FOI laws, and that it would be a better use of our resources to come in several years later and assess the effectiveness of the new regime.

Senator FISHER—Is that still the status in respect of freedom of information issues then?

Prof. Weisbrot—That is right. We received a letter from the Attorney which formally revoked the existing inquiry and the discussion around that was that the ALRC would come back into that field some years down the track.

Senator FISHER—I think your annual report referred to that prospect. How many inquiries did you have in the 2008-09 year, or references underway?

Prof. Weisbrot—In this we are working on two. One is a review of federal secrecy laws, and the other is a review of the Royal Commissions Act and related laws and practices.

Senator FISHER—You have published reports in respect of how many of those thus far?

Prof. Weisbrot—In each inquiry, what we do is publish a series of consultation documents; usually an issues paper, which sets the scene, a discussion paper—

Senator FISHER—A discussion paper, yes.

Prof. Weisbrot—which sets out our tentative proposals, and then a final report.

Senator FISHER—By ‘report’, I mean a third iteration.

Prof. Weisbrot—Both of those will conclude in October, so we will produce two reports, one for each inquiry, at the end of October this year.

Senator FISHER—Would the end result of that then be that in the 2008-09 year, your organisation would have published one report?

Prof. Weisbrot—We had the previous inquiries. Last August we published the mammoth report on privacy laws, and I think that is the only one in that calendar year.

Senator FISHER—Okay.

Prof. Weisbrot—I mean, they do not fall evenly by financial year.

Senator FISHER—No. Indeed, the production of a report is not necessarily indicative in itself of the number of inquiries that you have been conducting. I take that point. I am just trying to get a sense of the workload. In respect of the two inquiries that your organisation is currently working on, for which you have indicated a reporting date of the end of October this year, are you on target to deliver?

Prof. Weisbrot—Yes, with both of them. We are anticipating both of them will be delivered on time at the end of October, yes.

Senator FISHER—Do you have any sense of what referrals might be coming up in the next year?

Prof. Weisbrot—There are two areas that have been foreshadowed by public statements made by ministers. Senator Faulkner, when he was speaking at the Right to Know conference a few months ago, talked about a referral to the Australian Law Reform Commission of FOI or disclosure regimes in respect of the private sector. That is one. We have not received terms

of reference for this yet but it was foreshadowed. Then Prime Minister Rudd, about a month ago I guess, in announcing the strategy in relation to the reduction of violence against women and children, announced that the ALRC would be getting terms of reference looking at improving and harmonising laws that relate to domestic violence.

Senator FISHER—Thank you. I guess implicit in what you said is that you do not really have a sense of the time frame in which you would be expected to deliver your report, given that you do not have the references yet.

Prof. Weisbrot—Not yet. It would depend on that nature of the terms of reference and how broad those are.

Senator FISHER—Thank you. I want to ask a couple of questions now around your key performance indicators, in particular focusing for a moment on the use of your website. Your public documentation, in terms of your organisation's role being education of the public about the law and legal issues, talks about doing that in two ways: first, your website and, second, by community and stakeholder consultation. I think I have stated that correctly. The website is a primary tool for your organisation, is it, in that respect?

Prof. Weisbrot—It is one of the main tools, yes.

Senator FISHER—What are the other main tools?

Prof. Weisbrot—Extensive community consultation. We also publish twice yearly a journal called *Reform*, which is aimed at the general public. It is not a university-type law journal. The commissioners are also very active in speaking to community groups, conferences and so on.

Senator FISHER—Your 2007-08 annual report talks about having a target of an increase in hits on your website of 10 per cent to enhance community consultation. The organisation's portfolio budget statements for 2008-09 are consistent with this in talking about a target, as stated on page 174, of a 'sustained increase in website hits'. I think those were the words. Can you talk about the basis upon which, in the portfolio budget statements, the subject of this estimates a 30 per cent reduction in website hits is satisfactory compared with the previous aim? Can you talk to us about that?

Prof. Weisbrot—Only insofar as it makes no sense.

Senator FISHER—That was going to be my next question.

Prof. Weisbrot—Yes. Part of the problem in using that as a KPI is that it is difficult sometimes to get precise information. Sometimes people access our website through alrc.gov. Sometimes they go directly to the reports, which are hosted by AustLII. I think we have some concerns about the reliability of the figures, because, for example, during the period you referred to we were undertaking the privacy inquiry. We had massive media coverage, huge amounts of public interest and large attendance at public meetings. So it seemed counterintuitive to us that our website hits would actually drop off during that time. But we have reported faithfully what figures we have been given.

Senator FISHER—For the past, but in respect of the future, your target is some 30 per cent lower than the previous period. Is that right? I am referring to page 245 of the organisation's portfolio budget statements.

Ms Wynn—In our portfolio budget statements we are trying to give a realistic target. In our analysis of our—

Senator FISHER—Did you not attempt to give a realistic picture in the preceding period as well? It was very different.

Ms Wynn—Yes, but what is happening is that people are accessing websites in a different way, particularly in the way they access them to download reports. A lot of people are now caching sites. There is an analysis of the way people are using websites to access information. What we are trying to do is to be realistic: certainly still aiming to provide a lot of information through the website, but being cognisant of the different ways that people are using websites to access information.

Prof. Weisbrot—If I can give an example of that. When we find useful information to one of our references—say, another government report or an article that is on the web—we copy it and have it on our intranet site so that each of our staff members is not racking up internet time downloading the same document. We suspect that that is the case with our documents accessed by external users. Many of them are caching them or downloading them in a PDF form or another form to their own website so that they not accessing it any longer directly on the ALRC site.

Senator FISHER—Thank you. Nonetheless, your agency's documentation does talk about the ALRC being committed to raising public awareness and doing this primarily through website and the publication to which you referred, the biannual journal *Reform*. But your documentation is putting a fair bit at stake on the website. Now you seem to be saying that you do not know how reliable it is anyway, so you will deal with your KPIs by reducing downwards your expectation of your agency's delivery in respect of something that you say is the key way, or has been the key way, of raising public awareness, which you also say is a major thing that your organisation does. Are you going to have to come up with some different KPIs?

Prof. Weisbrot—Probably over time as the nature of internet usage and its measurement changes. We are trying to come to terms with how people use our website. We are also looking at trying to make the website itself less static. So we have put a new feature on the website called 'Talking Secrecy' and 'Talking Royal Commissions', where people can go on and there are moderated discussion forums to allow people either to gain information or to make an informal or formal contribution to the consultation process in that way. So I think we are learning how to use the website more effectively. I do not think we have perfected it. How that usage is measured is also something we are still learning.

Senator FISHER—I understand from your budget statements through to 2012-13 that you are expecting your operating expenses to remain relatively static. Is that correct?

Prof. Weisbrot—That is the budget that has been allocated to us, so that is our expectation.

Senator FISHER—Okay. I want to ask about some other KPIs. You refer in the budget papers to consultation papers. You talk about downloads of consultation papers, again through the web, falling by some 32 per cent. But you are also expecting the number of hardcopy final reports to fall by nearly 40 per cent. Why is that?

Prof. Weisbrot—One factor is that the hard copies of final reports are very expensive to produce and bulky and expensive to ship. So more and more we ask stakeholders whether they would be happy to get them in CD-ROM form. So to some extent we are phasing out hardcopy and replacing them either with PDF versions on the web, which are downloadable, or CD-ROMs.

Senator FISHER—Is it also correct that you are talking about forecasting a reduction in downloads of 32 per cent, or am I not comparing apples with apples?

Prof. Weisbrot—Part of that was having regard to the much larger than usual number of reports accessed in relation to privacy, sedition and so on, and trying to forecast where the normal level would be across references.

Senator FISHER—Okay. Page 247 of the budget statements refers to the key performance indicator for media reportage, citations and mentions. Is it correct that you are revising those KPIs downwards as well?

Prof. Weisbrot—That is right.

Senator FISHER—Why is that?

Prof. Weisbrot—I think the unprecedented coverage of privacy was just so out of kilter with most of the references we have had before and our expectations of the normal run of things. We are trying to come up with something that was a more typical figure.

Senator FISHER—So is your explanation the same in respect of the revising downward of presentations and speaking engagements. I point out that nods are not recorded by Hansard.

Prof. Weisbrot—That is right.

Prof. Weisbrot—That is right. There seem to be an amazing number of privacy professionals. We have been doing an enormous number of presentations around that. That figure has been unusually high.

Senator FISHER—And similarly the key performance indicators for media interviews?

Prof. Weisbrot—Yes.

Senator FISHER—Thank you. On page 250 of your budget statements there is a reference in table 3.2.2 to cash and to cash equivalents. Is it correct that essentially it is a forecast fall of about one-third over the four years to 2013 if you take it from \$1,500 to \$1,000? Why is that?

Prof. Weisbrot—It is decreased income from interest from reserves. As the interest rate has declined so has our income from that.

Senator FISHER—I presume that would have been why you did not predict this in the preceding year's budget statements?

Prof. Weisbrot—That is right.

Senator FISHER—Thank you. That concludes my questions, Madam Chair.

CHAIR—Senator Barnett, you have no questions of the Australian Law Reform Commission? Thank you very much for your attendance today; it is much appreciated. I call officers from the Australian Transaction Reports and Analysis Centre.

[1.54 pm]

Australian Transaction Reports and Analysis Centre

CHAIR—I welcome representatives from the Australian Transaction Reports and Analysis Centre, commonly known as AUSTRAC. To commence, do you have an opening statement that you want to provide to us?

Mr Story—Yes, we do, Madam Chair.

CHAIR—Thank you.

Mr Story—Thank you for the opportunity to make a brief opening statement today. I would like to draw the committee's attention to the 14 May letter from AUSTRAC's chief executive officer, Neil Jensen, informing the committee of his absence from this round of Senate estimates. Mr Jensen regrets his absence, which is due to ongoing commitments with the Egmont Group of financial intelligence units. As chair of the Egmont Group's governing committee, he is required to attend the meetings of this international body in which Australia has an important stake. The letter also advised the committee that Mr Jensen had informed the Minister for Home Affairs that he would be retiring from his position as chief executive officer of AUSTRAC on 16 July this year. Mr Jensen would like to thank the committee and its secretariat for the interest that they have shown in AUSTRAC's work over the many years during which he has appeared before the committee. Thank you, Madam Chair.

CHAIR—Thank you very much. Any questions Senator Barnett?

Senator BARNETT—On behalf of the coalition and others could you, Mr Story, relay to Mr Jensen our thanks for his letter of 12 May and acknowledgement of the fact that he let us know he would not be here and that you would be representing him? Would you also relay to him our best wishes for his future endeavours?

Mr Story—Yes.

Senator Ludwig—I also express the government's thanks and I associate myself with the comments made in the committee. I have known Mr Jensen for some years now and also from that side of the table. I know him to be a good chief executive officer of AUSTRAC and I thank him for his work.

Senator BRANDIS—I do not want to be mean-spirited about this, but I think the record should reflect—and obviously this is no reflection on you, Mr Story—that this is the third agency within this portfolio that we have had today and the second in which either the chief executive officer or the most relevant witness who was of interest to senators has been absent from estimates. I do not know whether that will be a pattern of conduct with other agencies. I defer to Senator Barnett. Thank you, Madam Chair.

CHAIR—Before you go ahead I think, with all due respect, that the Human Rights Commission indicated to us that Mr Calma was in the United Nations, which is an unprecedented occurrence. I think this is probably one of those rare occasions that he has not been here.

Senator BRANDIS—That is true.

CHAIR—We have also had an adequate explanation today from this agency.

Senator BRANDIS—I do not think there is any doubt about the adequacy of the explanations. The point, though, is that a strikingly large number of the most relevant witnesses are not here. I am rather chastened when I say that to my knowledge Mr Graham Samuel will not be at economics estimates to answer questions on behalf of the ACCC, which is what he told me the other day. A lot of senior officials seem to be missing in action at this estimates round.

CHAIR—With all good reason. Let us go to questions.

Senator BARNETT—Thank you, Madam Chair. I will start with questions about staffing arrangements in the PBS, but initially I want to ask about the consultancy arrangements. There has been an answer to my questions on notice Nos 268, 269 and 270 regarding AUSTRAC consultancies. However, I want to ask specifically about question No. 270 which relates to the \$167,593 Porter Novelli AUSTRAC consultancy—a select tender from a multiuse list. It seems as though that was a 12-month contract for the cross-border movement communication strategy.

Mr Story—Yes.

Senator BARNETT—Could you describe that in further detail, advise the committee how Porter Novelli was appointed, and advise us of the status of that report? For those who might be listening, Porter Novelli is a public relations organisation.

Mr Story—Porter Novelli were appointed from a multiuse list—that is, the list coming from the government communications unit. They were selected from a multiuse list. The work that they were—

Senator BARNETT—Could you tell us who was on that list, either now or on notice?

Mr Story—No. I can take that question on notice. I do not have that information here.

Senator BARNETT—Thank you.

Mr Story—The work of that tender was to advise us and then to put in place information on the new cross-border movement requirements under the new act, which were to cover every airport, seaport and any other access point into this land where we could put up adequate signage. The issue is one of getting the most optimal signage for each of those points. They also provided advice to us—

Senator BARNETT—What does the signage state? What is the key message?

Mr Story—It would be that you have to report cash and bearer negotiable instruments in excess of \$10,000. They also provided further information to us on how we would reach airlines. They also put messages into airline journals and other publications that were effective, for example, travel agents. That was to advise people of these new requirements.

Senator BARNETT—Have they prepared a report for AUSTRAC and is the project complete? I see that it was a 12-month project.

Mr Story—Yes, they did, Senator, and it is complete.

Senator BARNETT—What did the report say?

Mr Story—Basically, it was telling us what they did against the various benchmarks that we had set for them. Again, I would be happy to take this question on notice and provide further information to you about that.

Senator BARNETT—You could take that question on notice. Could you also give us the report?

Mr Story—Yes.

Senator BARNETT—When was the report completed?

Mr Story—I think it was in November 2008.

Senator BARNETT—It was a 12-month effort. Is this not an ongoing effort relating to public awareness—a public relations campaign on behalf of AUSTRAC?

Mr Story—Yes. As a result of this support and the work that we have done with Customs we now have a lot of signage and other public information in place in a way that we think is optimal to inform a traveller.

Senator BARNETT—I can understand the importance of it, which is why I am asking: is that not an ongoing effort for and on behalf of AUSTRAC, or is this meant to inform AUSTRAC as to what you need to be doing in the future to optimise your public relations effort?

Mr Story—It is more of the latter. This consultancy was more about design.

Senator BARNETT—Was it reviewing your current arrangements and making recommendations for future public relations effort?

Mr Story—That is correct.

Senator BARNETT—Do you have the terms of reference and can you table that for us? Did you give them the terms of reference?

Mr Story—I do not have them here today.

Senator BARNETT—I presume that you gave them terms of reference that set out what their tasks were?

Mr Story—Yes, we did but I am afraid I do not have them with me today. We will take that question on notice.

Senator BARNETT—We would like that. Are you anticipating employing them again for the next 12 months?

Mr Story—No.

Senator BARNETT—How do you act out your public relations and education campaign into the foreseeable future? Do you do that in house and, if so, how do you do it?

Mr Story—Through a number of mechanisms. In the first place, at all the major airports we have now secured electronic signage, with the cooperation of Customs. You will find that that signage is periodic in the sense that it will come up every few minutes. Those signs have been strategically placed throughout airports to inform incoming and outgoing passengers. We also have a small unit of people that work on our major communication initiatives. These

would cover our website, our major publications such as typology and feedback reporting, our annual report and our ongoing issues management.

Senator BARNETT—Let us go to the other report. The Open Mind Research Group has undertaken a report called *Monitoring Awareness Levels for Cross Border Movement Obligations*. That 10-month project was to cost \$127,833. Was that a select tender from a multiuse list?

Mr Story—Yes. A very similar situation applies here. The purpose of that research was to conduct surveys in various parts of Australia of levels of awareness of these obligations. I think it was done twice—once as a benchmark measure and once some of the signage was trialled subsequent research was done to see whether we were seeing changes in the benchmark awareness levels.

Senator BARNETT—When was the report concluded?

Mr Story—Senator, I am not sure. Again, I will have to take that question on notice. I think that the second report was concluded in October last year.

Senator BARNETT—What did you discover?

Mr Story—Levels of awareness were a little mixed.

Senator BARNETT—Sorry?

Mr Story—Levels of awareness were a little mixed.

Senator BARNETT—That is why I am interested to know the answer to this question.

Mr Story—On cash reporting, levels of awareness were generally better. Obviously it is an older obligation and people know about it. On bearer negotiable instruments that is a complex term. It is a new obligation so naturally we have seen lower levels of awareness at this time. We then had to work to do something about that.

Senator BARNETT—Are they above 50 per cent?

Mr Story—No, I do not think so—not on bearer negotiable instruments.

Senator BARNETT—Below 50 per cent?

Mr Story—I would think so. Again I do not have these figures with me today, Senator. I am happy to take that question on notice.

Senator BARNETT—Sure. What about cash?

Mr Story—I think it would be higher.

Senator BARNETT—Do you know roughly what it was?

Mr Story—I suspect around 50 per cent or 60 per cent but it could be more. Again, I am not certain of these figures.

Senator BARNETT—All right. You could take that question on notice. I would like you to provide a copy of the report for the committee.

Mr Story—Yes.

Senator BARNETT—If you cannot provide a copy of the report, for whatever reason—and I hope that you can—I would like you to summarise the findings of the report and advise the committee accordingly.

Mr Story—Yes.

Senator BARNETT—You can take that question on notice. Minister?

Senator Ludwig—To the extent that the estimates committee is now requesting the agency to provide a summary of a document which will then lead to the creation of a document—

Senator BARNETT—I would prefer the document, Minister.

Senator Ludwig—I am not at all adverse to information going to the estimates committee, so do not take this the wrong way. I am merely trying to ensure that we do not get caught in a position where estimates committees require departments or agencies to go away and summarise documents and then to bring them back. AUSTRAC can provide whatever information it can to assist the committee.

Senator BARNETT—Of course.

CHAIR—Before you move on I wish to clarify whether the report that you are talking about will have an executive summary?

Mr Story—Yes, it does.

CHAIR—Perhaps that would be enough?

Senator BARNETT—Indeed.

Senator Ludwig—Thank you Madam Chair.

CHAIR—I am happy to assist.

Senator BARNETT—I am happy to have that. Likewise, could you answer on notice the question regarding why Open Mind Research was chosen and who was on the select list?

Mr Story—Yes.

Senator BARNETT—The third report relates to Managing Values Proprietary Limited—an eight-month report to design and facilitate a cultural intervention program with domestic relations regulated entities. What was that all about? That eight-month direct source report was allocated \$12,772.

Mr Mazzitelli—That consultancy relates to the education of the external education team on cultural issues surrounding the entities that they are out there regulating.

Senator BARNETT—Who is your external team?

Mr Mazzitelli—The staffing group that is assigned the task of educating reporting entities on their obligations under the AML/CTF Act.

Senator BARNETT—What have they done? What interaction did Managing Values Proprietary Limited have with those people?

Mr Mazzitelli—They provided an in-house training course to our staff to raise the awareness and understanding of cultural issues surrounding the entities that they are out there regulating.

Mr Story—Perhaps I can just add, Senator, that in our regulatory catchment we have a significant number of quite difficult to reach entities in the alternative remitter sector. These entities are mobile, tend to be suspicious of government and do not want to interact readily with us, or with anybody else for that matter. It would be in that context that this type of training is being delivered.

Senator BARNETT—Okay, that sounds reasonable. I think we will go back to the staffing and related matters and I will pass to Senator Brandis.

Senator BRANDIS—That is good of you, Senator Barnett; thank you. I take you to page 274 of the PBS where we learn that the staff of AUSTRAC has been reduced by 12.

Mr Story—Yes.

Senator BRANDIS—AUSTRAC staff will be reduced by 12—from 330 to 318. I know it is relatively small—about half a per cent—but undoubtedly that will have some effect on AUSTRAC's operations, will it not?

Mr Story—Yes. The primary impact of that reduction will be in our industry supervision areas. This is the part of—

Senator BRANDIS—Which industries do you supervise?

Mr Story—Gambling, financial services, the alternative remitter sector, other major ones—

Senator BRANDIS—Sorry, what was that? You referred to gambling and to financial services.

Mr Story—They are financial services, gaming and the alternative remitter sector.

Senator BRANDIS—The alternative remitter sector?

Mr Story—Yes. These are the remittance providers that we were discussing earlier.

Senator BRANDIS—All right.

Mr Story—There are about 17,000 such enterprises.

Senator BRANDIS—How many of your current year staff establishment of 330 were tasked to deal wholly or largely with those areas?

Mr Story—Wholly? The direct supervision, which is the conduct of on-site assessments, desk reviews and other similar sorts of interventions, directly engages about 80 staff.

Senator BRANDIS—Eight or 80?

Mr Story—It directly engages 80.

Senator BRANDIS—How many of those 80 staff will be lost?

Mr Story—The number is around 10.

Senator BRANDIS—So there is a reduction of nearly 12 per cent or 13 per cent in the supervision of gaming, financial services and the alternative remitter sector?

Mr Story—That is correct.

Senator BRANDIS—I take you now to Budget Paper No. 2. Do you have that there?

Mr Story—No.

Senator BRANDIS—I will have a copy put in front of you, Mr Story. I take you first to page 90 of Budget Paper No. 2—that is, the summary in the Attorney-General's chapter of expenditure measures, which includes savings measures. You will see that it states:

The Government has identified total savings of \$2.8 million over four years by refining the Australian Transaction Reports and Analysis Centre's (AUSTRAC) approach to reporting entity compliance under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the AML/CTF Act) to better reflect risk management practices.

As the measure states, that is a reduction of \$2.8 million over four years from your budget to deal with Anti-Money Laundering and Counter-Terrorism Financing Act compliance.

Mr Story—Yes.

Senator BRANDIS—Let me take you back to page 88, under the item 'Africa—law and justice frameworks—Australian assistance'. Over those same four years the government has budgeted \$7.7 million to assist African countries to develop effective law and justice frameworks. Page 90 of Budget Paper No. 2 goes on to state:

... the Australian Transaction Reports and Analysis Centre will provide technical assistance tailored to the needs and requirements of African partners. Assistance will include training for forensics specialists and financial intelligence units, as well as legal workshops.

This measure will contribute to the ability of African countries to maintain security and stability in support of broader human development outcomes ...

Mr Story, can you tell me, first, which African countries will be the recipients of this support from AUSTRAC?

Mr Story—The final technical assistance beneficiaries are still being determined, but they will be Anglophone countries. The likely countries are Botswana, Kenya, Tanzania and Namibia.

Senator BRANDIS—Are those the four main candidates?

Mr Story—These are the four major candidates, and then there will be other Anglophone countries in the region that I will look at.

Senator BRANDIS—Mr Story, referring to the number of suspicious transactions or movements of moneys that attract the scrutiny of AUSTRAC, would I be right in guessing that very few of those transactions arise from or involve Botswana, Kenya, Tanzania and Namibia?

Mr Story—Yes, I think you would. Because the purpose of the program is different, those country beneficiaries have weak financial intelligence units today. The program is a capacity-building program.

Senator BRANDIS—Has AUSTRAC ever identified a significant unlawful transaction arising from or directly involving Botswana, Kenya, Tanzania or Namibia?

Mr Story—I do not know, Senator. That would take us into some operational matters. That is the sort of matter that I could take on notice for you.

Senator BRANDIS—To the best of your knowledge it has not?

Mr Story—I would think it is less likely.

Senator BRANDIS—It is unlikely. I think you said that these are capacity-building measures for these countries?

Mr Story—Yes.

Senator BRANDIS—You do not expect an immediate impact on Australian domestic law enforcement, even in the international aspects of Australian law enforcement, of these capacity building measures in Botswana, Kenya, Tanzania or Namibia, do you?

Mr Story—It would be hard to gauge. Another country that is under consideration for this capacity-building assistance is Nigeria.

Senator BRANDIS—They are foreign currency run schemes.

Mr Story—Yes. There would be significant connectivity to us.

Senator BRANDIS—Sure. Let us stick to the four that you offered as the four that were at the top of your mind, as it were, for consideration. Mr Story, it strikes me as very strange indeed that your agency would have its capacity to supervise and investigate unlawful transactions in the gaming and financial services sector significantly reduced by the loss of one-eighth of its staff and its operational budget slashed in the name of efficiencies by \$2.8 million at the same time as the government is giving you \$7.7 million to help develop capacity in Botswana, Kenya, Tanzania and Namibia.

If you were the author of the priorities, would you not regard tracking potentially unlawful transactions in the gaming and financial services sector in Australia as being a more important priority for AUSTRAC than helping to develop intelligence capability in Botswana, Kenya, Tanzania or Namibia?

Mr Story—First, there are different staffing groups involved here.

Senator BRANDIS—I can understand that, but let us gross it up, Mr Story. The government is taking money and staff away from you who deal with your core business of supervising, to put it in the vernacular, money laundering and other crime-facilitating financial transactions in, of all things, the gaming industry and the financial services industry in Australia. It then requires you to spend four times as much money in what amounts to be a foreign aid program in Botswana, Kenya, Tanzania and Namibia. Mr Story, is that where that AUSTRAC money is best spent?

Mr Story—Well, I think—

Mr Wilkins—Senator, could I intervene? I think that is a policy issue you are putting to Mr Story about where it is best to spend money. That is a matter that government and cabinet decide; it is not a matter that he decides or I decide.

Senator BRANDIS—I understand that, Mr Wilkins. I was wondering whether I could approach it by asking this officer a question. Of the two potential objects for the expenditure of this money—that is, fighting crime in Australia or developing capacity in Botswana, Kenya, Tanzania and Namibia—what would he regard as being the higher priority? Nevertheless, I acknowledge your reservation and I will not press the point.

CHAIR—Senator Brandis, before you continue, I remind you that officers are not required or expected to answer questions or provide opinions on matters of government policy.

Senator BRANDIS—I am aware of that, Madam Chair. Senator Ludwig, do you happen to know whether Botswana, Kenya, Tanzania and Namibia are among the countries that Australia has been courting in their votes in pursuit of its ambition to be elected to a seat on the United Nations Security Council?

Senator Ludwig—I am happy to take that question on notice and to ask the Attorney-General to see whether he can provide any assistance in response to your question.

Senator BRANDIS—Thank you very much, Minister. I would hate to think that Australian crime enforcement was being sacrificed to the Napoleonic ambitions of the Prime Minister to aggrandise himself on the international scale, but it certainly looks like that, does it not? Returning to another matter—

Senator Ludwig—I think it is fair to say, though, that you are not complaining about enhancing international law enforcement cooperation and capacity building across the globe?

Senator BRANDIS—Senator Ludwig, you are the government—I am not. I dare say that if I were the minister responsible for AUSTRAC I would be more comfortable investing its money in combating domestic crime than assisting Botswana, Kenya, Tanzania and Namibia with a quasi foreign aid program dressed up as an AUSTRAC allocation.

Senator Ludwig—That is a difficulty that you will always face. On that basis I am pleased quite frankly that you are not the minister, because we live in a global market and in a global economy. If you have some familiarity with this area you will know that there are huge movements of funds across the globe. When you seek cooperation you need that globally. You need to strike across places such as Indonesia, Pakistan and Africa to ensure that things such as the global movement of funds can be dealt with effectively. Cooperation is important for that purpose.

Senator BRANDIS—Indeed. Minister, I am sure that international cooperation is something that we all support. Is it not a question of priorities and how you allocate scarce resources? Moving on to another matter, I am sure that Mr Story saw a report in the *Brisbane Courier-Mail* about a man called Paul Darveniza?

Mr Story—Yes.

Senator BRANDIS—The claim was made that this man was recruited to AUSTRAC, notwithstanding a rather unsuitable past. Are you familiar with that report?

Mr Story—Yes, I am.

Senator BRANDIS—Can you tell us what steps AUSTRAC has taken to deal with that matter?

Mr Story—Yes. Mr Darveniza was the successful applicant in a merit based selection process for a senior manager position in gaming supervision—the area we talked about earlier—within the Brisbane office of AUSTRAC. When he applied for that position, Mr Darveniza declared on his security clearance forms his previous criminal record for the supply of drugs, which involved two counts in December 1996 and in January 1997. Even though no

convictions were recorded against him, there was an independent vetting contractor who interviewed Mr Darveniza as part of our normal security process. He decided that, as the offences were 11 years prior and there were no other matters of interest, he was suitable for a protected level of clearance. This is the lowest security clearance rating within AUSTRAC. For that level of clearance checks are normally required only for five years and it applies to persons who would not be expected to have access to higher levels of intelligence or enhanced intelligence documents.

When it was found that Mr Darveniza had been disbarred from practising law in Queensland and New South Wales, we secured a second security vetting contractor who then completed further checks on Mr Darveniza in accordance with the Commonwealth Protective Security Manual process for reviewing an individual's security clearance when such concerns are raised. This second review, which was by a different security vetting consultant, again recommended that he was suitable to hold a protected level of clearance.

Senator BRANDIS—Why was the fact that he had been disbarred from practising law in New South Wales and Queensland not revealed in the first vetting? If Mr Darveniza did not of his own motion disclose that fact, even though he may not have been asked it, would that not raise an issue as to his integrity and, therefore, his suitability for this role?

Mr Story—On the standard forms for a protected clearance he raised what he had to raise, so he answered the questions. That was not detected because it would not have been in any way evident to the reviewer.

Senator BRANDIS—Do you mean that the standard form does not include some general question such as, 'Are there any other circumstances which bear upon your suitability or eligibility for this job to which you wish to draw our attention', or words to that effect?

Mr Mazzitelli—Senator, the answer is yes. Our standard security clearance forms require an individual to declare any other matters considered relevant to the granting or providing of a security clearance.

Senator BRANDIS—At the time Mr Darveniza completed that form—presumably he did not disclose that fact in response to that question—he had either concealed that fact or he had made a judgment that being disbarred from practising law in two jurisdictions was not a relevant matter to be disclosed on either of those alternative criteria. It seems to me, with all due respect, that he is plainly a person lacking the integrity to be an officer of AUSTRAC.

Mr Story—When we had him reviewed a second time the vetter yet again said, 'Yes, you meet the standard for a protected clearance.' We then put him on an extended probation or after-care program for a further 12 months. That period is still running.

Senator BRANDIS—If the 12-month period is still running, when was the second decision made?

Mr Story—I understand that the second decision was made in October.

Senator BRANDIS—In October 2008?

Mr Story—Yes, in October 2008.

Senator BRANDIS—By whom was the decision made?

Mr Story—The second decision would have been made by me, as acting chief executive.

Senator BRANDIS—And you made that decision on advice?

Mr Story—On advice.

Senator BRANDIS—From the person who assessed him?

Mr Story—Yes, after two independent reviews.

Senator BRANDIS—Mr Story, like any professional man, you are not obliged to follow the advice you are given. You are obliged to consider it, but you are not bound by it.

Mr Story—No.

Senator BRANDIS—Does it not occur to you that a person who failed to disclose that fact when invited to disclose any other relevant circumstances, either because he sought to conceal it or because he did not consider it relevant, that he had been disbarred from practising law in two jurisdictions would be a person lacking the integrity to be an officer of AUSTRAC?

Mr Story—The PSM, or the Protective Security Manual, allows persons to hold a clearance in circumstances such as this if various mitigating circumstances are to be taken into account.

Senator BRANDIS—What were the mitigating circumstances here?

Mr Story—These factors were, first, that he was clearly the most suitable person in a merit based selection process.

Senator BRANDIS—Pausing there, Mr Story—that is not a mitigating circumstance. That cannot be held in mitigation of a consideration of unsuitability. All it means is that but for the consideration of unsuitability he would have been at the top of the list. Given that but for the circumstance of unsuitability he would have been at the top of the list for the reason you have explained, what is the mitigating circumstance?

Mr Mazzitelli—At the time Mr Darveniza argued to the admissions board that he was not required to declare his offences because they were minor in nature and no conviction was recorded. The Protective Security Manual allows for persons who have a criminal record to hold a security clearance when various mitigating circumstances are taken into account. Mr Darveniza met a significant number of those factors and these were taken into account when the security clearance was evaluated. These include that he had a clean record for more than an 11-year period, no convictions were recorded during that period and no conviction was recorded at the time of the offences. Noting the time that had elapsed and that the Protective Security Manual normally requires a five-year checkable background, he declared his background upon his application, so his honesty in that regard was noted.

Senator BRANDIS—But this is a man who has been struck off from practising law; who his own profession has declared is not a person of sufficient integrity even to conduct a case in court, let alone somebody who can be trusted with a sensitive, secure investigation; and who, if the report in direct speech in the *Courier-Mail* article from which I am quoting is right, was found by the Queensland Court of Appeal to have shown ‘an utter disrespect for the law’ and to have lied about his association with drug dealers. He concealed these matters, and

you still made a decision that he was a person of sufficient integrity for your organisation. I find that very alarming.

Mr Story—For a base level of clearance, we normally go back five years. These matters went back 11 years. It is true that he is currently subject to other investigations by our agency.

Senator BRANDIS—Arising out of these matters?

Mr Story—No, they are separate matters.

Senator BRANDIS—Have they independently come to light? What are they?

Mr Story—These are matters that are subject to a code of conduct, and it is in connection with operational matters of the agency, which I am not really able to discuss.

Senator BRANDIS—I am not going to ask you to deal with operational matters. If you had formed the view that, because of this man's demonstrated lack of integrity and the fact that he had been struck off the bar in two jurisdictions and had been found by the Queensland Court of Appeal to have shown an utter disrespect for the law and to have lied to a court, presumably under oath and thereby committing the offence of perjury, about his contact with drug dealers—if you had paid sufficient regard to those indicia of bad character—you would not now find that you have an officer who, since you made the decision to employ him, has evidently now fallen under suspicion again in relation, this time, to operational matters. Is that what you are telling us?

Mr Story—I acted on advice at the time which I thought was right and for the reasons that I have already stated. With the benefit of hindsight I can say that these matters have been a little unfortunate, but I cannot prejudge what is going on under the code of conduct matter—I have to let that run.

Senator BRANDIS—But taking into account matters that already had been definitively judged by a court—by the Court of Appeal, in fact—would not have been prejudging. It would have been making a judgement that this man was just not a person of sufficient integrity to be an officer employed by an agency that is dealing with matters of the sensitivity with which yours deals. So perhaps it is proved.

Mr Story—He has a low level of clearance in our place and he does not have access to the higher value intelligence that is in the place. He does not work in the financial intelligence unit.

Senator BRANDIS—I am sure if you sent him to Botswana to teach their officers the Botswana government would not appreciate it.

Mr Story—As you heard, these matters occurred a number of years ago. We took all those matters into account. We vetted him twice. We also gave him an extended period of probation, during which his security can be reviewed.

Senator BRANDIS—In view of this unfortunate experience, have you thought about reviewing your vetting procedures?

Mr Story—Yes, we have.

Senator BRANDIS—Is that review underway, or has it been done?

Mr Story—It has been done and it will strengthen some of the inquiries that I made at this first level of clearance.

Senator BARNETT—In terms of your review and the outcomes of that review, what specifically have you determined about the previous process? What have you now put in place to ensure that it does not happen again?

Mr Story—What will be done under the strengthened clearance is that there will be more checks made of what is in the public domain. As you heard, it is a five-year period, and that will remain the same.

Senator BARNETT—You are going to stick with the five-year period?

Mr Story—There have been some changes to forms as well.

Senator BARNETT—In sticking to the five-year period, how can we be sure that it will not happen again?

Mr Story—That is standard under the PSM.

Senator BARNETT—So you are going to stick with the five-year period?

Mr Story—For a routine level of clearance, yes. We have some people cleared to ‘protected’, some to ‘highly protected’, some to ‘secret’ and some to ‘top secret’.

Senator BARNETT—What we are interested to know are the changes you have put in place to rectify the problem that you have identified.

Mr Story—As I said, for these routine matters—for people who are cleared only to ‘protected’—there will be greater searches done of other information that is in public domains to support the information that is provided by the applicant.

Senator BARNETT—That is the only change.

Mr Story—Yes.

Senator BARNETT—You think that is adequate.

Mr Story—We think it will strengthen it, yes.

Senator BARNETT—I am sure it will strengthen it if you search what is in the public domain, but, in terms of addressing the concerns raised by Senator Brandis, do you believe that they will be taken into account?

Mr Story—The other response is to raise the level of clearance that is applied to a class of officer—we could clear more people to ‘highly protected’, for example. We will look at that, but we look at that matter on an ongoing basis. We have role based security, which means that we constantly look at the role and align it with an appropriate level of clearance. He was assessed at being at the base level, and we will have to review those levels of clearance.

Senator BARNETT—Thanks for that.

CHAIR—I thank you and your officers very much for attending this afternoon.

[2.42 pm]

Classification Board
Classification Review Board

CHAIR—I welcome representatives from the Classification Board and the Classification Review Board. We will examine these agencies together. I invite you to make an opening statement?

Mr McDonald—Thank you for the opportunity to make an opening statement. I want to take this opportunity at the outset to update you with a few facts and figures about the board's work this year and to mention progress since we last appeared before you in October of last year. As you would be aware, the Classification Board is an integral part of the national classification scheme and cooperative arrangement between the Commonwealth, states and territories.

The act under which we are established requires that, in appointing members to the board, regard is to be had to the desirability of ensuring that membership of the board is broadly representative of the Australian community. Since we last met, five new board members have been appointed and two others reappointed. Those new members come from Western Australia, New South Wales, the ACT and the Northern Territory.

In recent years the board has processed over 7,000 applications per annum for classification and classification-related services. The board makes its decisions about the classifications of films, publications and computer games in accordance with the act, the national classification code and classification guidelines, which are statutory instruments.

In this financial year to the end of April the board has received 5,710 applications. This includes applications for classifying around 4,000 films, 872 computer games and 163 publications. There is evidence of a decline in this year's applications to date, although not a large one, and time will tell whether this is yet another instance of the impact of the global financial crisis or due to some other causes. In making its decision, the legislation requires that the board must reflect community standards, which means the standards of morality, decency and propriety that are generally accepted by reasonable adults. In every instance the board takes this duty most seriously.

During the current year, the new authorised television series assessor scheme commenced. Starting on 1 January, this new scheme complements the other industry-based schemes where authorised persons are enabled to make recommendations to the board about likely classifications of different product types. From 1 January, this also includes television series which have been screened on Australian television and which are commonly known as boxed sets. So far 25 people have been trained and 73 applications have been submitted under the scheme.

Senator BARNETT—On 1 January this year?

Mr McDonald—Yes, Senator. Looking forward to the next financial year, another new industry-based scheme will commence on 1 July. That scheme, known as the advertising scheme, will enable authorised and trained industry assessors to assess the likely classification of an unclassified film or computer game so that it can be advertised together with classified

material before it is classified. The scheme will come with appropriate training courses and safeguards.

I also briefly mention developments since the October 2008 Senate estimates hearing when some senators raised concerns about certain publications. Since that time the board has increased its focus in this area and this year to date has investigated 119 publications. This, in turn, has led to increased monitoring of serial classification declarations, which are declarations made by the board that the classification of one publication applies to future issues, usually for 12 or 24 months. Where breaches of these declarations are found, the classification is being revoked.

Some of these magazines had RC, that is to say refused classification, content; that is, they featured people who were under 18 in a way that would cause offence to a reasonable adult. These publications have been reported to law enforcement agencies. In addition, I have continued to use my power to call in material for classification. If material is unclassified and I have reasonable grounds to believe that it should be classified in accordance with the legislation as it pertains to publications, films and computer games, I am able to require that it be submitted within three days.

This year I have called in, among other things, 48 adult publications, five graffiti magazines, and 386 films. I will continue to use this power in circumstances where I believe it is warranted. I should also mention that the board works with the three officers of the classification liaison scheme, who travel around Australia and check compliance with classification laws while also educating industry about those laws. During this financial year I have asked these officers, among their other tasks, to buy adult magazines that are sold in unrestricted premises, such as petrol stations and news agencies.

Senator BARNETT—Excuse me, Mr McDonald, could you repeat that last part?

Mr McDonald—Yes. I have asked the officers of the classification liaison scheme, among their other duties, to buy adult magazines that are sold in unrestricted premises, such as petrol stations, and news agencies. The board is using these magazines to more closely monitor whether distributors are complying with the serial classification declaration scheme. I am also using these magazines, and others sent in by members of the public, to call in unclassified publications for classification.

Finally I should note that the board is not charged with the responsibility of enforcing classification laws. Its primary role remains to classify the many thousands of publications, films and computer games that it must classify every year. That said, I would like to reassure senators that the board takes its responsibility very seriously and will continue to do everything in its power to increase compliance with Australia's classification laws in cooperation with enforcement agencies and protect the integrity of the classification scheme. Thank you, Senators. I look forward to answering your questions.

CHAIR—Thank you, Mr McDonald.

Mr Griffin—Madam Chair and Senators, can I offer an apology for Ms Victoria Rubensohn, who is the recently appointed convenor of the Classification Review Board. Unfortunately she has an examination to sit at the University of Sydney and is therefore unable to be here today. I have been the deputy convenor since April 2004 and I have sat on

most of the classification reviews since about that time as well as attended Senate estimates committees. I thought it was important to offer her apology for her inability to be her today.

CHAIR—Thank you very much; that is appreciated.

Senator BARNETT—Chair, I do not want to intervene at great length at the moment, but there is a bit of a trend that has been set today in terms of this particular department and in terms of relevant officers not being available. But thank you for advising us, Mr Griffin.

CHAIR—Given Mr Griffin's eminent qualifications—

Senator BARNETT—There is a very strong trend. I think it is in four out of five agencies so far the relevant executive officers have not been present.

Senator FISHER—Yes.

Mr Griffin—I made the apology with some trepidation, having heard the earlier apology.

CHAIR—Yes, and I will just put on the record again that there are some very valid reasons here that are quite unique and have not occurred certainly in my last 15 months of chairing estimates. Mr Griffin, I am sure that with your eminent background you will be able to answer these questions just as well. I have every confidence in that. Let us go to questions.

Senator McGAURAN—In your opening statement you said that while it is not the responsibility of the board to enforce, is it not the responsibility of the board to, if you like, monitor and police? What do you mean by enforcement? Do you mean lay charges?

Mr McDonald—No.

Senator McGAURAN—I would have thought it was your responsibility to follow up and check up on your classifications.

Mr McDonald—With respect, Senator, it is not. That is the responsibility of state and territory police forces.

Senator McGAURAN—So on all occasions, the complaints, such as Kids Free 2B Kids, should be directed to the police first, and not to your organisation?

Mr McDonald—No, not at all, Senator. We take all contact from the public very seriously and deal with the material that people bring before us. It is extremely useful to us to hear from members of the public their concerns about material. We take that seriously and we examine that material.

Senator McGAURAN—If you find it to be in breach?

Mr McDonald—If we find it to be in breach, if it has been subject to a serial classification and it is in breach of that serial declaration, we will revoke the declaration and advise the enforcement authorities; that is to say, the state police, in the main. On the other hand there is material that comes to us from members of the public which has not been classified at all. Similarly, we advise the enforcement authorities of that material.

Senator McGAURAN—If I ask about that specific case, I am trying to understand that really you play with a dead hand over all of this. The best example yet of the serial breaches that are occurring out there, or the racket that is occurring out there, is Ms Gale, who self-titles as a housewife in the suburbs and runs the Kids Free 2B Kids, finding out all these

things. It is for her to monitor, to follow up, and to bring that to your attention. She is the one who has triggered all this and has brought these enormous numbers of breaches—or, as I call it, a racket—to your attention. It is not within your power or your resources to ever at any time uncover this racket by the pornographers?

Mr McDonald—It is not within the duties of the Classification Board but the department may have some comment on that.

Mr Wilkins—I can perhaps just point out, Senator, the arrangement between the states and the Commonwealth, which has lasted some considerable time now, has the Classification Board and the Commonwealth basically responsible for the classification of publications. Enforcement of and compliance with those rules is a matter for the states and particularly the state police. That is how the system works and has worked for a long time.

If the complaint is about classification, the right place to bring it is to the Classification Board. If the complaint is about the compliance with classifications that have been made, then the right place for it to end up is with the state police. What Mr McDonald is saying is that if matters come to our attention—whether it is to the Classification Board or whoever in the Commonwealth—and through liaison officers some non-compliance is seen, that is referred to the state police. They are the people who appropriately should take action.

Senator McGAURAN—The call-in notices to the distributors? What distributors?

Mr McDonald—Not to many.

Senator McGAURAN—No.

Mr McDonald—I have the figures here, Senator. I have called in 11 publications in 2008 and 37 in 2009, and I am just getting for you the response, which was pretty pathetic, actually. Senator, rather than delay you now, can I take that on notice? But I can tell you there was very little response from the calling in.

Senator McGAURAN—Having taken it on notice, are you able to identify the distributors involved?

Mr McDonald—Even that is a shadowy world. For background, the publications we are talking about are overwhelmingly entirely printed overseas. We are not having problems of this sort with Australian publishers. These are magazines that are imported—many of them two and three years after the original date that is on the cover. They are imported by not just one distributor but by several distributors, so what is called parallel importing is going on.

The issues may not even be exactly the same: for instance, there have been cases where one of these distributors has submitted a publication for serial declaration with pages removed and otherwise treated. Then we have later found in this last year issues of apparently the same magazine, imported by somebody else, as far as we can determine, that is not the same as the original issue that we classified. This might lead you to think that serial declaration classification is a flawed scheme. I think it works on trust, and we are finding out who can be trusted and who cannot be trusted.

In the main, the Australian publishers can be trusted. They have some issues where they sail very close to the wind. We talk to them about those issues and they live within the

declaration. But the imported material, I have formed the view, is not an entirely suitable range of products to which a serial classification should apply.

Senator McGAURAN—When it is imported, in crates or however, it is non-classified then, is it not? How does that work? Does Customs do it?

Mr McDonald—Yes. What happens at that point would be a matter for Customs, who are among the enforcement agencies that we deal with. It is not for me to speak for them or to defend them, but Customs and the police clearly have many priorities in respect of crime. They do not necessarily find these easy matters to pursue in comparison with their other priorities.

Senator McGAURAN—Just on the same theme, have you had any or many, and if so how many, state police notifications to you or complaints to you? You say it is the state police who have to enforce this. If they are enforcing it, you would be kept abreast of it. How much of that is going on?

Mr McDonald—The police do not report back to us. The police might seize the publication that they are concerned about in some sort of raid and they could submit it to us—in other words, make an application to us for classification. In respect of adult publications, that would happen extremely rarely. We do have other sorts of material referred to us by state police and by customs, but not in the adult publication area very often.

Senator McGAURAN—So the state police are doing nothing. You mentioned community liaison officers.

Mr McDonald—Community liaison officers, yes.

Senator McGAURAN—What are their duties?

Mr McDonald—They are employees of the Attorney-General's Department in the classification operations branch.

Senator McGAURAN—They go out and check?

Mr McDonald—Yes. There are three of them for the whole country, Senator.

Senator McGAURAN—Under resourced, do you believe, for such a job?

Mr McDonald—It is a matter for other people to determine those priorities, not for me.

Senator McGAURAN—Has there been any complaint to you about 7-Eleven? We know the major service stations, to their absolute credit—BP and Shell to name two—have withdrawn all these publications because of the racket in the jackets; that is, the publication is classified as one thing, and then as soon as you open up the jacket it is child pornography.

Mr McDonald—Yes.

Senator McGAURAN—Have you had any complaints that 7-Eleven has refused to withdraw these category 1 magazines?

Mr McDonald—Again, that is not within my sphere of influence, Senator. 7-Eleven may be among the stores selling these publications; I am sure they are. But there is no mechanism under my responsibilities for me to have a direct relationship with retailers or chains of retailers.

Senator McGAURAN—I thought perhaps Kids Free 2B Kids, for example, may have brought it to your attention. They have certainly brought it to the attention of 7-Eleven. They have listed the category 1 magazines which you have now de-classified—you know, the classics. *Purely 18*, for example, is the one that was caught up the most. It has been brought to the attention of 7-Eleven that they are selling that magazine, and Shell all the major service stations have withdrawn it and you have withdrawn it, and 7-Eleven have written back and said that it has category 1 on the jacket. They believe that is all right and they continue to sell such a magazine. I have a letter here from the 7-Eleven national franchising manager.

Mr McDonald—I have not seen copies of the correspondence to which you refer, but it would in any case be a matter for the state and territory police.

Senator McGAURAN—Yes, to enforce. But when these matters are brought to your attention you then notify the state police.

Mr McDonald—I do.

Senator McGAURAN—As you have with the previous complaints?

Mr McDonald—Yes.

Senator McGAURAN—Would you not then notify the state police to investigate 7-Eleven's recalcitrance?

Mr McDonald—That is another chain. Our chain of responsibility is in respect of classifying or revoking a classification of a publication and informing police of that.

Senator McGAURAN—Would you inform the police of that if you thought 7-Eleven was selling illegal magazines—if the evidence was put to you?

Mr McDonald—I would not withhold the information. I do not have it.

Senator McGAURAN—That is what you have been doing up until now. I do not know why you are reluctant on this one. After my complaints and Kids Free 2B Kids complaints you have duly followed it up. Why would you not duly follow this up?

Mr McDonald—I think I have already said that I have not seen the letter to which you are referring. I have not seen any correspondence from the 7-Eleven franchise.

Senator McGAURAN—All right. Perhaps I will write directly privately. I will not table it, but I will definitely give it to the Classification Board.

CHAIR—You will follow it up in a private capacity?

Senator McGAURAN—Yes, with the Classification Board.

Senator Ludwig—Has it been referred to the state police? Quite frankly, I have a concern if we are talking about lawful publications.

Senator McGAURAN—No.

Senator Ludwig—To any relevant jurisdictions?

Senator McGAURAN—No, it has not.

Senator Ludwig—Maybe in writing to the Classification Board. Mr McDonald, you might also do the latter as well and bring it to the attention of the state police

Senator McGAURAN—Possibly so. That seems to be the chain. Let us not divest ourselves of the responsibility the Classification Board has. There is a racket going on here. It is being gang pressed into doing something, if not necessarily by Mr McDonald. But if the previous meeting we had here some time ago in estimates is any example—and I am glad to see that the Classification Board has acted upon that—there was a tremendous amount of dragging of feet initially.

CHAIR—Is that all the questions you have, Senator McGauran?

Senator BARNETT—I assume he is reserving his right.

Senator McGAURAN—I am reserving my right.

CHAIR—Senator McGauran, is that all the questions you have?

Senator BARNETT—He is reserving his right.

CHAIR—Have you finished for the moment?

Senator McGAURAN—Yes.

Senator BARNETT—It seems Mr McDonald—and indeed the minister and Mr Williams—that we have a system failure currently before us where we have pornographic material being sold in corner stores, newsagencies and service stations all around Australia. These are publications which should be refused classification. In fact, they are publications which have an RC—refused classification—and they are continuing to be sold. We have had the example of Julie Gale who bought those 28 publications and sent them in to you, and you have outlined or responded to some of that. But we have a system failure. You are acknowledging that today. You are saying that it is up to the law enforcement agencies, which are state and territory agencies, and ministers and that, indeed, the police commissioners are responsible.

I understand that the Minister, Bob Debus—and please confirm if this has occurred—has written to his state counterparts and the state police commissioners. Perhaps Mr Wilkins or the minister can advise. I understand it is an acknowledgment of system failure. He has written to say, ‘Let’s fix the system. Let’s see what we can do to fix it.’ Perhaps you could advise when, where and how that occurred and the content of that letter. If that is the case, there is an acknowledgment at a federal level that we have a system failure, that young kids and adults are buying a publication that has been refused classification and yet it is continuing to be sold. We have a system failure. Could we perhaps have a response from the government to start with?

Senator Ludwig—Thank you. It is a serious matter. I highlight that as well. I can advise that the Minister for Home Affairs has taken an interest in addressing this matter. He sought the cooperation of police commissioners and ministers to address the issue. He also raised compliance and enforcement of publications at the 7 November 2008 meeting of the Ministerial Council for Police and Emergency Management. In addition, on 4 February the minister wrote to all police commissioners and the Queensland Commissioner of Fair Trading seeking their assistance in giving increased priority and adequate resources to the enforcement of classification offences. As of 11 May, five commissioners have responded.

Senator BARNETT—Which five?

Senator Ludwig—I do not have any detailed knowledge of this particular matter other than what I have provided. I can ask Mr Wilkins to see if he can add to the information we have at hand. If not, I can always seek additional information from the Minister for Home Affairs and provide it to the committee.

Senator BARNETT—He has written to the police commissioners and his relevant counterpart in each state?

Senator Ludwig—I am advised that he has written to the police commissioners and the Queensland Commissioner of Fair Trading, who has a role in enforcing classification laws in Queensland.

Senator BARNETT—But has he written to his ministerial counterparts in each state and territory?

Senator Ludwig—I understand it was copied to the ministers.

Senator BARNETT—And you will take on notice the responses that have come back?

Senator Ludwig—Yes.

Senator BARNETT—You have said there are five and you will let us know which five.

Senator Ludwig—First of all I said I will see whether Mr Wilkins can provide any additional information to the committee in terms of the question you have asked and the general matter. In addition, if that does not satisfy the committee's primary question, I am happy to take that on notice as well.

Senator BARNETT—The threshold question is: do you acknowledge and has the minister in his letter acknowledged, or at a public level that perhaps I have missed, that we have a system failure here where this type of material is being sold through these shops and corner stores?

Senator Ludwig—I am only familiar with what you have described to date. I can say personally that I am very concerned about it. I will get Mr Wilkins, who has some knowledge or at least has been familiar with this material before, to provide additional information to the committee.

Mr Wilkins—Just going to the question of systems failure, I think that is rather too strong a word. But the minister in his letter certainly says that he has concerns about the level of compliance and asks that more attention be given to that by state and territory police. I think the idea of system failure is too strong a word. In fact, after matters were raised in this chamber by some of the senators here steps were taken by the minister. This is one among the several measures to try to get higher penalties in terms of customs regulations, which is in train, and working through the Standing Committee of Attorneys-General to try to get a more uniform approach to this, as well as the letters that he has been sending to police commissioners—

Senator BARNETT—We will come to SCAG in a minute. I have SCAG on the horizon.

Mr Wilkins—But you asked what was being done. In response to questions I think raised in this place last time, Mr McDonald has said the matters were raised with the Classification

Board and it took action on that as well. I am not sure that the concept of a system failure is not too strong a word.

Senator BARNETT—That is my interpretation of it and I stand by it. I appreciate your responding. I am happy for you to take this on notice. Could we please have a copy of the letter that the minister sent.

Mr Wilkins—I think that will probably be okay, but I need to check with the minister to see if he is happy with that.

Senator BARNETT—Of course. Thank you.

Mr Wilkins—You wanted to know which commissioners have responded.

Senator BARNETT—Yes.

Mr Wilkins—So far, we have had letters back from Western Australia, South Australia, of course, the AFP, the Northern Territory and Victoria.

Senator BARNETT—That is only three states.

Mr Wilkins—The territories are responsible for this too.

Senator BARNETT—But there are six states and the Northern Territory and the AFP. Who are we missing? We are missing New South Wales, Tasmania, Queensland and the ACT.

Mr Wilkins—Yes.

Senator BARNETT—That letter was written on 4 February. It is now mid-May. That indicates to me, and I think perhaps to others, the level of seriousness with which some of those states are dealing with this matter. That is a matter for them, of course.

I refer to the SCAG meeting of 17 April. I have the communique that came out of that meeting. I refer specifically to point 2, which you touched on Mr Wilkins, regarding classifications of publications and films, compliance and enforcement. It states that ministers considered proposals to improve compliance with the National Classification Scheme for offensive publications and films and asked officers to develop detailed proposals for reform in this area. Where are we up to? What has happened? How much progress has been made? This has been an ongoing issue. I have raised it at most estimates hearings in which I have been involved over several years. I know that for other senators, such as Senator Fielding, Senator McGauran, Senator Joyce and many others representing their constituents from all around Australia, this has been an ongoing issue. What progress has been made, apart from a letter being sent to commissioners?

Mr Wilkins—There are a number of things being taken care of, and I have already foreshadowed some of them. All the ministers agreed to examine actions in their relevant jurisdictions to facilitate prosecution of classification offences. As I said, the Commonwealth is looking at strengthening regulations in respect of customs matters. The department is working with the Australian Customs Service to develop amendments to the customs regulations to increase the penalties for the import of commercial quantities of objectionable goods. The minister has considered options to strengthen harmonised classification offences and penalties. That is rather a tall order. But officers are to develop detailed proposals to reform serial classification declarations to reduce their abuse. As I said, the minister has also

written to commissioners. There is a working party which is to develop relevant proposals in relation to consultation with law enforcement agencies about how to do that. But there are quite a lot of things occurring on this front, actually.

Senator BARNETT—I appreciate that feedback. But I use the Latin words, *res ipsa loquitur*—the facts speak for themselves. In terms of dealing with what I call a system failure, it appears to me that we have not progressed a great deal. I go back to Mr McDonald. Thank you for advising in your introductory remarks the number of publications called in. I think you said there were 48 adult publications, five graffiti publications and 300 films. Could you please take it on notice to advise the names of those?

Mr McDonald—Of all those products?

Senator BARNETT—Yes. You have also indicated that you have investigated—

Mr McDonald—You would like titles of those 387 films. I would be happy to provide them.

Senator BARNETT—And the adult publications—and I think you said graffiti publications.

Mr McDonald—Yes.

Senator BARNETT—You also indicated that you have investigated 119 publications over the past 12 months. Can you identify them on notice?

Mr McDonald—Certainly.

Senator BARNETT—Senator McGauran has rightly pointed out that we have an issue with the distributors. Clearly they are not responding to your requests. You must be pulling your hair out. What can you do about it?

Mr McDonald—Absolutely nothing, other than to advise the police and—

Senator BARNETT—That is further evidence of system failure where you request these distributors to respond and you are getting absolutely no response.

Mr McDonald—Well, you are calling it a system failure. I think it would be helpful to define which part of the system is failing.

Senator BARNETT—You have put out a request and you are not getting an answer.

Mr McDonald—And having not got an answer, I then advise, as I am obliged to do, the law enforcement agencies responsible.

Senator BARNETT—I have a comment here from Mr Davis, who says that since July last year the Classification Board has referred over 200 adult publications to law enforcement agencies. Is that correct?

Mr McDonald—I will provide you with a schedule of all of the classification publications that we have advised the law enforcement agencies about. It would be of that order at least.

Senator BARNETT—At least?

Mr McDonald—Yes.

Senator BARNETT—So you will advise us how many? Can you advise us their identity?

Mr McDonald—Yes.

Senator BARNETT—Can you advise us which enforcement agencies you have referred them to?

Mr McDonald—Yes. All of the state and territory police or, in the case of Queensland, the Office of Fair Trading.

Senator BARNETT—All right. What about the response? Do you follow up and do you find out what has happened to these publications? In terms of law enforcement, do you have any follow-on or follow-up to know exactly what is happening?

Mr McDonald—Police are not obliged to inform us of any action they take.

Senator BARNETT—I know they are not obliged, but do you follow up? Do you find out? Do you monitor court proceedings? Do you know if you are making any progress in nailing these people who are allowing this filth to penetrate the public arena?

Mr McDonald—I preside over a body that is called the ‘Classification Board’, and that is what we do. I do not want to use what may seem a vainglorious analogy, but a court does not follow up what happens after it finds against somebody. That is not within our remit, nor certainly within my powers.

Senator BARNETT—That is again further evidence of system failure from my perspective, but you are responding from your perspective, and I appreciate that. I have some questions regarding computer games and the classification of computer games in the R18+ category. But other senators, like Senator Fielding, may have other questions.

Senator FIELDING—I am happy to make a start in this area. This might be a dumb question, but have any laws been broken in regard to pornographic material being sold at corner shops, milk bars and petrol stations?

Mr McDonald—Yes, there have been publications sold which have never been classified or which have carried a serial classification declaration for category 1, which permits them to be sold in a sealed plastic bag in an unrestricted premises, but which on the opening of the plastic bag and on examination proved to be category 2, which means they should be sold only in restricted premises. On that level, yes, the law is being broken, and not infrequently.

Senator FIELDING—Is it a federal law or a state law?

Mr McDonald—It is a state law.

Senator FIELDING—We do not seem to be getting very far in cracking down on this issue given what we have just heard and how you have explained it. You have certainly written and the responses are, frankly, pretty slow and sloppy given the serious nature of the breach. It is pornographic material. Mr Wilkins might be able to help in answering this question. Given the seriousness of the breach, have you or the department recommended anywhere that we should have a federal law so that we are not beholden to the states in cracking down on pornography being so readily available in corner shops and milk bars and so that we can get on with it and use the AFP? We can send the federal police into the Northern Territory but we cannot send them in to deal with pornography being sold in milk bars, corner shops and petrol stations. I find that absurd. Anyone listening to this today would

find it absurd that we are beholden to the states when we could pass a federal law with penalties for selling this sort of material in our local communities.

Mr Wilkins—Some support has been given to that proposition. There are some constitutional constraints, but it may be possible for the federal government to do that. The big issue is whether we are going to basically run police forces that enforce that. We would have to grow the police forces significantly to do this job.

Senator FIELDING—I am not sure. That is a separate issue. At the moment we are not following through and there seems to be no penalty given. I think at the federal level, certainly in the case that you have in front of you, being beholden to the states to react in their own fair time is ludicrous. We should have a federal law that can be policed with some penalty, even if it is financial, to stop this so readily happening. You are clearly being played here. You are a soft touch and you are saying that the parliament of Australia is soft on this issue. Putting up with the states on this issue is not fair to Australian families, who are clearly concerned about this issue. Was it raised at SCAG having federal laws in place with severe penalties, even financial ones, to stop this from happening and getting to the issue?

Mr Wilkins—The question of more severe penalties was certainly raised at SCAG.

Senator FIELDING—Were federal laws raised?

Mr Wilkins—No. But we have a cooperative scheme which has lasted since 1996 and before that, and it has worked quite well in relation to a whole range of issues. The question here is partly about raising penalties. But, most significantly, it does not matter if you raise penalties if those penalties are not enforced. The real question is about enforcement. It is about having people out on the streets enforcing the laws. It comes down to enforcement issues at the end of the day.

Senator FIELDING—It is not a matter of enforcement; it is actually applying penalties. Quite clearly this breach has occurred and no-one has actually copped anything.

Mr Wilkins—But you have to go and enforce. You have to collect the evidence and take the people to court.

Senator FIELDING—You already have evidence showing that some people have breached the law. The evidence is there.

Mr Wilkins—I am not sure that it is evidence that is there. This is a technical issue. But the police need to collect the evidence, lay the charges and take people to court. The federal parliament can pass all the laws it likes, if no-one is going to enforce them it is meaningless. You need both adequate penalties and enforcement as well.

Senator FIELDING—Wrappers are another issue. Who stipulated that wrappers should be placed on these materials?

Mr McDonald—It is in the legislation.

Senator FIELDING—Federal legislation?

Mr McDonald—Yes.

Senator FIELDING—What does it say has to be on the wrapper? What is stipulated to be on the wrapper?

Mr McDonald—It is part of the cooperative legislation. For category 1 it is a label that says: ‘Restricted category 1. Not available to persons under 18 years.’

Senator FIELDING—Does the distributor’s name and contact details have to appear on the wrapper so that they can be easily contacted, knowing that there have been some problems in the past with this?

Mr McDonald—I cannot answer. Can we take that on notice?

Ms Davies—Under the current legislation, the requirement is that the classification marking—that is, category 1 and the restriction to adults—be listed, but there is no requirement regarding who the distributor is or contact details.

Senator FIELDING—Do you think it would be helpful to have that on the front for people to be held more accountable?

Ms Davies—It is certainly one of the sorts of issues that the officers are looking at in terms of taking proposals back to ministers—what information should be available on the outside of the cover—yes.

Senator FIELDING—When you say that is being looked at, where is that being discussed?

Ms Davies—That is part of the work that censorship ministers asked officers to do in terms of bringing back proposals for further changes in this area. So that will go back to censorship ministers, to SCAG.

Mr Wilkins—That list of issues that I explained to Senator Barnett came out of SCAG.

Senator FIELDING—Is this something we could do at the federal level—that is, introduce some requirement that you cannot sell these things unless the wrapper shows the distributor’s name and contact details?

Mr Wilkins—Possibly. But if we start doing that unilaterally the problem will then be that state and territory police and jurisdictions may not continue to play ball in terms of the cooperative scheme, which would mean that this whole issue of enforcement that I explained to you would become very problematic indeed. We would prefer to do it cooperatively under the scheme rather than just unilaterally using the federal law. But that is a possibility, maybe.

CHAIR—It is 3.30 pm, so it is time for our scheduled afternoon tea break. We will reconvene at 3.45 pm.

Proceedings suspended from 3.31 pm to 3.45 pm.

CHAIR—Senator Fisher, we are dealing with the Classification Board and the Classification Review Board. Do you have any questions for these people?

Senator FISHER—No.

CHAIR—That concludes our questioning. There are no other senators here to ask you questions and Senator Fielding has said that he will put the rest of his questions on notice. Thank you very much for your time this afternoon.

[3.50 pm]

Family Court of Australia

CHAIR—Good afternoon and welcome to Senate estimates. Before we go to questions, do you have an opening statement you would like to make?

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

CHAIR—Thank you. Senator Fisher, do you have any questions?

Senator FISHER—I do not have any myself, but I am sure we do have.

CHAIR—Normal practice would be that if senators are not here to ask witnesses questions we do not expect witnesses to stay. But I might just offer people the courtesy of letting them know that you are here at the table.

Senator FISHER—Thank you, Chair.

CHAIR—We will pause or suspend until 3.55 pm.

[3.55 pm]

CHAIR—I welcome Mr Foster to the estimates hearings again. There is no opening statement; is that correct?

Mr Foster—Yes.

Senator BRANDIS—Can somebody else start please? I am trying to do something else at the moment.

CHAIR—We do not have anyone else who has questions.

Senator BRANDIS—Don't we? Well then—

CHAIR—If you do not, I am sure the officers would like an early mark.

Senator BRANDIS—No, I will be with you in a moment. I think Senator Barnett might have a few questions for you for a little while.

CHAIR—Members should remember that at 5.00 pm we are going to stop to go to emergency management outcomes.

Senator BARNETT—We are on the Family Court. Mr Foster, it is nice to see you here. Thank you for your presence. It is very much appreciated. Let us start on the complaints handling mechanism that you have underway within your court. Perhaps you could update us on the number of complaints, how you have dealt with the complaints since we last met and the procedures you undertake to process those complaints.

Mr Foster—Certainly. I will provide some history about the judicial complaints system, because there is some activity at a policy level about the Attorney-General's view of a judicial commission. The Attorney-General wrote to the Chief Justice on 13 June and 20 October 2008 with regard to improved handling of complaints against the judiciary. The Chief Justice responded to these inquiries in writing on 19 June 2008, 23 June 2008, 26 June 2008 and 28 October 2008. The Chief Justice and senior officers of the court have discussed judicial complaints handling with the department over the term of this government, including on 7 July 2008, 20 August 2008, 17 November 2008 and 19 November 2008. There has been

significant discussion between the courts and the department in relation to judicial complaints.

In relation to what exists as we speak, the Family Court acknowledges that complaints about judicial officers from the public may warrant particular serious examination and in certain circumstances the Chief Justice may need to advise both the Attorney-General and the Governor-General in council that the procedures related to the termination of a commission under section 72 of the Constitution should be activated. The Family Court has implemented a judicial complaints handling policy that is readily available to the public on the Family Court website or upon request to individuals. We take seriously complaints made about judges. Policy does acknowledge the importance of the public providing feedback about judicial conduct so that the Chief Justice and the judge concerned may deal with the complaints appropriately. All that information is provided on the Family Court's website.

The Deputy Chief Justice, on behalf of the Chief Justice, has primary responsibility for the management of complaints against judges and is assisted in the consideration and investigation of the complaints by a judicial complaints adviser, who is a legally qualified registrar of the court. The first step in the process is for an assessment to be made of the complaint to ensure that it is about the conduct of the judge rather than the result of a decision of that judge or a matter of proceedings which might be raised as a ground of appeal. Once the nature of the complaint has been identified, an appropriate initial response acknowledging the complaint is provided as soon as practicable. If the complaint pertains to conduct of a judge, a detailed consideration of the proceedings may be undertaken. This may involve an examination of the transcript or a review of the available audio of the proceedings. A detailed and comprehensive reply is then prepared by the judicial complaints adviser and is reviewed and settled by the Deputy Chief Justice. In certain circumstances—

Senator BARNETT—How many judicial complaints advisers do you have?

Mr Foster—There is one—in the chambers of the Deputy Chief Justice here in Canberra.

Senator BARNETT—Do they have some sort of independence or are they simply part of the executive administration of the court?

Mr Foster—It is a registrar employed by me as the chief executive officer. But it is a legally qualified person who has had great experience in the court processes and systems and who knows how to review a file, read the transcripts et cetera. In certain circumstances, the judge concerned will be sent a copy of the complaint by the Deputy Chief Justice and invited to respond should the judge wish to do so.

Senator BARNETT—You say 'in certain circumstances'. Is that in most circumstances? In what circumstances would the complaint not be referred to the judge?

Mr Foster—If the matter was still proceeding before that particular judge then obviously that judge would not be consulted or advised about the complaint until the proceedings had been finally determined and dealt with.

Senator BARNETT—Is that automatic?

Mr Foster—Pretty much automatic, yes. If it is a behavioural thing from a party to an action and the matter is proceeding, those proceedings would wait until the judge had made the decision in relation to that matter.

Senator BARNETT—What if the judge was accused of being asleep through the hearing and consistently falling asleep every afternoon during the hearing?

Mr Foster—Fortunately that has not happened, so I am not really sure of that particular instance. I am really not in a position to respond.

Senator BARNETT—Would that not be an allegation that you would want brought to the attention of the judge as a matter of urgency?

Mr Foster—It might be. I am not being black and white in my response, but largely if there is a matter still before the judge for determination then it would be held back. There may be circumstances where it would be appropriate and/or necessary for the matter to be discussed with the judge notwithstanding that it was still before him or her in the court. But I would not like to speculate on those circumstances.

Senator BARNETT—But in any event, that is for the officer to liaise directly with the judge or not.

Mr Foster—That would be for the Deputy Chief Justice. The officer would advise the Deputy Chief Justice and he would make a decision, probably in consultation with the Chief Justice, about whether that further consultation process should take place. But to my knowledge that has not occurred.

Senator BARNETT—Why is it the Deputy Chief Justice and not the Chief Justice?

Mr Foster—I guess it is because the court has had such large numbers and it is a role clearly for the Deputy Chief Justice, who deals primarily with case management other than his court workload. Many of these complaints relate to case management, so it seems to fit within his responsibilities. The Chief Justice has delegated that responsibility to him.

Senator BARNETT—Going back, is it in most circumstances that it is referred to the judge? You said in ‘certain circumstances’.

Mr Foster—It would depend again on the nature of the complaint. If it was something of a particularly minor nature, it would not be. If it was a matter that it was considered the judge needed to be made aware of or might need to comment about, in those circumstances it would be referred to the particular judge.

Senator BARNETT—Using the last 12 months as an example, how many have been referred?

Mr Foster—I would have to take that on notice. Off the top of my head, I do not know.

Senator BARNETT—How many complaints have you had in the last 12 months?

Mr Foster—In the 2007-08 financial year, there were 75 complaints in relation to judges, out of a total of 206 non-judicial and 75 judicial complaints. To the end of December, there were 92 non-judicial complaints.

Senator BARNETT—From 1 July?

Mr Foster—To the end of December. Not about judges—they are non-judicial, about processes et cetera.

Senator BARNETT—What about judicial complaints—complaints about judges to the end of December?

Mr Foster—I do not have that figure. I will take that on notice. There were 75 for 2007-08.

Senator BARNETT—We are obviously interested in 2008-09, and through to 31 December if possible.

Mr Foster—Yes.

Senator BARNETT—But you do not have those figures for judicial complaints about judges? Do you have to take that on notice?

Mr Foster—If I could take that on notice—

Senator BARNETT—All right. Let us drill down those 75 complaints for 2007-08 in terms of the outcomes. Was that in your report last year?

Mr Foster—In the annual report?

Senator BARNETT—Yes.

Mr Foster—We have quite detailed—

Senator BARNETT—I think you have detailed that, but we do not have an update. You stated that the officer concerned in certain circumstances refers it to the Deputy Chief Justice, who refers it to the judge. Then what happens?

Mr Foster—Depending on whatever the complaint is about, the response may also provide an explanation about matters such as the manner in which judicial appointments are made. There is a whole range of things that people complain about. Obviously that is something you are interested in with that other committee. There are some other general things about judges—the oath of office, relevant training, professional experience, powers of courts to make decisions or an application made to the court, and the ability of individuals to request judges to disqualify themselves. There can be quite a range of different areas raised in these types of complaints. It is not always about the behaviour of a judge. When I say it is in relation to judges, it could be in relation to their appointment, their oath of office or a whole range of activities in relation to what judges do and their work.

Complaints relating to delays in proceedings or in the delivery judgements, as well as being made directly to the Family Court, may also be made to the relevant state or territory law society. In fact, in my experience that does happen. On 13 May, in response to the Senate inquiry into the Australian judiciary and the role of judge, the Chief Justice and the Chief Federal Magistrate sent a joint submission to the committee which again addresses some of these matters.

Senator BARNETT—That is very much appreciated. If you can relay that appreciation to the Chief Justice, that would be excellent. I look forward to perusing that and considering it very carefully.

Mr Foster—Thank you.

Senator BARNETT—Is there anything else in terms of the complaint handling mechanism that you wish to advise the committee?

Mr Foster—I do not think so at this stage, no.

Senator BARNETT—In terms of complaints made about judges, how many resulted in counselling and/or discipline?

Mr Foster—Can I also take that on notice? I do not know the exact number, other than to say it is very small. I am not really certain of the exact number.

Senator BARNETT—I am interested in the number and the nature of counselling and/or discipline that flows from that report.

Mr Foster—Certainly.

Senator BARNETT—In terms of case management issues before the court at the moment, can you provide us with a status report and an update from previous estimates?

Mr Foster—In relation to the courts?

Senator BARNETT—Case management and the load.

Mr Foster—Court workload?

Senator BARNETT—Yes.

Mr Foster—As at the end of March this year, there have been 2,850 applications filed to final orders. So we are projecting for the end the financial year 3,800 applications for final orders. There have been, or we are estimating, 14,400 applications in the year to date in both courts, of which 80 per cent were filed in the Federal Magistrates Court and 20 per cent filed in the Family Court of Australia. To March this year, there were 11,550 applications in the Federal Magistrates Court and 2,850 in the Family Court of Australia. There has also been an interesting trend in relation to filings. I can provide a graph to show this trend and some things that might impact on family law filings, such as family relationship centres when they were introduced. I have prepared a graph that might help.

Senator BARNETT—That is appreciated.

Mr Foster—It is interesting to note that in 1998-99 there were 21,931 applications filed in the Family Court. Since then, coming to 2008-09, we are projecting that there will be 17,800 for both courts, which is a reduction in family law filings for final orders in the order of 19 per cent over that period of time.

Senator BARNETT—Over what period of time?

Mr Foster—Since 1998-99.

Senator BARNETT—That is quite substantial.

Mr Foster—It is a significant drop. It looks as if it might have plateaued in the last couple of years. Last year there were 17,306. We are projecting 17,800 for this year.

Senator BARNETT—What do you put it down to do?

Mr Foster—I think that might be for others to answer. This table I have prepared puts in some significant events that have happened during that period of time. But I do not know that it is for me to answer that question.

Senator BARNETT—Are you able to table that?

Mr Foster—Yes.

Senator BARNETT—That is most appreciated. Is there anything else?

Mr Foster—In relation to active cases, as at 31 March, there were 3,364 cases pending in the Family Court. In July 2008, there were 4,015, which is a reduction of 650 cases. On average, at March 2009, there are 118 cases per first instance judge compared to 126 cases per first instance judge in 2007-08.

Senator BARNETT—Do you have the figures for the Federal Magistrates Court? I know we have them separately, but you have a dual role.

Mr Foster—Last time I found it pretty awkward. If we could stick to the one jurisdiction, if that suits you—

Senator BARNETT—That is okay. We will go there in a minute. I noticed you helped us with a comparison a few minutes ago with the 80 per cent to 20 per cent differentiation between the Federal Magistrates Court and the Family Court.

Mr Foster—In filing rates.

Senator BARNETT—Yes. Are there any other comparisons you can help us with?

Mr Foster—I do not know. I think that is comprehensive about the inputs from the court.

Senator BARNETT—Are there any other workload statistics that you can update us with since the last estimates?

Mr Foster—Only in relation to timeliness from filing to finalisation. It is difficult to be completely accurate about this because there are a number of factors that affect the time taken. Some of them are pretty obvious—the level of complexity of the issues, the level of conflict between the parties, family violence, abuse and/or ongoing criminal investigations and also the availability of judicial resources. But I can give an indication of timeliness based on some historical data. On average from filing to first day, trial year to date, it has taken 13.5 months. That is 13.5 months on average from filing to first day of trial, year to date. In 2007-08, it was 12.4 months on average from filing to first day of trial. But all applications for appearing in cases would have a first return date before a registrar for referral to a family consultant within six weeks of filing. So there is some intervention by the court before it actually gets to the judge. Of course, urgent matters can be listed before a judge for interim orders in a very short period of time.

With our key performance indicators, the court aims to have 75 per cent of its pending final orders cases less than 12 months old. Final orders cases outside that 12-month period are considered delayed. As at 31 March 2009, 37 per cent of the Family Court's pending cases were older than 12 months and therefore delayed. The target is to have only 25 per cent in that category. That is because of some of those complexities that I mentioned earlier.

Senator BARNETT—That is still quite a big gap.

Mr Foster—It is.

Senator BARNETT—Do you have measures in place to deal with that?

Mr Foster—The Chief Justice is continually moving resources around the country. If there is a shortage of judges in, say, Sydney, then judicial relief will be provided from other centres. As the court's numbers are reduced, that is becoming more and more difficult to do. There are still issues about transferring cases between the Family Court and the Federal Magistrates Court. But the Federal Magistrates Court has a significant workload as well. Notwithstanding that the numbers are dropping, there is still a significant workload to deal with in the courts.

Senator BARNETT—We will come to that. How many judges are there and how many vacancies do we have at the moment?

Mr Foster—There are currently 36 judges and one vacancy.

Senator BARNETT—Where is the vacancy?

Mr Foster—In Newcastle.

Senator BARNETT—What is in place to fill that vacancy?

Mr Foster—That is something that the department might respond to.

Senator BARNETT—Is there a process in place?

Mr Govey—The position in relation to the judge in Newcastle is that the Attorney-General appointed a panel to consider applications and nominations following an advertisement placed in the press. A report has recently gone to the Attorney-General. Of course, beyond that it is now a matter for the government.

Senator BARNETT—Who was on the panel?

Mr Govey—Chief Justice Bryant, former Justice Richard Chisholm, former High Court Justice Ian Callinan and me.

Senator BARNETT—And they were all selected by the Attorney-General?

Mr Govey—By the Attorney-General.

Senator BARNETT—Is that panel consistently used for the appointment of Family Court judges?

Mr Govey—This was the first time in the life of the current government that there was a process to fill a judicial position in the Family Court.

Senator BARNETT—I know we have the other courts before us in a moment, but can you tell us the process in the other courts? Do they follow a similar approach with the appointment of a panel and subsequent decision by the Attorney-General, I presume on behalf of the cabinet or in cabinet? Can you confirm that?

Mr Govey—That is right. That is also the position in relation to the Federal Court. It is a slightly differently constituted panel, but it is the same process in general terms. In relation to the High Court vacancy, that process was not used. For the Federal Magistrates Court, again, there is a panel process in place which involves advertising positions.

Senator BARNETT—Likewise, can you take it on notice or tell us now who the members of the panel are for the Federal Court and the Federal Magistrates Court?

Mr Govey—For the Federal Court there is a process in place right now for vacancies in Melbourne and Sydney. The panel comprises Chief Justice Black, retired High Court Chief Justice Sir Gerard Brennan, former Federal Court and current acting New South Wales Supreme Court Justice Jane Matthews and me. I do not think there are any current vacancies in the Federal Magistrates Court that are in the process of being filled.

Senator BARNETT—Do you have a panel appointed for the Federal Magistrates Court?

Mr Govey—I would need to seek some assistance on the particular people who filled the panel on the last occasion. But in essence it comprises the Chief Federal Magistrate Pascoe, Kathy Leigh from the department and, I think, retired Justice Susan Morgan of the Family Court.

Senator BARNETT—I assume that you will tell us if that is not the case. But you have only three for the Federal Magistrates Court. Are you on that as well?

Mr Govey—No, I am not. But, from memory, that does comprise only three members.

Senator BARNETT—Thank you for that. If it is different, obviously let us know. Mr Foster, in terms of consultancies that have been undertaken by the Family Court, answers to questions on notice Nos 298 onwards list the consultancies undertaken by the court. I am interested in the Crosier Scott Architects consultancy costing \$140,140 completed June last year involving the provision of design, development, documentation, tendering, contract supervision and administration services for the refurbishment of the Chief Justice's chambers and associated areas in the Family Court of Australia in Melbourne. That is done by select tender. Can you provide further details and particulars? It sounds like a lot of money for an architect. It depends on the job, of course. It might have been a very substantial job. Perhaps you can enlighten us.

Mr Foster—The question is in two parts. Can I take it on notice, because I do not have the details about how Crosier Scott Architects were chosen to do the work? The second is about the work undertaken. It was a significant piece of work in the Chief Justice's chambers on level 14 in Melbourne. The whole layout of level 14 was not really appropriate for the court. There was no provision for the members of the court to have a meeting on that floor. The changes made were basically done to reflect in similar terms the layout of the Federal Court's chambers in Melbourne on level 16, I think it is.

It provides an extra set of chambers for visiting judges because accommodation is really tight in Melbourne. Given the number of FMs that have been appointed, chambers are quite scarce. It provided an extra set of chambers for a visiting judge. It also provided a visiting office for senior officials, including myself, when we visit the Chief Justice's chambers. It required knocking down a number of internal walls to free up a whole lot of space that can be used for conferences and meetings in a more appropriate way. Yes, it did cost more than \$1 million for the work to be done. It was a significant sum of money.

Senator BARNETT—Does that include the architects' fees of \$140,000-odd?

Mr Foster—Yes, it does.

Senator BARNETT—Can you provide further and better particulars? It was a more than \$1 million redevelopment of the Melbourne chambers.

Mr Foster—It is the floor where Chief Justice's chambers are, but it is much broader than just the Chief Justice's chambers. I can certainly do that for you.

Senator BARNETT—Please detail exactly what work was undertaken, the total cost and the benefits that were achieved from undertaking such work.

Mr Foster—Certainly.

Senator BARNETT—It does sound like a lot, but no doubt there were good reasons for it.

Mr Foster—It does sound like a lot. But from my perspective as a CEO it is money well spent over a long period of time. It has made that accommodation workable when it was not previously.

Senator BARNETT—I will not go into it now, Mr Foster, but I draw your attention to the state of the facilities in Launceston in terms of the Family Court judge and the dire need for an upgrade. I think that is something that no doubt you will keep under consideration.

Mr Foster—As you know, I was in Launceston just recently and looked at various accommodation. But it is really a new policy proposal to deal with that; it is not something the court can resource out of its reserves.

Senator BARNETT—I refer to the PricewaterhouseCoopers NSO health check completed in April last year costing \$110,000. What was that all about?

Mr Foster—Because of the budget constraints on the Family Court, I thought it was important to ensure that we had best practice for staff in the national support office. That is in the corporate area, excluding IT. We invited PricewaterhouseCoopers to come in and do a review of staffing numbers et cetera in NSO and we got that report in March 2008. PricewaterhouseCoopers made a range of recommendations, but in the short term they said that the court could save in the order of \$285,000, and those recommendations are being implemented.

Senator BARNETT—How do you save that amount?

Mr Foster—Through staff reductions, better systems, less manual work. There was a range of reasons why that could happen.

Senator BARNETT—What does NSO stand for?

Mr Foster—The national support office in Canberra. That is basically corporate headquarters.

Senator BARNETT—When you say 'health check', what is that?

Mr Foster—That was PricewaterhouseCooper's term. It was looking at whether we had too many staff or enough staff and whether the practices and processes in the corporate area were reasonable and appropriate. That is really their term for a review of efficiency, if you like.

Senator BARNETT—Can you tell us what they recommended? What was the outcome?

Mr Foster—That was March 2008. I cannot off the top of my head remember the number of recommendations, but there were many. I made a note, short-term a saving of \$285,000 was recommended and medium-term, \$550,000, which we have implemented. In effect, from that review we have saved recurrent nearly \$800,000.

Senator BARNETT—It sounds like you chopped quite a few people.

Mr Foster—It did mean that the number of staff was reduced in various areas.

Senator BARNETT—Can you tell us where and provide more detail?

Mr Foster—Again, I would have to take that on notice. We implemented those recommendations pretty quickly after that report. It impacted on the savings we were trying to make for this financial year, which numbered 26. But they did not all come out of the national support office.

Senator BARNETT—I am happy for you to take it on notice. I would like to see the report. If you cannot provide it, I would like you to give us an outcome—maybe an executive summary if they have one.

Mr Foster—Certainly. There is another report of a review I had done at the same time by Oakton Limited in relation to IT services that are provided by the Family Court. That was in January 2008. Their recommendation said that to maintain our current level of business we needed up to 16 additional FTEs. They recommended the immediate appointment of an additional four to six FTEs. We did not act on those recommendations. We have done some restructuring inside the organisation and managed to maintain the existing services to both the Federal Magistrates Court and to the Family Court of Western Australia. The report from Oakton Limited found that we were actually under done significantly in the IT area. But we have still not resourced it any further because, quite frankly, we cannot afford to.

Senator BARNETT—Thank for taking that on notice. I refer to consultancy No. 306 and HBO+EMTB Consulting, involving the provision of services relating to a Brisbane space utilisation study. That was due for report on 30 April 2009. Has that been delivered?

Mr Foster—I have just received a copy of that report in the last week. But it is a report for the chief executive officers of the Federal Magistrates Court, the Federal Court and the AAT. It refers to how best we can utilise the space in the Brisbane Commonwealth Law Courts building. It is primarily around the fact that the federal magistrates in that building on level five have inadequate accommodation. It is an attempt to look at moving function around the building—I am talking about ‘judicial function’—to try to place the Federal Magistrates Court on one floor of the building.

Senator BARNETT—Again, if you are happy to take on notice whether we can have that report or the executive summary it that would be appreciated.

Mr Foster—Certainly. That is something that has also gone to the AAT and the Federal Court.

Senator BARNETT—That is noted. Thank you. With regard to consultancies, I notice that the amount paid to Des Semple and Associates is \$88,679. That is the direct source for consultancy No. 308. I notice that Des Semple and Associates or Des Semple directly on other

parts of this long list of consultancies from the department, which is greatly appreciated. I assume that is part of the central review. Is that a fair assessment?

Mr Foster—It is part of the central review, but it is also more than that in terms of the integration or combining administrations into one, particularly in relation to the structure of the family consultants and registrar services.

Senator BARNETT—Is it a separate review or is it part of the Semple report, as it is commonly known?

Mr Foster—It is really linked. It is a separate review from the Semple report involving the Attorney-General's Department. But I engaged Des Semple and Associates because of his knowledge of the business to do a review of the structure of family consultants and registrars for both courts. I have yet to get the report, but it is now completed.

Senator BARNETT—All right. I am going to pass through the chair to Senator Brandis, who I know has some questions about Semple. I note perhaps for the department that a range of reports has been undertaken by Des Semple and Associates or Des Semple. I want to ensure I have them all together and the total cost. Perhaps the department could take on notice how many there have been in the last 24 months, the titles of those reports and their cost.

Mr Wilkins—We are happy to take that on notice and come back to you on that.

Senator BARNETT—Thank you very much.

Senator BRANDIS—Following on from that, Mr Foster, we have the so-called Semple report dated August 2008. What reports has Mr Semple done either alone or in conjunction with the department or with the courts for that matter, and what reports has he been commissioned to do and that are still underway?

Mr Foster—The only reports that I have commissioned Mr Semple to do involve him providing advice in relation to an organisational structure for family consultants and registrars in the integrated courts administration.

Senator BARNETT—Is that the report I referred to—No. 308—costing, I think, \$68,679 direct source? Is that that report, or is it a separate report?

Mr Harriott—In respect of that consultancy, my understanding is that that piece of work was done when there was a process of separation of funding and Des Semple was chairing a working party at that time to look at separating and transferring some funding across to the FMC.

Senator BRANDIS—This is prior to August 2008?

Mr Harriott—Yes.

Senator BARNETT—Is that the \$68,679 report?

Mr Harriott—That is right.

Senator BARNETT—In answering Senator Brandis, is there a report in addition to that? If so, what is its name and what is the cost?

Mr Foster—I spoke to Mr Semple only this morning and I am expecting to have the reports by Monday. The reports were due only this week, basically.

Senator BRANDIS—'Reports' plural. How many are there?

Mr Foster—There are two reports—one for the structure of family consultants in the Family Courts and the other is in relation to registrars.

Senator BRANDIS—I see. I thought you were referring to a single document.

Mr Foster—No, they are separate reports.

Senator BRANDIS—There is one in relation to family consultants—

Mr Foster—Yes.

Senator BRANDIS—And one in relation to registrars. When was Mr Semple given the task to prepare each of those two reports?

Mr Foster—Again, I would have to take that on notice.

Senator BRANDIS—To the nearest month.

Mr Foster—It was only in the last couple of months.

Senator BRANDIS—But presumably before the Attorney-General's announcement on, I think, 5 May that the government was adopting the recommendations of the August 2008 report, commonly known as the Semple report?

Mr Foster—It would have been before 5 May.

Senator BRANDIS—All right. Was Mr Semple, in respect of each of those two reports, given a letter of instruction or some other document setting out the nature of his task?

Mr Foster—The terms of reference, yes.

Senator BRANDIS—There were terms of reference?

Mr Foster—Yes.

Senator BRANDIS—Could they be produced?

Mr Foster—Yes, certainly.

Senator BRANDIS—Do you have them here?

Mr Foster—I do not have them with me, but I will provide them on notice.

Senator BRANDIS—It would assist me if they could be produced before we excuse you. I think we are breaking from your evidence at 5 pm to deal with EMA. Perhaps they could be produced between 5 pm and when we resume after dinner. I would also like the details of the cost.

Mr Foster—I am not sure that it will be the final cost because the work is not completed yet.

Senator BARNETT—But there would be an estimate.

Mr Foster—There would be an estimate of the cost.

Senator BARNETT—Is there an hourly rate or is it a daily rate?

Mr Foster—It is a daily rate.

Senator BARNETT—If you could advise—

Mr Foster—The daily rate?

Senator BARNETT—Yes, please.

Senator BRANDIS—What is the daily rate? Do you know, Mr Harriott?

Mr Harriott—Not off the top of my head.

Senator BRANDIS—Does anyone know what Mr Semple's daily rate is?

Mr Foster—I can tell you what it is in the order of.

Senator BRANDIS—Yes.

Mr Foster—\$2,000-plus a day.

Senator BRANDIS—That is perfectly reasonable.

Mr Foster—It might be around \$2,300.

Senator BRANDIS—I have no criticism of that. Is it proposed to make the two reports we have been discussing publicly available when they are received, or will they be kept secret for a few months like the Semple report was?

Mr Foster—My process for dealing with those reports is to have discussions with the Chief Justice and the Chief Federal Magistrate. That will be happening next week. In fact, on Thursday afternoon next week I am meeting with the Chief Federal Magistrate. Both of Mr Semple's reports will be discussed with him on that date, with a view to him saying, 'Yes, I agree with those structures', or not. Similarly, I will have discussions next week with the Chief Justice about those structures. Then I intend to start having meetings with staff around the country about the implications of those reports, if the recommendations are accepted.

Senator BRANDIS—Were either the Chief Justice of the Family Court or the Chief Federal Magistrate consulted by Mr Semple in the preparation of either of those two reports?

Mr Foster—The Chief Justice was certainly consulted.

Senator BRANDIS—What about the Chief Federal Magistrate?

Mr Foster—The acting Chief Federal Magistrate, Mr Michael Baumann, has been consulted about the structure and outcome of those two reports.

Senator BRANDIS—When was he consulted?

Mr Foster—It has been over the last month. That is all I can say; I would have to check exact dates with Mr Semple.

Senator BRANDIS—Was a document provided by Mr Baumann setting out the views of his court or, indeed, his views on behalf of the court, that contributed to Mr Semple's thinking, or was it merely a conversation?

Mr Foster—I am not sure that a document was discussed. But I know that Federal Magistrate Baumann has prepared a document setting out the number of registrars that the Federal Magistrates Court would require for its work, and that document is going to the Chief Federal Magistrate upon his return to work today. I have not actually seen that report. I have some idea about what is in it, but I am not at liberty to discuss what is in it until FM Baumann has discussed it with the Chief Federal Magistrate. This was an attempt to transfer or to

allocate resources to the Federal Magistrates Court and asking that court to identify what its resource requirements were for both registrars and family consultants. It does not really impact on the work that Semple has been doing. Mr Semple's work is really about organisational structure. The actual numbers are not really relevant to that process.

Senator BRANDIS—Would I be right in assuming that both of the two reports that Mr Semple is about to deliver to you are prepared on the assumption that the principal recommendation of his August 2008 report will be given effect to?

Mr Foster—Can I provide some background about how we got to this space? I think it is quite important.

Senator BRANDIS—You are very welcome to do that as long as in the course of doing so you answer my question.

Mr Foster—I will certainly answer your question. A discussion about a combined registry and shared services model first occurred on 23 and 24 June 2005 with a joint meeting between the Federal Magistrates Court's then chief executive, its current deputy chief executive, me and a number of other staff from the Federal Magistrates Court.

Senator BRANDIS—Was that before or after the tea bag scandal?

Mr Foster—I do not remember the tea bag scandal; I am not sure when that happened. That was in 2005. The discussion was about the combined registry and shared corporate services nearly four years ago. On 15 August 2008 Mr Mathieson, who was then the CEO of the Federal Magistrates Court, wrote to Mr Govey, the Deputy Secretary of the Attorney-General's Department, regarding the Federal Magistrates Court's capacity to continue to meet its obligations with 'inadequate infrastructure'. He further raised the issue of a very high risk in relation to fraud and sustainability in regard to the court's corporate systems. That was on 15 August 2008. On 23 August 2008—

Senator BRANDIS—I do not want to be too fussy, but the Semple report is dated August 2008. Was that before or after the Semple report was delivered to government?

Mr Foster—I am not sure when the Semple report was delivered to government.

Senator BRANDIS—Do you know, Mr Wilkins, Mr Govey, or anyone?

Mr Wilkins—What was the question again?

Senator BRANDIS—What was the date on which the Semple report was delivered to government? It is dated, without identifying a particular day, August 2008.

Mr Govey—It went out at the beginning of September.

Senator BRANDIS—So it was not until after the end of August 2008. Thank you for that.

Mr Foster—On 15 August Mr Mathieson, the then CEO, wrote to Mr Govey. On 23 August 2008, Mr Govey emailed Mr Mathieson and said it was his understanding that 'a number of concerns Mr Mathieson raised would be addressed if the Family Court and the Federal Magistrates Court were to merge their administrative support more fully' and that this could occur with both courts' agreement quite separately from the government's consideration of the outcome of the current review. Both the letter and the email response were tabled at the Family Court's board meeting on 4 September 2008. That was a meeting with the Chief

Justice, the Chief Federal Magistrate, Mr Mathieson as the CEO of the Federal Magistrates Court and me.

At the Family Court's board meeting on that day the board resolved that the following should occur under the joint direction of both CEOs of both courts: that the executive directors corporate—that is, the executive director corporate of the Family Court and the executive director corporate services of the Federal Magistrates Court—meet to discuss the corporate functions of HR management and payroll, property services and financial management with a view to analysing the requirements of both courts to combine these functions. That was on 4 September 2008. The executive directors corporate were tasked with providing a report to the board no later than 6 October 2008 on their findings and considerations, together with recommendations on the most efficient and effective approach to moving to a shared services model. They were further tasked with providing a proposed implementation plan or framework. It was agreed that any integration of functions would occur in a staged manner under the joint direction of both of the EDs corporate.

On 1 October 2008, acting CEO of the Federal Magistrates Court, Mr Glenn Smith, emailed me requesting that, as part of the process ratified by the board on 4 September 2008, a transfer of the Federal Magistrates Court information management to the Family Court also occur. On 24 October 2008, the Family Court's board received and considered the executive directors' report and collectively agreed that a transfer of corporate services, including information management, should occur.

Senator BRANDIS—When you say that the Family Court board received the executive directors' report on 24 October 2008, it having been required by 6 October 2008, do you mean received in the sense that it was tabled at the meeting?

Mr Foster—At the board meeting. The following Federal Magistrates Court corporate service functions have since been transferred to the Family Court: human resources, first quarter 2009; payroll management, from 22 January 2009, the first Federal Magistrates Court payday being 5 February 2009; property management from 1 November 2008; financial management from 1 January 2009; contracts and procurement from 1 December 2008; and information management from 1 December 2008. On 25 November 2008 the Chief Federal Magistrate appointed me as the acting chief executive officer of the Federal Magistrates Court of Australia. The plan to further integrate the administrations of both courts in advance of the government's decision was made by the now called Family Court advisory group at a joint meeting in Melbourne on 23 March 2009.

Senator BRANDIS—Was that 23 March 2009?

Mr Foster—Yes.

Senator BRANDIS—The Family Court advisory group meeting—

Mr Foster—That group has taken the place of the Family Court board and it consists of the Chief Justice, the Chief Federal Magistrate, the two courts' respective CEOs—although in this case there is only one because I am acting CEO of the Federal Magistrates Court—Federal Magistrate Baumann, Justice Gary Watts from Sydney Registry and Mr Govey from the Attorney-General's Department. That new structure has been set up to assist in the management of the transition of administrative services and, I guess, whatever comes out of

the review of the structure of the courts. At that meeting on 23 March the group decided, ahead of any government decision, to proceed with the integration of administration of both courts. These changes have been made by agreement between the two courts. The Chief Justice and—

Senator BRANDIS—Is that agreement embodied in a document?

Mr Foster—It is in the minutes of the Family Court advisory committee meeting.

Senator BRANDIS—Of 23 March 2009?

Mr Foster—Yes, on 23 March 2009. The Chief Justice and the Chief Federal Magistrate made this decision in advance of the government's announcement on 5 May about the proposed merger of the two courts in order to maximise efficiency and resources and to help address both courts' difficult financial positions, as they are responsible for the administration of the courts. Under the respective acts the jurisdictional heads are responsible for the administration of the acts, and under the acts they can direct the CEO to perform certain functions. In effect, they have directed me to proceed with this merger.

So the integration of the administration has proceeded as planned and now includes the restructuring of administrative and registrars' positions and family consultants. They are the last two items of the report that I asked Mr Semple to prepare for me. It is really about trying to balance the budget of the courts and reducing duplication in management and management structures. That is really what this is about. When we have completed this merger of the administration it will not have any effect whatsoever on any decisions others might make about the structure of courts. There is one administration and it does not matter whether it is administering to two courts, three courts, one court with two tiers, or whatever the final structure may be. It is a sensible business decision to eliminate waste and to try to provide service to the clients of the courts. That is basically the background of it.

Senator BRANDIS—I think in that last sentence you have emphatically answered my question; that is, that this would have happened anyway regardless of what the parliament might decide to do concerning the recommendation of the August 2008 Semple report.

Mr Foster—I think the important thing is that the authority for doing that rests under the legislation with the two jurisdictional heads, and they have decided to exercise that authority.

Senator BRANDIS—I would like you to table for the committee the documents to which you have referred, that is, going back in reverse chronological order, and only the relevant portions of course that are relevant to your account: the minutes of the Family Law Court advisory group meeting of 23 March 2008; the minutes of the Family Court board meeting of 24 October 2008, the email to you, to which you referred, of 1 October 2008; the report by the executive director that was tabled at the Family Court board meeting of 24 October 2008; the letter and the email which was tabled at the Family Court board meeting on 4 September 2008; and the relevant minute of that meeting of that board on 4 September 2008.

Mr Foster—Can I take that on notice, Senator?

Senator BRANDIS—Yes, though, once again, if over the dinner adjournment those documents could be located and made available to the committee that would be very helpful.

Mr Foster—I will do the best that I can. I think I can get at least some if not all of them to you.

Senator BRANDIS—Thank you. I appreciate it. Mr Foster, or perhaps Mr Wilkins or Mr Govey—whoever knows the answer to this question is welcome to answer it—can I take you to page 111 of Budget Paper No. 2, ‘Budget Measures’.

Mr Foster—It is not in the portfolio; is it in the blue one?

Senator BRANDIS—It is the blue one. I understand we changed the colour in the interests of greater transparency. It is PBS, ‘Budget Measures’. This is in the chapter on the Attorney-General’s Department and its agencies. You will see that there is a tabular summary of the savings expected to be achieved by the merging of the Federal Magistrates Court into new lower divisions of the Family Court and the Federal Court. Below the line which indicates the fiscal year, you will see that in 2009-10 the additional expenditure by the Family Court is estimated at \$21.2 million, in 2010-11 \$42.6 million, in 2011-12 \$43 million, and in 2012-13 \$43.3 million—that is just to give the context. On the next line there are some additional expenditures projected for the Federal Court, though of a somewhat lower magnitude. On the next line below that there are offsetting savings brought about by the elimination and absorption into the two other courts of the Federal Magistrates Court so as to produce in the bottom line total savings of \$800,000 in 2009-10, \$1.9 million in 2010-11, \$1.6 million in 2011-12 and \$2 million in 2012-13, which is a total of \$6.3 million over four years. What I would like to know, from whomever is in a position to tell me, is: in relation to the figures against the Family Court for each of those four years, how were those figures derived and by what process were they derived? Where do these figures come from?

Mr Harriott—In respect of those costings, there was quite a detailed process embarked upon with the respective chief finance officers at the time. I guess the starting point was the existing appropriations for the Federal Magistrates Court.

Senator BRANDIS—Mr Harriott, I am going to ask that question at the Federal Magistrates Court. In a sense the Federal Magistrates Court is easy because it gets abolished. Presumably the projected outlays for it are no longer outlays against the budget. What I am more interested in knowing and what I am specifically directing your attention to is how these outlay figures, rather than savings figures, for the Family Court were arrived at?

Mr Harriott—As I was trying to explain, there was a process with the three chief finance officers where essentially the underlying costs structure of the Federal Magistrates Court was worked through in terms of the proposed resource shifts. I guess the starting position was to understand the costs of a federal magistrate as they existed in the federal magistrate’s financial statements or set of books at the time. From that process, essentially there was a cost agreed per federal magistrate. From that process there was also some discussion around the numbers of magistrates that were being proposed to be transferred between the respective courts. From that the underlying costings were identified and again agreed by those respective chief finance officers.

Senator BRANDIS—Mr Harriott, I do not want to interrupt you too much but, when you say the respective costings were agreed, that really does not tell me how they were derived. By what process were these figures arrived at?

Mr Harriott—There is a Department of Finance and Deregulation costing template which detailed right down to every single line item the cost of a federal magistrate and their support. That was the basis of the proposed funding transfer. As I said, there was a very extensive process of identifying those costs and making sure they were valid, accurate and appropriate. Then, from that underlying cost for a federal magistrate, the rest was really quite simple, once we knew how many magistrates were being proposed to be transferred to the respective courts.

Senator BRANDIS—Was it as simple as this, Mr Harriott: you worked out of a given number of federal magistrates how many were going to come into the Family Court and you added up the costs of each of those federal magistrates and that is where the figure in respect of the Family Court comes from? Is it as simple as that?

Mr Harriott—Essentially. For example, per magistrate, there is a magistrate and two direct support, so there was the costing for that particular bundle. In addition there were administrative support positions, so, in accordance with the Semple report, there was reference to elimination of duplication through the proposed merger and restructure.

Senator BRANDIS—Just pausing there, that would be the same duplication, largely, if not entirely, that would be eliminated in any event, would it not, following what Mr Foster has told me, by the integration of registries and family relationship counselling.

Mr Harriott—That is right. It is part of that process.

Senator BRANDIS—Good.

Mr Harriott—Absolutely.

Senator BRANDIS—All right. Did that take into account or make any assumptions about any change to the remuneration of federal magistrates who were absorbed into the Family Court?

Mr Harriott—I might pass that one across to the department, if I may.

Senator BRANDIS—Mr Govey?

Mr Govey—No. It assumed status quo.

Senator BRANDIS—It assumed no change in remuneration. Good. So where we see these savings in the bottom line of the table, what I understand you to be telling me, Mr Harriott, is that those savings are largely, if not entirely, because of the integration of registries and family relationships counselling facilities which, according to Mr Foster, was going to happen anyway, whether or not the Semple recommendations were proceeded with.

Mr Harriott—In respect of your questions regarding those positions, approximately half were related to corporate services. For example, there were two CFOs, two property managers and support and so on and so forth, so there were about 15 of the savings. I think the full-year savings were in the order of 30 or 31 positions, and that is what the savings are based on. So it was about half a corporate, and there were some other administrative support positions that were proposed to be eliminated through eliminating duplication.

Senator BRANDIS—In the scheme of things, though, \$800,000 in 2009-10—I do not want to make light of any expenditure of taxpayers' money—is not an enormous amount, is it,

particularly for a court such as the Family Court whose budget for 2009-10 is \$177 million, according to the portfolio budget statement on page 320? The total estimate for 2009-10 is \$177,521,000, and you are talking about achieving a saving out of that budget of \$800,000.

Mr Harriott—I think there are two points or two comments I would make. In respect of the \$800,000 you are talking about, that is a half-year's savings.

Senator BRANDIS—Okay, \$1.6 million then. This assumes that the new structure will commence on 1 January 2010.

Mr Wilkins—Senator, this is \$2 million per annum forever we are saving.

Senator BRANDIS—Yes, I know that.

Mr Wilkins—And possibly more. It is not a nothing. I am not quite sure what the point of the inquiry is.

Senator BRANDIS—Mr Wilkins, please: no more rhetorical flourishes about 'possibly more', because I could equally say 'possibly less'. Let us just assume that the portfolio budget statement and the agency resourcing budget statement, which have been prepared by the government on the best advice available to it, are the figures more likely to be true than any other figures.

Mr Wilkins—Sure, but \$2 million is \$2 million.

Senator BRANDIS—Well, \$2 million is \$2 million, or \$6.3 million over four years, as the agency resourcing statement says, and one is talking about the Family Court, which in 2009-10 alone has a budget of \$177 million. So every dollar counts; I accept your point. But I think it is relevant for the parliament to draw attention to the relatively scant nature of the savings in the scheme of things that are predicted to be achieved by a measure which, as you must know, is highly controversial.

Mr Wilkins—But there are other efficiencies, Senator, which will not show up necessarily in terms of money.

Senator BRANDIS—Let us deal with the financial result first.

Mr Wilkins—We will come back to that.

Senator BRANDIS—There may be other efficiencies and there may be other inefficiencies. There may be externalities and costs of a non-financial character as well. Let us not go there for the moment, Mr Wilkins. Perhaps we will come back to it. Now—

Mr Harriott—Sorry, Senator, if I could just interrupt—

Senator BRANDIS—Yes, Mr Harriott.

Mr Harriott—I do not think I had finished.

Senator BRANDIS—I am sorry. You were interrupted by Mr Wilkins.

Mr Harriott—I am sorry, but I just wanted to give you the complete answer that I was trying to propose.

Senator BRANDIS—Yes.

Mr Harriott—The \$6.3 million is a net figure. The savings component was \$7.8 million and then there was a decision to reinvest \$1.5 million over four years for additional judicial support. That comes up with the net \$6.3 million. The other thing I would comment on is that you were talking about page 320 being the Family Court's budget of \$177 million. I point out that that is the resourcing statement which picks up prior year departmental appropriations as well.

Senator BRANDIS—So what do you say is the relevant table?

Mr Harriott—I would suggest that is table 3.2.1, which refers to the court's budget as \$157.6 million. That is the appropriate base.

Senator BRANDIS—Which page is that on?

Mr Harriott—Page 328, table 3.2.1, and it would be about the first subtotalled total expenses. In 2009-10, it is \$157.641 million.

Senator BRANDIS—So it is \$157 million rather than \$177 million.

Mr Harriott—Yes.

Senator BRANDIS—Okay. Nevertheless, my point remains largely intact, I think, notwithstanding your quite proper correction.

CHAIR—Senator Brandis, it is five o'clock.

Senator BRANDIS—That is fine, Madam Chair. I will come back after dinner with more.

Mr Foster—Can I just make one point about Mr Semple's rates. I guessed \$2,300 a day, and I have just been advised that it is actually \$300 an hour. For an eight-hour day, that is reasonably close.

Senator BRANDIS—That is a very modest fee for a professional man.

Senator BARNETT—I will just reflect on that, Mr Wilkins. It is \$300 an hour for Mr Semple. I think that relates to Roger Beale's consultancy of over \$500 an hour. Is that correct?

Mr Wilkins—I do not know, Senator, but I can find out.

Senator BARNETT—Yes. I have an answer to a question on notice, but there is a very significant difference there. If we clarify that during the break, that would be helpful.

Senator BRANDIS—During the dinner adjournment, you will try to find the various documents that I asked you to locate?

Mr Foster—We are working on it now, Senator.

Senator BRANDIS—Thank you very much indeed.

Senator BARNETT—Mr Wilkins, do we have any answers yet to the questions put regarding the cost of the number of projects undertaken by Mr Semple and the cost of those consultancies?

Mr Govey—I can give you those, Senator, either now or later.

Senator BARNETT—Let's go, if we can.

Mr Govey—All right, if the committee is ready to take them now.

Senator BARNETT—Do you want to table that?

Mr Govey—It is not in a form that can be tabled, Senator. But there are two reviews or consultancies which Mr Semple was involved with in relation to the department. The first one was the one that we have been discussing, the one that related to the restructure of the federal courts. That consultancy cost just under \$54,000. The second one relates to consultancy services that he provided to the department with a review of workload resources and funding of the Family Court of Western Australia and to carry out consultations with the Family Court of Western Australia, the Western Australian Department of the Attorney General and other offices. That consultancy cost \$34,187.

Senator BARNETT—So there were just the two.

Mr Govey—There were just the two.

Senator BARNETT—All right. I have answers to questions on notice. Thank you for pulling it together from the department, but it does list the other consultancies undertaken by Mr Semple or Des Semple and Associates. I guess it must have been the other courts—the Federal Court, the Family Court and perhaps the Federal Magistrates Court. I will have to go through those answers, but is that something that you can assist us with?

Mr Govey—No. Those are the only two. Strictly speaking, I think in both cases it was probably Des Semple and Associates. But certainly from our point of view we were not drawing any distinctions.

Senator BARNETT—Are you aware of work undertaken for and on behalf of the Federal Court or the Federal Magistrates Court? We have heard already from the Family Court.

Mr Govey—I am only aware of the matters that Mr Foster has referred to, Senator.

Senator BARNETT—Can you take on notice and check during the break for work undertaken by Mr Semple for the other two courts?

Mr Govey—I will talk to the other two courts, Senator.

Senator BARNETT—I can dig through the answers to questions on notice. There are other reports that he has undertaken at a substantial cost.

Mr Foster—There is certainly none for the Federal Magistrates Court.

Senator BARNETT—None for the Federal Magistrates Court?

Mr Foster—No. They do work with the Family Court.

Senator BARNETT—So it may have been the Federal Court then? Perhaps we will check that during the break. I will check it, and could you check it as well?

[5.04 pm]

Attorney-General's Department

CHAIR—As agreed, we will move to the Attorney-General's portfolio and jump down to outcome 2, Coordinated federal criminal justice, security and emergency management activity, for a safer Australia. I call on subprogram 2.1.2, Emergency management. Senator Fisher, will you be asking questions?

Senator FISHER—I have some questions, Chair.

CHAIR—Mr Pearce, good afternoon and welcome.

Mr Pearce—Good afternoon, Chair.

CHAIR—Is there any opening statement from your section of the department at all?

Mr Pearce—No, Madam Chair.

CHAIR—We will go to questions, and I understand that Senator Fisher will commence.

Senator BARNETT—Can I just interpose here to save the department scurrying around?

CHAIR—Yes.

Senator BARNETT—In terms of one part of that question, it was answer to question No. 38 relating to Mr Beale's contract with the government and the cost of the review. It states that these too, Allen Consulting, will be billed on an hourly basis at a rate of \$550 per hour plus GST for an estimated four days per week on average over the duration of the audit to a maximum of \$320,000 plus GST. That is question No. 38. Thanks, Chair, and it is now back to Senator Fisher.

CHAIR—All right. Mr Pearce?

Senator FISHER—Thanks Chair. Mr Pearce, thanks for making yourself available. We understand you have some constraints, so we will deal with those.

Mr Pearce—Thank you.

Senator FISHER—First of all, I wanted to ask some questions around the national emergency warning system. The portfolio budget statement, page 19, lists the funding for a national emergency warning system. Is that funding being administered by Emergency Management Australia? It is table 1.2 for 2009-10.

Mr Wilkins—I might answer that question, Senator. It is an appropriation to the department. It is actually another division that is handling that in terms of resilience policy. But if you have questions about that, collectively we can answer your questions.

Senator FISHER—Okay, thank you, I do. Clearly, whoever is in charge of it, the bulk of the funding is intended to be discharged in the 2009-10 year, correct?

Mr Wilkins—Yes, that is correct. That is an upfront capital cost, and there will be recurrent expenditure as well.

Senator FISHER—Which is reflected there and elsewhere. What is the status of the national emergency warning system?

Mr Wilkins—There are two components to it. One is something which the Commonwealth alone can deliver, which is known as the IPND. That is actually providing a facility whereby telephone numbers of citizens can be made available. That is out to tender as we speak. We have gone to public tender and asked for people who can supply that service. The other component is, if you like, the actual telephonic warning system, which essentially is a matter for the states and territories. There is a process in place now where Victoria is the lead state, with the other states and territories cooperating with them. They will go out to tender for that component and the Commonwealth government will be supplying the funding for that

component. I understand that is imminent, but you will appreciate that it relies on the states and territories agreeing on a set of specifications which I gather they are doing as we speak as well.

Senator FISHER—Mr Wilkins, I will take from you as being one of the factors, but I guess my interest in EMA is that it is, on its say-so, responsible for representing the Australian government's efforts to coordinate a national response and management system. To that extent I am interested in hearing what Mr Pearce has to say too.

Mr Pearce—Certainly. EMA's role is about coordinating the whole-of-government response to assist states and territories in emergencies. The former EMA, under our previous departmental structure, used to have responsibility for capability development and emergency management policy as well in its former life. However, as the secretary explained, there are three divisions that look after those three particular aspects. EMA's role now is not one that involves itself in things such as the development of an emergency warning system.

Senator FISHER—So you are more after the event.

Mr Pearce—Yes.

Senator FISHER—In the sense not of the disaster event, but after the states and other agencies have done their bit, rather than at the proactive end.

Mr Wilkins—No. The EMA is now focused on the management of crises. Tony was with the Prime Minister at the floods over the weekend. The EMA is responsible for crisis management. There is another division in my department which is responsible for developing capabilities and there is a division that is developing policy across a whole range of areas, from e-security to critical infrastructure. The development and procurement of the early warning system is part of their responsibility.

Senator FISHER—Thank you. You may be answering more of these questions than I appreciated.

Mr Wilkins—Possibly. I am trying to, Senator.

Senator FISHER—What does the national emergency warning system encompass? As I understand it you have talked about the national level and making the phone numbers of citizens public, and at a state level a telephone warning system. Is there anything else contemplated in the program?

Mr Wilkins—There is. Can I suggest, just to confuse matters a little more, that Mike Rothery, who is sitting right at the end of this table, is in charge of the division which is now developing policy and doing the procurement. Perhaps I should get him to take you through the components of what we are actually procuring here.

Senator FISHER—Thank you.

Mr Rothery—As the secretary has explained, we are working with the states on effectively two different parts of the equation. The first is a database to extract telephone numbers out of the IPND, the integrated public number database which is managed by Telstra, and make those available to any systems that the states and territories wish to procure. As the Western Australian government already has a system, it means that when that database comes

on line, it will be able to provide telephone numbers that are very, very accurate and that have only been extracted from the database in the previous 24 hours, and be able to make those available to the system that the Western Australian government already has.

Senator FISHER—Before you proceed with the rest of your answer, can I ask whether the Western Australian system is opt-in and therefore are those numbers, to the extent that they are available, necessarily a selective population?

Mr Rothery—The way that the system has previously been run by the Western Australian government has been opt-in. By making available telephone numbers out of the IPND, it gives the Western Australian government the opportunity to make calls based on a particular geographic region and based on billing address.

Senator FISHER—Okay, thank you.

Mr Rothery—There is quite an issue about the billing address, which I will come back to. The second element, as the secretary has described, is about an offer that the Commonwealth has made to provide funding to build an emergency warning system for the states and territories. That is being led by Victoria. There is a third element, which is about resolving issues around mobile phones. As I have said before, we could quite easily extract mobile phones telephone numbers by billing address, but that does not necessarily get to all mobile phones that might be in a particular target area, such as people whose telephone billing address may be to their office or to their business premises, or people that may be just transient through a particular area. The third element of the Commonwealth offer is to make funding available to prove the capability of being able to identify mobile phones in a particular target area.

Senator FISHER—Or to deal with the fact that mobile phones are, by definition, mobile.

Mr Rothery—Correct. The totality of the Commonwealth's offer includes all three elements.

Senator FISHER—I want to refer to some newspaper articles of which the secretariat has copies, if you wish to have a look. On 13 February, which is the day after the previous estimates finished, there was a story in the *Age* that reported the Victorian premier's frustration in getting a consensus on a national approach to the national emergency warning system. Beyond COAG's agreement to develop such a system, what headway has been made?

Mr Wilkins, I know you have talked about what I refer to as the first limb of the IPND having gone out to tender and your expectation that the Commonwealth funded telephone warning system, in which Victoria is taking the lead, will go to tender imminently. As to the third limb, if you indicated the status of it, Mr Rothery, I do not recall that, though you may have. Is the Victorian premier's reflection a fair reflection of the situation? What particular progress has been made beyond the COAG commitment in general?

Mr Wilkins—I might say a couple of things, and then I might get Mr Rothery to explain what can currently be done. As you would be aware, the Commonwealth parliament has for one thing passed a law which had not been previously enacted under any previous government to enable access to these phone numbers.

Senator FISHER—Yes.

Mr Wilkins—Secondly, procurement is not nothing. One needs to procure this in order for it to happen. In relation to the R and D aspect with mobile telephones being based on geographic location, that will be part of a process which, as you would appreciate, the states and territories need to put in place. I do not know that all jurisdictions are working towards having the system up and running through these processes before the next bushfire season—or, in any event, as quickly as possible.

Senator FISHER—Is there a concern being voiced that you cannot get a national system until there is national agreement? Are there stumbling blocks in the sense of some states not agreeing to come on board with any aspects? If so, are they valid stumbling blocks?

Mr Wilkins—I think that whatever reservations there may have been have entirely dissipated. My experience, in talking to the states and territories, is that there seems to be consensus that we need to move quickly on this matter.

Senator FISHER—I have more questions about the phone based communication system for use. On 17 February this year, there was an article in the *Herald Sun* written by Bob Falconer during which he outlined his view of communications he had with the previous government. I think EMA was involved under the previous government. That article was referred to again in the press today, 25 May, in an article by Gary Hughes in the *Australian*. Mr Hughes has written about Mr Falconer's involvement in attempting to progress this issue. I will take this in two steps. Mr Falconer is reported as suggesting that he was told by the then Prime Minister's office in 2003 that EMA was actively considering a phone based emergency warning system based on that in Western Australia. Was that an accurate reflection of the situation back then?

Mr Wilkins—I have no idea, Senator. I was nowhere near here then.

Senator FISHER—Fair comment. Let us re-characterise the question. As of 17 February, according to Mr Falconer's say-so, he had not heard from EMA or anyone else about his particular suggestions and his particular slant on the implementation of the Western Australian approach. Are you able to update on any progress?

Mr Wilkins—Sorry, as of now?

Senator FISHER—Yes.

Mr Wilkins—I think there has been quite a lot of dialogue. I will let Mike talk about that in more detail, but I found in my dealings with Western Australia a fruitful dialogue and an accommodation. They seemed to be quite supportive of this process that we are going through.

Mr Rothery—The discussions that I am aware of that have taken place since mid-February have really been about the varying levels of interest between the states, which have since become a consensus that was achieved at the previous COAG. That difference of view prior to that date related to some different approaches and some different issues around deficiencies in the technology. For example, I am aware that some jurisdictions were concerned about introducing a system before issues around mobile phones had been resolved, that at least there should be an agreed path, that some false expectations could be created in the community about the effectiveness of the warnings, that there also have been some issues

that we have been working on in parallel around network congestion and the ability to do large areas of the population involving many tens of thousands of telephone numbers, that we should ensure that we do not overload the network so that triple-0 calls do not get through, that this work was happening and was initiated by this department in the second half of last year before the bushfires and that we have been able to put that guidance to the states and territories to be able to influence whatever systems they build.

I think it is also worth pointing out that in terms of the Western Australian system, as you quite rightly pointed out before, up until now it has been an opt-in system and it has been a relatively small number of households that have been tested at any one time. The number of about 300 comes to mind. There were some concerns that while the technology was proved in a small scale sample there were some additional questions about how that would work if it was in a high population area and there were many tens of thousands of messages being sent and calls being made in a very short period.

From the point of view of the department and from an agreement at COAG in the middle of last year to assist that states and territories in taking forward the idea of telephone based emergency warning systems, we have been trying to systematically deal with all of the unresolved issues around congestion, around access to telephone numbers and so forth. That work was underway before the bushfires in February.

Senator FISHER—Is there a concern by some jurisdictions—for example, Victoria—that they do not want to implement a scheme until there is a national scheme? That is what is reported in Mr Hughes's article in the *Australian* today. He says that the hearings being held in Victoria have been told that 'Victoria held off introducing its own state-based system', which is its own state telephone based system, 'because it supported a uniform national system and was waiting for agreement to be reached between state and territory governments.' Is that a concern which you are aware is being expressed?

Mr Wilkins—I do not think that is a material concern any longer. I have no idea whether it was some sort of motivation on the part of Victoria historically. If that is what they say they thought, that may be what they thought—it predates my involvement in this. It is evident that from the middle of last year, through the processes in which I chaired a working group at COAG, there has been a deal of cooperation from all the jurisdictions, and that predates the Victorian bushfires by several months. I have not encountered that, but what the Victorians may be talking about is some sort of historical issue rather than something of which we have had experience lately. Going forward, as I say, I have not received any evidence that there is any reticence on the part of any of the jurisdictions. Then again, we do essentially have a national system being developed, so that may be the answer to your query. That is what everybody is signing up to at the moment.

Senator FISHER—So you are saying that if those concerns still exist they are not being put to you.

Mr Wilkins—That is right.

Senator FISHER—A Dr Goudie from the James Cook University's Centre for Disaster Studies has been reported in the *Australian* in February as suggesting that bushfires should be

categorised similarly to cyclones and tsunamis. Has that proposition been part of the national consideration?

Mr Wilkins—I do not know that the proposition has. If you mean the utility of early warning systems for other events, the answer is yes, of course. This is not something that is simply restricted to use in bushfires. It could be used for a whole range of purposes.

Senator FISHER—He is more suggesting a system that builds on the current system in some places of categorising cyclones and tsunamis according to severity and doing likewise with bushfire. The thinking is that that would assist householders make more ready and hopefully wiser decisions about, for example, whether to stay or go.

Mr Pearce—I should say I am aware of Dr Goudie's work. His discussion is based on trying to identify categories of fire to allow the community to recognise the severity, the dangers and the potential risk.

Senator FISHER—That is right.

Mr Pearce—It is not about the warning system per se. As the secretary said, the all-hazards approach of the warning system would be applicable regardless of the severity. The only issue that I think could occur would be in identifying where states and territories chose individually to use the system, versus the level of threat that they saw at the time, based on that sort of category that Dr Goudie is alluding to.

Senator FISHER—The restructuring of EMA to which you referred has been the subject of a little criticism in recent times. What was the reason for the restructure? Is it now complete, as much as restructuring ever is?

Mr Wilkins—Yes. I preface my remarks by saying that it has received a little criticism but it has also received a lot of support and congratulations. A lot of that flows from a consideration of the Smith report on national security. The general view around the world and among people who look at the problems of emergency management is that one should deal with it on the basis of all hazards. Natural catastrophes and health catastrophes may or may not occur as a result of pandemics, counterterrorism or terrorist problems, so whether it is man made or a natural catastrophe there are elements which can be treated in both crisis management and recovery in the same sort of way. I do not think that any of the people who you might speak to who have thought about this deeply would disagree that there is a convergence. An all-hazards approach makes sense. The other thing that is happening is that it also makes sense to take a longer view, as in cases where you are thinking about health policy. If you just concentrate on the crisis end, you will not necessarily get anywhere. You need to think about prevention, early intervention and you need to think about capacity building in the community so that people can take precautionary steps and can put themselves in a position to take better care of themselves.

You need a specialist capacity to handle the crisis, and that is what the EMA in my department will do. You need the capacity in the department to build capability, both in the counterterrorism and emergency management sphere, in an all-hazards approach. That is what the capability division in my department does. That brings together some people who work with the NCTC and with the old emergency management team. They focus on things like training, exercises, education and that sort of thing. Then you have Mike's division, which is a

resilience policy division and which looks across, as I was saying, a whole range of precautionary and early intervention measures, including things like talking to business about ways of dealing with critical infrastructure to preclude or enable a quick recovery from disasters, whether they are natural or man made.

You have issues around communications of the sort that we are talking about. We are looking at a whole range of capacity building in communities as well so that communities can be better prepared for these sorts of things. But there is a range of things that Mike and his guys are working on, from things like e-security to things like this early warning system et cetera. I think it makes sense to try to get some greater specialist concentration and focus on those three aspects. As I say, a lot of it comes out of other people looking at the structure that I inherited and suggesting that you need some specialisation along those three lines. That is really the reason for it. If you look at the Smith report on national security through the lens of national security, you will see that you will come to much the same conclusion.

Senator FISHER—Did the restructure realise savings in the monetary sense?

Mr Wilkins—No, it did not. Actually, it required greater outlay in this area. It required the creation of a whole new capacity that was not previously there to do with policy and to do with the sorts of things that Mike is doing in the resilience area. That includes looking at policy on volunteering, adaptation to climate change and things like that, which is clearly relevant to things like floods and fires. So more resources are now being used in relation to emergency management, widely defined, than there were before.

Senator FISHER—Focusing for a minute on defining EMA, Emergency Management Australia, what was the impact of the restructure on staffing and funding for EMA? I heard what you said in general, Mr Wilkins—you said it required funding in a whole new area to develop new capabilities—but what was the impact on staffing and funding for EMA?

Mr Wilkins—I am not sure you took account of what I just told you.

Senator FISHER—I tried to.

Mr Wilkins—There are three divisions now that deal with the area that the old EMA dealt with.

Senator FISHER—Within the Attorney-General's Department.

Mr Wilkins—Within the Attorney-General's Department, so you were sort of comparing apples and oranges. I do not have the numbers in front of me, but I am happy to give you some sort of comparison if I can take that on notice.

Senator FISHER—Can you take that on notice? That would be good.

Mr Wilkins—It is a bit more complicated and I will need to unpack it for you.

Senator FISHER—Thank you. That would be appreciated. In February this year, Mr Pearce's predecessor, Mr Templeman, was being critical of restructure and was reported in an article by Paul Maley in the *Australian*.

... under the proposed arrangements, it was not clear who the states and territories were supposed to go to for resources and assistance.

Mr Templeman is quoted as saying:

You're going to see confusion and fragmentation and jurisdictions going to many different areas of the Attorney-General's Department and possibly other agencies to get co-ordinated assistance ...

Has that concern been realised or quashed with subsequent events?

Mr Wilkins—No. Can I be quite emphatic about that? In fact, the states and territories were congratulatory on this move. Anybody who has kept up with where things are heading should be looking at it that way. We have had several discussions and meetings with the states and territories and they know precisely who they are supposed to be talking to. I do not think there is any confusion at all.

Senator FISHER—Is EMA the single go-to point as it is intimated by Mr Maley that the Attorney-General suggested back in February:

The EMA is the single "go to" point for state and territory governments beset by disaster ...

Mr Wilkins—It is. When the balloon goes up—

Senator FISHER—Or down.

Mr Wilkins—Or down—people know that they are supposed to talk to Tony.

Senator FISHER—In terms of EMA's powers, Mr Pearce's predecessor in 2008 suggested—I am sure you are familiar with this—that EMA has no mandate, legislation or cabinet endorsement with which to take command in the event of a major national disaster. I presume that the EMA has considered this report and this view and assessed the merits or otherwise of it. Has EMA done so?

Mr Wilkins—The issue of governance in terms of natural disasters is something that is evolving, and evolving relatively rapidly given the impact of possibly—some people would speculate—climate change whereby we seem to be getting bigger and much more severe disasters of a variety of sorts.

Senator FISHER—They are by definition severe. We do not have to debate that perhaps.

Mr Wilkins—Yes, but historically a lot of these things have been dealt with purely at state and territory level. It appears that they are taking on much more of a national dimension. The governance and the governance arrangements around national disasters is something which I think is currently being considered through the COAG process. There could be a question of the sort that you are raising about whether it would be appropriate to have the Commonwealth with some greater, if you like, legislative basis for intervention. But at the moment it proceeds on the basis of sort of voluntary arrangements between the Commonwealth and the states through intergovernmental agreements, essentially.

Senator FISHER—Is COAG actively considering the proposal that the Commonwealth have greater legislative powers, such as those that you have intimated?

Mr Wilkins—I would not have said that it was that specific. But the issues of governance and the way in which those existing protocols and agreements on cooperation in disasters are being looked at could be one element of it. I am not saying that that is what they are necessarily doing, because I do not know.

Senator FISHER—Are you not aware? Are you speculating or are you trying to observe appropriate—

Mr Wilkins—No, I am speculating. I think it is relatively early days yet. There is a task force of the states and territories who are looking at these issues. I do not want to pre-empt what they might come up with; that is all.

Senator FISHER—What is the next step in the process of that task force, and who is on it? Who is driving it? To whom does it report?

Mr Wilkins—It reports to COAG. I assume the Department of the Prime Minister and Cabinet would be providing the chair of the group.

Mr Govey—Yes.

Mr Wilkins—The states and territories would nominate representatives, probably from a variety in our case—

Senator FISHER—‘Would’ and ‘probably’—do they mean ‘have’? I am sorry, Mr Wilkins. Does anybody around the table know?

Mr Jordana—As the secretary has said, the task force or working group—I cannot remember the actual working group—is chaired by the Department of the Prime Minister and Cabinet. It has representatives from all the states and territories on it. It is up to them to nominate whom they wish to have on the working group. Sometimes it is premiers’ departments or chief ministers’ departments. Most often it is that. Some of the states and territories have the heads of their emergency management bodies along as well; it just depends. That is basically the make-up of the group.

Senator FISHER—Was this working group publicly announced at the time as a result of COAG, for example? I presume it has been publicly announced.

Mr Jordana—Yes, Senator, it was—as part of the COAG communique.

Senator FISHER—In the context of the Black Saturday bushfires, has EMA taken account of or examined allegations by the United Firefighters Union that professional crews were advised to stay away when they offered help for the Black Saturday effort? Is that within your remit?

Mr Pearce—No, Senator, it absolutely is not. It is an industrial issue at state level and it is certainly not something the EMA has any involvement in, nor in reviewing those sorts of issues either.

Senator FISHER—Are the Attorney-General’s departmental expenses for the royal commission into the Victorian fires administered by EMA? I gather not, from Mr Wilkins’s earlier answers.

Mr Pearce—Are you talking about—

Senator FISHER—Page 18 of the portfolio budget statement, table 1.2.

Mr Wilkins—I can see that, Senator. As you know, the Commonwealth is appearing before the royal commission. My department is coordinating the whole-of-government approach to that, so this represents the money or the expenses for that purpose.

Senator FISHER—The whole-of-Commonwealth-government approach?

Mr Wilkins—Yes.

Senator FISHER—And the money for Commonwealth government representation, is it?

Mr Wilkins—Yes.

Senator FISHER—Thanks. That clarifies that. I understand the bushfire mitigation program is administered by EMA and was recently merged into the Disaster Resilience Australia Package, which was outlined in the government's press release of 12 May. Is funding under this program tied in any way to what the states and territories may or may not do in terms, for example, of meeting milestones in controlled burning practices?

Mr Wilkins—Mr Studdert, as I said, is in charge of capabilities.

Mr Studdert—Senator, the funds to which you refer have been folded into the Disaster Resilience Package, and the process for the use of them in that way is a well-established one. It is a process that allows the states and territories to bid effectively for the grants that are associated with that package. Those grants are then brought up and considered against the guidelines. If they meet the guidelines, they are approved and paid on a fifty-fifty basis to the relevant state or territory.

Senator FISHER—Do those guidelines include limiting factors—for example, requiring a state or territory to do particular things in respect of controlled burning practices and arguably other bushfire mitigation strategies?

Mr Studdert—I am not sure whether there are limits specifically on controlled burning strategies.

Mr Pearce—There never has been.

Mr Studdert—No, it is not that sort of detail, Senator.

Senator FISHER—Thank you. I refer to aerial firefighting, on page 19 of the budget statements. This is my second last area of questioning. I see on page 19 funding for the continuation and expansion of support for aerial firefighting but it appears that the annual funding is due to be cut back or reduced by some 27 per cent over the four years to 2012-13. In the Attorney-General's press release of 12 May he suggested that this funding was provided to permit the leasing of aircraft by states and territories. Can you explain what the reduced funding is about? How will that impact on aeroplanes?

Mr Wilkins—I will let Peter Channells answer the question, but it was certainly not cutting back on funding in this area. However, Mr Channells might be able to answer your question.

Mr Channells—The funding was increased. I am not sure how the table describes that, but it was an increase; there is no decrease.

Senator FISHER—Okay, I accept that answer. I now move to the national building code for bushfire prone areas. This is my final area of questioning. Has the EMA had any involvement in the development of a national code?

Mr Pearce—No, Senator, we have not had an active involvement in the development of codes at all. We have certainly worked in the past with the planning authorities in education and training for them, but we have had no involvement whatsoever in code development.

Senator FISHER—Thank you, Mr Pearce and others.

Senator BARNETT—I have a few questions. Thank you very much for being here. I refer to the consultancy arrangements and ask you about MTD, the Making the Difference consultancy, report on emergency management volunteers and options for attraction, support and retention, completed on 23 December 2008. Could you provide details of that report?

Mr Wilkins—Which report was that, Senator?

Senator BARNETT—Which one?

Mr Wilkins—Could you say that again?

Senator BARNETT—I refer to the MTD, Making the Difference consultancy, report on emergency management volunteers and options for attraction, support and retention, which apparently was completed on 23 December 2008.

Mr Wilkins—Mr Rothery will talk to you about that.

Senator BARNETT—Thank you.

Mr Rothery—That was a report to inform the Australian Emergency Management Committee on issues about the recruitment and retention of volunteers in the emergency management sector.

Senator BARNETT—Thank you for that. I think I discovered that from the title of the report. I was wondering whether you could advise us, either on notice or now, about the outcome of the report—the recommendations or the outcomes of the report? Exactly how are we doing with respect to retaining and encouraging volunteers in the emergency management sector?

Mr Wilkins—Could I say a bit about that? This is something which the Attorney-General and other ministers put on a very short strategic agenda for emergency management ministers to consider, precisely because of the issue that you raised. There is a question about the capacity to attract volunteers. Volunteers do a great job. However, there is always the need for more and there is also a need to get younger people involved. This report does not deal so much with how many people there are and how many people there are not; it deals more with the question of what strategies the Commonwealth and the states should take relating to it. It has not yet been considered by ministers. It is a Commonwealth-state document, Senator, so it is not a document that we would want to release at this stage until ministers have had a chance to consider it.

Senator BARNETT—It was tabled or completed on 23 December and we are now in mid-May. We are in the middle of a royal commission and we have had some serious issues regarding fires and floods, which are continuing to this day. I would have thought that this sort of thing would have been a priority for state and federal ministers. It is certainly a priority for senators and members around this table.

Mr Wilkins—It is a priority. In fact, what we are doing with the report is now putting together a strategy for ministers. Until they have considered it—

Senator BARNETT—Why can we not have a copy of the report, with the greatest respect?

Mr Wilkins—Because I think it is subject to public interest immunity on the basis that it is a Commonwealth-state document.

Senator BARNETT—I would like you to take that question on notice, if you could. I find that—

Senator Ludwig—I will take that question on notice.

Senator BARNETT—If you could. This is December—

Senator Ludwig—It seems in the first instance to have a public interest immunity requirement, but I will establish—

Senator BARNETT—I cannot possibly see how there is any public interest immunity involved in the retention and encouragement of further emergency management volunteers around Australia. I just cannot understand such a reason.

Senator Ludwig—That is true. There may not be, but I want to take the question on notice and find out whether there is a claim of public interest immunity, particularly because it goes to state and federal relations. If it does not, the minister will be able to provide an answer to you about—

Senator BARNETT—You know the climate that we are in at the moment. There are a lot of sensitivities around this issue. We are using taxpayers' money for a report that was delivered in December last year.

Senator Ludwig—That is why I have taken an interest in it. I just indicated to you that I will take that question on notice to see whether I can find an answer to your question.

Senator BARNETT—I am keen to get an answer as soon as possible. Can you tell us how we are going, Mr Pearce? How are emergency services around the country going in relation to volunteers and numbers? Can you provide the numbers for us?

Mr Pearce—No, Senator. I think we provided them for you at the last hearing. I would have to take that question on notice again now. I am not aware that there has been any marked increase or decrease in volunteer numbers.

Senator BARNETT—All right. I am happy for you to take that question on notice. I have a close working relationship with Volunteering Australia and Volunteering Tasmania. I do as much as I can to support volunteers and I know that many other senators and members do. I am interested in your view as to whether the trend is going up or whether the trend is going down. In the general volunteer sector we are aware of a downward trend. I would be surprised if that trend was not applied across the board to emergency services.

Mr Pearce—We can certainly take that question on notice.

Senator BARNETT—All right. Do you have in place any current initiatives that are encouraging either the retention or joining up of emergency service volunteers?

Mr Studdert—The parts of the volunteer program to support those sorts of groups fall within my division—the National Security Capability Development Division. There was about \$3.25 million in the years 2008-09 under the auspices of the National Emergency Volunteer Support Fund. That money went towards 183 projects that were aimed specifically at boosting recruitment retention skills and the training of volunteers.

Senator BARNETT—Are you talking about emergency services volunteers? Is that correct?

Mr Studdert—Yes, in response to emergency services volunteers. A similar amount of funding will be available in the 2009-10 program.

Senator BARNETT—Are those 183 projects on the public record?

Mr Studdert—I would have to check that.

Senator BARNETT—If not, can you provide us with that information?

Mr Studdert—I do not see any reason why they would not be.

Senator BARNETT—Could you let us know details of those project and where they have been held?

Mr Studdert—I am told that they are on the public record.

Senator BARNETT—Could you advise the committee accordingly?

Mr Studdert—Sure.

Senator BARNETT—And where those projects are being undertaken.

Mr Studdert—Sure.

Senator BARNETT—The other report, the RTO Strategic Development Solutions consultancy report on the redevelopment of the Emergency Management Australia education and training evaluation system, was completed in March last year. What is the status of that report and has the government responded to it?

Mr Pearce—Senator, I think that was when the training facility was under my control. But the report itself does not ring a bell, so I would have to take that question on notice to get the detail of the draft.

Senator BARNETT—If you could?

Mr Pearce—Yes, certainly.

Senator BARNETT—At the February estimates we touched on the Gibson Quai-AAS Pty Ltd analysis of the potential impact of an emergency warning system on the capacity of a telecommunications system. Could you bring us up to date on that report since the February estimates? That report was completed on 24 September 2008.

Mr Rothery—A subsequent and more detailed study has been done that has helped to identify particular metrics for the telephone-based emergency warning system. I made reference to it in a previous answer. This is now being provided to the states and territories as guidance for the development of the national emergency warning system. It relates to the particular recommended limits in the number of calls per minute and the number of text messages to mobile phones per minute so as to manage the risk of overloading the public telephone network, in particular, bearing in mind that, coincidentally, with any warning there may also be a high demand for triple-0 calls.

We were very sensitive to the idea of overloading the telephone system at such a crucial time. The first report to which you made reference is a sort of an overview, looking at issues

around the telecommunications carriers and their capacity. The second report is a statement of recommended performance criteria that will be made available to the states to help them design the system.

Senator BARNETT—It has been or it will be?

Mr Rothery—I would have to take that question on notice, Senator. We are right at the point of negotiating with the states in relation to their technical specifications for the national emergency warning system. I would have to check to establish exactly where we are at to date.

Senator BARNETT—Will that report make recommendations on how they can implement the advice in the report?

Mr Rothery—Yes, correct. In summary, it will have recommended performance numbers, in other words, limits on the number of calls per minute that are recommended to avoid overloading the system.

Senator BARNETT—All right. Could you take that on notice that part of my question relating to the time? Could you describe a bit more for us what advice to the states is in the report if that is possible and take that question on notice?

Mr Rothery—Yes.

Senator BARNETT—If you could also provide the executive summary of the report that would be useful. You can take that question on notice. I apologise that I do not have a date for this but I have an article that states, ‘Regulator lacks guts to push the 000 tracking’ written by Drew Warne-Smith. I think this article was published in the *Australian*, but I do not have the date. The article states:

THE federal communications regulator has for 10 years ignored calls from emergency services to adopt technology that would allow triple-0 operators to pinpoint callers from mobile phones.

The article makes reference to the Australian Communications and Media Authority. Is that something that you are across? Are you aware of that issue?

Mr Wilkins—It is probably a broadband matter more than—

Senator BARNETT—I am aware that it is a communications department matter, but is it something that you are aware of?

Mr Wilkins—Yes.

Senator BARNETT—Do you have a view about it, Mr Pearce?

Mr Wilkins—Senator, we will have some discussions with the states and territories about this more generally and see whether the current arrangements are appropriate. As I suggested, it is an obligation largely set under legislation controlled by the department of broadband. But there are some aspects of it that—

Senator BARNETT—It seems to me that it flows through to Emergency Management Australia or related concerns regarding emergency management.

Mr Wilkins—No, not specifically to EMA, but it is something that we as a department are interested in—the emergency responses or the responses by emergency agencies, in particular,

at a state and territory level. We will talk to them to see whether there are issues around this problem.

Senator BARNETT—Clearly there are issues because this is what has been advised and reported in the public arena. Where is it at? Where are you headed with it?

Mr Wilkins—As I said, we are having discussions with the states and territories to see exactly what the issues might be.

Senator BARNETT—Is that at a SCAG level or at a COAG meeting?

Mr Wilkins—No, this is just us talking to the states and territories.

Senator BARNETT—A lot of people are getting frustrated, not with members of parliament directly; they are getting frustrated because they hear about the royal commission, they read the reports in the papers and they are asking, ‘What are you doing about it?’ That is a fair question that we are getting from constituents.

Mr Wilkins—Yes, that is right. As I said, primarily it is not a matter for us but we are trying to find out.

Senator BARNETT—I am flagging it with you and I appreciate that you are proceeding with it. It would be good if we can make some progress. Senator Fisher asked earlier about an article in today’s *Australian* by Gary Hughes. I was wondering whether either you or the minister has an official response to that article.

Mr Wilkins—I have not seen it.

Senator BARNETT—I will read you the first paragraph which is headed, ‘Fire phone alerts proposed in 2001.’

Mr Wilkins—Could I have a look at the whole article, Senator?

Senator Ludwig—Could we get a copy of it?

Senator BARNETT—Yes. I have a copy here. It is the same article to which Senator Fisher referred to on page 5 of *the Australian*. I will read the first paragraph, which states:

THE Victorian and federal governments were urged to adopt a successful telephone-based emergency alert system seven years before Black Saturday, when wildfires engulfed a number of communities before warnings could be given through the media and over the internet.

I am wondering whether the minister, a departmental official, or Emergency Management Australia has an official response to that.

Mr Wilkins—That could well be the case; however, I have just been through the chronology and suggested that whatever the position was under the previous government. I have only just arrived here. In my experience the government has been pushing it. From July last year it has taken it through COAG and now we are out doing procurement. That is something that was being done before these bushfires arrived. I really do not know about the system back in 2001. I will ask Tony Pearce whether he has anything to comment.

Mr Pearce—Senator, the only thing I can say is that at that stage the Western Australia system was not even the Western Australia system that it is today. They are two totally different systems. I understand Mr Falconer made attempts at that time to get take up

nationally with all the jurisdictions as well as the federal government. I believe that there were limitations. They developed a new system and that is now encapsulated in the whole process of the development of the new emergency warning system. I think events have certainly overtaken these, although the issues that Mr Falconer had would have been consistent with that environment at that time.

Senator BARNETT—They are pretty strong comments—I will not say allegations—and both the Victorian government and the federal government are in the sights, as it were. These allegations have been made. I am wondering whether the minister would like to respond.

Senator Ludwig—As I understand it—and I am taking this opportunity to read the article that has just been provided to me—this is something that was proposed under the previous government. Obviously, I cannot comment on what it did or did not do in respect of this issue. I can say that I am advised that this year the Commonwealth has committed over \$26 million to assist states and territories to develop their telephone-based emergency warning capability.

Senator BARNETT—This year, as in the 2009-10 budget?

Senator Ludwig—That is all I have. I can provide additional information. I do not know how much was committed in 2001 by the previous government to assist. Nonetheless, in February this year the Attorney-General wrote to the states and territories offering Commonwealth financial assistance for the development of a national telephone based emergency warning system. Of course, we are seeking the agreement of COAG to progress that. I am not sure whether in 2001 it got to the COAG agenda.

Senator BARNETT—When is your next COAG meeting, Minister?

Senator Ludwig—As I understand it, we got agreement. I am not sure whether that was ever put back on the agenda in 2001 for COAG or what happened to it back then as I am not privy to that information. I am advised that having secured that agreement in COAG on 30 April the Prime Minister and the Attorney-General announced that the Commonwealth would invest up to \$15 million to assist the states and territories to establish the system.

From this government's perspective we are acting, unlike what was left undone back in 2001. The Australian government, of course, is not in favour of a particular brand or product for a telephone based warning system, but it advocates a national approach. I think one of the important things that we need to focus on is that has to be a national approach and it has to be centred on our ability to communicate across Australia. As you would appreciate, Australia is a very diverse country.

The states and territories will be responsible for developing the specifications. As we move forward more will be able to be provided to the committee as it is developed. This government takes the matter seriously and it is acting. Despite this matter being raised back in 2001, since we have come into office we have made real progress. We have now secured COAG agreement, we have committed funds to its development, and we look forward to being able to keep you advised about its progress.

CHAIR—Are those all the questions that we have for this area? Mr Pearce, we can let you head off.

Mr Pearce—Thank you very much.

CHAIR—I think we were waiting for some answers from the Family Court. Mr Wilkins, this is obviously not related to that issue.

Mr Wilkins—This goes back to a request when we were discussing classification and censorship matters. I think Senator Barnett asked whether we could table the letters that the Minister for Home Affairs wrote to the police commissioners and to his counterparts. I have had word from the minister that he is perfectly happy to table them, so I am happy to give them to the secretariat.

CHAIR—Thank you.

Senator BARNETT—Mr Wilkins, I received advice in answers to questions regarding the costs relating to the Semple reviews. Apart from the two consultancies referred to by Mr Govey—the restructure of the Federal Courts, \$54,000 and the review of the workload of the Family Court of Western Australia, \$34,187—I have other answers to questions. Nos 32 and 33 both related to \$33,000 projects for the Family Court, and Nos 319, 320 and 322 were consultancies for the Federal Magistrates Court. I stand to be corrected on that, but those are the answers I have received to my questions.

Mr Wilkins—We will try to sort this out. There seem to be a lot of Semple things floating around.

Senator BARNETT—Yes, indeed. We will try to simplify the Semple things.

Mr Studdert—Could I give one answer to a question that you asked me that I wanted to confirm? The projects that I mentioned in support of the volunteers are all on the EMA website—at www.ema.gov.au.

Senator BARNETT—All 183 of them?

Mr Studdert—I am told that they are listed there, Senator.

Senator BARNETT—Does it list where they are being undertaken?

Mr Studdert—I cannot confirm the details.

Senator BARNETT—Could you check that? If it is not, perhaps you could let us know.

Mr Studdert—Right.

Senator BARNETT—Thank you.

CHAIR—Mr Foster, going back to you, I thought that you had some letters that you were going to table, or you had an answer that you were going to table.

Mr Foster—We have now managed to table all those documents.

Senator BARNETT—We have not seen them yet, Mr Foster, but thank you for doing that. Is that what is being tabled as we speak?

Mr Foster—Every one of the documents that I mentioned in my evidence has now been tabled in relation to the integration of the courts.

Senator BARNETT—I know that Senator Brandis has a special interest in those documents.

CHAIR—Mr Foster, would you go through what they are?

Mr Foster—The first document is the letter dated 15 August from Mr John Mathieson, the then chief executive officer of the Federal Magistrates Court, to Mr Ian Govey, Deputy Secretary of the Attorney-General's department.

CHAIR—Yes, that is the first one.

Mr Foster—The second one is the email from Mr Ian Govey dated 23 August 2008 to Mr John Mathieson.

CHAIR—Yes, I see that one.

Mr Foster—The third one is the board minutes of the Family Law Court's board meeting of 4 September 2008, or the minutes relating to this item under discussion.

CHAIR—I do not think we have those yet.

Senator FISHER—They are being printed.

CHAIR—And the last one is an email, is it not?

Mr Foster—The next one is an email dated 1 October 2008 from the then acting chief executive officer of the Federal Magistrates Court, Mr Glenn Smith, to me as the chief executive officer of the Family Court.

CHAIR—We do not seem to have that either. I think we had better sort this out. We do not have those last two documents. Are they being photocopied?

Senator BARNETT—Madam Chair, apparently they are on the way. If you are happy to hold—

CHAIR—No. I just said as the chair that we would not do that. We will wait and sort out these documents. Once we have done that, I understand that Mr Foster and this section can leave.

Senator BARNETT—I am suggesting that Mr Foster wait until 6.30 pm, which is another 15 minutes. In the meantime we can go to the Federal Court—

CHAIR—As chair I just said that we will sort out these documents so that it is clear for us and clear for Hansard what is being tabled.

Senator ABETZ—Madam Chair, is the Federal Court coming back after dinner?

CHAIR—Yes. We will keep rolling through the program.

Senator ABETZ—All right. I was under the misapprehension that they might be leaving at 6.30 pm because they have a plane to catch.

CHAIR—That was the EMA.

Senator ABETZ—That was the EMA? That is all good then.

Senator FISHER—They might wish they were.

CHAIR—My understanding, Mr Foster, is that there should be five documents. Is that correct?

Mr Foster—I am not sure of the exact number, but at least five. The last one I called out was dated 1 October 2008, the email from the acting chief executive officer of the Federal Magistrates Court, Mr Glenn Smith, to me.

CHAIR—That is what we do not have.

Mr Foster—You do not have that?

CHAIR—For our sake and for the sake of Hansard can you clearly run through the five documents that you are now tabling, Mr Foster?

Mr Foster—Would you like me to start from the beginning of these documents, Madam Chair?

CHAIR—Yes.

Mr Foster—The first document being tabled is a letter dated 15 August 2008 from Mr John Mathieson, chief executive officer of the Federal Magistrates Court, to Mr Ian Govey, Deputy Secretary of the Attorney-General's Department. The second document, which is dated 23 August 2008, is an email from Mr Ian Govey to Mr John Mathieson.

CHAIR—We have an email here with no date on it that is headed 'Thanks for your letter of 15 August'. Is that what you are talking about?

Mr Foster—That is the one; that is the document.

CHAIR—That is the second document. What is the third document?

Senator ABETZ—Sorry, Madam Chair, but could I be assisted? I am trying to get these documents. That is the second document, thank you.

Mr Foster—Are we okay? Should I keep going?

CHAIR—Yes, thank you.

Mr Foster—Then there are the minutes of the Family Law Court's board meeting of 4 September 2008 relating to the decision that was made about the integration of the courts administration.

CHAIR—Yes, thank you.

Senator ABETZ—The minutes of the Family Court board meeting?

Mr Foster—Dated 4 September 2008.

Senator ABETZ—I do not have those.

CHAIR—The fourth one?

Mr Foster—The next one is an email dated 1 October from the then acting chief executive officer of the Federal Magistrates Court, Mr Glenn Smith, to me as the chief executive officer of the Family Court. It starts off by stating, 'I refer to our conversation.'

Ms Playford—It is coming. It will be tabled.

Senator ABETZ—Could I invite the secretariat and the department to re-sort this rather than trying to do it during open committee?

CHAIR—No, we are nearly there. We are now at—

Senator ABETZ—I am trying to organise all these documents.

Mr Foster—Should I keep going, Madam Chair?

CHAIR—We do not have that email to which you are referring.

Ms Playford—I will table it again.

CHAIR—Thank you. No, this does not look like an email and there is no date on this. What is the date of this piece of paper that you have just handed to me?

Mr Foster—We have the date here, but when we email it to the committee we lose the date. However, the date was 1 October 2008.

CHAIR—Okay. And the fifth letter?

Mr Foster—The minutes of the Family Law Court's board meeting of 23 October 2008.

CHAIR—So there are two sets of minutes?

Mr Foster—Yes. Then there are the minutes of the Family Law Court's advisory group meeting of 23 March, and that is it.

CHAIR—I have been advised that you keep emailing stuff to us that has a whole lot of attachments that are not the documents that you are specifying. I invite you to work with the secretariat, sort out what you are tabling for us, and give it to us in a comprehensive pile so that we can all get a copy of it.

Mr Foster—I am more than happy to do that.

CHAIR—I ask you to leave the table and while we get that sorted we will get underway with the next agency.

Senator BRANDIS—Madam Chair, I was about to suggest the very same thing. Perhaps we could have this after the dinner adjournment. I know that my colleague Senator Abetz has some questions, which will probably fit neatly into the 6.30 pm bracket for the Federal Court.

CHAIR—That is what I am suggesting.

Senator BRANDIS—That is very wise.

CHAIR—I think this is very messy for us and it would be much better if you printed off exactly what you want us to get and give it to us in a bundle.

Mr Foster—I am sorry, Madam Chair, I had not realised—

CHAIR—It must be clearly marked and dated.

Mr Foster—I had not realised that I had been brought back to the table. I had already sent the material.

CHAIR—We ask you to go away and to organise that over the break.

Mr Foster—Certainly.

CHAIR—We will see you back here at 8 o'clock.

Mr Foster—Thank you.

CHAIR—Can you get rid of all these documents so that there is no confusion? We will expect a new bundle of documents at 8 o'clock. In the meantime we will go to the Federal Court of Australia.

Mr Govey—Madam Chair, while they are arriving I need to correct a figure that I gave before—the costs that the department paid to Mr Semple for his work on the courts review. I said that we had paid an amount of just under \$54,000. I have now been advised that the amount is in fact just under \$60,000.

CHAIR—Right.

Senator BARNETT—Could you give us the specific amount?

Mr Govey—I can. It is \$59,957.

Senator BARNETT—And that is for the restructure of the federal courts?

Mr Govey—That is correct.

[6.20 pm]

Federal Court of Australia

CHAIR—I welcome representatives from the Federal Court of Australia. Do you have an opening statement that you want to provide to us?

Mr Soden—No, thank you.

CHAIR—We will go to Senator Abetz. I also have some questions but I will start with you, Senator Abetz.

Senator ABETZ—Thank you very much, Madam Chair. My question relates to the Hobart Federal Court Registry. I was wondering whether you could tell us briefly what its current status is. Has a decision been made, for example, to abolish the position of registrar?

Mr Soden—No, Senator. I presume that you are now referring to the work we are doing relating to the small registries—that is, reviewing the resources. No decision has been taken. The consultation period closed last week. I am yet to receive reports from the group that is undertaking that review, so no decisions have yet been taken.

Senator ABETZ—When was the closing date for feedback? I thought it was Friday 8 May?

Mr Soden—I think it was extended.

Senator ABETZ—When was it extended?

Mr Soden—It was extended prior to that time as a result of the district registrar making a request that he have a few extra days to make a submission. Unfortunately, his father was ill and passed away at about that time.

Senator ABETZ—When did the Law Society of Tasmania receive the discussion paper or consultation paper relating to the Federal Court Registry in Hobart?

Mr Soden—I cannot be certain, Senator. It would have been a few weeks prior to 8 May.

Senator ABETZ—Can I suggest to you that it was received on the Thursday before 4 May, whatever date that would have been? Could you please check up on that? Do you have any

email trail or any other evidence to confirm when the Law Society of Tasmania received the consultation paper? I also ask about the Bar Association of Tasmania because I was told that it received that only on Monday, 4 May, with the closing date for feedback being Friday, 8 May?

Mr Soden—I will have to check that. I do not know those details, Senator. I will take that question on notice.

Senator ABETZ—If you could, because if those matters that I am seeking to report faithfully to you are correct, the suggestion that this was a consultation paper is a misnomer because of the shortness of time given to respond. Prior to the consultation paper being written, was the Hobart registry given any opportunities to advise of any possible savings that they could make locally?

Mr Soden—Yes, they were, Senator.

Senator ABETZ—And when was that?

Mr Soden—It would have been some weeks, or possibly months, prior to that in the general process, which is still ongoing across the court, of looking at how we are to meet our budget in the coming years. Every registry was given an opportunity to do so.

Senator ABETZ—Right, but in the context of abolishing the Hobart registrar?

Mr Soden—At that time there was no proposal to abolish the registrar.

Senator ABETZ—So the Hobart registrar and registry were not given an opportunity to provide other, if you like, more extreme offsets to maintain a fully functioning registry in Hobart prior to the consultation paper being distributed?

Mr Soden—No. My view is that the consultation paper is the purpose by which any other extreme alternatives might be suggested.

Senator ABETZ—Had there been previous reviews of the Hobart registry?

Mr Soden—I am hesitating to say no or yes precisely. A number of years ago there was a review of the resources of the court in a general sense and I think Hobart was included in that review. However, it was not a specific review of Hobart.

Senator ABETZ—No, but it made very complimentary comments about the Hobart registry and the way that it was functioning and serving not only the legal community but also all the litigants within Tasmania.

Mr Soden—Possibly at that time, yes.

Senator ABETZ—What changed after that time?

Mr Soden—There is a general need to have a look at how things can be done efficiently and effectively, where improvements can be made across the operations of the registries of the court. A view has been taken, which has now been tested, relating to the consultation process and about how that might be done in some of the court's smaller registries. I should be clear: in three of the court's registries, which have the smaller registries.

Senator ABETZ—What are the savings that are anticipated if, as I understand it, option 3, which is the preferred model, were to be adopted?

Mr Soden—A target has not been set; certainly not by me.

Senator ABETZ—So no savings are anticipated. Why is option 3 preferred in this consultation paper if we do not know how much is to be saved?

Mr Soden—It is an option that I understand is the preferred option from the people doing the review because they take the view that it will be more efficient—therefore, possibly less expensive and more effective—by providing a broader range of services than presently exist.

Senator ABETZ—Clearly, a lesser range of services will be provided in the Hobart registry if you remove the only qualified legal personnel, namely, the registrar. Please do not suggest that there would be improved services in Tasmania. I accept that there might be savings, but have you worked out what sorts of savings might be achieved?

Mr Soden—Senator, I do not agree with your assertion that there will not be an improvement in legal services as a result of the abolition of the position in Tasmania.

Senator ABETZ—Oh please, Mr Soden! Do you honestly expect the Bar Association of Tasmania and the Law Society of Tasmania, to accept that a cost-saving measure that will see the removal of the qualified registrar from the registry somehow enhancing services to the litigants of Tasmania and the legal profession of Tasmania?

Mr Soden—I think that is possible, Senator, particularly on the model that is used elsewhere in the Territory and in the Australian Capital Territory where different expertise from different speciality in experience of registrars can be brought to bear by services provided from, in the case of Tasmania, the district registry in Melbourne.

Senator ABETZ—All right. What is lacking in the services in Tasmania?

Mr Soden—I have not yet received the benefit of the reports. I could make some assumptions, but it might be inappropriate to do that.

Senator ABETZ—We already have a preferred model before us. Surely the preferred model must have been based on some considerations. I want to know what would be the benefits.

Mr Soden—I can make some assumptions. As I said, I have not yet received advice following the consultation. But I can make some assumptions that I think are reasonable and, that is, that there are some people on legal staff in Melbourne who have particular specialities that they could deliver from Melbourne to Hobart either by electronic communication, by phone or by going to Hobart that presently do not exist in the skills of the district registrar in Hobart.

Senator ABETZ—In what areas? What skills do not exist in the Hobart registry?

Mr Soden—I cannot be precise, Senator.

Senator ABETZ—Can you volunteer one area?

Mr Soden—The benefit of the experience in particular areas. I would only be making assumptions about what they might be because I have not looked at the details. But let us say experience in active case management procedures as a result of working in the new fast-track arrangements in Melbourne that might be appropriate for a case in Hobart. That experience would not exist with the person in Hobart at the moment.

Senator ABETZ—Are you sure about fact?

Mr Soden—Not absolutely.

Senator ABETZ—As I understand it, the Hobart registrar has gone to the Melbourne registry from time to time to assist them. His position will now be abolished and we will get the benefit of people that he has been assisting in recent years giving us all this wonderful experience.

Mr Soden—I think the important thing, Senator, is that no decision has been taken to abolish the position.

Senator ABETZ—Sorry?

Mr Soden—The important point that I would like to make is that no decision has been taken to abolish the position. I am yet to receive the final recommendations as a result of the consultation.

Senator ABETZ—So you have a completely open mind?

Mr Soden—I have to say that I have, yes.

Senator ABETZ—Do you support option 3 as the preferred option?

Mr Soden—I support option 3 as the preferred option but, as I said, it is subject to consultation and testing as to its viability. I have not got the benefit of advice about that yet.

Senator ABETZ—Before option 3 was circulated did we get any figures whatsoever as to what the savings might be, and then the extra costs by way of people having to fly to Tasmania, and do video link-ups, et cetera? Was any cost benefit analysis done before we embarked on saying that option 3 was a good idea?

Mr Soden—There was, but I did not see the details of that.

Senator ABETZ—We have a preferred option but you cannot tell this committee what the indicative savings might be?

Mr Soden—I was told, Senator, that the indicative savings came about as result of option 3 being implemented, but I have not seen the details of what those savings might be. I thought it was probably appropriate not to go into the details and to keep an open mind on the issue.

CHAIR—It is dinner time.

Senator ABETZ—If it is dinner time we will resume after dinner.

CHAIR—Thank you for that. We will resume for five minutes with representatives from the Family Court of Australia while we sort out exactly what five documents they are tabling. There might be questions arising out of that.

Senator BRANDIS—There might be, so it could be longer than five minutes. However, it would not be very long.

CHAIR—We will come back to the Family Court at eight o'clock and when we have finished with it we will come back to the Federal Court.

Senator BARNETT—Madam Chair, can we make it clear that we will then go to the Federal Magistrates Court and then to Native Title Unit?

CHAIR—That is right; we will just keep working down.

Senator BRANDIS—I indicate to the secretary that I have a number of questions for the Federal Court, but more than that, the Federal Magistrates Court. In any event I expect that those two agencies will be well and truly finished with before the end of the evening.

CHAIR—This is an indicative time program and essentially we will just keep working through the list.

Senator Ludwig—We are here until 11 pm, Madam Chair.

CHAIR—That is right; 11 pm is the finishing time. We will be back at eight o'clock. We have an hour and a half for dinner this week.

Proceedings suspended from 6.34 pm to 8.00 pm

CHAIR—I have a document in front of me that is labelled 'Response to Senator Brandis: the integration of courts administration' with about eight documents attached. Mr Foster, this is the comprehensive list we were talking about an hour and a half ago, then?

Mr Foster—It certainly is.

CHAIR—Thank you very much for that. Senator Barnett, we will take that as a tabled document. Do you have questions emanating from this?

Senator BARNETT—We had some confusion prior to the break. Mr Foster, I appreciate you have now got together with the secretariat and tabled relevant material. Can you just take us through the material so we know exactly what is before us?

Mr Foster—Certainly. There should be an index on the front sheet. Have you got an index on the front sheet? So the first document is the letter dated 15 August 2008 from Mr Mathieson to Mr Govey. It is a three-page letter.

Senator BARNETT—Yes.

Mr Foster—The next one is a copy of an email dated 21 August from Mr Govey to Mr Mathieson. It is two pages.

Senator BARNETT—Thank you.

Mr Foster—Then the next document is the minutes of the Family Law Courts board meeting of 4 September 2008. It is two pages. Next is a letter dated 5 September 2008 from Mr Mathieson to Mr Govey in relation to financial systems. That is two pages. Then there is an email dated 1 October 2008 addressed to Richard—that is, to me—from Glenn Smith as the acting chief CEO of the Federal Magistrates Court.

Senator BARNETT—You are a Richard, so that is fair enough, isn't it?

Mr Foster—Then there is the copy of the report that I referred to before that the Family Law Courts board asked the respective executive members of corporate for, with associated documents for the board.

Senator BARNETT—I notice that that refers to the meeting of 4 September 2009. Should it be 2008?

Mr Foster—It should be 2008—thank you.

Senator BARNETT—So that is a typo?

Mr Foster—Yes. That is six pages with some attachments.

Senator BARNETT—That talks about the net savings of the transfer of functions being \$0.712 million.

Mr Foster—It only relates to some of those corporate service functions that the board agreed to transfer. So it is part of the Semple review, but it is not all of it.

Senator BARNETT—But is that a per annum figure or is that a total?

Mr Foster—I think it was a best guess at the time, quite frankly.

Senator BARNETT—Of a per annum figure?

Mr Foster—Of a per annum figure, yes.

Senator BARNETT—It is still not a lot of money, though, is it?

Mr Foster—Well, it is a lot of money to us. To the Family Law Courts it is a lot of money. Then there is the copy of the Family Law Courts board meeting minutes of 23 October 2008.

Senator BARNETT—Mr Foster, which was the next document?

Mr Foster—There are a whole lot of attachments to that.

Senator BARNETT—I have a lot of attachments in front of me.

Mr Foster—That is right. Then the next document you come to—sorry we did not have time to tag them—is the Family Law Courts board meeting minutes of 23 October 2008.

Senator BARNETT—Regarding the attachments, there are obligations and reporting requirements and the scoping of services?

Mr Foster—Yes.

Senator BARNETT—They are substantial. Then what is this document that is on a spreadsheet—'Single court with single corporate services'? Is that the attachment?

Mr Foster—Yes.

Senator BARNETT—Then there is the risk register template. Is that part of the attachments?

Mr Foster—That is, yes.

Senator BARNETT—Very good.

Mr Foster—Then the next document is a copy of the minutes of the Family Law Courts board meeting of 23 October 2008.

Senator BARNETT—Hang on. 'Part B, action required—the risk of what could go wrong'. Then you have listed how many items there—eight items?

Mr Foster—Yes.

Senator BARNETT—Who prepared that document?

Mr Foster—They were prepared by the executive directors of corporate jointly.

Senator BARNETT—Of the Family Court?

Mr Foster—Of the Family Court and the Federal Magistrates Court. This document was compiled in consultation with both of the executive directors. So both courts put this document together.

Senator BARNETT—Has anybody done a financial impact assessment of those risks that could go wrong?

Mr Foster—We did not actually do a financial impact. We just made a decision that they were within reasonable bounds and to proceed—or the board decided to.

Senator BARNETT—Right.

Mr Foster—In fact, we have now successfully implemented all that. As I explained earlier—

Senator BARNETT—That has been implemented?

Mr Foster—As I explained in my earlier evidence earlier this afternoon.

Senator BARNETT—Right—go on.

Mr Foster—The Family Law Courts board meeting minutes of 23 October 2008 are one page. Then there is an additional one that I did not mention in my previous evidence, a notice of appointment emailed—

Senator BARNETT—Sorry, just on that board meeting of 23 October, you say at the second paragraph that the transfer will take approximately six to eight weeks and that it needed to commence.

Mr Foster—Yes.

Senator BARNETT—That obviously did commence?

Mr Foster—It did.

Senator BARNETT—And was completed?

Mr Foster—Yes. It is finished.

Senator BARNETT—Finished?

Mr Foster—I can give you the time lines again, if you wish. I gave that earlier in my evidence this afternoon.

Senator BARNETT—That is okay. But that did occur within that time frame of six to eight weeks?

Mr Foster—The financial management was completed by 1 January 2009. There was concern about the financial system just not providing the sufficient information.

Senator BARNETT—No, I know. But it is noted in that third paragraph that you should not move at a breakneck speed, as John Mathieson had advised that the FMC finance systems were horribly exposed. That highlights a red flag in terms of a concern—if you are operating at breakneck speed.

Mr Foster—The board was concerned that if action was not taken strongly there was a possibility, if you go back to his first letter to Mr Govey, of the system breaking down

completely. So that is what the board's concern was about—to bring about the change as quickly as possible. My guess was that it would take six to eight weeks.

Senator BARNETT—And it was not done for political reasons, in your view?

Mr Foster—No. In fact, the letter of Mr Mathieson of 15 August sets out some of the pressing concerns that the FMC had with the financial systems. That is why it was considered a matter of some urgency. These decisions were taken completely outside of the political process. It was the Chief Justice and the Chief Federal Magistrate exercising their authority under their respective acts because they are responsible for the administration of the courts. Then there is a notice of appointment—just a notification—that the Chief Federal Magistrate was appointing me as the acting CEO of the Federal Magistrates Court from Tuesday, 25 November.

Senator BARNETT—That is you?

Mr Foster—That is me. Then the last set of minutes is from a meeting of 23 March, which was the new Family Law Courts advisory group of 2009.

Senator BARNETT—I will go back one step. I hope you do not mind me asking—I will plead some ignorance here—but Glenn Smith has been ill. What is the current status?

Mr Foster—Mr Smith was offered and accepted a voluntary redundancy effective from 30 June 2009.

Senator BARNETT—Does that mean he is still ill?

Mr Foster—I am not sure that I really should go into his—

Senator BARNETT—No, I am not wanting to know the personal details. What is his official status at the moment?

Mr Foster—He has accepted a voluntary redundancy. But I do not know that it is appropriate for me to go into his health issues—that is all.

Senator BARNETT—But he is not at the court? He is not operating—

Mr Foster—No. He has been off on sick leave since, I think, October—the last Senate estimates hearing—and has not returned to the court.

Senator BARNETT—And it is not anticipated that he will return prior to 30 June when his redundancy—

Mr Foster—No. He is going on a voluntary redundancy. He finishes with the court on 30 June this year.

Senator BARNETT—And the last set of minutes of 23 March?

Mr Foster—That is the Family Law Courts advisory group meeting of 23 March.

Senator BARNETT—It talks about Semple looking at the numbers of family consultants—

Mr Foster—That is right.

Senator BARNETT—to see if they could change from the 2007 position, having regard to the workload. What has happened there?

Mr Foster—That is the report that I referred to earlier that Mr Semple is delivering this week.

Senator BARNETT—That is the consultancy report?

Mr Foster—Mr Semple is looking at the structure and numbers of family consultants and registrars. They are the terms of reference. They are not attached to that set of documents. It is another document that is with you. Mr Semple's report will be available this week as a result of those.

Senator BARNETT—Is that one of the \$33,000 reports?

Mr Foster—I am not sure. I would have to check.

Senator BARNETT—That was 32 and 33 that were conducted for the Family Court?

Mr Foster—I would rather take that on notice. I am not really certain. There are so many that he has done, I am not completely certain.

Senator BARNETT—No. Well, there were a lot of reports done by Des Semple and his associates. In fact, I have seven reports over the last 12 months plus, and the two I have are \$33,000 each for the Family Court. What was indicated earlier for the Federal Court was \$59,957 and a review of the workload of the Family Court of Western Australia, \$34,187. Then there were three others for the Federal Magistrates Court. I am not sure if any of those cross over. We are going to get clarity, hopefully, from the department on that.

Mr Foster—I think the department and I would have to work together on getting that clarity.

Senator BARNETT—We would certainly like clarity on that as soon as possible.

Mr Foster—Certainly.

Senator BARNETT—Thank you for that. That is very much appreciated.

Senator BRANDIS—I do not want to prolong this. I want to go back over a couple of items in this exchange of correspondence and set of minutes. Mr Foster, you will remember before dinner that you told me that the reviews that Mr Semple is currently doing that you are about to receive are not premised upon the recommendations of the integration of the Federal Magistrates Court into the Family Court or the Federal Court necessarily being proceeded with. We got into this long sequence of documents because you were eager to explain to the committee the background and manner in which this developed, for which we thank you.

But it is pretty clear to me, I must say, on a cursory reading of these documents, that if at the start of the sequence, which is pre the receipt of the Semple report, they are not premised on that assumption, it is not very long before they are. Given that the last document in the bundle—the minutes of the FLAG meeting of 23 March—predates by approximately six weeks the government's announcement that it would accept the recommendations of the Semple review, would it not be a fair characterisation of these documents and the positions reflected in them that the two courts, or certainly the Family Court at the very least and to a degree the Federal Magistrates Court too, are moving towards the common assumption that the recommendations of the Semple review for the integration of the two courts is going to happen?

Mr Foster—No. That is not the position at all.

Senator BRANDIS—Let me point out a couple of items to you, please, Mr Foster. There is Mr Govey's email to you of 23 August, which responds to Mr Mathieson's three-page letter. He says:

If the Family Court and FMC were to merge their administrative support more fully, this could occur with both courts' agreement quite separately from the Government's consideration of the outcome of the current review.

So at this point, there is agnosticism, if I can use that word, about whether the courts would be integrated as per Semple. That is recited at the meeting on 4 September at item 2 of the minutes, where Mr Mathieson raised this matter. If we go a bit further to Mr Smith's email to you of 1 October, Mr Smith says, among other things, at the fourth line from the top:

I would note, however, as per our discussion yesterday—

that is, your discussion with Mr Smith—

that the FMC will maintain the current EL1 HR manager for a period into 2009 anticipated to be by the end of the first quarter of next year.

Those words seem to suggest to me—correct me, please, if I am wrong—that what is being contemplated here is some transitional arrangements that will certainly not extend beyond 2009.

Mr Foster—That is right. In fact, the human resources function transfer was finished by March 2009.

Senator BRANDIS—Now is that not only consistent with the integration of the courts?

Mr Foster—As I said—and I think we have been consistently saying this, Senator—in management terms, we started to scramble the egg at the direction of the Chief Justice and the Chief Federal Magistrate. The decision was made not to unscramble the egg. So we would keep going. The board minutes have been consistent in that regard.

Senator BRANDIS—Who made the decision?

Mr Foster—The Family Law Courts board. The Chief Justice and the Chief Federal Magistrate made the decision.

Senator BRANDIS—Not to unscramble the egg?

Mr Foster—Not to unscramble the egg.

Senator BRANDIS—By that phrase, what I understand you to mean is not to seek to maintain the separateness of the two courts?

Mr Foster—Only in terms of its administration. It does not really matter to a single administration whether it is servicing one court, two courts or one court with two divisions. So the decision was made on the basis that there were issues around financial systems and other systems in the FMC that the Family Court could help in that regard. The decision was made to do that over a range of corporate service functions, which proceeded. They were all completed by no later than the first quarter in 2009. Then to better integrate things, such as family consultants and registrars and to better identify what resources the FMC need,

approval was given for that work to be extended beyond that original approval for those six corporate service functions.

Senator BRANDIS—The problem I have with all of that, Mr Foster, is that by this stage the government had not made a decision to adopt the Semple report. Yet before the time Mr Semple's report was delivered to government at the beginning of September 2008 until the time the government announced its decision on 5 May 2009, both of these courts seemed to be proceeding on a common assumption which pre-empted the decision of the government—let alone, by the way, a decision of the parliament—to amend the acts, which is yet to be made, because the opposition, you know, is against this. I would not be at all surprised to find that this legislation does not pass in the Senate. But that is a matter for another day.

My concern is that these two courts—or the head honchos, if I can use that vernacular expression, of these two courts—have put their heads together, pre-empted a decision of the government, pre-empted a decision of the parliament and, to use your phrase, made a decision not to unscramble the egg. So if parliament or, for that matter, the government, having considered the Semple report, decided that it wanted the egg unscrambled, it would be too late.

Mr Foster—In terms of the administration?

Senator BRANDIS—Yes.

Mr Foster—The legislation provides for that authority to rest with the jurisdictional heads and it does not actually impact on the broader decision about the structure of the courts. It cannot affect it. There is also no requirement for legislation to have one administration servicing the two courts. It can be done by agreement.

Senator BRANDIS—I can understand that there might be issues of a common administration. I can understand that there might be efficiencies in having common registries and a common administration of family relationships counselling. I have no cavil with any of those propositions. What I do have a concern about, though, is that the tenor of this sequence of correspondence and minutes seems to go much further than that. They seem to suggest that the Semple report's key recommendation, in large measure to be absorbed by the Family Court, is a fait accompli in advance of a decision of either the government or the parliament.

Mr Foster—That is certainly not the position of the Chief Justice or the Chief Federal Magistrate. This is strictly about the administration. Certainly it is designed to not impact on any decision others might make about the structure of the courts into the future. It provides for that sort of thing.

Senator BRANDIS—What about this document, Mr Foster, rather grandly entitled 'Risk register template' dated 18 October 2008, in which a number of risks are anticipated and then analysed in a tabular fashion? No. 5 states:

FMC: unable to produce a full set of closing financial statements and supporting records.

That seems to me, Mr Foster, to be hardly consistent with an open-minded view as to the continued separate existence of the FMC—that it is a risk that it might not be able to produce closing financial statements.

Mr Foster—That is in relation to the end of the financial year. There was great concern that the system would not be able to provide enough information to provide appropriate closing statements at the end of the financial year. That is why the matter was treated urgently by the Family Law Courts board. There was grave concern that the financial systems were breaking down and were not providing adequate information to the management of the court, including the Chief Federal Magistrate. It is not talking about the long-term future. It is talking about the close of the books as at 30 June.

Senator BRANDIS—What about No. 2:

FCoA—

Family Court of Australia—

not adequately resourced to take on the additional workload.

Is that not the absorption of the work being at that time conducted by the FMC?

Mr Foster—There were an additional four or five positions that needed to be taken on for that short term during the transition period of shifting those resources which are no longer required. So there was a short-term impact on the Family Court and its corporate resources, but that impact has now disappeared because the systems have been integrated. There were two separate courts, two separate sets of records, two separate sets of financial records and two separate sets of employee records being run by the one administration. It is not an unusual set of circumstances in government to put the corporate service functions into a bigger organisation. That is really what happened here.

Senator BRANDIS—It is an unusual thing, though, for courts, is it not?

Mr Foster—No. In South Australia, for example, there is a structure where the corporate services are provided to all the courts. In Western Australia, there is a similar process. I worked in Western Australia for several years in the court system. So, no, I would tend to disagree. It is quite common in court structures where the corporate service functions are centralised. The other thing to bear in mind, I guess, is that the Family Court has been providing registry services to the FMC since its inception in 2000, and that has made a lot of sense. There has not been the unnecessary duplication of management structures et cetera.

Senator BRANDIS—I go to the minutes of the meeting of 23 March again. There is the agenda item ‘Access to justice taskforce transfer of resources’. The only thing that seems to have been discussed at this meeting—in fact, the only substantive agenda item—appears to have been the transfer of resources. Are you telling the committee that the transfer of resources being discussed there is only the transfer of resources necessary to have a common administration, not a transfer of resources such as to integrate the courts entirely?

Mr Foster—That is right. It is really about nominating a number of family consultants and registrars that would be dedicated to providing services to the Federal Magistrates Court combined in one structure. At the moment, that does not happen. Federal Magistrate Baumann has been working over the last couple of months to try to identify quite clearly what resources the Federal Magistrates Court needs in terms of family consultants and registrars. It is very close to having that signed off. As soon as that happens, those resources will be allocated to

the Federal Magistrates Court for their use and for however they want to use those resources. It is not up to the Family Court to determine how those resources will be used.

Senator BRANDIS—Mr Foster, I turn to the position post the Attorney-General's announcement of 5 May that the government would adopt the Semple report. Has the court been consulted on the amendments to the legislation that could be required to accomplish that outcome?

Mr Foster—The answer is no.

Senator BRANDIS—Do you expect to be consulted?

Mr Foster—I expect we will be consulted. In fact, both courts will be consulted at the appropriate time, but that might be a question for Mr Govey.

Senator BRANDIS—Mr Govey, or Mr Wilkins, who is there, I see, are you able to assist me with that? What steps are underway at the moment or are to be taken in consulting the Family Court, the Federal Magistrates Court and the Federal Court in relation to preparing legislation to give effect to the government's announced adoption of the Semple recommendations?

Mr Govey—We are in the process now of preparing drafting instructions at the same time as we are preparing—

Senator BRANDIS—For the parliamentary counsel?

Mr Govey—That is correct, yes. At the same time as we are preparing those, we are having discussions both formal and informal with, in fact, I would say, all three courts, but primarily—

Senator BRANDIS—Mr Foster, who is the main player here, says there have been no discussions with him.

Mr Govey—I think that is correct. I have had a very short discussion with the Chief Justice. Some issues also arose, so I might remind Mr Foster, at the meeting of the family law courts advisory group, but they were of a preliminary kind. We have had more detailed discussions with the Federal Court and with some representatives of the Federal Magistrates Court. But, as I say, they are all preliminary discussions at this point and I would expect them to continue while we prepare the drafting instructions. I guess after that—

Senator BRANDIS—Rather than taking up Mr Foster's time, I will ask you about your discussions with the Federal Court and the Federal Magistrates Court when we have their officers before us. When is the government expecting to introduce this legislation?

Mr Govey—That will be a matter for the Attorney.

Senator BRANDIS—I understand that. Is this for the second half of this year?

Mr Govey—That will be dependent on the preparation of the draft legislation.

Senator BRANDIS—To what deadline are you working to have the legislation ready?

Mr Govey—We are certainly hoping that we can have the legislation introduced this year. But, as I say, that is very much dependent on the government making decisions about the allocation of drafting resources and, I guess, the legislative program.

Senator BRANDIS—Has the government taken advice about the constitutional position of those federal magistrates who may not wish to join either the Federal Court or the Family Court?

Mr Govey—We have certainly taken a lot of legal advice in the process of preparing to get to this point.

Senator BRANDIS—Well, I am not going to ask you to produce that legal advice, Mr Govey. But I think I am entitled to ask you what your view, informed by that legal advice, is as to the constitutional position of those federal magistrates who may choose not to accept an offer to become members of a puny division of the Family Court or of the Federal Court.

Mr Govey—I think I would best answer that not by referring to constitutional advice but rather in general terms. As I understand the situation, if offers are made to people to join other courts and they do not accept those offers, they would remain judicial officers of the Federal Magistrates Court.

Senator BRANDIS—That is right. Let it be assumed that there are people in that position. What arrangements do you have in mind to make for those people?

Mr Govey—I think it is too early to speculate on that.

Senator BRANDIS—No. It is not speculation. We know from what is more than speculation that there are a not inconsequential number of federal magistrates who are in that position who do not like this and are not minded to join the Federal Court or the Family Court in an inferior capacity. Surely the department has done some thinking about what happens to them since they remain federal magistrates.

Mr Govey—Senator, it would be speculation at this point. The legislation has not been passed and we certainly have not received any formal or informal advice about specific people who would not accept an offer because such an offer has not been made. But I think I can also answer your question by saying that they would remain in the Federal Magistrates Court if they did not accept the offer, assuming it were made, for a commission in one of the other courts. If that happened, it would not be possible to fully merge the Federal Magistrates Court.

Senator BRANDIS—Yes. Well, you have obviously turned your mind to this.

Mr Govey—Certainly.

Senator BRANDIS—Rather than take up Mr Foster's time, I might return to this when we have the Federal Magistrates Court before us.

CHAIR—Mr Foster, we thank your officers for staying back and assisting with the documents we asked you to produce. We need to continue with the Federal Court of Australia and its representatives.

[8.32 pm]

Federal Court of Australia

Senator ABETZ—Who prepared the consultation paper entitled ‘Small registry review: consultation paper 20 April 2009’?

Mr Soden—Three of my senior staff prepared that paper.

Senator ABETZ—So where—from Canberra?

Mr Soden—The three people were the district registrar in Melbourne, the district registrar in Sydney and the district registrar in South Australia.

Senator ABETZ—So there was no Tasmanian input in relation to the development of the consultation paper. That is correct?

Mr Soden—No.

Senator ABETZ—Is there any intention in the Small review consultation paper to similarly impact South Australia’s registry?

Mr Soden—No.

Senator ABETZ—So we have somebody from Melbourne, who would, of course, be in effect increasing their empire by having Hobart as a subsidiary, and Sydney and Adelaide, none of whom might be impacted by the consultation paper in relation to having a downgraded registry service?

Mr Soden—No, Senator. For your assistance, the New South Wales district registrar is already the district registrar for the ACT registry. The South Australian district registrar is already the district registrar for the Northern Territory registry.

Senator ABETZ—My point is that neither of those registrars are going to have a diminution of areas of activity in relation to their registries as a result of this consultation paper, if it were implemented.

Mr Soden—I think that is fair to say. On the other hand, for the record, I should say that the Melbourne registry of the Federal Court has a history of supporting the Tasmanian operations of the court. As you know, Justice Heerey, though a well-known Tasmanian, was a resident judge in Melbourne and travelled to Tasmania from Melbourne, as does now the two judges working from Melbourne in Tasmania.

Senator ABETZ—And does the Hobart registry assist the Melbourne registry from time to time?

Mr Soden—I would not put it that way, Senator.

Senator ABETZ—Why does the Hobart registrar fly over to work in the Melbourne registry from time to time other than to assist them?

Mr Soden—He certainly works in the Melbourne registry. That is assistance to the Melbourne registry.

Senator ABETZ—Thank you.

Mr Soden—But I think you could also describe it as being able to provide that assistance because of insufficient work in Hobart to keep that person fully occupied.

Senator ABETZ—There is no insufficient work in Melbourne that would allow them to go to Tasmania to do their work? I like that approach, Mr Soden.

Mr Soden—It does not necessarily follow, I do not think, Senator.

Senator ABETZ—Does it not?

Mr Soden—It will be a question of priorities and doing things differently.

Senator ABETZ—Doing things differently.

Mr Soden—But I have to repeat: this is not set in cement. I am still waiting for the report. No firm decisions have been made.

Senator ABETZ—There was no initial liaison with the Tasmanian interests, as I understand it, before this consultation paper was put together. That is correct, is it not?

Mr Soden—But subsequently there has been consultation, yes.

Senator ABETZ—The question was initial consultation before the paper was put together. The answer to that is no, is it not?

Mr Soden—With the people in Tasmania, no.

Senator ABETZ—Thank you. Sure, there has been consultation afterwards. But there have been four options put forward, have there not?

Mr Soden—Yes, from recollection, there are four.

Senator ABETZ—And you have indicated to us you have an open mind. So which other of the four options have you still got an open mind about?

Mr Soden—Senator, my mind is so open about the matter, I cannot tell you what the other options are because I have not studied this paper, waiting on the results of the consultation process.

Senator ABETZ—So your mind is so open that you would not necessarily agree that option 1 cannot be favoured because it offers only limited scope for savings?

Mr Soden—I have not given it consideration, Senator.

Senator ABETZ—And option 2 is flawed. Option 4 is not considered a realistic option. So, in other words, what we have done is set up four options. We absolutely condemn three of those options as being either flawed, not realistic and only of limited scope. Bingo, there is only one option left, is there not?

Mr Soden—I do not know, Senator. As I said, we need to wait for the results of the consultation. I will need to get advice on the nature of the issues raised as a result of that consultation. I have an open mind on the matter.

Senator ABETZ—Can I advise you that the consumers of legal services in Tasmania and the legal profession clearly do not have an open mind in relation to the maintenance of a registrar in the Federal Court registry in Tasmania. I want to follow up, then, and ask: is there any suggestion of the diminution of Federal Court hearings in Hobart?

Mr Soden—I can say absolutely not. On that issue, the Chief Justice has made it very, very clear that the service that we provide in terms of judicial resources and case management expertise and response to the case workload in Tasmania will continue to the extent that it has in the past, if not more as the cases demand it. There is absolutely a strong commitment to that approach.

Senator ABETZ—I will keep you to that. We will have a look and see what happens in the months and, indeed, years ahead. How much do you think the federal registrar in Hobart is underworked or has surplus capacity?

Mr Soden—I cannot answer that. I have—

Senator ABETZ—You made the assertion. Surely it must be based on something.

Mr Soden—Well, my only way of answering that is by saying that the district registrar in Tasmania offered from time to time the ability to assist in Melbourne if it would help Melbourne.

Senator ABETZ—And vice versa? You have told us that, have you not? Melbourne people do come down to service the Hobart registry from time to time.

Mr Soden—I am hesitating to say quickly that that has happened in recent times. I did say I think that that is what would happen if the preferred option is adopted in the future. That is, people from Melbourne, district registrar-like people—deputy registrars acting as district registrars—would perform services from Melbourne.

Senator ABETZ—So would we be appointing more people into the Melbourne registry to service the Hobart registry?

Mr Soden—No.

Senator ABETZ—So that suggests that there is surplus capacity in the Melbourne registry because people are free, without the appointment of anybody extra, to come down to Hobart and do the work that is required to be done in Hobart?

Mr Soden—I will wait and see what the recommendations are, Senator. But I anticipate that it would be proposed that there be an adjustment of priorities, not an assertion that there is insufficient work in Melbourne for the Melbourne registrars.

Senator ABETZ—You say there is insufficient work in Hobart. That is why the Hobart registrar can go to Melbourne and help out from time to time. But you do not apply the same logic when you tell us that people from the Melbourne registry can go to Hobart without the appointment of any additional staff. It just does not make sense. Then, of course, I have a look and see that the Victorian district registrar was on this consultation committee. What a surprise. Really, the logic surely, Mr Soden, flows both ways. There is either surplus capacity in Melbourne to service Hobart or there is surplus capacity in Hobart to service Melbourne. Chances are you might be right in relation to both. What I want to know is why only the Hobart registry is being picked upon and not the Melbourne registry for the cost savings.

Mr Soden—Senator, it would be false to assume that the Melbourne registry is not expected to make cost savings but not directed to the Hobart issue.

Senator ABETZ—Are you agreed there is surplus capacity currently in the Melbourne registry?

Mr Soden—No. As I said, I will need to wait and see what the recommendations are.

Senator ABETZ—Do you agree that there is surplus capacity in the Melbourne registry?

Mr Soden—I do not know, Senator. I do not know.

Senator ABETZ—Well, how do you know that there is surplus capacity in the Hobart registry and you can tell us that without appointing new personnel, Melbourne can service Hobart? Surely there must be spare capacity. Logic dictates that, surely, Mr Soden.

Mr Soden—Senator, I have to say that I have not made a decision on whether those sorts of issues are determined yet. I am waiting on the result of the consultation and the further report of that group looking into this issue.

Senator ABETZ—I am not going to delay the committee any further, Mr Soden. Surely, you must acknowledge that if Melbourne, without the appointment of any further personnel, can do all the work of the Hobart registrar, there must be some surplus capacity within the Melbourne registry that potentially could have been looked at rather than denying Hobart, a founding state of the Commonwealth, entitlement to a full registry, which actually includes having a registrar in it.

Mr Soden—I would answer that by saying, again, before I make any decision about this, I would have to be satisfied that the Melbourne registry had a capacity to support Tasmania.

Senator ABETZ—I invite you, Mr Soden, to read the *Hansard* and tell me whether you think, on rereading it, there are any inconsistencies in the evidence you have just given us because it just simply does not make sense, with the greatest of respect. Another matter that I invite you to look at is the possibility of—I am gobsmacked that it was not considered to be an option—a 70 per cent full time equivalent registrar. For example, if you think there is a bit of surplus capacity in Hobart, provide a registrar that might work every morning or until three o'clock in the afternoon or something like that so that people can in fact get timely service. With justice, timeliness is a vital ingredient and savings may well be able to be made in that way. But I will leave that to you and look forward to not having to come here at the next estimates because the Hobart registry has been left alone. Thank you very much.

Mr Soden—Senator, let me have an opportunity to conclude by saying that I do not know the details but I do understand that there is a submission about the district registrar working part time. I will have a very close look at that submission in the broader context.

Senator ABETZ—Good. If I might say, I look forward to not being back at this committee next time. Thank you very much.

CHAIR—Mr Soden, I have a few questions I want to ask you about the Federal Court in Darwin, which will come as no surprise to you, I suspect.

Mr Soden—No, it will not.

CHAIR—Can you just provide—take this on notice if you want to—the range of cases and the number of cases that would be heard by either the Federal Court, the Family Court or even the Native Title Tribunal currently out of their existing premises at the TCG building in

Mitchell Street? In other words, do you keep a compilation of the numbers and types of cases that move through the Federal Court arena up there in the Northern Territory?

Mr Soden—For the Federal Court, yes. But you would need to get the other information about the family law work and the Native Title Tribunal work from those institutions.

CHAIR—So no doubt a decision has been made at this stage that there is not a need for a distinct Federal Court building in Darwin? Would that be correct?

Mr Soden—That is not a matter for me, Senator. I do not know about that issue. That is something that is probably—

CHAIR—Best for A-G's?

Mr Soden—Yes.

CHAIR—So you have not been consulted about that decision?

Mr Soden—Me personally? No. I have no recent knowledge of any—

CHAIR—The Federal Court has not been asked to review whether or not they believe a distinct building for Federal Court and other court related matters would be in the best interests of Darwin or the Northern Territory?

Mr Soden—I will try to assist, Senator. I might need to take this on notice. But I do not think there have been any recent discussions for the coming budget year involving the Federal Court about a proposal concerning a building in Darwin. I do not think there has, Senator, but I can take that on notice and get back to you if I am wrong.

CHAIR—Thank you very much. I think it is probably a matter more for Finance and Public Administration. I am just trying to ascertain what sort of research Finance and Public Administration might have done in coming to the conclusion they came to.

Mr Soden—I understand your interest, Senator.

CHAIR—Yes. Thank you. We will keep pursuing it in other areas. We are used to doing that.

Senator BARNETT—I have a couple of questions, Mr Soden, regarding consultancies. Of the 471 consultancies listed in an answer to questions on notice from me by the department—numbers 315, 316 and 317—the first two were undertaken by Deloittes and the last one by stratsec. I wonder if you can provide further and better particulars regarding each of those three and specifically regarding the review of IT infrastructure for \$78,100 starting 1 November 2008, concluded 1 December 2008. Can you outline to the committee what that was all about?

Mr Soden—Sorry. I have the review of IT infrastructure and the stratsec e-lodgement system vulnerability assessment. What was the first one, Senator?

Senator BARNETT—The other one was the market analysis new evaluation of SAN Storage Solutions. I am happy for you to take them on notice, but I would like you to respond to the query I have about the review of IT infrastructure. What was that about? Can you tell us more?

Mr Soden—Yes. That was Deloitte. That was done specifically at my request in the context of all of the work we are doing in our e-service strategies, our e-lodgement system and the Commonwealth courts portal. I wanted specialist advice about the IT infrastructure of the court, particularly its communication links and capacities, to be confident that we had not missed anything in the development of our e-service initiatives.

Senator BARNETT—And?

Mr Soden—And that report has been received. It is comforting in the sense that it does not highlight any major problems. But it does give advice about some changes we should make over the next two budget years. They are not expensive changes but just to improve the capacity for the future. So it has confirmed that things are not too bad, but it could be done a bit better.

Senator BARNETT—Sure. I thought it might have recommended some changes. Can you advise the recommendations to the committee?

Mr Soden—I am happy to take that on notice. There were a number of recommendations and a number of time frames within which those recommendations were to be implemented.

Senator BARNETT—Could you take that on notice?

Mr Soden—I am happy to do that.

Senator BARNETT—I am happy for you to table either the report or an executive summary of the report.

Mr Soden—The report is quite large and technical. The executive summary would be, from my perspective, more useful for you.

Senator BARNETT—Absolutely. That is no problem. Likewise, take on notice the other two—316 and 317, Deloitte and stratsec. Likewise if you have an outcome-executive summary for each of those, that would be appreciated.

Mr Soden—Yes. I am happy to do that, Senator.

Senator BARNETT—Excellent. Finally, regarding the number of judges, how many do we have currently and how many vacancies are there?

Mr Soden—There are 45 judges presently on board, if I can use that. There is recruitment action in relation to three judges.

Senator BARNETT—Where are they based? You have three vacancies?

Mr Soden—Two in Sydney and one in Melbourne.

Senator BARNETT—What stage are they up to? Are they following the panel appointment process?

Mr Govey—Senator, it would probably be more appropriate for me to answer that question. .

Senator BARNETT—Sure.

Mr Govey—I think I referred earlier to the fact that the standing panel is currently considering nominations and applications for those positions.

Senator BARNETT—They have called for nominations?

Mr Govey—That is right. There was a public advertisement in April. The panel is now considering the material that has been provided.

Senator BARNETT—How many nominations did you get?

Mr Govey—It is a little complicated, Senator, because we had to take into account those who applied in Sydney in the previous round and did not withdraw or were otherwise not appointed and those who applied afresh and those who were nominated last time and still remain in the mix.

Senator BARNETT—So if you nominate on a previous round, your nomination remains live, does it?

Mr Govey—Unless you indicate that you do not wish to be considered. It is simply a matter of convenience for people. It saves them putting in a fresh application.

Senator BARNETT—So how many have you got?

Mr Govey—The figure I have is 177 people who are to be considered as a result of that process I just described.

Senator BARNETT—Did you say you have criteria for these judges?

Mr Govey—There were criteria that were indicated. I think the details of them are on the website. I cannot remember the breakdown, but certainly the information is on the website.

Senator BARNETT—So it is publicly available?

Mr Govey—That is correct.

Senator BARNETT—They have addressed the criteria in their application, most of these people, or in their nominations?

Mr Govey—It is the usual judicial process.

Senator BARNETT—That is the usual process?

Mr Govey—Some people did in a fairly fulsome way and others did not. Nominations on the whole do not do that for obvious reasons because they are third party nominations.

Senator BARNETT—Sure. It is a new process, so I am still getting my head around how this all works. So then the panel would select a short list of how many?

Mr Govey—I would rather not go into the details at this stage, Senator. Basically, the panel meets. It considers the applications. It considers people based on their reputation and consultations. Then a short list is prepared.

Senator BARNETT—Who prepares the short list?

Mr Govey—Well, I would say the panel does. We all have a look at the applications. We all have an opportunity to put forward names. We have a discussion.

Senator BARNETT—I am just trying to work out how the system works. It is a new system. I am not having a go at you in that regard. I am just trying to work out how it works. Who prepares the short list? You say the panel does.

Mr Govey—That is correct.

Senator BARNETT—Does an executive committee of the panel, or all four members? Do you get together and say, ‘Look, here’s a list of 177. These are my top 10. These are my top 10. These are my top 10?’ Is that how it works?

Mr Govey—That is not all that far from the mark, Senator. That is right. All members of the panel receive all the details of the applicants. We all have an opportunity before we meet to go through. On this occasion, we have exchanged some names of people the panel thought should be given further consideration.

Senator BARNETT—At the meeting or before that process?

Mr Govey—Before the meeting, I think, we certainly had the opportunity to do that.

Senator BARNETT—Via correspondence? You email each other?

Mr Govey—That is correct, yes.

Senator BARNETT—You email each other?

Mr Govey—That is correct.

Senator BARNETT—Then you get to a meeting?

Mr Govey—That is correct. I should be more specific about this. On this particular occasion, we had one meeting where we have taken our initial consideration of the short-listing further. We have not yet finalised that process.

Senator BARNETT—Then you prepare another short list to send to the minister?

Mr Govey—I would imagine that the next stage would be—this is based on what we have done in the past—a list of people to be recommended goes forward to the Attorney-General.

Senator BARNETT—How many on that short list?

Mr Govey—That will depend, Senator. We have not yet finalised that.

Senator BARNETT—Well, based on past experience.

Mr Govey—I do not think we can be specific about that. We have not done one in Melbourne before. I cannot remember the number who went forward last time.

Senator BARNETT—Well, you could be specific based on past experience.

Mr Govey—I would have to take that on notice, Senator. We are not working on the basis that we have to provide five, 10 or 15. It depends very much on the names who come forward and how they are categorised.

Senator BARNETT—So it depends on the panel how many are forwarded to the minister—the Attorney-General—for consideration?

Mr Govey—Yes. Although I think it is fair to say there is an expectation that we are not just going to provide one name or two names.

Senator BARNETT—Would it be less than 10?

Mr Govey—I do not know the answer to that yet, Senator.

Senator BARNETT—This is important. You are saying that you could send a list of more than 10 to the Attorney-General for selection.

Mr Govey—Well, that would depend upon the number of vacancies, Senator.

Senator BARNETT—What if there was one vacancy?

Mr Govey—Last time in Sydney there ended up being three appointments.

Senator BARNETT—And how many were forwarded to the minister? You cannot recall?

Mr Govey—I cannot recall.

Senator BARNETT—If you happily take it on notice and be as specific as you can in terms of the process based on past experience, that would be appreciated.

Mr Govey—I will do that, Senator.

Senator BARNETT—Could you do that?

Mr Govey—Certainly.

Senator BARNETT—We are all getting our head around this new appointment process. It is very important to understand how it is all going to pan out. So we need to get that information. Thank you very much. I do not have any further questions.

CHAIR—Mr Soden, thank you very much for your cooperation. That is all we need tonight from the Federal Court. We thank very much you and your officers.

Proceedings suspended from 9.00 pm to 9.17 pm

Federal Magistrates Court

CHAIR—We will reconvene with the Federal Magistrates Court.

Senator BARNETT—Let us start with the consultancy by Susan Morgan and her appointment as a panel member to make recommendations of highly suitable candidates for appointment to the Federal Magistrates Court. Can you tell us more about that? We have had a discussion with Mr Govey. I am happy for Mr Govey to answer, if you would like, about that consultancy, which concluded on 15 January 2009.

Mr Govey—I do not have any direct knowledge of that. As I mentioned earlier today, Ms Morgan was assisting us with the last panel process that was conducted in relation to the selection of federal magistrates. In accordance with the usual process, that is a matter for us in terms of the panel. But I assume from the fact that she was described as having been paid by the Federal Magistrates Court that the payment for her expenses was done by that court. If any of that information is not correct, I will let you know.

Senator BARNETT—You need to be a little more specific, Mr Govey; I am sorry. There is a consultancy, I understand. I would like to know further and better particulars about that. Why was she appointed?

Mr Govey—She was appointed with the approval of the Attorney-General to be on the panel, which was going through a process of selection for a federal magistrate. But it was not a panel which I was involved in.

Senator BARNETT—But why was she appointed?

Mr Govey—She is a former justice of the Family Court, so it was felt that she had expertise in that area.

Senator BARNETT—Was she appointed just to be a panel member or was she appointed to review the process for panel appointments?

Mr Govey—No. She was appointed to be a panel member. As I mentioned earlier, the other members of the panel were the Chief Federal Magistrate and Ms Kathy Leigh from the department.

Senator BARNETT—Right. So she did not make any recommendations regarding the panel appointment process? She was just appointed to be a panel member?

Mr Govey—That is correct. I have just been reminded that Federal Magistrate Baumann also participated instead of the Chief Federal Magistrate for some of that process. I am not sure.

Senator BARNETT—Do they receive a per diem or per hour rate? How does that work for those panel members?

Ms Playford—Susan Morgan was paid a sitting fee of \$696 per day plus flights and accommodation. This is consistent with a Remuneration Tribunal determination for advisory bodies in terms of their sitting fees. There was a total of \$6,264 for nine days of panel meetings and interviews at that \$696 per day.

Senator BARNETT—And that is consistent for the other panel members as well, I assume?

Ms Playford—The other panel members were Kathy Leigh from the department, who was not paid any sitting fee, and Federal Magistrate Baumann, and he was not paid any sitting fee.

Senator BARNETT—Could we move from there to perhaps get clarity around the Semple report consultancies and whether the department has that all together as yet. Can you assist us with that?

Ms Playford—Sorry, could you repeat that question?

Senator BARNETT—The Des Semple & Associates report consultancies that have been undertaken for and on behalf of the government.

Mr Govey—I mentioned the amounts previously, Senator. I know I corrected one of the amounts.

Senator BARNETT—You have. That is two of them.

Mr Govey—They are the only two consultancies with the department.

Senator BARNETT—Well, how is it I have five?

Mr Govey—With the department?

Senator BARNETT—Yes—set out in an answer to a question on notice which the department provided to me. There are 471 consultancies that I have right here in front of me. I have added them up and there are five.

CHAIR—Do you have a reference to that answer?

Senator BARNETT—I do. It is question No. 115. You have responded. Can I put on the record my sincere thanks to Mr Wilkins and your department for preparing that department. There is 471 in attachment A. Then you have a list at attachment B.

Mr Govey—Senator, I think the answer to this dilemma is that that question related to the whole portfolio.

Senator BARNETT—It did, yes.

Mr Govey—So the answer I am giving you relates only to the department. Of course, Mr Foster indicated that they had some consultancies as well. I think what we have agreed to do, perhaps while you were not in the room, is work with the Family Court and the Federal Magistrates Court to try to clarify the position.

Senator BARNETT—We have them all here. I have raised this issue a couple of times in the last few hours. I have five. I can go through them with you for the record. Mr Govey, you have mentioned the restructure of the Federal Court and then the review of the workload of the Family Court of Western Australia. You have indicated two figures—\$59,957 for the first one and \$34,187 for the second one. They are the two that you have referred to. I have here Family Court Nos 32 and 33 for \$33,000 each out of this list of 471.

Mr Govey—Senator, I think 32 and 33 are the two that I am referring to where he has worked for the department. I cannot at this point explain the figures except that I suspect they are simply wrong.

Senator BARNETT—That is what I thought, Mr Govey. That is one of the reasons I wanted to get some clarity around it. Thirty-two and 33 say pretty much the same thing as you said earlier. They say, ‘Assist the Attorney-General’s Department in the review of the delivery of family law services. Start date: 31 March, 2008. End date: 31 May, 2008. Cost of consultancy: \$33,000.’ The second one is the funding review of the Family Court of Western Australia. The dates are set out there. Again, it is \$33,000.

Mr Govey—Yes. Both the end dates and the cost of the consultancy appear to be wrong.

Senator BARNETT—So we have to assume that your figures you indicated to us earlier are correct. Can we assume it or can we now state as fact that the answer to the question on notice to me was wrong for reports 32 and 33?

Mr Govey—That is the information I have been given. As you can probably imagine, I was not personally aware of the precise amounts before tonight. But we have made further inquiries, including over the dinner break and indeed over the earlier break. We certainly believe these figures to be correct.

Senator BARNETT—That is one scalp for me. Go to report 319.

CHAIR—That was a killing term, Senator Barnett, so we will wait for the next one.

Senator BARNETT—Thank you for that acknowledgement, Chair. It is not every day I get those sort of wins. So there are reports 319, 320 and 322. Des Semples & Associates is 319. It says, ‘Undertake review of registrar and family consultant resource allocations for the Family Law Courts Board.’ This is under the heading ‘Federal Magistrates Court’. So that is you, Mr Foster. The second one is a review of corporate services. The third one is a review

commissioned by the A-G's Department. It is on future governance options for the federal family law courts in Australia and is entitled *Striking the right balance*. They are respectively worth \$32,670, \$16,085 and \$9,570. Are those reports correct? Are those figures correct?

Mr Foster—I would have to take that on notice because I am just not aware of them. Some of these consultancies happened before I got to the court. I will have to go back and check the records. I regret doing it but I have no choice. I could not give you an accurate and proper answer.

Senator BARNETT—Let us see if Mr Govey can provide a response.

Mr Govey—I think the answer for the one labelled 322 is that that was actually a continuation of the previous report. Certainly, from our perspective, we treat it as one and the same. The reference to the future governance options and *Striking the right balance* was the continuation of work on the Federal Court's structural review.

Senator BARNETT—So you will get back to us on that to confirm that?

Mr Govey—Indeed.

Senator BARNETT—Thank you. And the other two?

Mr Govey—The other two, I think, are for the courts.

Senator BARNETT—The other two are correct?

Mr Govey—No. The other two are for the courts.

Senator BARNETT—Well, it says the Federal Magistrates Court of Australia.

Mr Foster—I just repeat my previous answer. I am just not aware of what they are. So, regrettably, I just have to take that on notice.

Senator BARNETT—Mr Govey and Mr Wilkins, can we just get confirmation you will liaise with Mr Foster and you will confirm on the record hopefully as soon as possible tomorrow exactly what consultancies have been undertaken by Des Semple & Associates or Des Semple and the names of the reports and the cost of those reports?

Mr Govey—We will certainly do that as a matter of priority.

Senator BARNETT—Thank you very much. I have some other questions, but I think I will pass to Senator Brandis, who would like to pursue these matters.

Senator BRANDIS—Thank you, Senator Barnett. Mr Foster, here you are again. This is the Federal Magistrates Court. Of course, you are here because you are the acting CEO of the Federal Magistrates Court, are you not?

Mr Foster—That is right.

Senator BRANDIS—You are also the CEO of the Family Court?

Mr Foster—That is also right.

Senator BRANDIS—It seems that the amalgamation has, for all practical purposes, been completed before the permission of the parliament has even been sought.

Mr Foster—I am really acting at the request of the Chief Federal Magistrate because the previous acting CEO went off on extended sick leave.

Senator BRANDIS—This is Mr Smith?

Mr Foster—Mr Smith.

Senator BRANDIS—Why did the Federal Magistrates Court not appoint a new CEO?

Mr Foster—Because there is currently a CEO who has been granted a leave of absence from the court.

Senator BRANDIS—Is that the real reason?

Mr Foster—Mr Mathieson is the CEO of the Federal Magistrates Court. He was granted a leave of absence by the Chief Federal Magistrate last year.

Senator BRANDIS—Perhaps, Mr Wilkins, this question is for you. Allowing for the fact that in view of Mr Smith's illness it was necessary to find somebody to be the acting CEO of the Federal Magistrates Court, why of all people—no disrespect to you, Mr Foster—would Mr Foster, the CEO of another court with whom the Federal Magistrates Court was in conflict, be appointed?

Mr Wilkins—It is not our decision. It is a matter for the Chief Federal Magistrate.

Senator BRANDIS—Let me get this straight, Mr Wilkins. The person who—

Mr Wilkins—We do not make these appointments.

Senator BRANDIS—speaks for the Chief Federal Magistrate here is Mr Foster. I want to ask why it was that Mr Foster, who I contend is conflicted, was appointed most inappropriately to be the acting CEO of the Federal Magistrates Court. I feel abashed about asking that question of Mr Foster because I do not wish to embarrass him. I cannot ask it of the Chief Federal Magistrate, of course. You say I cannot ask it of you. To whom should I direct it, Mr Wilkins?

Mr Wilkins—That is the way in which, as you know, courts are governed in the Commonwealth.

Senator BRANDIS—I will have to ask it of Mr Foster, then. I do not mean to be rude, Mr Foster, but why you?

Mr Wilkins—I am serious about that.

Senator BRANDIS—I know you are.

Mr Wilkins—We cannot make those decisions. Of course, the people who do make these appointments are not here to answer the questions.

Senator BRANDIS—I will just have to persist with Mr Foster. Mr Foster, you were approached to become the acting CEO of the Federal Magistrates Court.

Mr Foster—That is right.

Senator BRANDIS—When you were approached with this offer, did you say, 'Well, I should decline because I am the CEO of the Family Court and, as we all know, there is at the moment a process which may likely lead to the integration of those two courts in which they have or could be apprehended to have inconsistent interests?' Did you do that?

Mr Foster—I did consider that. The process was that the Chief Federal Magistrate had a discussion with the Chief Justice and sought her approval first before I was approached, following that discussion. Bear in mind that the decision to move forward on the integration of corporate services had been made some time before that. And it was only an acting position because we did not know how long Mr Smith was going to be away for at that time. They thought that there needed to be someone in the place who could continue to work through with that process. Now it has been an extended acting appointment. That is probably not the most desirable thing that could have happened, but at the moment that is the way it is. It was certainly done subsequent to the decisions made to further integrate the transfer of the corporate service function. It was not until 25 November that I was appointed the acting CEO. I have worked in court structures before.

Senator BRANDIS—I am sure you have lots of experience, but I think it is probably obvious from where I am going with this that your experience is not the issue. The issue is whether you are in a false position. So you were appointed as acting CEO on 25 November 2008. On 25 November 2008 there was a process underway of integration, as you say, of the corporate services. We heard about that when you appeared before this committee in your other hat as CEO of the Family Court a couple of hours ago. The government at that stage had not accepted the recommendations of the Semple review. That is right, is it not?

Mr Foster—That is right.

Senator BRANDIS—And at the time that you were appointed last November was there any discussion as to the likely length for which you would be acting in this position?

Mr Foster—No. I was appointed until further notice because no-one knew how long Mr Smith would be away. No-one, I think, believed that he would be away for quite an extended period of time, which has proved to be the case.

Senator BRANDIS—So you were appointed for a period of unknown and indefinite duration which is still current?

Mr Foster—That is right. On the basis that decisions and action had to be taken in relation to the financial and other systems, which, as explained in Mr Mathieson's letter to Mr Govey, were reaching breakdown and required urgent and necessary action.

Senator BRANDIS—That may or may not be right. I will take it from you that it is. At least at the time you accepted this appointment you knew that there was a process of integration of the corporate services of the two courts underway, as evidenced in the minutes we have already been through. You must have apprehended that at least if the process went no further than that—the integration of corporate services—there was potentially an inconsistency in the interests of the two courts. The way one court wanted to do it may not have been the way the other court wanted to do it. Here you are in a position, for all intents and purposes, negotiating with yourself. How could you have served two masters?

Mr Foster—I can and I am because I am taking direction from both of them, who have agreed to this integration of the administration. So from my perspective, in that sense, there is no conflict of interest.

Senator BRANDIS—But for heaven’s sake, there may ultimately be an agreement. But that agreement, in the nature of these things, was inevitably reached after a process of discussion. You are not going to tell me, are you, that from the moment the idea of amalgamating the corporate services of the two courts was conceived of, everyone who participated in those discussions from the two courts concerned had an identical view about every aspect of that complex process?

Mr Foster—I am sure that is not the case. The decision was made, as I said, by the Chief Justice and the Chief Federal Magistrate. I was obeying their instructions about bringing in the administration and integrating them as far as is possible in relation to those corporate service functions. Subsequent to that, those two people, who had the responsibility for making those decisions, have made the decision that we should accelerate this process even further outside any decision of government in relation to the administration because it will not impact on any decision others might make about the structure of the courts.

Senator BRANDIS—You participated in these discussions, did you not?

Mr Foster—I did.

Senator BRANDIS—Are you telling the parliament that there was never a time in these discussions on any issue in which there was a difference of view between the two courts?

Mr Foster—There have been several differences of view. But since the period of time—

Senator BRANDIS—So in those discussions, when there was a difference of view between these two courts and you were there on behalf of both of them, which court did you represent?

Mr Foster—I represented both.

Senator BRANDIS—Though they had a difference of view, as you have told us, on many issues?

Mr Foster—But the difference of views were at the margin. It was around about—

Senator BRANDIS—It is a matter of opinion what is at the margin and what is not.

Mr Foster—In my opinion, it was at the margins. It was primarily around the sharing of resources. To that end, Federal Magistrate Baumann had been asked by the Chief Federal Magistrate to review the requirements of the Federal Magistrates Court in relation to registrar and family consultant uses, which he has now basically completed. He is having discussions with the Chief Federal Magistrate this week about the outcomes of those reviews. I can only assume that that will then go to a meeting of the Family Law Court advisory group. That group will make a decision, I would think, supporting those requests.

Senator BRANDIS—You have told this committee and, through it, the parliament that in these meetings in which you participated, representing both courts, there were differences of view between them on several issues. How can you possibly suggest that representing both courts in meetings which were of a different view on several issues you were not conflicted?

Mr Foster—Only in relation to the administration. If you are suggesting something else about the structure of courts, I did not participate in those discussions.

Senator BRANDIS—I am coming to that.

Mr Foster—That was a matter for the Chief Justice and the Chief Federal Magistrate.

Senator BRANDIS—No. I am coming to that. So you were only conflicted in relation to matters of administration?

Mr Foster—I am not saying I was conflicted at all.

Senator BRANDIS—You did, actually. You said ‘only in relation to matters of administration’. They were your words. Do you want to withdraw that?

Mr Foster—I am sorry if I did say that. I did not mean to say ‘conflicted’. There might have been conflicting views at the margins between the two courts.

Senator BRANDIS—Your words were ‘on several issues’.

Mr Foster—On some issues. But they were of a minor nature.

Senator BRANDIS—But that is not the point, really, is it? Whether they were issues of a major nature or, in your view, issues of a minor nature, they were still inconsistent views between two entities in a negotiation. You were there representing both. How could you possibly imagine that you were not conflicted?

Mr Foster—Because that is a model that is used in many other court systems and it is a model that I have worked in before, where there is one CEO and there are several courts, which are separately constituted organisations. Yes, there are differences of opinion. They are discussed and resolved and resolved by consensus. That has been how the Family Law Court advisory board has worked. In only the couple of meetings of the Family Law Court advisory group it has worked, decisions have been made by consensus. Not every decision made is on the recommendation of the chief executive officer. Many are made between the Chief Justice and the Chief Federal Magistrate.

Senator BRANDIS—On these issues in which there were differences of view, you held one view as opposed to the alternative view, did you not?

Mr Foster—The only view that I have held personally is in relation to the sense of having one administration and reducing the cost to the taxpayer and delivering services and being able to free up some court resources to provide decent support to the Federal Magistrates Court in relation to family consultants. I have held that view for some time.

Senator BRANDIS—Well, we all want to save the taxpayer money, Mr Foster.

Mr Foster—I have no personal view—and if I had one I would not express it because it is not relevant—around the structure of the courts.

Senator BRANDIS—I am sorry; I might be a bit slow, but I still cannot get my mind around how it can be that, if in a negotiation two parties have a different view and you are there on behalf of both, regardless of whether you regard it as an unimportant difference, you could be other than conflicted.

Mr Foster—Well, it is more a consultation these days than a negotiation in relation to resources. That is the part that I play in this whole thing. I think we are getting close to, by consensus, reaching agreement with the sharing of the resources that both courts have.

Senator BRANDIS—Of course, it becomes more serious, Mr Foster, does it not, because the decision of the government announced by the Attorney on 5 May to adopt the principal recommendations of the Semple report was itself controversial among some within the federal judiciary. You are aware of that, are you not?

Mr Foster—Yes, I am.

Senator BRANDIS—We heard at the last round of estimates that the letter from Chief Justice Black on behalf of the Federal Court—that is one court you do not represent here—was subsequently produced in which Chief Justice Black says bluntly in relation to those aspects of the Semple review that are germane to his court that the Federal Court does not support the recommendation. You know that Semple is controversial in important ways with the Federal Court. The Semple recommendations are, however, popular and well supported, are they not, by the Family Court?

Mr Foster—I would say that the majority of judges, not all, would support the recommendations in the Family Court. But the recommendations of the Semple report were widely supported by a whole range of organisations, including bar associations.

Senator BRANDIS—I know who supports the recommendations. I know who does not. I am asking specifically about the role of people answerable to the parliament, not the views of external commentators and stakeholders.

Mr Foster—The Chief Justice's view has been expressed and was part of a letter to the Attorney-General. But she made it quite clear that it did not necessarily express the views of the court. So I would say, wearing my other hat, that there are some different views in the Family Court about it. I think some people might be ambivalent about it. Some people would support it. Some people might not support it. Like any group of people, there are varying degrees of support for the issue.

Senator BRANDIS—How many Family Court judges are there just at the minute?

Mr Foster—Right this moment, 35, with one vacancy.

Senator BRANDIS—Of the 35 Family Court judges there are at the moment, and taking your classifications, approximately how many would you say support Semple, how many are ambivalent and how many do not support it?

Mr Foster—Well, I have not spoken to every judge in the Family Court.

Senator BRANDIS—That is why I said approximately.

Mr Foster—I do not really think I am in a position to answer that question.

Senator BRANDIS—Yes, you are. You just told the parliament that you knew there were some Family Court judges who supported it, that there were some who were ambivalent and that there were some who were opposed to it. I am not trying to tie you down to actual figures. That would not be fair. But if you have this knowledge you can at least give the parliament a sense of your understanding of roughly the proportions who hold those different views.

Mr Foster—I am not really sure that I am in a position to answer that with any great accuracy.

Senator BRANDIS—No. That is why I said approximately. As well as you can do. If you felt able to tell the parliament that there were different views across the Family Court and to classify them into three broad categories then you are in a position to assess the relative weight or strength of those three respective views that you yourself have identified.

Mr Foster—Well, I would say a very small sample. The majority of them would probably support the government's recommendations.

Senator BRANDIS—We are talking about the Family Court now?

Mr Foster—I am talking about the Family Court. There would be, again, a very small sample who would be ambivalent. I guess there would be even fewer who would say, 'No, this is not such a good idea.' But I would say the majority of the people that I have spoken to, in any event, would probably say this makes sense. I am talking about the structure of the courts, not the administration. I am not hearing one—

Senator BRANDIS—Yes. That is what I am asking about. I am asking you about the Semple recommendation.

Mr Foster—In relation to the structure of the courts or the integration of the administration? Semple is in two bits.

Senator BRANDIS—The elimination of the Federal Magistrates Court and its absorption in large measure by the Family Court and the balance of it into the Federal Court. That is what I am describing as the principal recommendation of the Semple review.

Mr Foster—That small sample in relation to that. I would stand by that answer.

Senator BRANDIS—So, to summarise, you think that a majority of Family Court judges support that proposition? Of those who are not in the majority, there are more who are ambivalent than are dissenting?

Mr Foster—I would think that is probably accurate.

Senator BRANDIS—Well, you see, that was easy. I am not asking you to put more precise figures on this than you are able to. But that is very informative. Thanks, Mr Foster.

Mr Foster—That is very much a personal assessment.

Senator BRANDIS—Of course, Mr Foster. But you are in a better position to make that judgment than anybody else I can think of in the entire country. So that is very informative.

Mr Foster—Well, I think probably the Chief Justice is in a better position than I am.

Senator BRANDIS—But she cannot talk to us, as we know, and as Mr Wilkins has reminded us. I will continue with the principal recommendation of the Semple report—that is, the integration of the courts from three into two and the absorption of the Federal Magistrates Court. Would you agree with me that that is a much more extensive and complex process than merely integrating the corporate services and that one would expect that there was a greater occasion for differences of view between the two courts on the principal Semple recommendation than there is on the narrow issue of the integration of corporate services?

Mr Foster—In relation to the structure of the courts?

Senator BRANDIS—Yes.

Mr Foster—Yes, I agree with that.

Senator BRANDIS—In fact, that is how it has proved to be, is it not? There have been all sorts of problems between the Family Court on the one hand and the Federal Magistrates Court on the other hand subsequent to the Attorney-General's announcement in giving effect to or developing a model to enable you to accomplish this integration, have there not?

Mr Foster—I would have to say from my position as CEO of the Family Court—I came to that position in 2000 when the FMC was first established—there was a great deal of friction over many aspects of the administration of the courts. I think that has improved enormously over the last several years.

Senator BRANDIS—Well, that is historical, though. Now that we are talking about eliminating the Federal Magistrates Court as an element of the federal judiciary, you are aware, are you not, that there are many federal magistrates who are deeply unhappy and strongly opposed to this measure?

Mr Foster—Yes, I am aware of that.

Senator BRANDIS—You are aware, are you not, that even among those federal magistrates who support or are prepared to go along with the Semple recommendations there are concerns that they have not been given sufficient information?

Mr Foster—I think there are concerns about the detail that would follow the decision. As I understand it, Mr Govey recently had a meeting with several of the FMs—federal magistrates—in Melbourne in an attempt to provide further information. But the detail of the proposal in relation to the structure of courts, I guess, is yet to emerge. Certainly there has been plenty of information provided in relation to the integration of the administration, and there will continue to be so. I do not get a sense, certainly not in the Family Court or in the Federal Magistrates Court generally, that there is great concern about that happening.

Senator BRANDIS—About a lack of information?

Mr Foster—Not about a lack of information. About the integration of the administration.

Senator BRANDIS—I will come to that. Let us just dwell for the moment on the lack of information. Do you agree or dispute that the federal magistrates are concerned that they have not received sufficient information?

Mr Foster—That is really a matter for the department.

Senator BRANDIS—I am asking you.

Mr Foster—I think there are some areas that are unclear, but it is a matter for others to determine what they are. It is certainly not a matter for me. My role is in relation to the integration of the administration. I am providing information on a very regular basis about that issue. I do not believe that there is strong resistance to this happening.

Senator BRANDIS—We will come to that too. On the issue of information, the Family Court judges are not saying that they do not have enough information about it, are they?

Mr Foster—The proposal, as I understand it, does not have the same sort of impact on them.

Senator BRANDIS—Quite—their court is not being abolished.

Mr Foster—They are still remaining justices of the Family Court of Australia.

Senator BRANDIS—But the federal magistrates are complaining that they have not been given sufficient information, are they not?

Mr Foster—It is unclear about where some of it is going, but it is really a matter for others to answer that question. It is not a question for me.

Senator BRANDIS—Is it right to say that the federal magistrates are concerned that they do not have sufficient information?

Mr Govey—That view was put to me before we had our meeting with them. I would certainly like to think that, on the basis of the discussion we had, they are much better informed about the position now. We have certainly made it clear that we would be very happy to have further discussions. Of course, some of the matters on which information is sought are matters on which no final decision has been made. So we are in a position to discuss these issues with them and to be influenced by their views.

Senator BRANDIS—How many meetings have you had with the federal magistrates?

Mr Govey—I have had one meeting with a number of federal magistrates.

Senator BRANDIS—Who are they, please?

Mr Govey—I had better take that on notice.

Senator BRANDIS—Was Acting Chief Federal Magistrate Baumann one of those present at the meeting?

Mr Govey—He was.

Senator BRANDIS—Was Federal Magistrate Burchardt there?

Mr Govey—He was.

Senator BRANDIS—Was Federal Magistrate Connolly there?

Mr Govey—He was.

Senator BRANDIS—Was Federal Magistrate Donald there?

Mr Govey—He was.

Senator BRANDIS—Was Federal Magistrate Driver there?

Mr Govey—You are very well informed, Senator.

Senator BRANDIS—The minutes of the meeting have been given to me by a federal magistrate who is very concerned about the lack of wisdom of the Semple recommendations. You can have a look at a copy if you do not have a copy before you. Federal magistrates are concerned that they do not have sufficient information. That is what Acting Chief Federal Magistrate Baumann told you, is it not? It is the first item after the identification of the participants in the meeting.

Mr Govey—That is what I conceded when you asked me a moment ago.

Senator BRANDIS—Is this the only such meeting you have had with the federal magistrates?

Mr Govey—I also participated in a discussion as part of the Family Law Advisory Group when Chief Federal Magistrate Pascoe and Acting Chief Federal Magistrate Baumann were present.

Senator BRANDIS—But that is the peak group of the Federal Magistrates Court and the Family Court, is it not?

Mr Govey—Yes, that is correct. That is the only meeting I have had with a number of federal magistrates at the same time.

Senator BRANDIS—While we are dealing with these minutes, I asked you earlier when we were talking about this topic during the Family Court estimates whether or not you or the department had turned your mind to the question of what would happen with federal magistrates who declined to participate and wished to continue to be federal magistrates. You said that that was just speculation—'speculation' was your word. If you go to page 3 of the minutes of this meeting under the heading 'Fresh commissions are proposed', you will see that one of the main items under discussion at that meeting was what would happen in relation to federal magistrates who refuse to participate. If you follow me towards the top of the page, the minutes read:

If a Federal Magistrate decides not to accept any new commission but retains the commission as a Federal Magistrate in the Federal Magistrates Court, it is intended that the jurisdiction of the court will be exclusively family law matters assigned to the court by the Family Court.

Then four options are set out, including what is to happen with federal magistrates who do not participate. So, contrary to your earlier answer, which I am sure must have been a slip of the tongue, not only had you thought about this but you had actually thought about the manner in which this eventuality would be dealt with, had you not?

Mr Govey—That is certainly one of the options. I think the minutes perhaps overstate that in the sense that that is also one of the options. But, as I mentioned before, option 4 is what I said before—that is, that somebody could decide not to take a new commission and remain a federal magistrate in the Federal Magistrates Court. That is entirely consistent with what I said before.

Senator BRANDIS—But my point is—and I do not want to try to and trip you up—when I asked you about this, you certainly gave the committee to believe that this was purely a matter of conjecture and it had not been carefully considered by the department. Yet the very eventuality is:

... it is intended that the jurisdiction of the court will be exclusively family law matters assigned to the court'—

that is, the continuing Federal Magistrates Court—
by the Family Court'.

There had actually been, perhaps in a preliminary way, a policy decision made as to what was to be done should this eventuality occur, had there not?

Mr Govey—I could take that on notice.

Senator BRANDIS—That is what the minute says. Are you saying that the minute is wrong?

Mr Govey—I think what the minute does not distinguish between is conjecture as to the options available for government and a decision by government. I am pretty sure I am right that no decision has been made by the Attorney or government.

Senator BRANDIS—Have you seen these minutes before?

Mr Govey—I saw them in draft form.

Senator BRANDIS—By whom were they prepared—the federal magistrates or by officers of the Attorney-General's Department?

Mr Govey—By the Federal Magistrates Court.

Senator BRANDIS—Mr Foster, there are many issues in controversy among the federal magistrates in relation to the Semple proposal, are there not?

Mr Foster—I can only speak in relation to the administration. I think to describe them as 'many' is not an accurate description. To be fair, I have visited and met with the federal magistrates in Brisbane. I have been to Melbourne and met with the federal magistrates as a group twice. I have been to Adelaide and met with all the federal magistrates. I have been to Newcastle. I have been to Hobart and Launceston. I have been to Sydney, Parramatta and to John Maddison Tower in Sydney to talk to magistrates individually and collectively. So I have put quite a lot of effort in to talking about the administration.

Senator BRANDIS—I am not questioning your industry.

Mr Foster—It is not about industry; it is about the communication. You said we are lacking information. In relation to the administration, I would argue that there has been a surplus of information that has gone out about the integration of the administration. In relation to the structure of the courts, that is a totally different matter and not something that is within my purview.

Senator BRANDIS—The Federal Magistrates Court appears to be so bitterly divided over the issue that it was reported in the *Australian* newspaper on Friday, 15 May, the Friday before last, by Mr Pelly and Ms Berkovic, two reputable journalists who cover legal affairs for that newspaper, that 15 federal magistrates who do general law work are saying that they are prepared to resign over plans to give effect to the Semple report. You must have seen that report.

Mr Foster—I did read that report, but I do not know where it came from.

Senator BRANDIS—It came from the 15, presumably. The journalists would not have made it up, I am sure.

Mr Foster—I do not know where it came from.

Senator BRANDIS—How many federal magistrates are there at the moment—about 60?

Mr Foster—There are 61.

Senator BRANDIS—So there is a credible report that 15 of them, one-quarter of the entire court, are so energised and anxious about this proposal that they are actually threatening to

resign. If that report is true, it paints a very ugly picture of the esprit de corps of that court, doesn't it?

Mr Foster—It does, but I do not know where that came from. I read the report in the paper—

Senator BRANDIS—Are you in a position to dispute.

Mr Foster—I do not know; I have not asked about who would resign. I do not think that is a matter for me to deal with.

Senator BRANDIS—If you are the CEO, albeit the acting CEO, of a court one-quarter of whose members are talking to journalists about resigning from the court, that is a very serious matter, isn't it?

Mr Foster—I think it is a very serious matter but I think that is a matter for the judicial head to deal with, not the CEO. My responsibility is to assist the Chief Federal Magistrate in the administration of the court. It is not to be responsible for who may or may not consider resigning from the court. I think that is clearly a judicial matter and not an administrative matter.

Senator BRANDIS—It is all very well for you to say that but, as Mr Wilkins kindly reminded me earlier on, the judicial head of the court cannot appear before this committee. The person whom the court puts up to appear before this committee and speak on its behalf to the parliament is you.

Mr Foster—I am not saying that that story was true and that it is not concerning.

Senator BRANDIS—No; you told me you are not in a position to dispute it.

Mr Foster—But I do not know whether it is or it is not.

Senator BRANDIS—I can tell you, because my political colleagues and I are, obviously on a confidential basis, receiving complaints all the time from members of this court—not the usual suspects, if I could use that expression, but people from different states. Many people I have never heard of before ring up or send in documents and say, 'You need to raise this in parliament, Senator Brandis. The court is deeply divided over this; we are being railroaded; this is a terrible decision.' It is unheard of for a court to be leaking to politicians like a sieve. It is unheard of for one-quarter of the members of the court to be telling journalists that they are threatening to resign. It is unheard of, may I suggest to you with respect, that a person who represents two conflicting interests is presiding over this process, as you are. It is unheard of for members of a court to be complaining to the department that, in a process that existentially affects the court and their own future careers, they have insufficient information. This is chaos.

Mr Foster—I think it is a bit harsh to say I am presiding over it, because I just do not do that.

Senator BRANDIS—I am not blaming you for all of it. I am not blaming you for any of it, as a matter of fact, but you are the person that both courts, as a matter of fact, put up to answer these questions from the parliament, so I am afraid I am going to have to direct them to you.

Mr Foster—I do not resile from the fact. I understand there is great dissatisfaction in the court about this proposal, but I am speaking from the position through the administration, the bit that I am actually responsible for to the Chief Federal Magistrate, and I am not hearing the same issues that you are alluding to in relation to the structure. All I am trying to suggest is that that is a matter for someone else to deal with.

Senator BRANDIS—Who should be dealing with it?

Mr Foster—I will certainly take this up with the Chief Federal Magistrate. Through the *Hansard* I will take up your concerns with him.

Senator BRANDIS—Sure.

Mr Wilkins—I think the problem is that we are not really equipped to answer some of the questions that you are putting in relation to the structural issues. No one is suggesting that Mr Foster is acting unlawfully, I do not think.

Senator BRANDIS—No, not at all. There is not the slightest suggestion that has come from me or any of my colleagues that Mr Foster is acting unlawfully.

Mr Wilkins—What he is doing is perfectly lawful. It is just that some of the things that you are trying to get opinions about, I do not know about and he does not know about. They are matters for the chief judges.

Senator BRANDIS—Mr Wilkins, I understand that. As you properly reminded me, it seems like some hours ago, I cannot put these questions to the judicial officers. I understand that. All I want to know and all, I am sure, other senators want to know is what is going on here? Have you ever heard of a situation in which one quarter of the judges of a court are threatening to resign? I have never heard of it. Have you, Senator Ludwig?

Senator Ludwig—I have not seen the article.

Senator BRANDIS—Here it is. You know that Mr Pelly and Ms Berkovic are very respectable journalists.

Senator Ludwig—I am happy to look at the article. I could say that with my previous experience as the shadow attorney-general I do recollect past occurrences were information has been provided to me from a range of the judiciary on a range of issues—

Senator BRANDIS—Nothing like a court in chaos like this.

Senator Ludwig—So I do not think I would place much stock in that quote, frankly. Of course, if someone is agitating an issue, it is not unusual to contact the opposition to pursue their case. From my perspective, when these types of things were raised with me, I would always put it through the design of whether or not I was being used to progress someone else's issue rather than make up my own mind about the matter. I am sure you are competent to come to that conclusion about these matters as well.

Senator BRANDIS—Indeed, one must. And one must respect the views of the people most immediately affected by these courts, in particular family law litigants who are very strongly of the view that the federal magistrate court ought to be left alone because it does a good job. Mr Foster, I am sure you are aware that one of the several issues in controversy between these courts, were parliament to consent to this integration of proceeding, is the

question of whether those federal magistrates who might join the Family Court would have a rule-making power and whether they would be able to promulgate their own rules of court. You are aware that that is an issue of some concern. It is one of the issues raised at the meeting of 12 May with Mr Govey. What is your view on that matter? I suppose that is not fair of me. Let me withdraw that question. You should not have a view. What is your view on that matter speaking on behalf of the Family Court? Then you can tell us your view of that matter speaking on behalf of the Federal Magistrates Court. If the two views are inconsistent then that is hardly your fault.

Mr Foster—Prior to that meeting to which you refer that Mr Govey attended with acting Chief Federal Magistrate Baumann and a number of other federal magistrates, the Chief Justice wrote to the Chief Federal Magistrate expressing in fairly clear terms that it was not and is not her intention, if the structure went through, to change the practices and procedures that exist within the Federal Magistrates Court. In other words, the prevailing culture, the method of doing business, would remain. I believe that her view is that it would make a lot of sense to have a common set of rules primarily based on the Federal Magistrates Court's rules because of their user-friendly focus—if I can express it in those terms—but with special provision if there was a first division for the justices for the most complex matters that they are dealing with so that it was not one cap fits all. Certainly, the letter clearly expresses the view that there is no desire, willingness or intention on behalf of the Chief Justice of the Family Court to interfere in the operations of a second division if that were to come to be.

Senator BRANDIS—In the course of that answer, did I mishear you or did you say that the Chief Justice of the Family Court thought there should be a single set of rules?

Mr Foster—I think she believes that there should be a set of modified rules which would largely replicate what happens in the Federal Magistrates Court. Then there would need to be special provisions for the first tier for the justices of the court recognising that they are doing the most complex and difficult work and that the way they do that work is necessarily different from what would happen in the principal trial division.

Senator BRANDIS—Cutting to the chase, the Chief Justice wants a single set of rules for both tiers.

Mr Foster—With those exceptions. I am talking about a single set of rules for implementing an action for the processes that are of a more routine nature. The answer is that her view—if I am expressing it properly on her behalf—is that that would be a good thing.

Senator BRANDIS—Do you know, Mr Foster, that the Family Court rules are longer and more complicated than either the High Court rules or the Federal Court rules? In fact, they are the longest, most complicated, least easily navigable set of rules of any federal court.

Mr Foster—I think the Chief Justice, again speaking on her behalf I hope accurately, would recognise that the Family Court rules are too complex and need to be changed. But to be fair, they are a set of rules that she inherited just before she was appointed as the Chief Justice.

Senator BRANDIS—Have there been no additional Family Court rules promulgated since Chief Justice Bryant has been the Chief Justice?

Mr Foster—I am sure there have been for various reasons, but not a complete review of the rules and that is really what I am suggesting that she is considering.

Senator BRANDIS—If there is to be a single set of rules, by whom would those rules be made? Would they be made by a committee of the senior judges of the court as is usually the custom?

Mr Foster—I really have no idea of how that would work. In the Family Court it is by the majority of judges who vote supporting the rules to see whether the rules are accepted. If you looked at the numbers, if there were 61 ‘federal magistrates’ and only—

Senator BRANDIS—But there would not be 61 federal magistrates absorbed into the Family Court.

Mr Foster—I am just using that as a figure. There would be a significant majority of judicial officers in the new Family Court who would be in the second tier. I do not know what the rule-making provisions would be. It is for others to work out. Certainly, it is not for me to work out.

Senator BRANDIS—I imagine although I have not looked at this that the rule-making powers are conferred by the Family Law Act or the act that constitutes the court. That is a conjecture as to one way in which it might possibly work if all of the judges had, as it were, an equal franchise, but has any thought been given to the way in which in this augmented structure—this two division, two tier court—the rule-making power would be exercised?

Mr Foster—Not to reach any conclusions would be my answer. It has obviously been raised just in informal discussion more than anything else that this is an issue.

Senator BRANDIS—What is your view speaking on behalf of the Family Court as to the way in which it should work?

Mr Foster—That is a matter for the judges.

Senator BRANDIS—The rules of court of course ultimately are promulgated by the judges, but given that the rules of court are one of the most important aspects, if not the most important aspect, that conduce to the efficiency or otherwise of a court they are of immense administrative importance too.

Mr Foster—They are, but how the rules are promulgated is a matter for the judges, not for me.

Senator BRANDIS—What I am asking you, speaking on behalf of the Family Court, is what the view of the court is as to how the rules of court should be promulgated in this new structure?

Mr Foster—I do not think the court has a view on that.

Senator BRANDIS—I also ask you, speaking in your capacity as the acting CEO of the Federal Magistrates Court, the view of Federal Magistrates Court of how the rules should be promulgated.

Mr Foster—From my understanding, the Federal Magistrates Court would want to have its existing rules retained. In terms of rulemaking power, I have not had any discussions with any federal magistrate about how that might work.

Senator BRANDIS—I do not know if I handed you a copy of the minute of this meeting in Melbourne on 12 May—I do not think I did—but if you go to the foot of the third page, where the discussion of this issue is recorded, you will see that Acting Chief Federal Magistrate Baumann expresses a view about the importance of federal magistrates having clarification of whether they will have control over their practices and procedures. Presumably the federal magistrates who would constitute a lower tier of the Family Court would want to import into that court the existing practices, procedures and rules of the Federal Magistrates Court as it currently operates. Is that right?

Mr Foster—That is quite clear.

Senator BRANDIS—And that is your view, speaking on their behalf?

Mr Foster—I would support that view.

Senator BRANDIS—It goes on to say magistrates are keen to ensure that they can retain control over the manner in which they conduct their proceedings. Chief Justice Bryant has indicated she will be writing to the court to confirm this and has subsequently done so, but there is some concern about the need for some independent rulemaking power consistent with judicial independence. Do you know what that means?

Mr Foster—Not really, no. I must admit I really do not understand what it means.

Senator BRANDIS—I must confess it is a little obscure to me, too. I thought you might be able to help me.

Mr Foster—I am sorry I cannot help you.

Senator BRANDIS—There is a note here that says Chief Justice Bryant, subsequently to this meeting on 12 May, has written such a letter. Could that be produced, please?

Mr Foster—Can I take that on notice and ask the Chief—

Senator BRANDIS—Is it available?

Mr Foster—I do not have it with me.

Senator BRANDIS—You are familiar with the letter?

Mr Foster—I am aware of it, yes.

Senator BRANDIS—What is the date of it?

Mr Foster—I think it was the date of this particular meeting—Tuesday, 12 May. It might have been the day before, but it was certainly only 11 or 12 May, and I do know that a copy of it was hand delivered to Acting Chief Magistrate Baumann prior to the meeting and that one of them was forwarded to the Chief Federal Magistrate.

Senator BRANDIS—Is it the view of Chief Justice Bryant that, were the courts to be integrated in the manner suggested by Mr Semple, those former federal magistrates who would constitute the lower tier of the court would have a say in the making of rules of court equal to the senior tier of Family Court judges? Or is that not her view?

Mr Foster—I do not know what her view is on that.

Senator BRANDIS—Would you take that on notice as well, please?

Mr Foster—I can.

Senator BRANDIS—I warned about this in a speech I made to the Senate the week before last. It concerns me that, if there is going to be a single set of rules, almost inevitably in the way of things the more senior people in the court—the pre-existing Family Court judges—are going to have the say. They are going to be in a position, ever so politely, perhaps, to impose their will on the more junior judges, and the single set of rules that may develop that governs both the upper tier and the lower tier is just going to impose upon the lower tier, who will have displaced the family law jurisdiction of the Federal Magistrates Court, the same old complex, expensive, lengthy Family Court culture. The culture wars, if I may put it that way, within the family law system are going to be resolved by the people with the power—the senior judges.

Mr Foster—I cannot express more clearly than I have previously that that is not the view of the Chief Justice. She has written to the federal magistrates to that effect. I guess it is a question for others to determine how that eventuates, but that is certainly not the view of the Chief Justice. I can say that with some conviction.

Senator Ludwig—I just had an opportunity of looking through that article of 15 May. To be fair to the witness, Senator Brandis indicated that there were 15 who threatened to resign. I am just having difficulty getting the number 15. It says:

A GROUP of federal magistrates have threatened to resign over plans to restructure the judiciary and move them into the Family Court.

Senator BRANDIS—The figure 15 appears in the left-hand column.

Senator Ludwig—It then says:

The 15, who do general law work, say they are prepared to join the Federal Court, but accept not all will be wanted.

Senator BRANDIS—We can try and deconstruct what Mr Pelly and Ms Berkovic said, but I think the use of the definite article at the commencement of the second paragraph of the article plainly refers to the claim made in the first paragraph of the article. In any event, let's move on.

Senator Ludwig—I was just wondering if there was any other evidence that you were basing that 15 on. Was it in the minutes of the meeting that you had?

Senator BRANDIS—I have asked the questions I wish to ask in relation to that matter.

Senator Ludwig—So you simply rely on that article to claim 15.

Senator BRANDIS—I put a proposition to the witness on the basis of a report written by two reputable journalists, who you would know are familiar with this topic. The witness was not in a position to affirm or dispute the accuracy of the report.

Senator Ludwig—In fairness to the witness, I am just trying to endeavour to qualify how you came to the number 15 in the proposition that you put.

Senator BRANDIS—It is the figure quoted by the journalist in the report.

Senator Ludwig—It does not tie, in any plain reading, to them all indicating that they would resign. I will grant you that it says 'a group'. It does not say 15 threatened to resign. In

fairness to the witness, in these types of questions you should really provide the witness with the document.

Senator BRANDIS—That is why the document was provided to the witness.

Senator Ludwig—That is why I raised it in this manner.

CHAIR—Thank you for that clarification.

Senator BRANDIS—But it is a misleading interpretation of the article, because the reference to the group is qualified by the words ‘the 15’, a reference to the group of magistrates threatening to resign. But let’s not quibble about it. Minister, you have made your point and I have made mine. Time is on the wing and I wish to move on.

Senator Ludwig—But it still says:

The 15—
comma—

who do general law work, say they are prepared to join the Federal Court, but accept not all will be wanted.

Senator BRANDIS—Before you mislead the Senate any more, read the first paragraph, please.

Senator Ludwig—It says:

A GROUP of federal magistrates have threatened to resign ...

You are at liberty to say ‘a group’. I am not sure you are at liberty to say—

Senator BRANDIS—‘A group has threatened to resign’—what are the next two words?

Senator Ludwig—It says:

... over plans to restructure the judiciary ...

Senator BRANDIS—I will not have the Senate misled by you.

Senator Ludwig—And I will not have the Senate misled by you, quite frankly. In dealing with a witness in such a way, you are misconstruing what I think would be a plain reading of the article.

Senator BRANDIS—You are entitled to your view.

Senator Ludwig—And you are entitled to yours.

Senator BRANDIS—In my view, the plain reading of the article by the use of the words ‘the 15’, referring to the reference to the group threatening to resign in the first paragraph, is quite unambiguous. However, you have put your view on the record and I have put mine. May we move on, Madam Chairman?

Senator Ludwig—I think it is ambiguous and I think you have used it inappropriately, but there you have it. You are entitled to your view. I just think the witness is entitled to be able to answer the question fairly on the evidence that is presented.

Senator BRANDIS—The witness has answered the question, and he has answered the question very honestly, without any need for your assistance.

Mr Foster—Could I just add one other comment in relation to harmonisation of rules?

Senator BRANDIS—Yes, by all means.

Mr Foster—There has been an informal group set up by the two courts, comprised of Justice Murphy from the Brisbane registry, Federal Magistrate Baumann from the Brisbane registry and Mr Geoff Sinclair, who is the Chair of the Family Law Section of the Law Council.

Senator BRANDIS—I know Mr Sinclair. Mr Sinclair is a big proponent of the Semple report, of course. He is quoted extensively in the press on the matter.

Mr Foster—But this is in relation to harmonisation of rules. That is the first step, and I think it is a clear indication that steps are being taken to have consistent and common rules wherever possible. The area where I see a difference is only for that small area of the justices of the Family Court dealing with the more complex matters, because they deal with matters in a different way—for example, the less adversarial trial in their procedures. But, in terms of the speedier, faster, quicker resolution, I think there is a pretty reasonable recognition that the rules that exist in the Federal Magistrates Court are appropriate and effective.

Senator BRANDIS—Thank you. Mr Foster, I must confess that you would have assuaged my concerns more successfully if you had told me, as indeed I suggested late last year, that one possible way of retaining the culture of the Federal Magistrates Court, were it to be integrated with the Federal Magistrates Court, would be to allow the lower tier of the court sufficient autonomy to make its own rules so that those who may take credit for the efficient culture of the Federal Magistrates Court would be in charge of their own procedure, as they currently are. But I gather from the answer to the questions I lately asked you that the idea of allowing the second tier of the Family Court, as it would be, an autonomous rule-making power is not in contemplation.

Mr Foster—No, I am not in a position to answer that. I said I do not know.

Senator BRANDIS—Well, if you do not know, you do not know.

Mr Foster—All I am saying is that the Chief Justice would support that in principle.

Senator BRANDIS—I will turn, then, to the question of the designation of federal magistrates who may be absorbed respectively into the Family Court and the Federal Court—and I want you to put your acting CEO of the Federal Magistrates Court hat on now, please. Mr Govey, you can come in on this too if you are able to assist. What is the current thinking as to the designation or title of federal magistrates who are absorbed into the Family Court?

Mr Foster—‘Judge’.

Senator BRANDIS—Has that been decided?

Mr Foster—That is in the recommendations of the report, as I understand it.

Senator BRANDIS—It is, and Mr Semple suggests that, but to the best of my recollection it is not in the Attorney-General’s press release. That decision has been made, has it?

Mr Govey—I will check, but my recollection is that it was announced by the Attorney-General.

Senator BRANDIS—Perhaps you are right. What about, Mr Foster, the federal magistrates who are absorbed into the Federal Court?

Mr Govey—That was also announced in the Attorney's press release.

Senator BRANDIS—What are they going to be called?

Mr Govey—They are going to be called magistrates.

Senator BRANDIS—I am right in understanding, am I not, that that discrimination of title between the two categories is a matter of some anxiety to those who will continue to be called magistrates?

Mr Govey—That is my understanding, subject to the qualification, of course, that no decision has been made about who would be in that category.

Senator BRANDIS—What are you proposing to do about that?

Mr Govey—That is a matter for the Attorney-General.

Senator BRANDIS—This matter is being addressed. It is hardly a policy question, is it—what title somebody is going to be called by?

Mr Govey—I think it is a policy question, but it is a matter on which the Attorney indicated a government view when he put out his press release of 4 May.

Senator BRANDIS—Speaking on behalf of the Federal Magistrates Court, Mr Foster, what do you say is the Federal Magistrates Court's view of the appropriate designation of those federal magistrates who may be absorbed into the Federal Court?

Senator Ludwig—Mr Foster has some information that may assist in relation to that question, though there seems to be some controversy as to whether it is a policy question. But he has some information and I am only too happy for him to provide it.

Mr Foster—I would say that the feeling is very strong that the nomenclature should be 'judge' and it should be consistent across both courts.

Senator BRANDIS—You would be aware that the week before last the Remuneration Tribunal suggested that there might be a break in the salary and entitlements nexus between Federal Court judges and Family Court judges. Without inviting you to offer a view as to whether that is a good or a bad idea, if that were to happen what is your view of the Federal Magistrates Court in relation to the question of whether that break in the nexus should be reflected in the second tier of those respective courts?

Mr Foster—I do not know the answer to that. The determination only came down last week, I think. I have not spoken to the acting chief federal magistrate about that, so I do not care to speculate about it. I do not know whether Mr Govey can answer that.

Senator BRANDIS—This is really a question for the court—is it not? Again, this dramatises the conflict here. If the Federal Court judges' remuneration improves relative to the Family Court judges' and if the Semple report's recommendations are agreed to by the parliament, you may have a situation where if the Federal Court magistrates' remuneration is linked as a relativity to the Federal Court judges' they may be favoured; whereas if it is linked

to their equivalent tier of judicial officers in the Family Court, they may be disadvantaged. You must have thought about that.

Mr Foster—To be honest, I really have not given it a great deal of thought. It is something that has only really emerged in the last short period of time and is not something I have turned my mind to. But in principle, I think that would be a very bad thing.

Senator BRANDIS—Well, it would be a good thing for the former federal magistrates who were in the Federal Court. It would only be a bad thing if you think it would be a bad thing in principle for the nexus to be broken, and that may well be so.

Mr Foster—That was the point I was making.

Senator BRANDIS—Okay, I can understand why you say that and there are respectable arguments in favour of that view. Mr Govey, what is the government going to do about that?

Mr Govey—As I understand it, the Attorney has made clear his view that he supports the retention of parity between the Federal Court and the Family Court, and if the tribunal were to adhere to that view then, of course, the issue would not arise. I might have missed something, but I am not aware of anything in the tribunal's determination of a week or so ago that deals with this issue in terms of making a decision on it.

Senator BRANDIS—I think Mr Conde and the other members of the tribunal have raised this as an issue.

Mr Govey—I am certainly aware that they have raised it which is why the Attorney has made his—

Senator BRANDIS—In a preliminary way.

Mr Govey—Exactly, which is why the Attorney has made clear his view that he supports the retention of parity.

CHAIR—Senator Brandis, I think I might—

Senator BRANDIS—I think I might just assist you—

CHAIR—I was speaking before you.

Senator BRANDIS—by telling you that I think I might finish my questions to this agency at this point.

CHAIR—I wanted to say that I do not think we are going to get to the department tonight. We have 25 minutes left and we still have an agency to finish and the National Native Title Tribunal.

Senator BARNETT—We have finished this agency.

Senator BRANDIS—That is what I was trying to tell you, Madam Chair.

CHAIR—You won't be 25 minutes on the National Native Title Tribunal. All right, we will be moving on then. I was going to send the department home. We have finished the Federal Magistrates Court.

Senator BRANDIS—Yes.

CHAIR—Thank you very much. Thank you for your time and for your appearance.

Mr Foster—Thank you.

Senator BARNETT—I have two questions for the department to consider overnight which means that department representatives and officers could leave if I could put that question to Mr Wilkins.

CHAIR—Are there any other senators who have questions of the department for this evening? Bear in mind that we are not scheduled to get to the department until eight o'clock tomorrow night so that you do actually have all day to think about this.

Senator BARNETT—I just have two queries that you might think about overnight. Can I put those to you now? An answer tomorrow would be fine.

CHAIR—Bearing in mind that we have agencies all day tomorrow and we are not due to have the department come before us until eight o'clock tomorrow night.

Senator BARNETT—So there will be plenty of time to prepare. That is why I wanted to put my questions to you tonight. I refer to the answer to question on notice No. 120 of the corporate services group about hospitality expenditure. Firstly, thank you for preparing that answer and providing it to me. On 26 November 2008, under Attorney-General, the National Gallery of Australia end of year function with departmental senior executive and portfolio agency heads, \$1,807, could advise how many were there? On 7 May 2008, under Minister for Home Affairs, Ottoman restaurant dinner with the New Zealand Minister of Customs, \$620.10, I would like to know how many and who attended. On 13 November 2008, under Minister for Home Affairs, Waters Edge restaurant lunch for Indonesian Minister of Law and Human Rights as part of the Australian ministerial forum, \$1070, I would like to know who was there and how many. I may have further particulars to follow up regarding those particular matters tomorrow. I am also interested to know how those expenditures were paid for—that is, credit card or invoices—and what processes were undertaken to pay for them and more generally with respect to payment of ministerial expenses in terms of how those payments are made.

My second area of questioning relates to Commonwealth legal spending. It went from \$408 million in 2006-07 to \$510 million in 2007-08. Aside from the \$56 million attributed to many agencies reporting legal costs for the first time, is there any reason why the jump in legal costs is so large? Finally, the Attorney-General has not revealed what proportion of the \$510 million spent last year on federal government legal costs was external. Can the department reveal this figure? What is the usual process for determining who will provide government legal advice? If those areas could be attended to, that would be great. We have a lot more questions for the department.

CHAIR—We will now move to the National Native Title Tribunal.

[10.39 pm]

National Native Title Tribunal

CHAIR—Good evening to you all. Do you have an opening statement that you would like to commence with?

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

Senator BARNETT—If we could start with the consultancies. The National Native Title Tribunal, Nos. 455 and 458, firstly, Mark Dignam and Associates conducted a client satisfaction survey from 8 February 2008 which finished 20 May 2008 by select tender for a figure of \$41,360. Can you provide further particulars regarding that survey and its outcomes?

Ms Fryer-Smith—That consultancy was a client survey that was conducted in 2008. The results of that, I think, we had better take on notice.

Senator BARNETT—What sorts of questions did it look at? What were the areas of interest? Can you provide further particulars? Obviously it was quite important as it cost over \$40,000.

Mr Gaffney—I can give you a summary of that and provide you with the details later on. The survey by Mark Dignam and Associates contacted, I believe, around 60 clients, which represented a range of stakeholders. They were asked the same questions. The results were collated and presented to members and senior managers of the tribunal.

Senator BARNETT—Could you take it on notice then. Is a report available?

Mr Gaffney—There is a report and an executive summary of the report.

Senator BARNETT—I am happy to get an executive summary, if that is convenient. It would be appreciated. Are you happy to take that notice?

Mr Gaffney—We are.

Senator BARNETT—The second one is the website project by the Vivid Group: \$116,434, mid last year, by open tender. It seems like a lot of money but obviously not as much as the \$30 million budget was spent on the GROCERYchoice website; nevertheless, it is a good deal of money. Could you describe the terms of reference for that report and the outcome?

Ms Fryer-Smith—I might pass that to Mr Gaffney too. Like the previous survey, that was commissioned before I began with the tribunal.

Mr Gaffney—I can provide the terms of reference, but I do not have them on the top of my head. In summary, that consultancy involved creating a new intranet for the tribunal and the associated work around that. I cannot give you the details as to the terms of reference, but it involved the creation of the new tribunal intranet.

Senator BARNETT—Is that operating now?

Mr Gaffney—It is currently operating, yes.

Senator BARNETT—Was a report provided to the tribunal?

Mr Gaffney—I cannot say if there was a report. The consultancy developed the intranet and things like that, so I am not sure whether you can say there was a report because a number of developers were involved and various design work was involved. Whether I could go so far as to say there was a report, I would be stretching—

Senator BARNETT—Are you happy to take it on notice and provide further particulars to the committee?

Mr Gaffney—Yes.

Senator BARNETT—Can you describe your case load and workload?

Ms Fryer-Smith—The workload is broad ranging, as you would know. In terms of mediating native title claims, currently there are 256 claimant applications with the tribunal for mediation. The tribunal also has many other functions, including the registration of claimant applications. It engages in future act mediation and arbitration, and in Indigenous land-use agreement mediation and negotiation. It also provides assistance to parties and to persons who might become engaged in the native title system. It also has a broad function in relation to, for example, capacity building with native title representative bodies.

Senator BARNETT—You obviously have a very heavy workload and your case load is a substantial, and we are aware of those pressures. Do you have the resources to do the job?

Ms Fryer-Smith—Up until recently we have had the resources. Under the recent budget, the tribunal is in fact going to sustain a reduction in funding for the next four-year budget cycle; a significant reduction in the first year in the order of \$2.8 million.

Senator BARNETT—What is the reduction over the four years?

Ms Fryer-Smith—It is in the vicinity of that amount. The appropriation to the tribunal in the forthcoming four years will be in the vicinity of \$29 million, whereas in this financial year it was in the order of \$32 million.

Senator BARNETT—That is quite a big cut.

Ms Fryer-Smith—That is a very significant cut.

Senator BARNETT—It is about a 10 per cent cut.

Ms Fryer-Smith—It is 7.7, precisely. I was giving you round figures.

Senator BARNETT—So you have had a big reduction.

Ms Fryer-Smith—Yes, a significant reduction.

Senator BARNETT—Where are these cuts going to occur within the tribunal?

Ms Fryer-Smith—In the first instance we are looking at reducing corporate and administrative expenses. We have already calculated where those administrative expenses will be reduced in the first instance. In relation to our IT budget, we have invested significantly in IT in the last year or so because of the need to make up a lack of investment in the past. We are looking at efficiencies in processes. We will be reducing the cost of travel; the cost of meetings; costs associated with the notification processes of the tribunal, especially in relation to advertising; publication and printing costs, some professional service; and, ultimately, salary costs.

Senator BARNETT—How do you change the salary costs for your employees? How is that possible?

Ms Fryer-Smith—We will be reducing staff numbers.

Senator BARNETT—When will that occur, and how many?

Ms Fryer-Smith—Over the next financial year we expect to have the equivalent of eight staff members fewer than we have at the moment, so that is from an average 244 to 236.

Senator BARNETT—Is that full-time equivalent?

Ms Fryer-Smith—Yes, broadly.

Senator BARNETT—Again, that is significant. That is over the next 12 months?

Ms Fryer-Smith—The next financial year.

Senator BARNETT—And the year after that? Is there a further reduction after that, is it steady from that time or do you not know?

Ms Fryer-Smith—We have not looked that far ahead, but we are mindful of the budgetary pressures that are being exerted across the board. We are wanting, of course, to retain our workforce as much as we can.

Senator BARNETT—In what areas will those eight staff be cut?

Ms Fryer-Smith—At this stage it is a little early to say. We are hoping that the reductions will occur through natural attrition. It is probable that they will be across the board, but we, of course, would be loath to lose staff out of essential service delivery areas.

Senator BARNETT—Indeed, but it is going to put enormous pressure on the tribunal to fulfil its role.

Ms Fryer-Smith—It will be very challenging, yes.

Senator BARNETT—How many tribunal members do we currently have?

Ms Fryer-Smith—We have nine members at the moment.

Senator BARNETT—Any vacancies?

Ms Fryer-Smith—I am not sure if I would characterise it as ‘vacancies’, but I would think not. There are no processes, as I understand, at the moment to appoint any new members.

Senator BARNETT—How many members did we have this time last year?

Ms Fryer-Smith—This time last year we had 11.

Senator BARNETT—And you have dropped to nine.

Ms Fryer-Smith—Yes, we have.

Senator BARNETT—Why is that?

Ms Fryer-Smith—One member resigned in July last year and a second member’s term expired.

Senator BARNETT—Has the government made a specific decision not to replace the tribunal members?

Ms Fryer-Smith—I cannot speak for the government, but at the moment the situation is that we have nine members. The term of one has recently been extended.

Senator BARNETT—What would happen if another tribunal member resigned?

Ms Fryer-Smith—That would increase the pressure on our members’ workload, of course.

Senator BARNETT—Is there a standing view now that you do not fill vacancies?

Ms Fryer-Smith—That is not our position.

Mr Govey—That is a matter for the Attorney-General.

Senator BARNETT—It would be, and I am happy for the Attorney—either the minister or Mr Govey on behalf of the department—to answer the question of why there has been a reduction from 11 to nine and those vacancies have not been filled when you know about the pressures on the tribunal.

Senator Ludwig—I am happy to take that on notice. These matters are for the Attorney-General.

Senator BARNETT—Minister, you cannot help us?

Senator Ludwig—On these matters it is for the Attorney-General to make the relevant appointments. I am happy to take it on notice.

Senator BARNETT—Would Mr Wilkins know the answer?

Senator Ludwig—They are for the Attorney-General to decide.

Senator BARNETT—Can you also take on notice, Minister, what will happen if there are further vacancies. Will there be appointments made or will those vacancies remain vacant and the numbers keep reducing?

Senator Ludwig—That is a hypothetical question to some extent. What I can do, though, is seek the views of the Attorney-General on this matter.

Senator BARNETT—Thank you. How many were there two years ago? Are we seeing a trend of reduction over time here?

Ms Fryer-Smith—There has been a process of reduction in numbers. I cannot say exactly how rapid that was. We are just calculating now. There was at least one additional member, I think, in 2007.

Senator BARNETT—At least one additional one. So we have seen a reduction over the last couple of years of at least three.

Ms Fryer-Smith—Yes, that is so.

Senator BARNETT—All right. Let me go back to your workload. The last time we met, in February—and I think even the time before that—I think the longest duration of a case before you was some 14 years, based on an answer to a question on notice that I seem to recall. Based on current rates of work commitment, you would settle all the matters before you over the next 30 years. Is that your recollection? Is that an accurate summation?

Ms Fryer-Smith—That was an estimate that the tribunal made early in 2008.

Senator BARNETT—Is that still broadly correct?

Ms Fryer-Smith—We have not made any fresh assessment of the disposition rate since early 2008, Senator. You will be aware that over the last seven months or so we have been informed that there will be substantive changes to the Native Title Act and we are proceeding on that basis. The management of the claimant application workload will rest, really, with the Federal Court. What we have done has been essentially to keep a watching brief on the disposition rate. I would just like to point out that that rate was calculated on a national basis and that in fact the disposition rate does vary considerably from jurisdiction to jurisdiction. In South Australia, for example, most of the matters may well be disposed of in the next five years.

Senator BARNETT—Notwithstanding that, Ms Fryer-Smith, could you please take on notice the analysis that you undertook, I think, early last year and apply a similar analysis this year—on notice, if you could get back to us.

Ms Fryer-Smith—We can attempt to do that, yes.

Senator BARNETT—Thank you. You have indicated the changes foreshadowed to the legislation and, if that legislation passes, the likely workload take-up by the Federal Court in terms of mediation. I think that is one way to summarise it. Do you envisage that that would reduce your workload to a significant degree and, if so, to what degree?

Ms Fryer-Smith—We simply cannot predict that. Under the terms of the amending legislation, the Federal Court has the power to refer claimant applications to mediation quite broadly. The discretion is broad and, indeed, mediation may occur within the Federal Court, it may occur within the tribunal or it may be conducted by external third-party mediators. How the individual judges of the court choose to apply the amending provisions, assuming they go through, is a matter for the court. We simply cannot second-guess that.

Senator BARNETT—So it is probably fair to say that nobody could really predict exactly how it will impact on the workload of the tribunal or the Federal Court.

Ms Fryer-Smith—The tribunal cannot predict it, Senator.

Senator BARNETT—I am not sure that anybody could at the moment. I am not sure that anybody within the government could, unless Mr Govey or somebody from the department would like to respond to that question.

Mr Govey—The only thing we can say about that is that it will be necessary to keep it under review.

Senator BARNETT—Which begs the question: why has the government chosen to reduce the funding commitment to the tribunal? Of course that is a matter for the government and for the minister.

Ms Fryer-Smith—Yes.

Senator BARNETT—Based on a recent Senate committee of inquiry, my understanding is there was either little or no consultation with the tribunal prior to the amending legislation being promulgated. Is that correct?

Ms Fryer-Smith—Not prior to the legislation being promulgated, but I understand that the president of the tribunal was notified of the proposal to amend the act shortly before the public announcement was made.

Senator BARNETT—So the president and/or the members of the tribunal did not have any opportunity to have input or make recommendations with regard to the nature and content of that legislative proposal?

Ms Fryer-Smith—No, the tribunal has made a number of submissions in relation to matters affecting the Native Title Act in the last six months or so. We made a submission to a recent Senate inquiry. We made a submission to the—

Senator BARNETT—I appreciate that, but what I am saying is, in respect of the government's proposal to amend the legislation, you were not consulted but for a phone call

to the president the day before or a few days before the announcement that there would be a legislative change.

Ms Fryer-Smith—I understand that is the case, yes.

Senator BARNETT—You must feel very aggrieved and disappointed by that, that you were not consulted and the tribunal was not consulted.

Mr Govey—Can I make one point about the consultation process? It is fair to say that the reforms that are now being implemented in large measure relate to the same matters that were the subject of quite an extensive process of consultation leading up to the report that was prepared by two consultants, Mr Hiley and Dr Levy, and in the course of preparing that report there was very extensive consultation. So it would be fair to say that the government was very well aware of the views of the tribunal and took those into account when they made their decision on this particular set of reforms.

Senator BARNETT—Nevertheless, I am aware of the submission that you put to the Senate committee regarding this legislation, and it made clear that the president was advised a day before or a couple of days before the announcement and the release of the legislation. The view was expressed at that time of a considerable disappointment. Is that correct?

Ms Fryer-Smith—Yes, I understand the president was disappointed.

Senator BARNETT—In the one minute remaining, would you care to summarise the prospects for undertaking the work before the tribunal with the limited resources that you have available over the next year and onwards? You described it earlier as ‘challenging’. Can you outline in further detail what you mean by that?

Ms Fryer-Smith—Yes, it will be challenging. We have had some time to consider how we would deal with the changes because the tribunal participated in a review of native title funding in 2008. We have taken a number of strategies in the last year or so to give effect to the 2007 amendments, and these have included developing strong multidisciplinary teams to assist members in mediating matters and we imagine that we will be calling on our staff members to support the members to the greatest possible extent—although I am sure that is in fact already occurring.

Senator BARNETT—Thank you very much for that. I do appreciate your response. I know it is a challenging situation that you are in. It is just whether it is diabolical or confusing or perplexing for us to consider this and the cuts to the tribunal at the same time the government sees it as imperative, and they say publicly that they wish this, to reduce the workload and reduce the backlog. It just seems a bit of a paradox; one does not seem to fit with the other. So that is the diabolical arrangement with which we are currently faced. I make that observation, noting that it is 11 pm.

CHAIR—As there are no senators requiring your attendance tomorrow morning, I thank you very much for your attendance at estimates and you are off the hook for tomorrow morning.

Ms Fryer-Smith—Thank you.

Committee adjourned at 11.00 pm